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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2022–1250; Project Identifier AD–2022–00763–T; Amendment 39–22490; AD 2023–13–05]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD was prompted by a report indicating fuselage skin lap splice cracking was found between stations (STA) 767 and STA 787, just below S–14R fuselage skin lap splice, where a lower skin panel buckle intersected the upper skin of the lap splice. Cracking was also found just below S–14R between STA 747 and STA 767. This AD requires an inspection for any repair at certain skin lap splices at S–4, S–14, and S–24 and depending on the configuration, repetitive inspections for buckling, wrinkling, or bulging at affected skin lap splices and repair, repetitive inspections for cracking at affected locations common to fuselage skin on the left and right sides and repair, and alternative inspections and on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective October 27, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 27, 2023.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1250; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Material Incorporated by Reference:*

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.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. It is also available at *regulations.gov* under Docket No. FAA–2022–1250.

**FOR FURTHER INFORMATION CONTACT:** Owen Bley-Male, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3992; email: *Owen.F.Bley-Male@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The NPRM published in the **Federal Register** on November 9, 2022 (87 FR 67581). The NPRM was prompted by a report indicating fuselage skin lap splice cracking was found between STA 767 and STA 787, just below S–14R fuselage skin lap splice, where a lower skin panel buckle intersected the upper skin of the lap splice. Cracking was also found just below S–14R between STA 747 and STA 767. In the NPRM, the FAA proposed to require an inspection for any repair at certain skin lap splices and depending on the configuration, repetitive inspections for buckling, wrinkling, or bulging at affected skin lap splices and repair, repetitive inspections for cracking at affected locations common to fuselage skin on the left and right sides and repair, and alternative inspections and on-condition actions. The FAA is issuing this AD to address cracks, skin buckles, wrinkles, and bulges at fuselage longitudinal lap splice areas at S–4, S–14 and S–24. This condition, if not addressed, could result in cracks in fatigue-critical baseline structure and the inability of a principal structural element to sustain limit loads, which could adversely affect the structural integrity of the airplane.

### Discussion of Final Airworthiness Directive

#### Comments

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

The FAA received additional comments from six commenters, including Boeing, Aviation Partners Boeing, Delta Air Lines (Delta), Southwest Airlines (SWA), United Airlines (UAL), and Qantas. The following presents the comments received on the NPRM and the FAA's response to each comment.

#### Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST00830SE does not affect the actions specified in the proposed AD.

The FAA concurs with the commenter. The FAA has redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST00830SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17

#### Request To Correct Errors in Service Information or Refer to Latest Service Information

Boeing, Delta, SWA, UAL, and Qantas requested that the NPRM be revised to correct errors in the referenced service information. Boeing, SWA, UAL, and Qantas requested that the NPRM be

revised to refer to a new revision of Boeing Special Attention Requirements Bulletin 737–53–1399 RB, dated May 20, 2022. The commenters noted that Boeing was drafting a revision to correct several errors in the service information. Boeing stated that the revision would modify a table and several illustrations, inspection steps, and footnotes to clarify the inspection locations, and revise Table 1 in the Accomplishment Instructions to correctly specify the applicable airplanes. SWA suggested the revision would clarify the distinction between the detailed visual and non-destructive testing (NDT) inspections underneath the lap joint. UAL and SWA noted that certain figures incorrectly specify to externally inspect an area that is not visible externally. UAL added that the revision would correct errors in the figures related to orientations of airplane sections. Delta and Qantas noted that Table 1 of the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–53–1399 RB, dated May 20, 2022, includes the compliance actions for Groups 1 through 6 airplanes, but Table 1 specifies it applies only to Group 1 airplanes. UAL pointed out that Table 1 in the Compliance section specifies the inspections are applicable to all airplanes, which contradicts Table 1 in the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–53–1399 RB, dated May 20, 2022.

The FAA agrees with the commenters' request. The FAA has reviewed Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023, which corrects the errors noted by the commenters. Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023, also combines actions for several conditions to remove duplicative instructions and revises related figures accordingly. These revisions allow operators to do all applicable actions for their airplane models without obtaining an AMOC, and do not add additional work. The FAA has revised this AD to refer to Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023.

**Request To Clarify Inspection Locations**

Boeing requested that the FAA revise the Related Service Information Under 1 CFR part 51 section of the NPRM to clarify the inspection locations, including whether they are on the right (R) or left (L) side of the airplane, and applicable airplane models for each inspection location. Boeing noted that the locations specified in the NPRM don't correspond to the service information due to errors in Boeing Special Attention Requirements Bulletin 737–53–1399 RB, dated May 20, 2022.

The FAA agrees to revise the Related Service Information Under 1 CFR part 51 section for the reasons provided. The FAA has revised this section as requested.

**Request To Clarify Root Cause of Cracking**

Boeing asked that the FAA change a sentence in the Background section of the NPRM to specify that the skin lap splice cracking ''may have been the result of incorrect procedures . . .'' rather than ''was the result of incorrect procedures . . .'' Boeing noted that it has always stated that the root cause of cracking is unknown.

The FAA agrees that the suggested wording provides clarification on the root cause. However, the sentence in question does not get carried over to the final rule. This AD was not changed regarding this issue.

**Request To Clarify Number of Reports**

Boeing requested that the FAA revise a sentence in the Background section of the NPRM to specify that the FAA ''received a report from Boeing'' rather than ''received reports'' indicating fuselage skin cracking was found. Boeing noted that it had only one report of crack findings, with only one airplane with cracks reported.

The FAA agrees that the suggested wording is more accurate. However, the sentence in question does not get carried over to the final rule. This AD was not changed regarding this issue.

**Request To Remove Reference to Widespread Fatigue Damage (WFD)**

Boeing requested that the FAA revise the proposed AD to remove reference to WFD. Boeing explained that, although there was one report of multi-site damage within two bays, it does not consider this cracking to be a WFD issue. Boeing added that, based on its reviews of similar manufactured skins on other models of Boeing airplanes, these skins are not susceptible to WFD. Additionally, Boeing proposed revised language for the unsafe condition sentence in the proposed AD.

The FAA agrees with the commenter's request. After further review, the FAA has determined that a single crack finding is not enough to conclusively indicate that the unsafe condition is related to WFD. However, an unsafe condition still exists because cracks in fatigue-critical baseline structure and the inability of a principal structural element to sustain limit loads could adversely affect the structural integrity of the airplane. The FAA has revised the SUMMARY, Background section, and paragraph (e) of this AD to remove reference to WFD, and revised the Background section and paragraph (e) of this AD to clarify the unsafe condition.

**Request To Define Skin Buckles, Wrinkles, and Bulges**

Qantas requested that the proposed AD be revised to provide more precise definitions for skin buckles, wrinkles, and bulges, including size, orientation, origin, and depth as well as whether wrinkling is permanent or temporary. Qantas noted that skin panels have minor imperfections due to production assembly processes, but those aren't skin buckles, wrinkles, or bulges. Qantas states that what constitutes a skin buckle, wrinkle, or bulge could be open to interpretation, causing operators to perform unnecessary NDT inspection. The commenter noted that it found a Boeing definition of a buckle and a Boeing Service Letter that states wrinkling is temporary and will have no detrimental long-term effect unless it becomes more severe or permanent. The commenter added that the Boeing Service Letter suggests that you'll find wrinkling in the vicinity of the inspection area. Qantas suggested this would lead to unnecessary repeat inspection on unrepaired areas and cause an undue burden.

The FAA acknowledges the commenter's concern. This terminology reflects the suspected root cause of the discovered cracking, and possible precursors to future cracks. This terminology also reflects commonly used verbiage for possible structural damage, so further explanation is unnecessary. However, the FAA notes that Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023, states that areas of loose paint, discoloration, loose fasteners, lap joint separation, or disturbed sealant can be indicative of areas where a skin buckle, wrinkle, or bulge has occurred. Skin buckles, wrinkles, or bulges could lead to cracks that may result in the inability of a principal structural element to sustain limit load, which could result in reduced structural integrity of the airplane and lead to a decompression event. Therefore, the follow-on inspections for cracks are necessary if any skin buckles, wrinkles, or bulges are found, regardless of size, origin, depth, or other factors. This AD was not changed regarding this issue.

**Request To Revise Certain Compliance Times**

Qantas noted that, for certain conditions, the NDT inspections must be repeated every 600 flight cycles, regardless whether any buckle, wrinkle, or bulge is found, which is burdensome for operators. The FAA infers the commenter is requesting an extension of the compliance time.

The FAA disagrees with the commenter's request. In developing the compliance times for this AD, the FAA considered the recommendations of the manufacturer as well as the urgency associated with the subject unsafe condition. However, under the provisions of paragraph (i) of this AD, the FAA will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. This AD was not changed regarding this issue.

**Request To Clarify Paint Thickness for Certain Inspections**

SWA requested clarification regarding the acceptable level of paint thickness for certain inspections. SWA noted that figures 17 through 19 and 28 through 35 in Boeing Special Attention Requirements Bulletin 737–53–1399 RB, dated May 20, 2022, indicate that subsequent NDT inspections can be accomplished with paint in place. SWA added that per the 737 NDT Manual Part 4, 53–30–06, the procedure can only be used with paint up to 0.007 inches thick. SWA suggested adding this guidance in a note, since the repetitive inspections occur every 600 flight cycles.

The FAA notes that the suggested clarification has been added to a note in the applicable figures in Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023. As previously noted, this AD has been revised to refer to Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023. Therefore, no further change to this AD is necessary regarding this issue.

**Conclusion**

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

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

The FAA reviewed Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023. This service information specifies procedures for a general visual inspection for any repair, any buckle, any wrinkle, any bulge, and any cracking at skin lap splice at stringers S–4R (737–800 Boeing Converted Freighter airplanes only), S–14L, S–14R, and S–24R (737–600, –700, –700C, 800, –900, and –900ER series airplanes only). This service information also describes procedures, depending on the configuration, for repetitive detailed inspections for buckling, wrinkling, or bulging at unrepaired areas of affected lap splices, and repair; repetitive detailed, high frequency eddy current (HFEC), and ultrasonic (UT) inspections for cracking at affected locations common to fuselage skin on the left and right sides, and repair; and alternative inspections and on-condition actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

**Costs of Compliance**

The FAA estimates that this AD affects 2,462 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections ... | Up to 34 work-hours × $85 per hour = Up to $2,890 per inspection cycle. | $0 | $2,890 per inspection cycle | Up to $7,115,180 per inspection cycle. |

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2023–13–05 The Boeing Company:** Amendment 39–22490; Docket No. FAA–2022–1250; Project Identifier AD–2022–00763–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective October 27, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

(1) This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST00830SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by a report indicating fuselage skin lap splice cracking was found between stations (STA) 767 and STA 787, just below S–14R fuselage skin lap splice, where a lower skin panel buckle intersected the upper skin of the lap splice. Cracking was also found just below S–14R between STA 747 and STA 767. The FAA is issuing this AD to address cracks, skin buckles, wrinkles, and bulges at fuselage longitudinal lap splice areas at S–4, S–14 and S–24. This condition, if not addressed, could result in cracks in fatigue-critical baseline structure and the inability of a principal structural element to sustain limit loads, which could adversely affect the structural integrity of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023.

**Note 1 to paragraph (g):** Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023, which is referred to in Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023.

**(h) Exceptions to Service Information Specifications**

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023, use the phrase ''the original issue date of the Requirements Bulletin 737–53–1399 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair and doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

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

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

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

**(j) Related Information**

(1) For more information about this AD, contact Owen Bley-Male, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3992; email: *Owen.F.Bley-Male@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

**(k) Material Incorporated by Reference**

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

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

(i) Boeing Special Attention Requirements Bulletin 737–53–1399 RB, Revision 1, dated March 14, 2023.

(ii) [Reserved]

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

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

Issued on June 30, 2023.

**Michael Linegang,**

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

[FR Doc. 2023–20503 Filed 9–21–23; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2023–1884; Project Identifier MCAI–2023–00482–A; Amendment 39–22554; AD 2023–19–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Aircraft Industries, a.s. Airplanes

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

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

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Aircraft Industries, a.s. Model L–420, L 410 UVP–E20, and L 410 UVP–E20 CARGO airplanes. This AD was prompted by reports of the pressure plates within the main landing gear (MLG) wheel brake unit malfunctioning. This AD requires replacing certain MLG wheel brake units with serviceable parts and prohibits installing an affected part

on any airplane. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective October 10, 2023.

The FAA must receive comments on this AD by November 6, 2023.

**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–2023–1884; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4059; email: *doug.rudolph@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1884; Project Identifier MCAI–2023–00482–A'' 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 Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

## Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0055, dated March 16, 2023 (referred to after this as the MCAI), to correct an unsafe condition on Aircraft Industries, a.s. Model L–410 M Turbolet, L–410 UVP—Turbolet, L–410 UVP–E, L 410 UVP–E9, L 410 UVP–LW, L 410 UVP–E–LW, L 410 UVP–E20, L 410 UVP–E20 CARGO, and L–420 airplanes, all variants. The MCAI states there were several reports of the MLG wheel brake malfunctioning (blocking). Investigations revealed that all the malfunctions were caused by fractured brake pressure plates, and further analysis by Aircraft Industries, a.s. and the brake unit manufacturer showed that the root-cause of the failure was an improper (re-) design of certain pressure plates installed on certain serial numbers of MLG wheel brake unit part number (P/N) K38–1200–7. This condition, if not detected and corrected, could lead to reduced brake function, resulting in loss of control of the airplane, especially during taxiing, aborted take-off, or landing. The MCAI requires replacing all affected parts with serviceable parts, as defined in the MCAI.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1884.

## FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

## AD Requirements

This AD requires accomplishing the actions specified in the MCAI described previously, except as discussed under ''Differences Between this AD and the MCAI.'' This AD also prohibits installing on any airplane an MLG wheel brake unit P/N K38–1200–7 with serial number XXX–35, XXX–36, XXX–37, or XXX–38, where X represents any numerical value.

## Differences Between This AD and the MCAI

The MCAI applicability includes Aircraft Industries a.s. Model L–410 M Turbolet, L–410 UVP—Turbolet, L–410 UVP–E, L 410 UVP–E9, L 410 UVP–LW, and L 410 UVP–E–LW airplanes and this AD does not because those airplane models do not have an FAA type certificate.

The MCAI specifies a compliance time based on an affected part's number of flight cycles, but this AD requires a compliance time based on an affected part's hours time-in-service (TIS). When doing the conversion from flight cycles to hours TIS, the FAA has estimated that 1 flight cycle is equal to 1 hour TIS.

## 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.

There are no affected airplanes currently on the U.S. registry. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In

addition, for the foregoing reason(s), 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.

**Regulatory Flexibility Act**

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

**Costs of Compliance**

There are no costs of compliance with this AD because there are no affected airplanes on the U.S. Registry. In the event an affected product becomes a U.S.-registered product, the following is an estimate of the costs to comply with this AD.

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replace affected MLG wheel brake unit ..... | 8 work-hours × $85 per hour = $680 ..... | $5,000 | $5,680 | $0 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

**2023–19–04 Aircraft Industries, a.s.:** Amendment 39–22554; Docket No. FAA–2023–1884; Project Identifier MCAI–2023–00482–A.

**(a) Effective Date**

This airworthiness directive (AD) is effective October 10, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Aircraft Industries, a.s. Model L–420, L 410 UVP–E20, and L 410 UVP–E20 CARGO airplanes, all serial numbers, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 3240, Landing Gear Brake System.

**(e) Unsafe Condition**

This AD was prompted by reports of the pressure plates within the main landing gear (MLG) wheel brake unit malfunctioning. The FAA is issuing this AD to address MLG wheel brake failures. The unsafe condition, if not addressed, could result in reduced brake function, resulting in loss of control of the airplane, especially during taxiing, aborted take-off, or landing.

**(f) Compliance**

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

**(g) Definitions**

The following definitions apply to this AD:

(1) An ''affected part'' is an MLG wheel brake unit part number (P/N) K38–1200–7 having serial number XXX–35, XXX–36, XXX–37, or XXX–38, where X represents any numerical value and where the MLG wheel brake unit has not been modified using sections B. and C. of the Implementation Information in LET Aircraft Industries Service Bulletin L–410/039a, Revision 1, dated October 25, 2022 (LET SB L–410/039a, Revision 1).

(2) A ''serviceable part'' is an MLG wheel brake unit that is not P/N K38–1200–7 having serial number XXX–35, XXX–36, XXX–37, or XXX–38, where X represents any numerical value or where the MLG wheel brake unit P/N K38–1200–7 having serial number XXX–35, XXX–36, XXX–37, or XXX–38 has been modified using sections B. and C. of the Implementation Information in LET SB L–410/039a, Revision 1.

**(h) Required Actions**

(1) For airplanes with an affected part installed: Before each affected part accumulates 1,500 hours time-in-service (TIS) since the affected part's first installation on any airplane or within 10 hours TIS after the effective date of this AD, whichever occurs later, replace each affected part with a serviceable part.

(2) As of the effective date of this AD, do not install an affected part on any airplane.

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

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov*. If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

**(j) Additional Information**

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2023–0055, dated March 16, 2023, for related information. This

EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1884.

(2) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

(3) For service information identified in this AD that is not incorporated by reference, contact Aircraft Industries, a.s., Na Záhonech 1177, Kunovice, Czech Republic; phone: +420 572 817 664; email: *pps@let.cz;* website: *let.cz/en/bulletin.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust Street, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

**(k) Material Incorporated by Reference**

None.

Issued on September 18, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023–20554 Filed 9–21–23; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2023–1325; Airspace Docket No. 23–AGL–17]**

**RIN 2120–AA66**

## Amendment of VOR Federal Airway V–36 and Establishment of RNAV Route T–675; Northcentral United States

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Very High Frequency Omnidirectional Range (VOR) Federal airway V–36 and establishes Canadian Area Navigation (RNAV) route T–675 in the northcentral United States (US). The Air Traffic Service (ATS) route actions are necessary due to the planned decommissioning of the Wawa, Ontario (ON), Canada, VOR navigational aid (NAVAID). This action is in support of NAV CANADA's NAVAID Modernization Program within Canada.

**DATES:** Effective date 0901 UTC, November 30, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the ATS route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

### History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–1325 in the **Federal Register** (88 FR 37179; June 7, 2023), amending VOR Federal airway V–36 and establishing Canadian RNAV route T–675 in the northcentral US. The action is due to the planned decommissioning of the Wawa, Ontario (ON), Canada, VOR navigational aid (NAVAID) by NAV CANADA in support of their NAVAID Modernization Program. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

### Differences From the NPRM

Subsequent to the NPRM, NAV CANADA clarified their intended action due to the planned decommissioning of the Wawa, ON, Canada VOR was to replace the existing V–36 entirely with a new RNAV route T–675 between the Thunder Bay, ON, Canada, area and the Sault Ste Marie, MI, VOR/Distance Measuring Equipment (DME) NAVAID. The NPRM proposed to remove the affected V–36 airway segments within US airspace between the Thunder Bay, ON, Canada, VOR/DME and the Sault Ste Marie, MI, VOR/DME, but only proposed to establish the replacement Canadian RNAV route T–675 for one of the two affected V–36 segments within US airspace. In the NPRM, the FAA proposed to establish the T–675 route segment over Lake Michigan between the NOJJE, MI, waypoint (WP) replacing the ''CFZDP'' computer navigation fix (CNF) and the RUXDU, MI, WP replacing the ''CFTKM'' CNF on the US/Canada border, but not the second route segment overlaying V–36 in US airspace between the Sault Ste Marie VOR/DME northward to the US/Canada border.

In order to provide continued cross border connectivity for the entirety of the new T–675 route replacing the existing V–36 airway between the Thunder Bay VOR/DME and the Sault Ste Marie VOR/DME, the FAA has determined this action must also include establishing a second segment of T–675 within US airspace between the Sault Ste Marie VOR/DME and the BBIGG, MI, WP replacing the ''CFCMN'' CNF on the US/Canada border. Although the second T–675 route segment was not proposed in the NPRM, its inclusion in this action retains the ATS routing provided by V–36 prior to this final rule, provides route continuity with NAV CANADA's T–675 in Canadian airspace, assures continued cross border connectivity between Thunder Bay, Ontario, Canada and Sault Ste Marie, MI, and prevents any possible safety-related issues or confusion caused by the publication of the replacement T–675 route ending on the US/Canada border instead of the Sault Ste Marie VOR/DME NAVAID.

Therefore, this action adds the Canadian RNAV route T–675 segment between the Sault Ste Marie VOR/DME and the BBIGG, MI, WP to the route description published in the NPRM. The Canadian RNAV route T–675 being established in this final rule extends between the Sault Ste Marie VOR/DME and the BBIGG, MI, WP and between the NOJJE, MI, WP and the RUXDU, MI, WP.

### Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) and Canadian Area Navigation Routes are published in paragraph 6013 of FAA Order JO

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

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

## The Rule

This action amends 14 CFR part 71 by amending VOR Federal airway V–36 and establishing Canadian RNAV route T–675 in US airspace. This action is being taken due to NAV CANADA's planned decommissioning of the Wawa, ON, Canada, VOR as part of their NAVAID Modernization Program. The ATS route actions are described below.

*V–36:* Prior to this rule, V–36 extended between the Thunder Bay, ON, Canada, VOR/DME and the Sault Ste Marie, MI, VOR/DME; and between the Elmira, NY, VOR/DME and the intersection of the La Guardia, NY, VOR/DME 310° and the Stillwater, NJ, VOR/DME 043° radials (NEION fix). The airspace within Canada is excluded. The airway segments between the Thunder Bay, ON, Canada, VOR/DME and the Sault Ste Marie, MI, VOR/DME and the exclusionary language is removed. As amended, the airway extends completely within US airspace between the Elmira VOR/DME and the intersection of the La Guardia VOR/DME 310° and the Stillwater VOR/DME 043° radials (NEION fix).

*T–675:* T–675 is established between the Sault Ste Marie, MI, VOR/DME and the BBIGG, MI, WP which replaces the ''CFCMN'' CNF, and between the NOJJE, MI, WP and the RUXDU, MI, WP. The two new Canadian RNAV route segments in US airspace provide route continuity and cross border connectivity from Sault Ste Marie, MI, and Thunder Bay, ON, Canada with two Canadian RNAV route T–675 segments being established by NAV CANADA within Canadian airspace.

All radials in the VOR Federal airway V–36 description in the amendments to part 71 are unchanged and stated in degrees True north.

## Regulatory Notices and Analyses

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

## Environmental Review

The FAA has determined that this action of amending VOR Federal airway V–36 and establishing Canadian RNAV route T–675 within US airspace, due to NAV CANADA's planned decommissioning of the Wawa, ON, Canada, VOR NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5k, which categorically excludes from further environmental impact review publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Amendment

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

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

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

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

### § 71.1 [Amended]

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

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–36 [Amended]**

From Elmira, NY; INT Elmira 110° and LaGuardia, NY, 310° radials; to INT LaGuardia 310° and Stillwater, NJ, 043° radials.

* * * * *

*Paragraph 6013 Canadian Area Navigation Routes.*

* * * * *

**T–675 SAULT STE MARIE, MI (SSM) TO RUXDU, MI [NEW]**

| | | |
|---|---|---|
| Sault Ste Marie, MI (SSM) | VOR/DME | (Lat. 46°24′43.60″ N, long. 084°18′53.54″ W) |
| BBIGG, MI | WP | (Lat. 46°30′27.69″ N, long. 084°20′44.09″ W) |
| and | | |
| NOJJE, MI | WP | (Lat. 48°10′58.82″ N, long. 088°03′36.84″ W) |
| RUXDU, MI | WP | (Lat. 48°13′11.74″ N, long. 088°44′17.74″ W) |

* * * * *

Issued in Washington, DC, on September 18, 2023.

**Karen L. Chiodini,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2023–20449 Filed 9–21–23; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2023–0955; Airspace Docket No. 22–AGL–37]**

**RIN 2120–AA66**

## Revocation of VOR Federal Airway V–456 and Mankato, MN, Low Altitude Reporting Point; Mankato, MN

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

**ACTION:** Final rule.

**SUMMARY:** This action revokes Very High Frequency Omnidirectional Range (VOR) Federal airway V–456 and the Mankato, MN, Low Altitude Reporting Point. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Mankato, MN (MKT), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Mankato VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Effective date 0901 UTC, November 30, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service enroute structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

### History

The FAA published a NPRM for Docket No. FAA–2023–0955 in the **Federal Register** (88 FR 23593; April 18, 2023), proposing to revoke VOR Federal airway V–456 and the Mankato, MN, low altitude reporting point due to the planned decommissioning of the Mankato, MN, VOR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

### Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) and Domestic Low Altitude Reporting Points are published in paragraph 7001 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. This amendment action will be published in the next update to FAA Order JO 7400.11.

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

### The Rule

This action amends 14 CFR part 71 by revoking VOR Federal airway V–456 and the Mankato, MN, low altitude reporting point due to the planned decommissioning of the VOR portion of the Mankato, MN, VOR/DME NAVAID. The airway and low altitude reporting point actions are described below.

*V–456:* Prior to this final rule, V–456 extended between the Mankato, MN, VOR/DME and the Flying Cloud, MN, VOR/DME. The airway is removed in its entirety.

*Mankato, MN:* The Mankato, MN, low altitude reporting point is removed.

### Regulatory Notices and Analyses

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

### Environmental Review

The FAA has determined that this action of revoking VOR Federal airway V–456 and the Mankato, MN, low altitude reporting point, due to the planned decommissioning of the VOR portion of the Mankato, MN, VOR/DME NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5k, which categorically excludes from further environmental impact review publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant

environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

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

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

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

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

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

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

### § 71.1 [Amended]

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

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–456 [Removed]**

* * * * *

*Paragraph 7001 Domestic Low Altitude Reporting Points.*

* * * * *

**Mankato, MN [Removed]**

* * * * *

Issued in Washington, DC.

**Karen L. Chiodini,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2023–20448 Filed 9–21–23; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2023–0456; Airspace Docket No. 23–ASW–3]**

**RIN 2120–AA66**

## Establishment of Area Navigation (RNAV) Routes T–469 and T–472; Southwest United States

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Area Navigation (RNAV) routes T–469 and T–472 in the southwest United States. The new RNAV routes expand the availability of the enroute structure and provide additional RNAV routing within the National Airspace System (NAS) in support of transitioning it from ground-based to satellite-based navigation.

**DATES:** Effective date 0901 UTC, November 30, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the enroute structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

### History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0456 in the **Federal Register** (88 FR 13742; March 6, 2023), proposing to establish RNAV routes T–469 and T–472 in the southwest United States to expand the availability of the enroute structure and provide additional RNAV routing within the NAS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

### Incorporation by Reference

United States Area Navigation Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

### The Rule

This action amends 14 CFR part 71 by establishing RNAV routes T–469 and T–472. The new RNAV routes are described below.

*T–469:* T–469 is established and extends between the TASEY, TX, waypoint (WP) (located 60 feet west of the Paris, TX, Very High Frequency (VHF) Omnidirectional Range (VOR)/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID)) and the Rich Mountain, OK, VOR/Tactical Air Navigation (VORTAC) NAVAID. This new T-route provides RNAV routing along the same route of flight as VOR Federal airway V–315 and

enhances flight safety and NAS efficiency for aircraft transiting enroute along the eastern boundary of the Rivers Military Operations Area (MOA).

*T–472:* T–472 is established and extends between the TASEY, TX, WP (located 60 feet west of the Paris, TX, VOR/DME NAVAID) and the Hot Springs, AR, VOR/DME NAVAID. This new T-route provides RNAV routing along the same route of flight as VOR Federal airway V–124 and enhances flight safety and NAS efficiency for aircraft transiting enroute along the southern boundary of the Hog B MOA.

**Regulatory Notices and Analyses**

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

**Environmental Review**

The FAA has determined that this action of establishing RNAV routes T–469 and T–472 in the southwest United States to provide additional RNAV routing within the NAS qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5i, which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

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

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6011 United States Area Navigation Routes.*

* * * * *

**T–469 TASEY, TX to Rich Mountain, OK (PGO) [New]**

| | | |
|---|---|---|
| TASEY, TX | WP | (Lat. 33°32'32.56'' N, long. 095°26'54.55'' W) |
| Rich Mountain, OK (PGO) | VORTAC | (Lat. 34°40'49.67'' N, long. 094°36'32.41'' W) |

* * * * * * *

**T–472 TASEY, TX to Hot Springs, AR (HOT) [New]**

| | | |
|---|---|---|
| TASEY, TX | WP | (Lat. 33°32′32.56″ N, long. 095°26′54.55″ W) |
| Hot Springs, AR (HOT) | VOR/DME | (Lat. 34°28′42.94″ N, long. 093°05′26.20″ W) |

* * * * *

Issued in Washington, DC, on September 18, 2023.

**Karen L. Chiodini,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2023–20450 Filed 9–21–23; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2023–0881; Airspace Docket No. 22–AEA–34]**

**RIN 2120–AA66**

## Amendment of VOR Federal Airways V–469 and V–501, and Revocation of VOR Federal Airway V–474 in the Vicinity of St. Thomas, PA

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Very High Frequency Omnidirectional Range (VOR) Federal airways V–469 and V–501, and revokes V–474. The FAA is taking this action due to the planned decommissioning of the VOR portion of the St. Thomas, PA (THS), VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The St. Thomas VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Effective date 0901 UTC, November 30, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual

revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the ATS route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

## History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0881 in the **Federal Register** (88 FR 21142; April 10, 2023), proposing to amend VOR Federal airways V–469 and V–501, and revoke VOR Federal airway V–474 due to the planned decommissioning of the VOR portion of the St. Thomas, PA, VORTAC NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

## Differences From the NPRM

Subsequent to the NPRM, the FAA determined that the proposed VOR Federal airway V–501 amendment to replace the St. Thomas, PA, VORTAC airway point with the VINSE Fix did not accurately overlay the existing airway between the Hagerstown, MD, VOR and the Philipsburg, PA, VORTAC airway points. To overcome the unintended difference to the V–501 routing, the FAA is establishing the GGRIF Fix located approximately 80 feet south of the St. Thomas VORTAC at the intersection of the Harrisburg, PA, VORTAC 241° True (T)/251° Magnetic (M) and Philipsburg, PA, VORTAC 178°(T)/188°(M) radials. Replacing the St. Thomas VORTAC airway point in the V–501 description with the GGRIF Fix instead of the proposed VINSE Fix will retain the existing airway as it is currently charted.

This action amends the V–501 description by changing the VINSE Fix proposed to replace the St. Thomas, PA, VORTAC airway point in the NPRM to the GGRIF Fix.

## Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

## The Rule

This action amends 14 CFR part 71 by amending VOR Federal airways V–469 and V–501, and revoking V–474 due to the planned decommissioning of the VOR portion of the St. Thomas, PA, VORTAC. The airway actions are described below.

*V–469:* Prior to this final rule, V–469 extended between the Danville, VA, VORTAC and the Woodstown, NJ, VORTAC. The airway segment between the Johnstown, PA, VOR/Distance Measuring Equipment (VOR/DME) and the Harrisburg, PA, VORTAC is removed. As amended, the airway now extends between the Danville VORTAC and the Johnstown VOR/DME and between the Harrisburg VORTAC and the Woodstown VORTAC.

*V–474:* Prior to this final rule, V–474 extended between the St. Thomas, PA, VORTAC and the Modena, PA, VORTAC. The airway is removed in its entirety.

*V–501:* Prior to this final rule, V–501 extended between the Martinsburg, WV, VORTAC and the Philipsburg, PA, VORTAC. The St. Thomas, PA, VORTAC airway point is replaced by the GGRIF Fix being established at the intersection of the Harrisburg, PA, VORTAC 241°(T)/251°(M) and Philipsburg, PA, VORTAC 178°(T)/188°(M) radials. As amended, the airway is retained as charted and continues to extend between the Martinsburg VORTAC and the Philipsburg VORTAC.

The NAVAID radials listed in the airway descriptions in the amendments to part 71 are stated in degrees True north.

## Regulatory Notices and Analyses

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

## Environmental Review

The FAA has determined that this action of amending VOR Federal airways V–469 and V–501, and revoking VOR Federal airway V–474, due to the planned decommissioning of the VOR portion of the St. Thomas, PA, VORTAC NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas;

Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5k, which categorically excludes from further environmental impact review publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

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

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–469 [Amended]**

From Danville, VA; Lynchburg, VA; INT Lynchburg 347° and Elkins, WV, 142° radials; Elkins; Morgantown, WV; INT Morgantown 010° and Johnstown, PA, 260° radials; to Johnstown. From Harrisburg, PA; Dupont, DE; to Woodstown, NJ.

* * * * *

**V–474 [Removed]**

* * * * *

**V–501 [Amended]**

From Martinsburg, WV; Hagerstown, MD; INT Harrisburg, PA, 241° and Philipsburg, PA, 178° radials; to Philipsburg.

* * * * *

Issued in Washington, DC, on September 18, 2023.

**Karen L. Chiodini,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2023–20446 Filed 9–21–23; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2023–0880; Airspace Docket No. 22–AEA–33]**

**RIN 2120–AA66**

## Amendment of VOR Federal Airways V–10 and V–210 in the Vicinity of Revloc, PA

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Very High Frequency Omnidirectional Range (VOR) Federal airways V–10 and V–210 in the vicinity of Revloc, PA. The amendments are necessary due to the planned decommissioning of the VOR portion of the Revloc, PA (REC), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Revloc VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Effective date 0901 UTC, November 30, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

**History**

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0880 in the **Federal Register** (88 FR 21130; April 10, 2023), proposing to amend VOR Federal airways V–10 and V–210 due to the planned decommissioning of the VOR portion of the Revloc, PA, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

**Incorporation by Reference**

VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. This amendment action will be published in the next update to FAA Order JO 7400.11.

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

## The Rule

This action amends 14 CFR part 71 by amending VOR Federal airways V–10 and V–210 due to the planned decommissioning of the VOR portion of the Revloc, PA, VOR/DME. The airway actions are described below.

*V–10:* Prior to this final rule, V–10 extended between the Pueblo, CO, VOR/Tactical Air Navigation (VORTAC) and the intersection of the Bradford, IL, VORTAC 058° and Joliet, IL, VOR/DME 287° radials (PLANO Fix); between the intersection of the Chicago Heights, IL, VORTAC 358° and Gipper, MI, VORTAC 271° radials (NILES Fix) and the Gipper, MI, VORTAC; and between the Youngstown, OH, VORTAC and the Lancaster, PA, VOR/DME. The airway segment between the Youngstown, OH, VORTAC and the Lancaster, PA, VOR/DME is removed. As amended, the airway now extends between the Pueblo VORTAC and the intersection of the Bradford VORTAC 058° and Joliet VOR/DME 287° radials (PLANO Fix), and between the intersection of the Chicago Heights VORTAC 358° and Gipper VORTAC 271° radials (NILES Fix) and the Gipper VORTAC.

*V–210:* Prior to this final rule, V–210 extended between the Los Angeles, CA, VORTAC and the Lamar, CO, VOR/DME; between the Will Rogers, OK, VORTAC and the Okmulgee, OK, VOR/DME; between the Brickyard, IN, VORTAC and the Rosewood, OH, VORTAC; and between the Revloc, PA, VOR/DME and the Yardley, PA, VOR/DME. The airway segment between the Revloc, PA, VOR/DME and the Harrisburg, PA, VORTAC is removed. As amended, the airway now extends between the Los Angeles VORTAC and the Lamar VOR/DME, between the Will Rogers VORTAC and the Okmulgee VOR/DME, between the Brickyard VORTAC and the Rosewood VORTAC, and between the Harrisburg VORTAC and the Yardley, PA, VOR/DME.

The NAVAID radials contained in the VOR Federal airway descriptions listed below in the amendments to part 71 are unchanged and stated in degrees True north.

## Regulatory Notices and Analyses

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

## Environmental Review

The FAA has determined that this action of amending VOR Federal airways V–10 and V–210, due to the planned decommissioning of the VOR portion of the Revloc, PA, VOR/DME NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5k, which categorically excludes from further environmental impact review publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Amendment

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

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

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

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

### § 71.1 [Amended]

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

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–10 [Amended]**

From Pueblo, CO; 18 miles, 48 miles, 60 MSL, Lamar, CO; Garden City, KS; Dodge City, KS; Hutchinson, KS; Emporia, KS; INT Emporia 063°and Napoleon, MO, 243° radials; Napoleon; Kirksville, MO; Burlington, IA; Bradford, IL; to INT Bradford 058° and Joliet, IL, 287° radials. From INT Chicago Heights, IL, 358° and Gipper, MI, 271° radials; to Gipper.

* * * * *

**V–210 [Amended]**

From Los Angeles, CA; INT Los Angeles 083° and Pomona, CA, 240° radials; Pomona; INT Daggett, CA, 229° and Hector, CA, 263° radials; Hector; Goffs, CA; 13 miles, 23 miles 71 MSL, 85 MSL Peach Springs, AZ; Grand Canyon, AZ; Tuba City, AZ; 10 miles 90 MSL, 91 miles 105 MSL Rattlesnake, NM; Alamosa, CO; INT Alamosa 074° and Lamar, CO, 250° radials; 40 miles, 51 miles 65 MSL to Lamar. From Will Rogers, OK; INT Will Rogers 113° and Okmulgee, OK, 238° radials; to Okmulgee. From Brickyard, IN; Muncie, IN; to Rosewood, OH. From Harrisburg, PA; Lancaster, PA; INT Lancaster 095° and Yardley, PA, 255° radials; to Yardley.

* * * * *

Issued in Washington, DC, on September 18, 2023.

**Karen L. Chiodini,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2023–20447 Filed 9–21–23; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

**[Docket No. FAA–2015–8672; Amdt. No. 91–340D]**

**RIN 2120–AL69**

## Extension of the Prohibition Against Certain Flights in the Sanaa Flight Information Region (FIR) (OYSC)

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** On December 7, 2021, the Federal Aviation Administration (FAA) published a final rule in the **Federal Register** to extend the Special Federal Aviation Regulation (SFAR) prohibiting certain flights in the specified areas of the Sanaa Flight Information Region (FIR) (OYSC) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Subsequently, the FAA became aware that the International Civil Aviation Organization (ICAO) amended waypoints the FAA uses to demarcate the boundary between the airspace in which U.S. operators are prohibited from conducting operations and the airspace in which U.S. operators are permitted to operate. The FAA is publishing this technical amendment to update its regulations to reflect the current waypoint names and locations.

**DATES:** This final rule is effective on September 22, 2023.

**FOR FURTHER INFORMATION CONTACT:** Bill Petrak, Air Transportation Division, Flight Standards Service, through the Washington Operations Center, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–3203; email *9-FAA-OverseasFlightProhibitions@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S. Code, 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.'' Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment and the delayed effective date because they would be unnecessary.

This action is a technical amendment that is limited to updating existing regulations to reflect the current waypoint names and locations. The amendment will not impose any additional substantive restrictions or requirements on the persons affected by these regulations and the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days.

Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

### II. Background

On December 7, 2021, the FAA published a final rule [1] in the **Federal Register** extending the prohibition against certain flights in the specified areas of the Sanaa FIR (OYSC) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Specifically, that final rule continued to prohibit all persons described in paragraph (a) of SFAR No. 115, title 14 Code of Federal Regulations (CFR), § 91.1611, from conducting civil flight operations in the specified areas of the Sanaa FIR (OYSC), as described in paragraph (b) of the rule, until January 7, 2025, due to the significant, continuing safety-of-flight risks to U.S. civil aviation operations in that airspace associated with the conflict between the Saudi Arabian-led Coalition (SLC) and Iranian-aligned Houthi forces.

Subsequently, the FAA became aware the International Civil Aviation Organization (ICAO) Middle East Air Navigation Planning and Implementation Regional Group approved an update to the Regional Air Navigation Plan to amend certain waypoints. Some of the amendments affected waypoints used by the FAA to demarcate the boundary between the airspace in which U.S. operators are prohibited from conducting operations and the airspace in which U.S. operators are permitted to operate. To address the amendments of waypoints, this technical amendment identifies the new waypoint names and locations to clarify where U.S. operators are prohibited from conducting operations due to flight safety risks associated with the conflict in Yemen and where they are permitted to operate.

The following table lists the changes being made.

TABLE 1—PREVIOUS AND CURRENT WAYPOINT NAMES AND LOCATIONS

| Previous waypoint name | Previous location | Current waypoint name | Current location |
|---|---|---|---|
| KAPET | 163322N 0530614E | KAPET | 163322N 0530614E |
| NODMA | 152603N 0533359E | NODMA | 152603N 0533359E |
| ORBAT | 140638N 0503924E | IMPAG | 140638N 0503924E |
| PAKER | 115500N 0463500E | TIMAD | 115500N 0463500E |
| PARIM | 123142N 0432712E | PARIM | 123200N 0432720E |
| RIBOK | 154700N 0415230E | RIBOK | 154700N 0415230E |

The FAA notes that the updated Regional Air Navigation Plan relocated the waypoint PARIM slightly, from 123142N 0432712E to 123200N 0432720E. The FAA has determined that this minor change in the location of the PARIM waypoint does not alter the FAA's assessment that PARIM is an appropriate waypoint to use to

[1] *Extension of the Prohibition Against Certain Flights in Specified Areas of the Sanaa Flight Information Region (FIR) (OYSC)* final rule, 86 FR 69167 (Dec. 7, 2021).

demarcate the boundary between the airspace where U.S. operators are prohibited from conducting operations due to flight safety risks associated with the conflict in Yemen and where they are permitted to operate, as the inadvertent risk emanating from potential air defense operations is primarily confined to Yemen's land territory.

### III. Technical Amendment

Consistent with the foregoing:

*Prohibited Operations.* U.S. civil aviation operations remain prohibited in the Sanaa FIR (OYSC) in that airspace west of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), northwest of a line drawn direct from NODMA to IMPAG (140638N 0503924E) then from IMPAG to TIMAD (115500N 0463500E), north of a line drawn direct from TIMAD to PARIM (123200N 0432720E), and east of a line drawn direct from PARIM to RIBOK (154700N 0415230E). Use of jet route UN303 is not authorized.

*Permitted Operations.* U.S. civil aviation operations remain permitted in the Sanaa FIR (OYSC) in that airspace east of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), southeast of a line drawn direct from NODMA to IMPAG (140638N 0503924E) then from IMPAG to TIMAD (115500N 0463500E), south of a line drawn direct from TIMAD to PARIM (123200N 0432720E), and west of a line drawn direct from PARIM to RIBOK (154700N 0415230E). Use of jet routes UT702 and M999 are authorized.

### List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Yemen.

### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

## PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.1611 by revising paragraphs (b) and (c) to read as follows:

**§ 91.1611 Special Federal Aviation Regulation No. 115—Prohibition Against Certain Flights in Specified Areas of the Sanaa Flight Information Region (FIR) (OYSC).**

* * * * *

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the portion of the Sanaa Flight Information Region (FIR) (OYSC) that is west of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), northwest of a line drawn direct from NODMA to IMPAG (140638N 0503924E) then from IMPAG to TIMAD (115500N 0463500E), north of a line drawn direct from TIMAD to PARIM (123200N 0432720E), and east of a line drawn direct from PARIM to RIBOK (154700N 0415230E). Use of jet route UN303 is not authorized.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Sanaa FIR (OYSC) under the following circumstances:

(1) *Permitted operations that do not require an approval or exemption from the FAA.* Flight operations may be conducted in the Sanaa FIR (OYSC) in that airspace east of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), southeast of a line drawn direct from NODMA to IMPAG (140638N 0503924E) then from IMPAG to TIMAD (115500N 0463500E), south of a line drawn direct from TIMAD to PARIM (123200N 0432720E), and west of a line drawn direct from PARIM to RIBOK (154700N 0415230E). Use of jet routes UT702 and M999 are authorized. All flight operations conducted under this subparagraph must be conducted subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Yemen.

(2) *Operations permitted under an approval or exemption issued by the FAA.* Flight operations may be conducted in the Sanaa FIR (OYSC) in that airspace west of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), northwest of a line drawn direct from NODMA to IMPAG (140638N 0503924E) then from IMPAG to TIMAD (115500N 0463500E), north of a line drawn direct from TIMAD to PARIM (123200N 0432720E), and east of a line drawn direct from PARIM to RIBOK (154700N 0415230E) if such flight operations are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. Government (or under a subcontract between the prime contractor of the U.S. Government department, agency, or instrumentality and the person subject to paragraph (a)), with the approval of the FAA, or under an exemption issued by the FAA. The FAA will consider requests for approval or exemption in a timely manner, with the order of preference being: First, for those operations in support of U.S. Government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. government department, agency, or instrumentality; and third, for all other operations.

* * * * *

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on September 15, 2023.

**Brandon Roberts,**

*Executive Director, Office of Rulemaking.*

[FR Doc. 2023–20530 Filed 9–21–23; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2023–0511**

## Special Local Regulation; Swim the Loop and Motts Channel Sprint; Wrightsville Beach, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce special local regulations for the ''Swim the Loop and Motts Channel Sprint'' on October 15, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event, which lies in the vicinity of Wrightsville Beach, NC. During the enforcement period, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any official authorized by the Captain of the Port (COTP), Sector North Carolina.

**DATES:** The regulation identified in the ''Event'' column of Table 4 to 33 CFR 100.501(i)(4) as covering the Swim the Loop and Motts Channel Sprint will be enforced from 7 a.m. until 11 a.m. on October 15, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email Chief Petty Officer Elvin Rodriguez, Waterways Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone 910–772–2239, email *NCMarineevents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce special local regulations in 33 CFR 100.501(i)(4) for the Swim the Loop and Motts Channel Sprint regulated area from 7 a.m. to 11 a.m. on October 15, 2023. As indicated in a footnote to Table 4 of § 100.501(i)(4), the enforcement dates and times for each of the listed events in this table are subject to change, and the October date differs from dates provided in the table. We are making this special local regulation subject to enforcement at the stated time to provide for the safety of life on navigable waterways during the day of the event. Table 4 to § 100.501(i)(4) specifies the location of the regulated area for this event as comprising the navigable waters surrounding Harbor Island, NC, including the Intracoastal Waterway, Lees Cut, Banks Channel and Motts Channel. During the enforcement period, as reflected in § 100.501(i)(4), the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or from any official representative of the COTP, Sector North Carolina.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, Marine Safety Information Bulletin, and Broadcast Notice to Mariners.

**Timothy J. List,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector North Carolina.*

[FR Doc. 2023–20566 Filed 9–21–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2023–0786]**

**RIN 1625–AA87**

## Security Zone; Patapsco River, Baltimore, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** At the request of the United States Secret Service (USSS), the Coast Guard is establishing a temporary security zone for the protection of persons who will be in Baltimore, MD on September 24, 2023. This security zone will prohibit persons and vessels from entering or remaining within the security zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

**DATES:** This rule is effective from 4 p.m. until 8 p.m. on Sunday, September 24, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0786 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call, or email LCDR Kate Newkirk, Waterways Management Division, Sector Maryland-National Capital Region, U.S. Coast Guard; (410) 365–8141, *Kate.M.Newkirk@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
USSS United States Secret Service

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was notified by the USSS of the visit without sufficient time to publish an NPRM. Delay in promulgating this rule would be impracticable because this security zone must be in by September 24, 2023, to protect these USSS protectees in the vicinity of Baltimore, MD. The presence of these USSS protectees creates unique safety and security concerns.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons discussed above.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70051 and 70124. The Captain of the Port Maryland-National Capital Region (COTP) has determined that the presence of persons under the protection of the USSS at this location presents a potential target for terrorist attack, sabotage, or other subversive acts, accidents, or other causes of similar nature. This rule is needed to protect persons under the protection of the USSS, personnel in and around the visit site, navigable waterways, and waterfront facilities.

### IV. Discussion of the Rule

This rule establishes a security zone from 4 p.m. until 8 p.m. on September 24, 2023, on the Patapsco River, in the vicinity of Baltimore, MD. The security zone will cover all navigable waters of the Inner Harbor on the Patapsco River, encompassed by a line connecting the following points beginning at 39°16′56.60″ N, 076°36′26.17″ W, thence to 39°17′1.25″ N, 076°36′21.67″ W, located at Baltimore, MD. The duration of the zone is intended to protect persons under the protection of the USSS, personnel in and around the visit site, navigable waterways, and waterfront facilities.

No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative and must proceed as directed by on-scene enforcement vessels. Any vessel permitted to transit the zone will be required to continue through the zone without pause or delay as directed by on-scene enforcement vessels.

### V. Regulatory Analyses

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

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a

''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and limited duration of the security zone. This zone impacts a small, designated area of the Patapsco River for 4 hours. Furthermore, vessel traffic can safely transit around the security zone within the eastern portion of the navigation channel.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting only 4 hours that will prohibit entry within certain navigable waters of the Patapsco River. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

*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.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0786 to read as follows:

### § 165.T05–0786 Security Zone; Patapsco River, Baltimore, MD.

(a) *Location.* The following area is a security zone: All navigable waters of the Inner Harbor on the Patapsco River, encompassed by a line connecting the following points beginning at 39°16′56.60″ N, 076°36′26.17″ W, thence to 39°17′1.25″ N, 076°36′21.67″ W, located at Baltimore, MD. These coordinates are based on WGS 84.

(b) *Definitions.* As used in this section—*Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer, 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 Maryland-National Capital Region (COTP) in the enforcement of the security zone.

*Official Patrol Vessel* means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

*USSS protectee* means any person for whom the United States Secret Service requests implementation of a security

zone in order to supplement protection of said person(s).

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter or remain in the security 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 or remain in the Security Zone, contact the COTP or the COTP's representative by telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(4) Unless specifically authorized by on-scene enforcement vessels, any vessel granted permission to enter or transit the security zone must comply with the instructions of the COTP or designated representative and operate at bare steerage or no-wake speed while transiting through the Security Zone, and must not loiter, stop, or anchor, and shall do so for the entirety of its time within the boundaries of the security zone.

(d) *Enforcement period.* (1) This section will be enforced from 4 p.m. until 8 p.m. on September 24, 2023.

(2) This security zone described in paragraph (a) of this section will be enforced with actual notice by the U.S. Coast Guard representatives on-scene, as well as other methods listed in 33 CFR 165.7. The Coast Guard will enforce the security zone created by this section only when it is necessary for the protection of USSS protectees in the vicinity of Hampton, Va. The U.S. Coast Guard may be additionally assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

Dated: September 18, 2023.

**David E. O'Connell,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-National Capital Region.*

[FR Doc. 2023–20562 Filed 9–21–23; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2023–0741]**

**RIN 1625–AA00**

## Safety Zone; Southern Command Dive Operation, Gulf of Mexico, Key West, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waterways surrounding Key West, Florida, during the Southern Command's (SOCOM) Dive operation. The safety zone is necessary to ensure the safety of event participants. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Key West or a designated representative.

**DATES:** This rule is effective from 6 a.m. until 9 p.m. on September 26 and September 27, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0741 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Lieutenant Hailye Wilson, Waterways Management Division, Sector Key West, FL, U.S. Coast Guard; telephone (305) 292–8768; email *Hailye.M.Wilson@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive final details from the U.S. Army operations department within the time required to publish an NPRM. Therefore, the Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It is impracticable and contrary to the public interest to delay issuing this rule because it is necessary to protect the safety of participants, the public, and vessels transiting the waters adjacent to Key West, FL.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the event is taking place September 26 and 27, 2023, and immediate action is needed to respond to the potential safety hazards associated with this event.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The Captain of the Port Key West (COTP) has determined that potential hazards associated with this dive operation will be a safety concern for persons and vessels in the regulated area. This rule is needed to ensure the safety of the event participants, the general public, vessels and the marine environment in the navigable waters within the safety zone during the Southern Command's Dive operation.

### IV. Discussion of the Rule

This rule establishes a safety zone on certain navigable waters of Key West, Florida, during the SOCOM's Dive operation. The safety zone will be enforced from 6 a.m. to 9 p.m. on September 26 and 27, 2023. The safety zone will cover all waters within the following coordinates: Latitude 24°35.724′ N, longitude 081°47.561′ W, thence east to latitude 24°35.960′ N, longitude 081°46.811′ W, thence south to latitude 24°34.802′ N, longitude 081°47.376′ W, thence west to latitude 24°34.952′ N, longitude 081°46.858′ W, located within the county of Monroe, FL.

No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without first obtaining permission from the COTP or a designated representative. If

authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The Coast Guard will provide notice of the safety zone by Broadcast Notice to Mariners, and/or by on-scene designated representatives.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on following reasons: (1) the temporary safety zone will only be enforced for a total of 15 hours per day; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves small, designated areas of the Gulf of Mexico around Key West, Florida, for only 10 hours per day and thus is limited in time and scope. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of 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.

## List of Subjects in 33 CFR Part 165

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0741 to read as follows:

### § 165.T07–0741 Safety Zone; Southern Command Dive Operation, Gulf of Mexico, Key West, FL.

(a) *Location.* The following area is a safety zone: All navigable waters within the following coordinates: Latitude 24°35.724′ N, longitude 081°47.561′ W, thence east to latitude 24°35.960′ N, longitude 081°46.811′ W, thence south to latitude 24°34.823′ N, longitude 081°47.376′ W, thence west to latitude 24°34.952′ N, longitude 081°46.858′ W, located within the county of Monroe, FL. These coordinates are based on North American Datum.

(b) *Definition.* As used in this section, the term ''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) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Key West by telephone at (305) 292–8772, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM channel 16, or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 6 a.m. until 9 p.m. on September 26 and 27, 2023.

**J. Ingram,**

*Captain, U.S. Coast Guard, Captain of the Port Key West.*

[FR Doc. 2023–20461 Filed 9–21–23; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2023–0661]**

**RIN 1625–AA00**

## Safety Zone; 26th Annual Key West Paddle Classic, Atlantic Ocean, Key West, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waterways surrounding Key West, Florida, during the 26th Annual Key West Paddle Classic event. The safety zone is necessary to ensure the safety of event participants and spectators. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Key West or a designated representative.

**DATES:** This rule is effective from 8 a.m. until 5 p.m. on September 30, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0661 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Lieutenant Hailye Wilson, Waterways Management Division Chief, Sector Key West, FL, U.S. Coast Guard; telephone (305) 292–8768; email *Hailye.M.Wilson@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive final details from the event sponsor for this year's event within the reporting threshold requirements. The Coast Guard has an existing safety zone for this event in 33 CFR 165.786, Table to § 165.786, Item No. 4.1; however, the existing regulation only covers the event when it is scheduled on the last weekend of April. Therefore, the Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It is impracticable and contrary to the public interest to delay issuing this rule because it is necessary to protect the safety of participants, spectators, the public, and vessels transiting the waters adjacent to Key West, FL.

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

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The Captain of the Port Key West (COTP) has determined that potential hazards associated with open water swim events will be a safety concern for persons and vessels in the regulated area. This rule is needed to ensure the safety of the event participants, the general public, vessels and the marine environment in the navigable waters within the safety zone during the 26th Annual Key West Paddle Classic paddle board event.

### IV. Discussion of the Rule

This rule establishes a safety zone on certain navigable waters of Key West, Florida, during the 26th Annual Key

West Paddle Classic paddle board event. The safety zone will be enforced from 8 a.m. until 5 p.m. on September 30, 2023. The safety zone will cover all waters within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of safety vessels. The event course begins at Higgs Beach in Key West, Florida, moves west to the area offshore of Fort Zachary Taylor Historic State Park, north through Key West Harbor, east through Fleming Key Cut, south through Cow Key Channel, and west returning back to Higgs Beach. Approximately 100 paddle boarders and six safety vessels are anticipated to participate in the event.

No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without first obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The Coast Guard will provide notice of the safety zone by Broadcast Notice to Mariners, and/or by on-scene designated representatives.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location, duration, and time-of-day of the safety zone. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable waters of Key West, Florida, during a paddle board event lasting nine hours. Although persons and vessels may not enter, transit through, anchor in, or remain within the zone without authorization from the COTP or a designated representative, they will be able to safely transit around this safety zone. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will 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 rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves small, designated areas of the Atlantic Ocean and Gulf of Mexico around Key West, Florida, for only 9 hours and thus is limited in time and scope. It is categorically excluded from further review under paragraph L60(a) of

Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of 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.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0661 to read as follows:

### § 165.T07–0661 Safety Zone; 26th Annual Key West Paddle Classic, Key West, FL.

*(a) Location.* The following regulated area is a moving safety zone beginning at Higgs Beach in Key West, Florida, moving west to the area offshore of Fort Zachary Taylor Historic State Park, moving north through Key West Harbor, moving east through Fleming Key Cut, moving south through Cow Key Channel, and moving west returning back to Higgs Beach. The safety zone will be extending 100-yards to either side of the race participants and safety vessels; extending 50 yards in front of the lead safety vessel preceding the first race participants; and extending 50 yards behind the safety vessel trailing the last race participants.

*(b) Definition.* As used in this section, the term ''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) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Key West by telephone at (305) 292–8772, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM channel 16, or the COTP's designated representative.

*(d) Enforcement period.* This section will be enforced from 8 a.m. until 5 p.m. on September 30, 2023.

**J. Ingram,**

*Captain, U.S. Coast Guard, Captain of the Port Key West.*

[FR Doc. 2023–20494 Filed 9–21–23; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R01–OAR–2023–0189; FRL–10876–02–R1]**

## Air Plan Approval; Connecticut; New Source Review Permit Program State Plan Revision

*Correction*

In Rule document, 2023–18909, appearing on pages 60591 through 60594, in the issue of Tuesday, September 5, 2023, on page 60591, the first sentence of the **SUMMARY** section is corrected to read as follows:

''The Environmental Protection Agency (EPA) is approving revisions to the Connecticut State Implementation Plan (SIP) concerning its New Source Review (NSR) permit program.''

[FR Doc. C1–2023–18909 Filed 9–21–23; 8:45 am]

BILLING CODE 0099–10–P

# Proposed Rules

Federal Register
Vol. 88, No. 183
Friday, September 22, 2023

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2023–1883; Project Identifier MCAI–2023–00804–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 certain Airbus SAS Model A350–941 airplanes. This proposed AD was prompted by a report of cracks found on the trunnion arms of the inboard flap assemblies. This proposed AD would require, repetitive inspections for cracking of the trunnion arms of the inboard flap assembly, and applicable corrective actions, 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 November 6, 2023.

**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–2023–1883; 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 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 *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1883.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

**FOR FURTHER INFORMATION CONTACT:** Dat Le, 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–2023–1883; Project Identifier MCAI–2023–00804–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 Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; 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

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0132, dated July 3, 2023 (EASA AD 2023–0132) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes. The MCAI states that cracks were found on the trunnion arms of the inboard flap assemblies that were made of forging aluminum 7037. This condition, if not detected and corrected, could affect the structural integrity of the trunnion arms.

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–2023–1883.

### Related Service Information Under 1 CFR Part 51

EASA AD 2023–0132 specifies procedures for repetitive ultrasonic inspections for cracking of the trunnion arms of the inboard flap assemblies, and corrective actions, as applicable. Corrective actions include obtaining and following repair instructions if any

cracking is found. EASA AD 2023–0132 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** 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 require accomplishing the actions specified in EASA AD 2023–0132 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 2023–0132 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0132 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 2023–0132 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 2023–0132. Service information required by EASA AD 2023–0132 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1883 after the FAA final rule is published.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 4 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| Up to 17 work-hours × $85 per hour = $1,445 | $10 | Up to $1,455 | Up to $5,820. |

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs 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 adding the following new airworthiness directive:

**Airbus SAS:** Docket No. FAA–2023–1883; Project Identifier MCAI–2023–00804–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by November 6, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0132, dated July 3, 2023 (EASA AD 2023–0132).

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by a report of cracks found on the trunnion arms of the inboard flap assemblies. The FAA is issuing this AD to address potential cracks of the trunnion arms. The unsafe condition, if not addressed, could adversely affect the structural integrity of the trunnion arms.

**(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 2023–0132.

**(h) Exceptions to EASA AD 2023–0132**

(1) Where EASA AD 2023–0132 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2023–0132 specifies if ''any crack is detected, before next flight, contact Airbus for approved instructions and, within the compliance time(s) specified in those instructions, accomplish those instructions accordingly,'' this AD requires replacing those word with ''if any cracking is detected, the cracking 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.''

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0132.

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

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

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

**(j) Additional Information**

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; email: *9-avs-nyaco-cos@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 2023–0132, dated July 3, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0132, 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 *ad.easa.europa.eu.*

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

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

Issued on September 15, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023–20407 Filed 9–21–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Part 1308

**[Docket No. DEA–1142]**

## Schedules of Controlled Substances: Placement of Ethylphenidate in Schedule I

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Drug Enforcement Administration proposes placing the substance ethylphenidate (chemical name: ethyl 2-phenyl-2-(piperidin-2-yl)acetate), including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken, in part, to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess) or propose to handle ethylphenidate.

**DATES:** Comments must be submitted electronically or postmarked on or before November 21, 2023.

Interested persons may file a request for a hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for a hearing and waivers of an opportunity for a hearing or to participate in a hearing, together with a written statement of position on the matters of fact and law asserted in the hearing, must be received on or before October 23, 2023.

**ADDRESSES:** Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). The electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. To ensure proper handling of comments, please reference ''Docket No. DEA–1142'' on all electronic and written correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration (DEA) encourages commenters to submit comments electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

• *Paper comments:* Paper comments that duplicate the electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

• *Hearing requests:* All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**FOR FURTHER INFORMATION CONTACT:** Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

**SUPPLEMENTARY INFORMATION:** In this proposed rule, the Drug Enforcement Administration (DEA) intends to place ethyl 2-phenyl-2-(piperidin-2-yl)acetate (ethylphenidate) including its salts, isomers, and salts of isomers in schedule I of the Controlled Substances Act (CSA).

## Posting of Public Comments

All comments received in response to this docket are considered part of the public record. DEA will make comments available, unless reasonable cause is given, for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want DEA to make it publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

DEA will make available publicly in redacted form comments containing personal identifying information or confidential business information identified as directed above. If a comment has so much confidential business information that DEA cannot effectively redact it, DEA may not make available publicly all or part of that comment. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as confidential as directed above.

An electronic copy of this document and supplemental information to this proposed rule are available at *http://www.regulations.gov* for easy reference.

## Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA).[1] Interested persons, as defined in 21 CFR 1300.01(b), may file requests for a hearing in conformity with the requirements of 21 CFR 1308.44(a) and 1316.47(a), and such requests must:

(1) state with particularity the interest of the person in the proceeding;

(2) state with particularity the objections or issues concerning which the person desires to be heard; and

(3) state briefly the position of the person with regarding to the objections or issues.

Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(c), together with a written statement of position on the matters of fact and law involved in any hearing.[2]

All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law involved in such hearing, must be sent to DEA using the address information provided above. The decision whether a hearing will be needed to address such matters of fact and law in the rulemaking will be made by the Administrator. If a hearing is needed, DEA will publish a notice of hearing on the proposed rulemaking in the **Federal Register**.[3] Further, once the Administrator determines a hearing is needed to address such matters of fact and law in rulemaking, she will then designate an Administrative Law Judge (ALJ) to preside over the hearing. The ALJ's functions shall only commence upon designation, as provided in 21 CFR 1316.52.

In accordance with 21 U.S.C. 811 and 812, the purpose of a hearing would be to determine whether ethylphenidate meets the statutory criteria for placement in schedule I.

## Legal Authority

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion.[4] This proposed action is supported by a recommendation from the Assistant Secretary for Health of the Department of Health and Human Services (HHS).

In addition, the United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2)–(4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention indicating that a drug or other substance has been added to a schedule specified in the notification, the Secretary of HHS (Secretary),[5] after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or

[1] 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D.

[2] 21 CFR 1316.49.

[3] 21 CFR 1308.44(b), 1316.53.

[4] 21 U.S.C. 811(a).

[5] As discussed in a memorandum of understanding entered into by the FDA and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985). The Secretary has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

substance.[6] In the event that the Secretary did not so consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) control. Pursuant to 21 U.S.C. 811(a)(1), the Attorney General (as delegated to the Administrator of DEA) may, by rule, add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed.

**Background**

Ethylphenidate is a central nervous system (CNS) stimulant and shares structural and pharmacological similarities with other schedule II stimulants such as methylphenidate. On April 21, 2017, the Secretary-General of the United Nations advised the Secretary of State of the United States that during its 60th session, on March 16, 2017, the Commission on Narcotic Drugs voted to place ethyl 2-phenyl-2-(piperidin-2-yl)acetate (ethylphenidate) in Schedule II of the 1971 Convention (CND Dec/60/7). Because the procedures in 21 U.S.C. 811(d)(3) and (4) for consultation and issuance of a temporary order for ethylphenidate, discussed in the above legal authority section, were not followed, DEA is utilizing the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) to control ethylphenidate. Such scheduling would satisfy the United States' international obligations.

Article 2, paragraph 7(b), of the 1971 Convention sets forth the minimum requirements that the United States must meet when a substance has been added to Schedule II of the 1971 Convention. Pursuant to the 1971 Convention, the United States must require licenses for the manufacture, export and import, and distribution of ethylphenidate. This license requirement is accomplished by the CSA's registration requirement as set forth in 21 U.S.C. 822, 823, 957, 958 and in ance with 21 CFR parts 1301 and 1312. In addition, the United States must adhere to specific export and import provisions set forth in the 1971 Convention. This requirement is accomplished by the CSA's export and import provisions established in 21 U.S.C. 952, 953, 957, 958 and in accordance with 21 CFR part 1312. Likewise, under Article 13, paragraphs 1 and 2, of the 1971 Convention, a party to the 1971 Convention may notify through the UN Secretary-General another party that it prohibits the importation of a substance in Schedule II, III, or IV of the 1971 Convention. If such notice is presented to the United States, the United States shall take measures to ensure that the named substance is not exported to the notifying country. This requirement is also accomplished by the CSA's export provisions mentioned above. Under Article 16, paragraph 4, of the 1971 Convention, the United States is required to provide annual statistical reports to the International Narcotics Control Board (INCB). Using INCB Form P, the United States shall provide the following information: (1) in regard to each substance in Schedule I and II of the 1971 Convention, quantities manufactured in, exported to, and imported from each country or region as well as stocks held by manufacturers; (2) in regard to each substance in Schedule II and III of the 1971 Convention, quantities used in the manufacture of exempt preparations; and (3) in regard to each substance in Schedule II–IV of the 1971 Convention, quantities used for the manufacture of non-psychotropic substances or products. Lastly, under Article 2 of the 1971 Convention, the United States must adopt measures in accordance with Article 22 to address violations of any statutes or regulations that are adopted pursuant to its obligations under the 1971 Convention. Persons acting outside the legal framework established by the CSA are subject to administrative, civil, and/or criminal action; therefore, the United States complies with this provision.

DEA notes that there are differences between the schedules of substances in the 1971 Convention and the CSA. The CSA has five schedules (schedules I–V) with specific criteria set forth for each schedule. Schedule I is the only possible schedule in which a drug or other substance may be placed if it has high potential for abuse and no currently accepted medical use in treatment in the United States. See 21 U.S.C. 812(b). In contrast, the 1971 Convention has four schedules (Schedules I–IV) but does not have specific criteria for each schedule. The 1971 Convention simply defines its four schedules, in Article 1, to mean the correspondingly numbered lists of psychotropic substances annexed to the Convention, and altered in accordance with Article 2.

**Proposed Determination To Schedule Ethylphenidate**

On April 3, 2019, the Drug Enforcement Administration (DEA) requested that the Department of Health and Human Services (HHS) conduct a scientific and medical evaluation and provide a scheduling recommendation for ethylphenidate. On October 26, 2020, HHS provided DEA a scientific and medical evaluation (dated August 25, 2020) entitled ''Basis for the recommendation to place ethylphenidate in schedule I of the Controlled Substances Act'' and a scheduling recommendation. Pursuant to 21 U.S.C. 811(b), following consideration of the eight-factors and findings related to the substance's abuse potential, legitimate medical use, safety, and dependence liability, HHS recommended that ethylphenidate be controlled in schedule I of the CSA under 21 U.S.C. 812(b). Upon receipt of the scientific and medical evaluation and scheduling recommendation from HHS, DEA reviewed the documents and all other relevant data and conducted its own eight-factor analysis in accordance with 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in its proposed scheduling action. Please note that both DEA and HHS eight-factor analyses are available in their entirety under the tab ''Supporting Documents'' of the public docket of this rulemaking action at *http://www.regulations.gov,* under docket number ''DEA–1142.''

1. *The Drug's Actual or Relative Potential for Abuse:* The term ''abuse'' is not defined in the CSA. However, the legislative history of the CSA suggests that DEA consider the following criteria when determining whether a particular drug or substance has a potential for abuse:[7]

*(a) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or*

*(b) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or*

*(c) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to*

[6] 21 U.S.C. 811(d)(3).

[7] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); reprinted in 1970 U.S.C.C.A.N. 4566, 4603.

*administer such drugs in the course of his professional practice; or*

*(d) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.*

Both DEA and HHS eight-factor analyses found that ethylphenidate has abuse potential associated with its abilities to produce psychoactive effects that are similar to those produced by schedule II stimulants such as methylphenidate that have a high potential for abuse. In particular, the responses in humans to ethylphenidate are stimulant-like and include tachycardia, anxiety, hallucinations, impaired thinking, paranoia and hypertension.

Ethylphenidate does not have an approved medical use in the United States. Thus, because this substance is not an approved drug product, a practitioner may not legally prescribe it, and it cannot be dispensed to an individual. DEA and HHS conclude that ethylphenidate is being abused for its psychoactive properties because it is being used without medical advice.

Reports from the public health sector and law enforcement suggest that ethylphenidate is being abused and taken in amounts sufficient to create a hazard to an individual's health. This hazard is evidenced by deaths associated with ethylphenidate use which represents a safety issue for those in the community. Further, ethylphenidate was first reported to the National Forensic Laboratory Information System (NFLIS-Drug) [8] database in 2013; a January 2023 query of this database for ethylphenidate reports indicated a total of 191 such reports through 2022 from 23 states by participating Federal, State, and local forensic laboratories. Consequently, the data indicate that ethylphenidate is being abused, and presents safety hazards to the health of individuals who consume it due to its stimulant properties, making it a hazard to the safety of the community.

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* As described by HHS, studies show that ethylphenidate produces pharmacological effects that are similar to those produced by methylphenidate, a schedule II substance. Similar to these schedule II substances, ethylphenidate binds to monoamine transporters for dopamine and norepinephrine and blocks the uptake of these neurotransmitters at their transporters. Functionally, ethylphenidate, similar to methylphenidate and cocaine, inhibits norepinephrine and dopamine uptake. The potency of ethylphenidate in inhibiting norepinephrine uptake is about 6.75-fold less than that of methylphenidate and 1.7-fold less than cocaine. With respect to behavioral data, according to HHS, while ethylphenidate is pharmacodynamically similar to methylphenidate, it is less potent than methylphenidate in the locomotor activity assay. Specifically, ethylphenidate is approximately 80% as effective as methylphenidate in producing locomotor effect. Self-reports by users of ethylphenidate demonstrate that the drug produces typical stimulant-like effects, including euphoria and psychological and psychomotor stimulation. Overall, these data indicate that ethylphenidate produces stimulant-like pharmacological effects and behaviors that are similar to those of schedule II substances methylphenidate and methamphetamine.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* Ethylphenidate is structurally similar to the schedule II substance methylphenidate. As stated in the HHS review, ethylphenidate is chemically known as ethyl 2-phenyl-2-piperidin-2-ylacetate, (*RS*)-ethyl 2-phenyl-2-(piperidin-2-yl)acetate and *dl*-ethylphenidate. Another name for ethylphenidate is EPH.

Ethylphenidate user reports suggest that following insufflation, the pharmacokinetics of the drug are relatively rapid, with the onset of effects occurring approximately 13 minutes after administration (with a range of 0 to 35 minutes). Additionally, following oral ingestion, the mean onset of action is 23 minutes (ranging from 5 to 31 minutes). According to published scientific literature, the mean duration of action of ethylphenidate is approximately 2 hours.

As stated by HHS, there are no published clinical or nonclinical toxicology studies using ethylphenidate. Furthermore, the only evidence of the toxicological effects of ethylphenidate come from anecdotal user reports and fatal overdoses that implicated its role in a death.

Neither DEA nor HHS is aware of any currently accepted medical use for ethylphenidate. According to HHS's August 2020 scientific and medical evaluation and scheduling recommendation, the Food and Drug Administration (FDA) has not approved a marketing application for a drug product containing ethylphenidate for any therapeutic indication, nor is HHS aware of any reports of clinical studies or claims of an accepted medical use for ethylphenidate in the United States.

Although there is no evidence to suggest ethylphenidate has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, all of the following must be demonstrated: the drug's chemistry is known and reproducible; there are adequate safety studies; there are adequate and well-controlled studies proving efficacy; the drug is accepted by qualified experts; and the scientific evidence is widely available. 57 FR 10499 (1992), *pet. for rev. denied, Alliance for Cannabis Therapeutics* v. *DEA,* 15 F.3d 1131, 1135 (D.C. Cir. 1994). Based on this analysis, ethylphenidate has no currently accepted medical use in the United States. Furthermore, DEA has not found any references regarding clinical testing of ethylphenidate in the scientific and medical literature. Taken together with HHS's conclusion, DEA finds that there is no legitimate medical use for ethylphenidate in the United States.

4. *History and Current Pattern of Abuse:* As described by DEA and HHS, ethylphenidate is a stimulant and is structurally and pharmacologically similar to the schedule II substance, methylphenidate. Ethylphenidate has been trafficked and abused in North America and Europe since its first report of abuse in 2011. In addition, ethylphenidate has been identified in law enforcement seizures in the United States since 2013 and has persisted through 2020 (There were no ethylphenidate-related NFLIS-Drug reports in 2021 and 2022). Thus, ethylphenidate abuse occurs worldwide.

[8] NFLIS represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive information system that includes data from forensic laboratories that handle the nation's drug analysis cases. NFLIS-Drug participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS-Drug, is currently 98.5 percent. NFLIS-Drug includes drug chemistry results from completed analyses only. While NFLIS-Drug data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. See 76 FR 77330, 77332, December 12, 2011. NFLIS data were queried on January 20, 2023.

5. *Scope, Duration and Significance of Abuse:* Forensic laboratories have confirmed the presence of ethylphenidate in drug exhibits received from State, local, and Federal law enforcement agencies. Law enforcement data show that ethylphenidate first appeared in the illicit drug market in 2013 with 10 encounters. Overall, from 2013 through 2022, NFLIS registered 191 reports from Federal, State and local forensic laboratories identifying this substance in drug-related exhibits from 23 states. Thus, ethylphenidate abuse is wide-spread.

6. *What, if Any, Risk There Is to the Public Health:* Based on the review of both HHS and DEA, public health risks of ethylphenidate result from its ability to induce stimulant-like responses, which may lead to adverse events that include psychological and cognitive impairment. Furthermore, risk to the public health is associated with adverse reactions in humans, which include hallucinations, impaired thinking, and paranoia. Nineteen deaths in the United Kingdom involving ethylphenidate have occurred between July 2013 and December 2014. A majority of these deaths involved males from East of Scotland with a history of current or previous heroin abuse. Additionally, according to the 2016 WHO Critical Review, these cases were almost exclusively associated with poly-drug use, with benzodiazepines, methadone, and other opioids being the most commonly detected drugs. Thus, the public health risks associated with ethylphenidate are confirmed by the pharmacological profile along with the fatalities associated with ethylphenidate use.

7. *Its Psychic or Physiological Dependence Liability:* According to HHS, the psychic or physiological dependence liability of ethylphenidate can be inferred based on case reports and from data on substances that have similar pharmacological actions. As noted by HHS, scientific literature of published case reports demonstrate the propensity of ethylphenidate re-dosing by its users. Furthermore, according to self-reports users of ethylphenidate typically experience stimulant-like behavioral effects. In addition, DEA notes that because ethylphenidate shares pharmacological properties with schedule II stimulant substances such as methylphenidate and methamphetamine, ethylphenidate likely has a dependence profile similar to these substances, which are known to cause substance dependence.

In summary, data suggests that ethylphenidate produces behavioral effects in animals and humans similar to those of schedule II stimulants. Although there are no clinical studies evaluating dependence liabilities specific for ethylphenidate, the pharmacological profile of this substance suggests that it possesses dependence liabilities qualitatively similar to schedule II substances such as methylphenidate and methamphetamine.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* Ethylphenidate is not an immediate precursor of any controlled substance under the CSA as defined by 21 U.S.C. 802(23).

*Conclusion:* After considering the scientific and medical evaluation conducted by HHS, HHS's scheduling recommendation, and DEA's own eight-factor analysis, DEA finds that the facts and all relevant data constitute substantial evidence of the potential for abuse of ethylphenidate. As such, DEA hereby proposes to permanently schedule ethylphenidate as a schedule I controlled substance under the CSA.

## Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

1. Ethylphenidate has a high potential for abuse.

Ethylphenidate, similar to the schedule II stimulants methylphenidate and methamphetamine, is a stimulant with a high potential for abuse. In animals, behavioral locomotor studies show that ethylphenidate produces stimulation similar to that of methylphenidate. Additionally, typical stimulant effects such as euphoria, psychomotor stimulation, and anxiety have been described from self-reports of ethylphenidate abusers. These effects are similar to those of schedule II stimulant such as methylphenidate and methamphetamine. These data collectively indicate that ethylphenidate has a high potential for abuse similar to other substances in schedule II such as methylphenidate and methamphetamine.

2. Ethylphenidate currently has no accepted medical use in treatment in the United States.

According to HHS, FDA has not approved a marketing application for a drug product containing ethylphenidate for any therapeutic indication. As HHS states, there are also no clinical studies or petitioners that claim an accepted medical use in the United States. In addition, as discussed above in the Factor 3 analysis, ethylphenidate does not satisfy DEA's five-part test for having a currently accepted medical use in treatment in the United States.

3. There is a lack of accepted safety for use of ethylphenidate under medical supervision.

Currently, ethylphenidate does not have an accepted medical use as noted by HHS. Because ethylphenidate has no approved medical use in treatment in the United States and has not been investigated as a new drug, its safety for use under medical supervision has not been determined. Thus, there is a lack of accepted safety for use of ethylphenidate under medical supervision.

Although the first finding shows ethylphenidate to have similar effects to schedule II substances such as methylphenidate and methamphetamine, it bears reiterating that there is only one possible schedule in the CSA—schedule I—to place ethylphenidate since it has no currently accepted medical use in treatment in the United States. See the background section for additional discussion.

Based on these findings, the Administrator concludes that ethylphenidate (chemical name: ethyl 2-phenyl-2-(piperidin-2-yl)acetate), including its salts, isomers, and salts of isomers, warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1). More precisely, because of its stimulant-like effects, DEA is proposing to place ethylphenidate in 21 CFR 1308.11(f) (the stimulants category of schedule I). As such, the proposed control of ethylphenidate also includes its salts, isomers, and salts of isomers.

## Requirements for Handling Ethylphenidate

If this rule is finalized as proposed, ethylphenidate would be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts

instructional activities or chemical analysis with, or possesses) ethylphenidate, or who desires to handle ethylphenidate, is required to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312 as of the effective date of a final scheduling action. Any person who currently handles ethylphenidate, and is not registered with DEA, would need to submit an application for registration and may not continue to handle ethylphenidate as of the effective date of a final scheduling action, unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration would be required to surrender all quantities of currently held ethylphenidate or to transfer all quantities of currently held ethylphenidate to a person registered with DEA before the effective date of a final scheduling action, in accordance with all applicable Federal, State, local, and Tribal laws. As of the effective date of a final scheduling action, ethylphenidate would be required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and Tribal laws.

3. *Security.* Ethylphenidate would be subject to schedule I security requirements and would need to be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b) and in accordance with 21 CFR 1301.71–1301.93 as of the effective date of a final scheduling action. Non-practitioners handling ethylphenidate would also need to comply with the employee screening requirements of 21 CFR 1301.90 –1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of ethylphenidate would need to be in compliance with 21 U.S.C. 825 and 958(e) and be in accordance with 21 CFR part 1302 as of the effective date of a final scheduling action.

5. *Quota.* Only registered manufacturers would be permitted to manufacture ethylphenidate in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of the effective date of a final scheduling action.

6. *Inventory.* Every DEA registrant who possesses any quantity of ethylphenidate on the effective date of a final scheduling action would be required to take an inventory of ethylphenidate on hand at that time, pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who becomes registered with DEA to handle ethylphenidate on or after the effective date of a final scheduling action would be required to have an initial inventory of all stocks of controlled substances (including ethylphenidate) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including ethylphenidate) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports with respect to ethylphenidate pursuant to 21 U.S.C. 827 and 958(e) and in accordance with 21 CFR parts 1304 and 1312, as of the effective date of a final scheduling action. Manufacturers and distributors would be required to submit reports regarding ethylphenidate to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312, as of the effective date of a final scheduling action.

8. *Order Forms.* Every DEA registrant who distributes ethylphenidate would be required to comply with the order form requirements, pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305, as of the effective date of a final scheduling action.

9. *Importation and Exportation.* All importation and exportation of ethylphenidate would need to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312, as of the effective date of a final scheduling action.

10. *Liability.* Any activity involving ethylphenidate not authorized by, or in violation of, the CSA or its implementing regulations would be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

## Regulatory Analyses

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

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

### *Executive Order 12988, Civil Justice Reform*

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

### *Executive Order 13132, Federalism*

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

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

This proposed rule does not have tribal implications warranting the application of E.O. 13175. It does not 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.

### *Regulatory Flexibility Act*

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA proposes placing the substance ethylphenidate (chemical name: ethyl 2-phenyl-2-(piperidin-2-yl)acetate), including its salts, isomers, and salts of isomers, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to

schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle, ethylphenidate.

According to HHS, ethylphenidate has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no legitimate commercial market for ethylphenidate in the United States. Therefore, DEA estimates that no United States entity currently handles ethylphenidate and does not expect any United States entity to handle ethylphenidate in the foreseeable future. DEA concludes that no legitimate United States entity would be affected by this rule if finalized. As such, the proposed rule will not have a significant effect on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in 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 million or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

*Paperwork Reduction Act of 1995*

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521.

**Signing Authority**

This document of the Drug Enforcement Administration was signed on September 7, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.11 by:
■ a. Redesignating paragraph (f)(6) through (12) as (f)(7) through (13); and
■ b. Adding a new paragraph (f)(6)

The addition reads as follows:

**§ 1308.11 Schedule I.**

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(f) * * *

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(6) Ethylphenidate (ethyl 2-phenyl-2-(piperidin-2-yl)acetate) ..... 1727

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**Scott Brinks,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

[FR Doc. 2023–20439 Filed 9–21–23; 8:45 am]

**BILLING CODE 4410–09–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2023–0267; FRL–10958–01–R9]**

## Second 10-Year Maintenance Plan for the 24-Hour $PM_{10}$ Standards; Sacramento County Planning Area, California

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the ''Second 10-Year $PM_{10}$ Maintenance Plan for Sacramento County'' (''Second 10-Year Maintenance Plan'' or ''Plan'') as a revision to the state implementation plan (SIP) for the State of California (''State''). The Second 10-Year Maintenance Plan includes, among other elements, a base year emissions inventory, a maintenance demonstration, contingency provisions, and motor vehicle emissions budgets for use in transportation conformity determinations, to ensure the continued maintenance of the national ambient air quality standards (NAAQS) for particulate matter of 10 microns or less ($PM_{10}$). With this proposed rulemaking, the EPA is beginning the adequacy process for the 2024, 2027, and 2033 motor vehicle emissions budgets. Additionally, as part of the technical basis for this approval, the EPA is taking comment on our August 1, 2022 concurrence on the wildfire exceptional events demonstration submitted by the California Air Resources Board (CARB) on April 26, 2021.

**DATES:** Written comments must arrive on or before October 23, 2023.

**ADDRESSES:** Submit your comments identified by Docket ID No. EPA–R09–OAR–2023–0267 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effect comments, please visit

*https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Michael Dorantes, Geographic Strategies and Modeling Section (AIR–2–2), EPA Region IX, (415) 972–3934, *dorantes.michael@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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## I. Background

### *A. The $PM_{10}$ National Ambient Air Quality Standards*

Under section 109 of the Clean Air Act (CAA), the EPA promulgates NAAQS for pervasive air pollutants, such as particulate matter, and conducts periodic review of these standards to determine whether they should be revised or whether new standards should be established. In 1987, the EPA established two $PM_{10}$ NAAQS: annual standards of 50 micrograms per cubic meter (μg/m$^3$) and 24-hour standards of 150 μg/m$^3$.[1] Upon further review, the annual $PM_{10}$ standards were subsequently revoked effective December 18, 2006, as the available evidence did not suggest an association between long-term exposure to coarse particles at ambient levels and detrimental health effects.[2] However, the EPA announced that it was retaining the 24-hour $PM_{10}$ NAAQS at 150 micrograms per cubic meter (μg/m$^3$) to provide continued protection against the effects associated with short-term exposure to coarse particles.[3] In this document, ''$PM_{10}$ NAAQS'' or the singular ''$PM_{10}$ standard'' will henceforth refer to both the primary and secondary 24-hour $PM_{10}$ NAAQS, as they are the same.

### *B. The Sacramento County Planning Area Nonattainment Designation and First $PM_{10}$ Maintenance Plan*

Under section 107 of the CAA, the EPA is required to designate all areas of the country as attainment, nonattainment, or unclassifiable for each of the NAAQS. Under the CAA Amendments of 1990, the Sacramento County planning area was initially designated as unclassifiable for the $PM_{10}$ NAAQS by operation of law. The EPA then redesignated and classified the area as a ''Moderate'' nonattainment area on January 20, 1994, due to $PM_{10}$ NAAQS violations recorded at two $PM_{10}$ monitors within the Sacramento County planning area during 1989 and 1990.[4] This action established an attainment deadline of December 31, 2000.

On February 15, 2002, the EPA determined that the Sacramento County nonattainment area had attained the $PM_{10}$ NAAQS by the attainment date.[5] The determination was based on complete, quality-assured, and certified ambient air monitoring data from 1998 to 2000. The 24-hour standard is attained when the recorded number of days with levels above 150 μg/m$^3$ (averaged over a 3-year period) is less than or equal to one.[6] The recorded number of exceedances averaged over a three-year period at any given monitor is known as the $PM_{10}$ design value, and the highest design value recorded within the nonattainment area is used as the area's $PM_{10}$ design value for the purposes of determining attainment.[7]

Section 175A of the CAA dictates that any state that submits a request for redesignation of a nonattainment area to attainment shall also submit a SIP revision that provides for the maintenance of the pertinent NAAQS for at least 10 years after the redesignation. This maintenance plan must, among other requirements, ensure control measures are in place such that the area will continue to maintain the standard for a 10-year period after redesignation, and include contingency provisions to ensure that violations of the NAAQS will be promptly remedied.

In California, CARB is the agency responsible for the adoption and submission of California SIPs and SIP revisions to the EPA. Working jointly with CARB, local and regional air pollution control districts in California are responsible for the development of regional air quality plans. The Sacramento Metropolitan Air Quality Management District (''SMAQMD'' or ''District'') develops and adopts plans to address CAA planning requirements applicable to Sacramento County. SMAQMD adopts and submits its plans to CARB for state adoption and submission to the EPA as revisions to the California SIP.

On December 7, 2010, CARB requested that the EPA redesignate the Sacramento County $PM_{10}$ nonattainment area to attainment and concurrently submitted the Sacramento $PM_{10}$ Maintenance Plan and associated motor vehicle emissions budgets (''budgets'') to the EPA as a revision to the California SIP.[8] On October 28, 2013, the EPA approved the Sacramento $PM_{10}$ Maintenance Plan, which provided for maintenance of the NAAQS for the area through October 28, 2023.[9]

[1] 52 FR 24634 (July 1, 1987). The EPA established both primary and secondary standards for the annual NAAQS and the 24-hour NAAQS. Primary standards provide public health protection, including protecting the health of ''sensitive'' populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. The primary and secondary standards were the set at the same level for the annual $PM_{10}$ NAAQS (*i.e.,* at 50 μg/m$^3$) and for the 24-hour NAAQS (*i.e.,* at 150 μg/m$^3$).

[2] 71 FR 61144 (October 17, 2006).

[3] 78 FR 3086 (January 15, 2013).

[4] The nonattainment area for $PM_{10}$ was set as the same boundaries as Sacramento County, 58 FR 67334 (December 21, 1993).

[5] 67 FR 7082 (February 15, 2002).

[6] An exceedance is defined as a daily value that is above the level of the 24-hour standard (*i.e.,* 150 μg/m$^3$) after rounding to the nearest 10 μg/m$^3$ (*i.e.,* values ending in five or greater are to be rounded up.) Thus, a recorded value of 154 μg/m$^3$ would not be an exceedance as it would be rounded to 150 μg/m$^3$. A recorded value of 155 μg/m$^3$ would be an exceedance because it would be rounded to 160 μg/m$^3$. 40 CFR part 50, Appendix K, section 1.0.

[7] 40 CFR 50.6 and 40 CFR part 50, appendix K. The comparison with the allowable expected exceedance rate of one per year is made in terms of a number rounded to the nearest tenth; *e.g.,* an exceedance rate of 1.05 would be rounded to 1.1, which is the lowest rate for nonattainment. 40 CFR part 50, appendix K, section 2.1(b).

[8] Letter dated December 7, 2010, from James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region IX.

[9] 78 FR 59261 (September 26, 2013).

## II. Air Quality in the Sacramento County Planning Area

### *A. Exceedances in the Sacramento County Planning Area*

A recent design value showing a maintenance area is continuing to attain the $PM_{10}$ NAAQS (*i.e.,* the recorded number of days with levels above 150 μg/m$^3$, averaged over a 3-year period, is less than or equal to one) is the foundation of a second 10-year maintenance plan. As described in more detail in Section IV.A of this document, a base year emissions inventory from the design value period that represents attainment conditions is used as the basis for projecting emissions inventories into the future and to demonstrate that future emissions will not lead to an exceedance of the standards. The District used the data from calendar years 2017 through 2019 to calculate a 2019 design value to demonstrate the area had continued to attain the $PM_{10}$ standard and selected the 2017 emissions inventory as its base year inventory.

Table 1 of this document shows the design values for the Sacramento County $PM_{10}$ maintenance area at the monitoring sites active in the county between 2011 through 2022, accounting for all recorded exceedances during that time. Specifically, no exceedances of the $PM_{10}$ NAAQS were recorded in 2011–2017, numerous exceedances were recorded in 2018 across all active monitors, a single exceedance was recorded in 2019 at the Sacramento T Street monitoring site (AQS ID: 06–067–0010), several exceedances were recorded in 2020 across all active monitors, and in 2021–2022 no exceedances of the $PM_{10}$ NAAQS were recorded. As a result of the exceedance days recorded in 2018, the calculated 2019 design value for $PM_{10}$ is in violation of the standard.[10] The District contends that the exceedances in 2018 were due to uncontrollable wildfire smoke and submitted a request to exclude the 2018 data from regulatory decisions on the basis that they are exceptional events.[11]

TABLE 1—SACRAMENTO COUNTY 2013–2022 $PM_{10}$ MONITOR DESIGN VALUES INCLUDING 2018 EXCEPTIONAL EVENTS EXCEEDANCES

| Design value period | Monitoring site | | | |
|---|---|---|---|---|
| | North Highlands | Del Paso Manor | Sacramento T Street [a] | Sacramento Branch Center |
| 2011–2013 | 0.0 | 0.0 | ..... | 0.0 |
| 2012–2014 | 0.0 | 0.0 | ..... | 0.0 |
| 2013–2015 | 0.0 | 0.0 | ..... | 0.0 |
| 2014–2016 | 0.0 | 0.0 | 0.0 | 0.0 |
| 2015–2017 | 0.0 | 0.0 | 0.0 | 0.0 |
| 2016–2018 | 4.1 | 4.1 | 2.0 | 2.0 |
| 2017–2019 | 4.1 | 4.1 | 2.3 | 2.0 |
| 2018–2020 | 6.0 | 6.0 | 3.7 | 4.6 |
| 2019–2021 | 1.9 | 1.9 | 1.7 | 2.6 |
| 2020–2022 | 1.9 | 1.9 | 1.3 | 2.6 |

[a] The Sacramento T Street monitoring station came into active use in 2013. (North Highlands Air Quality System Site ID #:06–067–0002–1; Del Paso Manor (primary) AQS Site ID #: 06–067–0006–1; Sacramento T Street AQS Site ID #: 06–067–0010–4; Sacramento Branch Center AQS Site ID #: 06–067–0284–1).

### *B. Exceptional Events Demonstration for the 2018 Exceedances in the Sacramento County Planning Area*

Congress has recognized that it may not be appropriate for the EPA to use certain monitoring data, collected by the ambient air quality monitoring network and maintained in the EPA's Air Quality System (AQS) database, in certain regulatory determinations. Thus, in 2005, Congress provided the statutory authority for the exclusion of data influenced by ''exceptional events'' meeting specific criteria by adding section 319(b) to the CAA. To implement this 2005 CAA amendment, the EPA promulgated the 2007 Exceptional Events Rule.[12] The 2007 Exceptional Events Rule created a regulatory process codified at 40 CFR parts 50 and 51 (sections 50.1, 50.14, 51.930). These regulatory sections, which superseded the EPA's previous guidance on handling data influenced by exceptional events, contain definitions, procedural requirements, requirements for air agency demonstrations, criteria for EPA approval of the exclusion of event-affected air quality data from the data set used for regulatory decisions, and requirements for air agencies to take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS. In 2016, the EPA promulgated a comprehensive revision to the 2007 Exceptional Events Rule (referred to herein as the ''Exceptional Events Rule'').[13] Under the Exceptional Events Rule, if, for example, a state demonstrates to the EPA's satisfaction that emissions from a wildfire smoke event caused specific air pollution concentration in excess of the $PM_{10}$ NAAQS at a particular air quality monitoring location and otherwise satisfies the requirements of 40 CFR 50.14, the EPA must exclude that data from use in determinations of exceedances and violations.[14]

For the EPA to concur with excluding the air quality data from regulatory decision, the demonstration must satisfy all the Exceptional Events Rule criteria. Specifically, under 40 CFR 50.14(c)(3)(iv), the air agency demonstration to justify exclusion of data must include:

1. a narrative conceptual model that describes the event(s) causing the exceedance or violation and a discussion of how emissions from the event(s) led to the exceedance or violation at the affected monitors(s);

2. a demonstration that the event affected air quality in such a way that

[10] See EPA AQS Design Value Report, AMP480, for 2011–2022 $PM_{10}$ Design Values for Sacramento County (Report accessed August 9, 2023), included in the docket for this rulemaking, for full details.

[11] Letter dated March 31, 2021, from Mark Loutzenhiser, Division Manager, Program Coordination Division, SMAQMD, to Richard Corey, Executive Officer, CARB, Subject: ''Exceptional Event Demonstration for November 2018 $PM_{10}$ Exceedances in Sacramento County due to Wildfires.''

[12] 72 FR 13560 (March 22, 2007).

[13] 81 FR 68216 (October 3, 2016).

[14] 40 CFR 50.14(b)(4).

there exists a clear causal relationship between the specific event and the monitored exceedance or violation;

3. analyses comparing the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times to support requirement in 40 CFR 50.14(c)(3)(iv)(2);

4. a demonstration that the event was both not reasonably controllable and not reasonably preventable, and;

5. a demonstration that the event was a human activity that is unlikely to recur at a particular location or was a natural event.[15]

In addition, the air agency must meet several procedural requirements, including:

1. submission of an Initial Notification of Potential Exceptional Event and flagging of the affected data in the EPA's Air Quality System (AQS) as described in 40 CFR 50.14(c)(2)(i);

2. completion and documentation of the public comment process described in 40 CFR 50.14(c)(3)(v); and

3. implementation of any relevant mitigation requirements as described in 40 CFR 51.930.

On August 21, 2019,[16] CARB submitted an Initial Notification of Potential Exceptional Events prepared by SMAQMD for numerous exceedances of the $PM_{10}$ NAAQS that occurred at the Sacramento T Street, North Highland, Del Paso Manor, and Sacramento Branch Center $PM_{10}$ monitoring sites within the maintenance area on November 10–12 and November 14–16, 2018.

The EPA recommended that CARB and SMAQMD determine the relevant exceedances and associated monitoring sites that may have regulatory significance with respect to the $PM_{10}$ NAAQS, and submit an exceptional event demonstration to the EPA no later than March of 2021.[17] On March 31, 2021, SMAQMD submitted the ''Exceptional Event Demonstration for November 2018 Exceedances in Sacramento County due to Wildfires'' to CARB for transmittal to the EPA.[18] Then, on April 26, 2021,[19] CARB submitted the exceptional event demonstration prepared by SMAQMD for 13 exceedances of the 1987 24-hour $PM_{10}$ NAAQS during November 10–12 and November 14–16, 2018.[20] Table 2 of this document summarizes the exceedances that SMAQMD included in the demonstration.

TABLE 2—SACRAMENTO COUNTY $PM_{10}$ NAAQS EXCEEDANCE SUMMARY FOR 2018

| Exceedance date | Monitoring site | AQS ID [a] | $PM_{10}$ (μg/m³) |
|---|---|---|---|
| November 10, 2018 | Sacramento T Street | 06–067–0010–4 | 189 |
| November 10, 2018 | North Highlands | 06–067–0002–1 | 222 |
| November 10, 2018 | Del Paso Manor | 06–067–0006–1 | 212 |
| November 10, 2018 | Del Paso Manor | 06–067–0006–2 | 202 |
| November 10, 2018 | Sacramento—Branch Center | 06–067–0284–1 | 200 |
| November 11, 2018 | Sacramento T Street | 06–067–0010–4 | 176 |
| November 12, 2018 | Sacramento T Street | 06–067–0010–4 | 183 |
| November 14, 2018 | Sacramento T Street | 06–067–0010–4 | 181 |
| November 15, 2018 | Sacramento T Street | 06–067–0010–4 | 292 |
| November 16, 2018 | Sacramento T Street | 06–067–0010–4 | 252 |
| November 16, 2018 | North Highlands | 06–067–0002–1 | 163 |
| November 16, 2018 | Del Paso Manor | 06–067–0006–1 | 166 |
| November 16, 2018 | Del Paso Manor | [b] 06–067–0006–2 | 163 |

[a] The last number in the AQS ID is the Parameter Occurrence Code (POC) and distinguishes between different monitors at the same site.
[b] The Del Paso Manor (POC 2) monitor is a collocated monitor used for quality assurance purposes. Data from this monitor are not used for comparison to the NAAQS. However, for completeness, CARB, SMAQMD, and the EPA have included this monitor in the demonstration and concurrence process.
Source: Second 10-Year Maintenance Plan, Table 2–5.

The demonstration submitted by CARB and SMAQMD provides a narrative conceptual model to describe how emissions from the Camp Fire, in Butte County, California, caused the $PM_{10}$ exceedances at the listed monitoring sites on the listed dates. The narrative conceptual model includes a description of the Camp Fire and its progression, the general meteorological conditions in the affected area, and information regarding how $PM_{10}$ concentrations measured during this period compared to normal conditions across the Sacramento Valley. To support a clear causal relationship between the wildfire event and the monitored exceedances, the demonstration includes several analyses, specifically including the following: comparison with historical $PM_{10}$ concentrations; Hybrid Single-Particle Lagrangian Integrated Trajectory (HYSPLIT) analysis; satellite imagery of smoke; ceilometer data;[21] regional patterns of $PM_{10}$ concentrations and PM air quality index (AQI) values; fine particulate matter ($PM_{2.5}$) concentrations and comparison with historical data; concurrent increases in carbon monoxide, black carbon, and organic carbon concentrations; media reports of wildfire smoke affecting the monitoring area; and District-issued air quality advisories.[22] The documentation also demonstrates that the wildfire

[15] A natural event is further described in 40 CFR 50.1(k) as ''[a]n event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role. For purposes of the definition of a natural event, anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions.''

[16] Email dated August 21, 2019, from Sylvia Vanderspek (CARB) to Gwen Yoshimura (EPA Region IX) Subject: ''INI Form for Submittal to EPA—SMAQMD $PM_{10}$.''

[17] See letter dated March 3, 2020, from Elizabeth Adams, Air and Radiation Division Director, EPA Region IX, to Sylvia Vanderspek, Air Quality Planning Branch Chief, CARB.

[18] Letter dated March 31, 2021, from Mark Loutzenhiser, Division Manager, Program Coordination Division, SMAQMD, to Richard Corey, Executive Officer, CARB, Subject: ''Exceptional Event Demonstration for November 2018 $PM_{10}$ Exceedances in Sacramento County due to Wildfires.''

[19] Letter dated April 26, 2021, from David Edwards for Michael Benjamin, Air Quality Planning and Science Division Chief, CARB, to Elizabeth Adams, Air and Radiation Division Director, EPA Region IX, Subject: ''Submittal of Final Documentation for 2018 Exceptional Events.''

[20] SMAQMD Exceptional Event Demonstration For November 2018 $PM_{10}$ Exceedances in Sacramento County Due to Wildfires, March 31, 2021.

[21] A ceilometer measures the attenuated backscatter of light due to gradients in particulate matter or other aerosols.

[22] See Sections 3 and 4, and Appendices A, B, C, and D of the Demonstration for full details.

event was not reasonably controllable and not reasonably preventable.[23] Furthermore, the Camp Fire event meets the definition of a natural wildfire event, defined in 40 CFR 50.1(n) as ''a wildfire that predominantly occurs on wildland.'' [24]

In addition to the technical demonstration requirements, there are timing and procedural requirements an air agency must follow to request data exclusion. The demonstration submitted by CARB includes evidence of the following: SMAQMD provided prompt public notification of the events, CARB submitted an Initial Notification of Potential Exceptional Event in the EPA's AQS system [25] and met the deadline requirements for these submissions, and the District allowed for a documented public comment period in which feedback from the public was solicited, collected, submitted to the EPA, and considered along with the submission of the demonstration.

The EPA reviewed and concurred on the documentation provided by CARB and SMAQMD to support claims that the Camp Fire caused exceedances of the $PM_{10}$ NAAQS at the Sacramento T Street, North Highlands, Del Paso Manor, and Sacramento Branch Center monitoring sites on November 10–12 and November 14–16, 2018.[26] The demonstration prepared by SMAQMD and submitted by CARB meets all criteria required by 40 CFR 50.14 (c)(3)(iv). Furthermore, the submittal satisfied all schedule and procedural requirements specified in 40 CFR 50.14(c) and 40 CFR 51.930. Thus, the EPA is relying on calculated values that exclude the event-influenced data for the purpose of demonstrating continued attainment of the $PM_{10}$ NAAQS. With the exclusion of the wildfire-related exceedances in 2018, the 2019 design value is no longer in violation of the $PM_{10}$ NAAQS.

EPA concurrence is a preliminary step in the regulatory process for actions that may rely on these data and does not constitute final agency action. Regulatory actions that rely on the exclusion of exceptional event data require the EPA to provide an opportunity for public comment on the technical basis of the proposed action, including the claimed exceptional events and all supporting data prior to the EPA taking final agency action. This proposed action provides the public with an opportunity to comment on the claimed exceptional events for the 2018 exceedances in Sacramento County and all supporting documents submitted by CARB, and the EPA's concurrence with the State's request with regards to our proposed action to approve the Second 10-Year Maintenance Plan.

*C. Exceedances Occuring After the 2019 Design Value Period*

In order to ensure that the area has continued to attain the standard after 2017–2019 design value period on which the Plan is based, the District calculated the 2020 design value (based on 2018–2020 data), and we independently calculated the 2021 and 2022 design values (based on 2019–2021, and 2020–2022 data, respectively). In all cases the design values are above the standard.[27] The 2020 exceedances associated with these violations were initially flagged in AQS by SMAQMD as wildfire related and the District included information with the Plan to support these claims.[28] Appendix A in the Second 10-Year Maintenance Plan (''Analysis of $PM_{10}$ Exceedance Days in 2020'') provides a conceptual narrative demonstrating how wildfire smoke also contributed to the $PM_{10}$ exceedances in 2020. Between September 8, 2020, and September 13, 2020, there was a total of seven recorded exceedances among all monitoring sites located within the county at the time,[29] accounting for all exceedances recorded in 2020. Table 3 of this document summarizes the exceedances recorded during this period.

TABLE 3—SACRAMENTO COUNTY $PM_{10}$ NAAQS EXCEEDANCE SUMMARY FOR 2020

| Exceedance date | Monitoring station | AQS ID [a] | $PM_{10}$ (μg/m³) |
|---|---|---|---|
| September 8, 2020 | Sacramento T Street | 06–067–0010–4 | 298 |
| September 11, 2020 | Sacramento T Street | 06–067–0010–4 | 231 |
| September 12, 2020 | Sacramento T Street | 06–067–0010–4 | 186 |
| September 12, 2020 | Del Paso Manor | 06–067–0006–1 | 186 |
| September 12, 2020 | Del Paso Manor | [b] 06–067–0006–2 | 188 |
| September 12, 2020 | North Highlands | 06–067–0002–1 | 187 |
| September 12, 2020 | Sacramento—Branch Center | 06–067–0284–1 | 201 |
| September 13, 2020 | Sacramento T Street | 06–067–0010–4 | 169 |

[a] The last number in the AQS ID is the Parameter Occurrence Code (POC) and distinguishes between different monitors at the same site.
[b] The Del Paso Manor (POC 2) monitor is a collocated monitor for quality assurance purposes, and the data from this monitor is not used for comparison to the NAAQS. However, for completeness, CARB, SMAQMD, and the EPA included this monitor in the demonstration and concurrence process.
Source: Second 10-Year Maintenance Plan, Table A–1.

Similar to the exceptional event demonstration for the 2018 exceedances, Appendix A documents several wildfires in the vicinity of Sacramento County that were active during 2020 and attributes emissions from these wildfires, concurrent with wind gust events, as having caused the $PM_{10}$ exceedances listed in Table 3.[30]

[23] Id. at pp. 3–1 to 3–3 and Section 5: p. 5–1.

[24] Id. at Section 6: p. 6–1.

[25] SMAQMD Exceptional Event $PM_{10}$ Initial Notification Summary Information 2016–2018, submitted August 21, 2019.

[26] Details included in ''Technical Support Document for EPA Concurrence on $PM_{10}$ Exceedances Measured in the Sacramento County Maintenance Area on November 10–12 and November 14–16, 2018 as Exceptional Events,'' found within the docket for this rulemaking, and letter dated July 27, 2022, from Elizabeth Adams, Director, Air and Radiation Division, EPA Region IX, to Sylvia Vanderspek, Chief, Air Quality Planning Branch and Air Quality Planning and Science Division, CARB, Subject: ''EPA Concurrence with EE exclusion of $PM_{10}$ exceedances on November 10–12 and 14–16, 2018.''

[27] ''Second 10-Year $PM_{10}$ Maintenance Plan for Sacramento County,'' Appendix A.

[28] EPA AQS Report of Flagged $PM_{10}$ Values due to Wildfire Events in Sacramento County, Report Prepared February 13, 2023.

[29] See Section IV.C of the rulemaking for additional details on the present status of the Sacramento County $PM_{10}$ monitoring network.

[30] During the late summer and early fall of 2020, the Slater/Devils Fire, Red Salmon Complex Fire, August Complex Fire, North Complex Fire (composed of the Baer and Claremont fires), Fork Fire, and the Creek Fire were all active at the time of the exceedances.

The appendix includes an overview of the wildfires active at the time of the exceedances, including the start and containment dates, the geographic proximity and range of each wildfire, and fire containment levels during the date range of the exceedances. To support a clear causal relationship between these wildfire events, wind gusts, and the monitored exceedances, Appendix A includes several analyses including the following: HYSPLIT analysis; satellite imagery of smoke; regional patterns of $PM_{10}$ concentrations and PM AQI; $PM_{2.5}$ concentrations and comparison with historical data; concurrent increases in carbon monoxide, black carbon, and organic carbon concentrations; as well as media reports of wildfire smoke affecting the monitoring data. In addition, the District notes that the wildfires listed in Table A–2 of Appendix A were either a result of lightning strikes or were still under investigation, and the District contends these wildfire events were not reasonably controllable and not reasonably preventable. Therefore, in lieu of an exceptional event demonstration, the EPA proposes to find that this information provided in Appendix A of the Plan indicates that the 2020 exceedances were caused by uncontrollable wildfire smoke and wind gusts.

Because SMAQMD and CARB did not submit an exceptional event demonstration for the 2020 exceedances from wildfires, we have factored these exceedances into design value calculations, and the post-2019 design values (2020, 2021, and 2022) remain in violation of the $PM_{10}$ NAAQS, as summarized in Table 4 of this document. However, after reviewing the evidence provided by the District demonstrating that the exceedances in 2020 were caused by a combination of uncontrollable wildfire smoke and wind gust events, and therefore separate from trends in the ambient air quality for $PM_{10}$, we propose to find that these exceedances do not call into question the EPA's proposed approval of the Second 10-Year Maintenance Plan as providing for maintenance of the $PM_{10}$ NAAQS. No exceedances were recorded in 2021, nor 2022, lending additional support to the claim that the 2020 exceedances were caused by uncontrollable wildfire smoke and wind gust events. We find that these data are consistent with the EPA's proposed approval of the Second 10-Year Maintenance Plan as providing for maintenance of the $PM_{10}$ NAAQS. Prior to finalizing this action, we will examine all quality-assured and certified $PM_{10}$ monitoring data available to ensure this trend persists or that the District has implemented its contingency plan to address any exceedances.

TABLE 4—SACRAMENTO COUNTY $PM_{10}$ MONITOR DESIGN VALUES WITH 2018 EXCEPTIONAL EVENTS EXCEEDANCES REMOVED

| Design value period | Monitoring site | | | |
|---|---|---|---|---|
| | North Highlands | Del Paso Manor | Sacramento T Street [a] | Sacramento Branch Center |
| 2011–2013 | 0.0 | 0.0 | ..... | 0.0 |
| 2012–2014 | 0.0 | 0.0 | ..... | 0.0 |
| 2013–2015 | 0.0 | 0.0 | ..... | 0.0 |
| 2014–2016 | 0.0 | 0.0 | 0.0 | 0.0 |
| 2015–2017 | 0.0 | 0.0 | 0.0 | 0.0 |
| 2016–2018 | 0.0 | 0.0 | 0.0 | 0.0 |
| 2017–2019 | 0.0 | 0.0 | 0.3 | 0.0 |
| 2018–2020 | 1.9 | 1.9 | 1.7 | 2.6 |
| 2019–2021 | 1.9 | 1.9 | 1.7 | 2.6 |
| 2020–2022 | 1.9 | 1.9 | 1.3 | 2.6 |

[a] The Sacramento T Street monitoring station came into active use in 2013. (North Highlands AQS Site ID #:06–067–0002–1; Del Paso Manor (primary) AQS Site ID #: 06–067–0006–1; Sacramento T Street AQS Site ID #: 06–067–0010–4; Sacramento Branch Center AQS Site ID #: 06–067–0284–1).

Source: TSD for EPA Concurrence on $PM_{10}$ Exceedances Measured in Sacramento County on Nov 10–12 and Nov 14–16 as EE, found within the docket for this rulemaking.

## III. The Second 10-Year Maintenance Plan Submittal and Procedural Requirements

CAA section 175A(b) requires states to submit a SIP revision to maintain the NAAQS for an additional ten years after the expiration of the 10-year period covered by the initial maintenance plan. The submittal is due eight years after the original redesignation request and maintenance plan was approved. The deadline to submit the SIP revision for the Sacramento County $PM_{10}$ NAAQS maintenance area was October 28, 2021. On October 21, 2021, CARB submitted the ''Second 10-Year $PM_{10}$ Maintenance Plan for Sacramento County'' (''Second 10-Year Maintenance Plan'' or ''Plan'') to meet the requirement for a subsequent maintenance plan under CAA section 175A(b).[31] The Second 10-Year Maintenance Plan is intended to provide for continued maintenance of the $PM_{10}$ NAAQS for the 10-year period following the end of the first 10-year period, *i.e.,* from 2024 through 2033.

In addition, CAA sections 110(a)(1), (2), and 110(l) require states to provide reasonable notice and opportunity for public hearing prior to adoption and submission of a SIP or SIP revision. To meet these procedural requirements, every SIP submission should include evidence that the state provided adequate public notice and opportunity for a public hearing consistent with the EPA's implementing regulations in 40 CFR 51.102. CARB's October 21, 2021 SIP submittal package includes documentation of the public processes used by the District and CARB to adopt the Second 10-Year Maintenance Plan. Prior to adoption of the plan, a reasonable notice of a public hearing was provided to the public, and a public hearing was conducted. Specifically, notices of a public hearing and the opening of a comment period for the Second 10-Year Maintenance Plan for Sacramento County were published within the ''News and Notices'' section of the District's website on July 23, 2021, in advance of the August 26, 2021

[31] Letter dated October 20, 2021, from Richard Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX (submitted electronically October 21, 2021).

public hearing.[32] No comments were received during the District's comment period.[33] Following the adoption of a resolution to approve the Second 10-Year Maintenance Plan,[34] the District requested that CARB review and adopt the Plan.[35] On August 13, 2021, CARB published on its website a notice of a public hearing to be held on September 23, 2021, to consider adoption of the District's Plan.[36] No comments were received during CARB's public comment period. CARB adopted the Plan,[37] and subsequently submitted it to the EPA as a revision to the California SIP on October 21, 2021. Based on the documentation provided in the Second 10-Year Maintenance Plan submittal, we propose to find that the SIP revision satisfies the public notice procedural requirements of the Act.

Section 175A of the CAA provides the general framework for a maintenance plan. The initial 10-year maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, including any control measures necessary to ensure such maintenance. In addition, maintenance plans are to contain contingency provisions necessary to ensure the prompt correction of a violation of the NAAQS that may occur after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation. Beyond these provisions, section 175A of the CAA does not define the content of a second 10-year maintenance plan.

The primary guidance on maintenance plans and redesignation requests is the September 4, 1992 memorandum from John Calcagni, titled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni Memo'').[38] The Calcagni Memo outlines the key elements of a maintenance plan, which include the following: attainment emissions inventory, maintenance demonstration, monitoring network requirements, verification of continued attainment, and contingency plan elements. We are evaluating the Second 10-Year Maintenance Plan based on the satisfactory fulfillment of these and all relevant procedural requirements of the CAA.

## IV. Evaluation of the Second 10-Year Maintenance Plan

### *A. Emissions Inventory*

A maintenance plan for the $PM_{10}$ NAAQS should include a comprehensive, accurate, and current emissions inventory of all sources of relevant pollutants in the area, to identify a level of emissions sufficient to attain the $PM_{10}$ NAAQS. The inventory should include emissions from stationary point sources, area sources, and mobile sources and must be based on actual emissions during the appropriate season, if applicable.[39] This emissions inventory should be consistent with the EPA's most recent guidance available at the time and should represent emissions during the time period associated with the monitoring data showing attainment, in this case 2017–2019. The specific $PM_{10}$ emissions inventory requirements are set forth in the Air Emissions Reporting Requirements rule.[40] The EPA has provided additional guidance for developing $PM_{10}$ emissions inventories in ''$PM_{10}$ Emissions Inventory Requirements,''[41] and ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Requirements'' (May 2017).

The SMAQMD Second 10-Year Maintenance Plan includes inventories for total primary $PM_{10}$ and nitrogen oxide pollutants ($NO_X$) in the County for the years 2017, 2024, 2027, and 2033. $NO_X$ emissions are discussed in this plan due to the significant contribution of $NO_X$ as a precursor pollutant, especially toward wintertime ambient $PM_{10}$ concentrations, as demonstrated in the first maintenance plan by a chemical mass balance (CMB) study of $PM_{10}$ pollution in the County.[42] Additionally, detailed emissions inventory data for sulfur oxides ($SO_X$) are not included, but $SO_X$ emissions remain stable throughout the second maintenance period at about 1 ton per day (tpd).[43] The Plan also states that volatile organic compounds (VOCs) are not identified in the CMB study analysis performed for the First Maintenance Plan as contributing to the $PM_{10}$ concentrations and therefore are not included in the emissions inventory. The District selected the inventory years to include the base year emissions inventory (2017), an inventory for the first year of the second maintenance period (2024), an interim year inventory (2027), and an inventory for the end of the second maintenance period (2033). The base year is the first year of the Plan's design value. Projected emissions inventories for future years must account for, among other factors, the ongoing effects of economic growth and adopted emissions control requirements, and the inventories are expected to be the best available representation of future emissions. The Plan includes emissions estimates from all the relevant stationary point, area, and mobile source categories, and further divides these main categories into more descriptive subcategories. As these emissions forecasts consider expected emissions reductions to the base year inventory resulting from adopted control measures, they similarly consider potential emissions increases, such as those associated with emissions reduction credits (ERCs). ERCs are allowances earned through voluntary pollutant emissions reductions such as equipment shutdowns or voluntarily installed controls. Emissions within the Plan are listed for an average winter day when concentrations were shown to be seasonally elevated. The SMAQMD analysis demonstrates a seasonal occurrence of higher ambient $PM_{10}$ concentrations in the fall and winter months.[44] The District finds that this trend is a result of increased residential wood combustion, in conjunction with

[32] SMAQMD affidavit of publication of ''Public Hearing for Approval of the Second 10-Year $PM_{10}$ Maintenance Plan for Sacramento County'' on the District's website on July 23, 2021.

[33] See SMAQMD Transmittal Letter from Mark Loutzenhiser, Division Manager, Program Coordination Division, SMAQMD, to Richard Corey, Executive Officer, CARB, dated September 2, 2021.

[34] SMAQMD Board of Directors Public Hearing and Resolution No. 2021–009 Adopting the ''Second 10-Year $PM_{10}$ Maintenance Plan for Sacramento County,'' dated August 26, 2021.

[35] Letter dated September 2, 2021, from Mark Loutzenhiser, Division Manager, Program Coordination Division, SMAQMD, to Richard Corey, Executive Officer, CARB.

[36] CARB Notice of Public Meeting to Consider Sacramento County $PM_{10}$ Maintenance Plan State Implementation Plan Submittal, dated August 13, 2021.

[37] CARB Board Resolution 21–20: Sacramento County $PM_{10}$ Maintenance Plan State Implementation Plan Submittal, dated September 23, 2021.

[38] Memorandum dated September 4, 1992, from John Calcagni, Director, Air Quality Management Division, EPA, to Regional Office Air Division Directors, Subject: ''Procedures for Processing Requests to Redesignate Areas to Attainment.''

[39] CAA section 172(c)(3).

[40] 40 CFR part 51, subpart A.

[41] EPA–454/R–94–033, September 1994.

[42] SMAQMD $PM_{10}$ Implementation/Maintenance Plan and Redesignation Request for Sacramento County, p. 4–4. Source contributions used in the CMB study were based on a technical paper on wintertime $PM_{2.5}$ and $PM_{10}$ source apportionment for Sacramento (Motallebi, Nehzat. ''Wintertime $PM_{2.5}$ and $PM_{10}$ Source Apportionment at Sacramento California.'' Air and Waste Management Association, 1999). The CMB study calculated source contributions for ambient air quality samples (>40 μg/m3) collected from November to January for 1991–1996.

[43] Second 10-Year Maintenance Plan, Table 5–1.

[44] Second 10-Year Maintenance Plan For Sacramento County, Section 2.8.

winter weather conditions conducive to $PM_{10}$ pollutant build up (*e.g.,* greater atmospheric stability, low wind dispersion, and colder temperatures).

The emissions inventories used in the Plan are from CARB's California Emissions Projection Analysis Model (CEPAM): CEPAM 2019: External Adjustment Reporting Tool—Version 1.02. Because the Second 10-Year Maintenance Plan depends on both $PM_{10}$ and $NO_X$ emissions to demonstrate continued compliance (discussed in further detail in Sections III.C and D of this document), the EPA reviewed both $PM_{10}$ and $NO_X$ emissions inventories.

Direct $PM_{10}$ and $NO_X$ emissions estimates for stationary point sources reflect actual emissions reported to the District by owners or operators of industrial point sources in the Sacramento County planning area. This category is primarily composed of fuel combustion, waste disposal, petroleum production and marketing, and other industrial processes. Areawide sources, such as consumer products and agricultural burning, occur over a wide geographic area. Emissions for these categories are calculated from fuel usage, product sales, population, employment data, and other parameters for the pertinent range of activities across Sacramento County.

Emissions from on-road mobile sources, which include passenger vehicles, buses, and trucks, were estimated using outputs from CARB's EMFAC2017 model.[45] Emissions inventories for aircraft, trains, boats, and off-road vehicles and equipment used for construction, farming, commercial, industrial, and recreational activities were included in the ''Other Mobile'' category.

The direct $PM_{10}$ emissions for the base year emissions inventory are presented within Table 5 of this document.

TABLE 5—SACRAMENTO COUNTY DIRECT $PM_{10}$ 2017 BASE YEAR EMISSIONS

[Tons per average winter day]

| Source category | Subcategory | 2017 | 2024 | 2027 | 2033 |
|---|---|---|---|---|---|
| Stationary Point Sources | Fuel Combustion | 0.26 | 0.24 | 0.25 | 0.24 |
| | Waste Disposal | 0.02 | 0.02 | 0.02 | 0.02 |
| | Industrial Processes | 1.14 | 1.18 | 1.31 | 1.35 |
| Areawide | Residential Fuel Combustion | 9.15 | 8.97 | 8.89 | 8.83 |
| | Farming Operations | 1.25 | 1.16 | 1.12 | 1.06 |
| | Construction and Demolition | 9.42 | 9.57 | 10.60 | 11.29 |
| | Paved Road Dust | 7.69 | 8.25 | 8.52 | 9.15 |
| | Unpaved Road Dust | 0.65 | 0.62 | 0.61 | 0.59 |
| | Managed Burning and Disposal | 0.16 | 0.17 | 0.17 | 0.16 |
| | Cooking | 0.88 | 0.94 | 0.96 | 1.00 |
| | Fires | 0.06 | 0.07 | 0.07 | 0.07 |
| | Fugitive Windblown Dust | 0.11 | 0.11 | 0.10 | 0.10 |
| | Asphalt Paving/Roofing | 0.01 | 0.01 | 0.01 | 0.01 |
| On-Road Motor Vehicles | | 2.24 | 2.08 | 2.15 | 2.22 |
| Other Mobile | Aircraft | 0.07 | 0.08 | 0.08 | 0.08 |
| | Trains | 0.02 | 0.02 | 0.02 | 0.02 |
| | Equipment (Off-Road/Farm) | 0.29 | 0.20 | 0.17 | 0.15 |
| | Recreational Boat | 0.13 | 0.09 | 0.08 | 0.07 |
| | Commercial Harbor Craft | 0.01 | 0.01 | 0.01 | 0.01 |
| | Off-road Recreational Vehicles | <0.01 | <0.01 | <0.01 | <0.01 |
| Total | All Stationary, Areawide, and Mobile Sources. | 33.58 | 33.78 | 35.15 | 36.43 |

Source: Second 10-Year Maintenance Plan, Table 3–1.

The direct $NO_X$ emissions for the base year emissions inventory are presented within Table 6 of this document.

TABLE 6—SACRAMENTO COUNTY $NO_X$ 2017 BASE YEAR EMISSIONS

[Tons per average winter day]

| Source category | Subcategory | 2017 | 2024 | 2027 | 2033 |
|---|---|---|---|---|---|
| Stationary Point Sources | Fuel Combustion | 1.93 | 1.78 | 1.80 | 1.80 |
| | Waste Disposal | 0.07 | 0.07 | 0.08 | 0.08 |
| | Industrial Processes | 0.24 | 0.25 | 0.27 | 0.28 |
| | Petroleum Processing and Marketing. | <0.01 | <0.01 | <0.01 | <0.01 |
| Areawide | Residential Fuel Combustion | 3.83 | 3.75 | 3.76 | 3.81 |
| | Managed Burning and Disposal | 0.06 | 0.06 | 0.06 | 0.05 |
| | Fires | 0.01 | 0.01 | 0.01 | 0.01 |
| On-Road Motor Vehicles | | 21.45 | 10.66 | 9.33 | 7.46 |
| Other Mobile | Aircraft | 1.75 | 1.98 | 2.08 | 2.30 |

[45] EMFAC is short for EMission FACtor. The EPA approved EMFAC2017 for SIP development and transportation conformity purposes in California on August 15, 2019. 84 FR 41717. EMFAC2017 was the most recently approved version of the EMFAC model that was available at the time of preparation of the Second 10-Year Maintenance Plan.

TABLE 6—SACRAMENTO COUNTY $NO_X$ 2017 BASE YEAR EMISSIONS—Continued

[Tons per average winter day]

| Source category | Subcategory | 2017 | 2024 | 2027 | 2033 |
|---|---|---|---|---|---|
| | Trains | 0.85 | 0.99 | 1.02 | 1.05 |
| | Equipment (Off-Road/Farm) | 5.00 | 3.42 | 2.97 | 2.69 |
| | Recreational Boat | 0.39 | 0.36 | 0.35 | 0.34 |
| | Commercial Harbor Craft | 0.25 | 0.23 | 0.22 | 0.19 |
| | Off-road Recreational Vehicles | 0.01 | 0.01 | 0.01 | 0.01 |
| Total | All Stationary, Areawide, and Mobile Sources. | 35.84 | 23.57 | 21,96 | 20.08 |

Source: Second 10-Year Maintenance Plan, Table 3–2.

Based on the estimates for the year 2017 in Table 5, areawide sources account for a majority (approximately 88 percent) of the total $PM_{10}$ emissions in the Sacramento County planning area. Residential fuel combustion, construction and demolition, and paved road dust account for the majority of the areawide emissions (approximately 89 percent). The future year emissions estimates in the Plan predict an increase in direct $PM_{10}$ emissions within the Sacramento County planning area over the second ten-year planning period. The main source of the overall predicted increase of $PM_{10}$ emissions is increased emissions of areawide sources, with increases from stationary source emissions also acting as a minor contributor to the overall trend (0.20 tpd). By 2033, total direct $PM_{10}$ emissions are estimated to be approximately 2.85 tpd (8.5 percent) higher than in the 2017 base year. These projected increases in $PM_{10}$ emissions are associated with increases in industrial activity and vehicle miles traveled (VMT) from expected population growth in the county.

For precursor $NO_X$ emissions estimates, the Plan predicts an overall decrease of 15.8 tpd (44 percent) between the base year of 2017 and 2033. Reductions to the On-Road Motor Vehicle subcategory, the most significant contributor to total $NO_X$ emissions, is the primary cause of this trend. Implementation of federal, state, and local regulations, including fleet turnover, result in a 14.0 tpd reduction in associated $NO_X$ emissions.

Based on our review of the Second 10-Year Maintenance Plan, we find that the emissions inventories in the Plan are comprehensive in that they include estimates of $PM_{10}$ and its precursors from all the relevant source categories, which the Plan divides among stationary, areawide, on-road motor vehicles, and other mobile sources. The EPA considers the selection of the 2017 base year inventory to be appropriate given that it was the most recent emissions inventory associated with the reporting schedule required under the Air Emissions Reporting Requirements rule at the time of Plan drafting and because it represents attainment conditions. Moreover, preparation of a seasonal average daily inventory, as opposed to a yearly or episodic inventory, is also appropriate given that elevated $PM_{10}$ concentrations in Sacramento County exhibit a clear seasonal pattern, with ambient concentrations peaking in the fall and winter months. Additionally, we consider the continued use of the CMB analysis from the first maintenance plan as a technical basis for the emissions inventory to be appropriate as we have found no evidence that it is invalid or inaccurate. Based on our review of the documentation provided with the Plan, we are proposing to find that the 2017 emissions inventory for $PM_{10}$ and $NO_X$ is based on reasonable assumptions and methodologies, and that the inventory is comprehensive, current, accurate, and consistent with applicable CAA provisions and the Calcagni Memo.

*B. Maintenance Demonstration*

Section 175A(a) of the CAA requires that the maintenance plan provide for maintenance of the NAAQS for such air pollutant in the area concerned for at least 10 years after the redesignation. A state may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by conducting modeling that shows that the future mix of sources and emissions rates will not cause a violation of the NAAQS.[46]

The District demonstrates continued maintenance of the $PM_{10}$ NAAQS in its Second 10-Year Maintenance Plan by using a proportional rollback analysis to show that the future $PM_{10}$ source concentrations will not cause a violation of the 24-hour $PM_{10}$ NAAQS. The District's proportional rollback model relies on CMB modeling performed in 1995.[47] In proportional rollback, each source category's associated proportion of the ambient $PM_{10}$ contribution scales with the emissions of the category, *i.e.,* the source ambient contribution is ''rolled back'' according to source emissions reductions. Thus, the Plan aims to demonstrate continued maintenance of the standard by showing that the sum of the individual source category contributions for future years will not exceed the $PM_{10}$ NAAQS as those source category emissions change.

To determine the source category concentration contributions for future years, the District conducted proportional rollback in two steps. First the State adjusted the 1995 source apportionment (percent contributions) to yield an updated source apportionment for the 2017 base year; then the 2017 source concentrations were projected to future years, including 2033. The ratio of the 2017 base year and the 1995 emissions for each category yields a scaling factor (''2017 Emissions Projection Factor''), to be applied to the 1995 percentage. This provides a growth-adjusted source apportionment for 2017 $PM_{10}$. This scaling factor accounts for the various changes in the $PM_{10}$ source categories that have occurred over the 1995–2017 period. For this purpose, the source categories were broad and included several individual categories with chemically similar emissions; for example, ''wood burning'' is the sum of Residential Fuel Combustion, Fires, and

[46] Calcagni Memo, p. 9–11.

[47] Motallebi, Nahzat. ''Wintertime $PM_{2.5}$ and $PM_{10}$ Source Apportionment at Sacramento California.'' Air and Waste Management Association [1999]. CMB receptor monitor results from the 1991–1996 wintertime ambient 24-hour $PM_{10}$ samples from the Sacramento T Street monitor were used to determine a CMB for the 1995 ambient $PM_{10}$. The CMB modeling used the chemical components of ambient $PM_{10}$ concentrations, such as fugitive dust, carbonaceous materials from burning, nitrate, and sulfate, and associated them with broad emissions source categories having those chemical signatures. This is a source apportionment, giving a percent ambient contribution for each source category.

Managed Burning and Disposal in the California Emissions Projection Analysis Model (CEPAM) 2019 state emissions inventory system. The Plan lists ammonium nitrate, ammonium sulfate, motor vehicles, wood smoke, fugitive dust $PM_{10}$, and all leftover $PM_{10}$ from unidentified sources as $PM_{10}$ ''source categories,'' identified in the CMB. The growth-adjusted source apportionment percentages for 2017 were then applied to the peak $PM_{10}$ ambient measurement in 2017 to yield the individual source category concentration contributions for 2017. In a similar manner, projection factors for future years were calculated from the ratio of future emissions estimates and 2017 base year emissions. Those projection ratios were then applied to the 2017 peak measurement source category concentrations to yield the peak source category concentrations for future years, 2024, 2027, and 2033.

TABLE 7—PREDICTED FUTURE MAINTENANCE YEAR CONCENTRATIONS BASED ON 2017 PEAK AMBIENT $PM_{10}$ CONCENTRATION IN SACRAMENTO COUNTY

| $PM_{10}$ CMB source category | 2017 Peak conc. (μg/m³) | 2024 Peak conc. (μg/m³) | 2027 Peak conc. (μg/m³) | 2033 Peak conc. (μg/m³) |
|---|---|---|---|---|
| Ammonium Nitrate | 27.1 | 21.7 | 20.6 | 19.6 |
| Ammonium Sulfate | 3.3 | 4.3 | 4.5 | 4.5 |
| Motor Vehicles | 32.3 | 29.0 | 29.4 | 29.7 |
| Wood Smoke | 27.9 | 27.4 | 27.2 | 27.0 |
| Fugitive Dust | 25.4 | 26.1 | 27.8 | 29.4 |
| Unidentified Other | 27.4 | 27.8 | 28.9 | 30.0 |
| Total $PM_{10}$—Background | 144.3 | 136.4 | 138.4 | 140.3 |
| Background | 5.7 | 5.7 | 5.7 | 5.7 |
| Total $PM_{10}$ (using peak concentration) | 149 | 142 | 144 | 146 |

Source: Second 10-Year Maintenance Plan, p. 5–5, Table 5–4.

Table 7 of this document presents a summary of the predicted peak ambient $PM_{10}$ concentrations for the future maintenance years for the Second 10-Year Maintenance Plan. The proportional rollback model predicts a decrease of secondary ammonium nitrate $PM_{10}$ due to the decrease in $NO_X$ emissions.[48] This decrease offset the increases in other $PM_{10}$ source categories such as ammonium sulfate and fugitive dust for the duration of the second maintenance period. The resulting projections for the future 24-hour $PM_{10}$ concentrations were calculated to be 142 μg/m³ for 2024, 144 μg/m³ for 2027, and 146 μg/m³ for 2033, all of which demonstrate continued attainment of the $PM_{10}$ NAAQS of 150 μg/m³. As discussed in Section 2.3.1 of the Plan, the peak concentration in 2017 was suspected to be influenced by natural events and may not represent ambient conditions in Sacramento.[49] The District states that this is supported by CARB flagging the data with an informational flag, which indicated the data may have been influenced by wildfire.[50]

Based on our review, we propose to find that the proportional rollback analysis performed to demonstrate continued attainment of the $PM_{10}$ NAAQS for the years 2017 through 2033 is based on reasonable methods, growth factors, and assumptions, and is based on the most current and accurate information available to CARB and SMAQMD at the time of plan drafting and inventory development. Given that the projections of combined $PM_{10}$ sources show continued attainment through 2033, we are proposing to find that the Second 10-Year Maintenance Plan provides an adequate basis to demonstrate maintenance of the $PM_{10}$ NAAQS within the Sacramento County planning area. Lastly, we propose to find that by providing projected peak concentrations through 2033, the Plan demonstrates maintenance of the $PM_{10}$ NAAQS for more than 10 years after the expiration of the first 10-year maintenance plan (*i.e.,* 2023), in accordance with section 175A(b) of the CAA.

*C. Monitoring Network Requirements*

Following redesignation, the EPA determines whether an area's air quality is maintaining compliance with the $PM_{10}$ NAAQS based upon complete, quality-assured, and certified data gathered at established state and local air monitoring stations (SLAMS) in the nonattainment area and entered in the EPA AQS database.[51] SLAMS monitors produce data to be compared to the NAAQS, using an approved federal reference method (FRM), federal equivalent method (FEM), or an approved regional method. Data from air monitors operated by state, local, or tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. These monitoring agencies certify annually that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in AQS when determining the attainment status of an area.[52] All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, Appendix K.

SMAQMD and CARB work together to monitor ambient air quality in Sacramento County and to submit annual monitoring network plans to the EPA. The annual monitoring network

[48] In its analysis, the District applied a scaling factor of 0.7 to reflect the change in ambient ammonium nitrate due to the change in $NO_X$ emissions. *i.e.,* ammonium nitrate concentration changed by 0.7 percent for every 1 percent change in $NO_X$ emissions. This ratio was based on San Joaquin Valley Air Pollution Control District photochemical modeling results. The District cites SJVAPCD, ''2007 $PM_{10}$ Maintenance Plan and Request for Redesignation,'' Appendix F. Modeling Analysis, p.61.

[49] The District performed additional proportional rollback analysis using the second highest ambient $PM_{10}$ value recorded in 2017 (87 μg/m³), which yielded predicted peak concentrations for 2024, 2027, 2033 that were substantially lower than those yielded using the highest ambient $PM_{10}$ concentration for 2017. However, as the future peak values yielded from the peak 2017 concentration already demonstrated continued maintenance, the District did not use this additional rollback analysis to demonstrate continued maintenance of the $PM_{10}$ NAAQS.

[50] Additional discussion of evidence in support of the impact of natural events on the peak 2017 ambient $PM_{10}$ concentration is found within Section 2.3.1 of the Plan.

[51] For $PM_{10}$, a ''complete'' set of data include a minimum of 75 percent of the scheduled $PM_{10}$ samples per quarter. See 40 CFR, part 50, appendix K, section 2.3(a).

[52] 40 CFR 50.6; 40 CFR part 50, Appendix J; 40 CFR part 53; and 40 CFR part 58, Appendices A, C, D, and E.

plans submitted to the EPA describe the air monitoring network operated by the District and CARB and its status, as required under 40 CFR 58.10. Once received, the EPA reviews these annual monitoring network plans for compliance with the applicable reporting requirements in 40 CFR part 58. The EPA examined the Sacramento-Roseville-Folsom Metropolitan Statistical Area (MSA), in which Sacramento County is located, to determine if the MSA currently meets the requirements for the minimum number of SLAMS for $PM_{10}$ based on the MSA population and air quality as described in 40 CFR 58, Appendix D. EPA regulations require six to ten $PM_{10}$ monitors in an MSA with the population and air quality of the Sacramento-Roseville-Folsom MSA. At the time the District drafted the Plan and through July 31, 2022, there were eight monitoring sites in the MSA, four of which were in Sacramento County. In 2022, the North Highlands monitoring station in Sacramento County, which produced air pollution data through 2021 and part of 2022, was closed.[53] Because we are evaluating the continued maintenance of the area using design values through 2022, we include discussion of the four monitoring sites. However, our evaluation of the adequacy of the monitoring network is based on the number of operational monitoring sites at the time of this rulemaking. With the temporary shutdown of the North Highlands monitoring site, the Sacramento-Roseville-Folsom MSA is operating a total of seven monitors; thus, the MSA meets the minimum monitoring requirements.

During the 2017–2019 design value period covered by the Plan, SMAQMD operated SLAMS monitors at three sites within Sacramento County (North Highlands, Del Paso Manor, and Sacramento Branch Center), and CARB operated a SLAMS monitor at one site (Sacramento T Street). Except for the North Highlands monitor, these monitors continue to operate. The Del Paso Manor monitoring site contains two collocated FRM monitors, while the Sacramento Branch site has, and the North Highlands site had, one FRM monitor each. The Sacramento T Street monitoring site has a single FEM monitor. The schedule for $PM_{10}$ sample collection is one in six days for the FRM filter-based high-volume samplers (Del Paso Manor, Sacramento Branch, and North Highlands monitoring site), while the FEM monitor operates on a daily 24-hour schedule (Sacramento T Street monitoring site).

SMAQMD and CARB jointly commit to continuing to operate a regulatory monitoring network in accordance with 40 CFR part 58 and the California SIP, to verify the attainment status of the area. The Plan contains provisions for the continued operation of air quality monitors that will provide such verification. These provisions include maintaining the operational procedures of data collection, routine calibrations, pre-run and post-run test procedures, and routine service checks. Continued adherence to the annual network plan and annual reviews of the entire air quality monitoring network will be performed to determine if the network is effectively meeting the objectives of the monitoring program. Furthermore, SMAQMD documents any modifications of its monitoring network in its annual network plan that is submitted and reviewed annually by the EPA.[54]

Therefore, the EPA proposes to determine that the Second 10-Year Maintenance Plan contains adequate provisions for continued operation of an air quality monitoring network and a commitment to annually verify continued attainment of the $PM_{10}$ NAAQS for Sacramento County.

*D. Verification of Continued Attainment*

Once an area has been redesignated, the state should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the continued attainment status of the area.[55] Data collected by the monitoring network during this time are also needed to implement the contingency provisions of the maintenance plan.

As discussed in Section IV.C of this document, SMAQMD monitors ambient concentrations of $PM_{10}$ in the Sacramento County planning area at three separate monitoring stations. In Section 5.5 of the Second 10-Year Maintenance Plan, the District commits to continue to operate a $PM_{10}$ ambient monitoring network to track maintenance of the $PM_{10}$ standard in accordance with 40 CFR part 58. The EPA also recommends that the state verify continued attainment through methods supplementary to the ambient air monitoring program, *e.g.,* through periodic review of the factors used in the development of the attainment inventory to track any significant change.[56] In the Second 10-Year Maintenance Plan, SMAQMD commits to perform periodic reviews of the air monitoring data and assumptions used to develop the emissions inventory as part of its effort to verify that the County will continue to meet the 24-hour $PM_{10}$ NAAQS. We are therefore proposing to determine that the Second 10-Year Maintenance Plan contains adequate provisions for continued ambient $PM_{10}$ monitoring and for periodic review of emissions inventory development assumptions to ensure the continued attainment through the maintenance period.

*E. Contingency Provisions*

Section 175A(d) of the CAA requires that maintenance plans include contingency provisions, as the EPA deems necessary, to promptly correct any violations of the NAAQS that occur after the redesignation of the area. Such provisions must include a requirement that the state will implement all measures with respect to the control of the relevant air pollutants that were contained in the SIP for the area before redesignation of the area as an attainment area. These contingency provisions are distinguished from contingency measures required for nonattainment areas under CAA section 172(c)(9), in that they are not required to be fully adopted measures that take effect without further action by the state. However, the contingency provisions of a maintenance plan are an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously once they are triggered. The maintenance plan should clearly identify the measures to be adopted, include a schedule and procedure for adoption and implementation of the measures, and contain a specific timeline for action by the state. In addition, the state should identify the specific indicators or triggers that will be used to determine when the contingency measures need to be implemented.

The District has adopted a contingency plan to address possible future $PM_{10}$ air quality problems in the Sacramento County planning area. The contingency plan is included in Section 6 of the Plan. As noted by the District

[53] On August 1, 2022, the North Highlands monitoring site (AQS ID: 06–067–0002) was dismantled at the request of the owner of the property, following a withdrawal of permission for the continued placement of the monitor on the property. Due to the deteriorating condition of the station, immediate relocation was deemed not feasible, and the District discontinued the monitor. SMAQMD will work with the EPA to identify a relocation site. See email dated July 28, 2022, from Janice Lam Snyder (SMAQMD) to Gwen Yoshimura (Air Quality Analysis Office, EPA Region IX), Subject: ''Notification of Shut down of North Highlands Station due to property owner request.''

[54] SMAQMD 2022 Annual Network Plan, August 1, 2022.

[55] Calcagni Memo, p. 11.

[56] Id.

in the Second 10-Year Maintenance Plan, contingency measures are to be triggered to promptly correct any violation of the standard that occurs during the maintenance period. In this case, these contingency measures will be triggered when the number of monitored exceedances, averaged over three years, is greater than 1.05. However, the contingency plan also includes a detailed screening process that allows the District and CARB, subject to EPA review and agreement, to exclude exceedances from the trigger calculation if the agencies collectively determine that information developed by the District is sufficient to support exclusion. The purpose of the screening process is to differentiate between exceedances that are not within the District's or State's control (*i.e.,* exceedances that occur despite the implementation of reasonable measures), and exceedances that are within the District's or State's control and therefore should be included in the trigger calculation. Should the District or State exclude an exceedance from the contingency trigger calculation using this process, it would not constitute the EPA's concurrence that the exceedance was caused by an exceptional event. The exceedance would therefore continue to be included in design value calculations for the planning area, unless CARB, following opportunity for public comment, submits a request for the EPA to concur on the exceedance as an exceptional event pursuant to 40 CFR 50.14, and the EPA reviews the submittal and formally concurs.

Under the contingency trigger screening process described in the Plan, the District will analyze any exceedance(s) within the District's or State's control that leads to a violation of the NAAQS on a quarterly basis, in order to determine the possible causes and take appropriate action.[57] The District will evaluate future emissions reductions from already-adopted rules to determine if those reductions would be sufficient to correct any exceedance(s). These rules could include previously-adopted CARB or District $PM_{10}$ or $NO_X$ measures used to address ozone or $PM_{10}$ SIP requirements. Should the additional reductions resulting from these measures be insufficient to correct the exceedance(s), the District has committed to consider the implementation of new rules and/or modifications to existing rules that would bring the area back into maintenance.[58] The District will complete its analysis of the exceedance(s) that caused the violation and evaluate the most appropriate control measures to adopt or implement within 6 months of identifying the violation. This is followed by a 12-month period, in which the District will adopt and implement the control measures identified from this process to achieve the necessary reductions. In total, the District will act to implement the contingency measures within 18 months of a violation of the $PM_{10}$ NAAQS. Based on our review of the Second 10-Year Maintenance Plan, we propose to find that the contingency provisions of the Plan clearly identify potential contingency measures, contain a triggering mechanism to determine when contingency measures are needed, contain a description of the process of recommending and implementing contingency measures, and contain specific and appropriate timelines for action. We also propose to find that the contingency trigger screening process, including the associated EPA review, is reasonably designed to distinguish between exceedances that were not within the District or State control, and exceedances that were within the District or State control and for which new or tightened control measures might be effective. Thus, we propose to conclude that the contingency plan in the Plan is adequate to ensure correction of any violation of the $PM_{10}$ NAAQS that occurs after redesignation, as required by section 175A(d) of the CAA.

### *F. Motor Vehicle Emissions Budgets for Transportation Conformity*

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) cause or contribute to violations of the NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the budgets contained in submitted or approved control strategy SIPs and maintenance plans.[59]

These control strategy SIPs and maintenance plans typically set budgets for criteria pollutants and/or their precursors to address pollution from on-road vehicles such as cars and trucks. Budgets are generally established for specific years for those specific pollutants or precursors. $PM_{10}$ maintenance plan submittals must identify budgets for transportation related $PM_{10}$ emissions for the last year of the maintenance period.[60]

For budgets in a maintenance plan to be approvable, they must meet, at a minimum, the EPA's adequacy criteria.[61] To meet these requirements, the budgets must be consistent, when considered with emissions from all other sources, with maintenance of the NAAQS and reflect all the motor vehicle control measures relied upon for the maintenance demonstration.

The EPA also determines the adequacy of budgets in certain submitted SIPs. The adequacy process is separate from the approval process. The EPA's process for determining adequacy of a budget consists of three basic steps:

[57] While not explicitly stated within the Plan, the District later confirmed that analysis of $PM_{10}$ monitoring data for any violation that would trigger the District's contingency plan or the exceptional event evaluation process would occur on a quarterly basis. See email dated June 12, 2023 from Michael Dorantes (EPA) to Janice Lam Snyder (SMAQMD). Subject: ''Sacramento County 2nd $PM_{10}$ Maintenance Plan; Inquiry regarding the Contingency Action Trigger.''

[58] Appendix C of the Plan compiles possible control measures to reduce windblown dust and wood combustion.

[59] Control strategy SIPs refer to reasonable further progress and attainment demonstration SIPs. 40 CFR 93.101.

[60] Transportation-related emissions of VOC and $NO_X$ must also be specified in $PM_{10}$ maintenance plans if the EPA or the state finds that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the $PM_{10}$ nonattainment problem and has so notified the MPO and the U.S. Department of Transportation (DOT), or the applicable SIP (or SIP revision submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment, or maintenance strategy. 40 CFR 93.102(b)(2)(iii). An analysis of precursors to $PM_{10}$ emissions, performed in the first maintenance plan, indicates that while $NO_X$ emissions contributed significantly to wintertime ambient $PM_{10}$ concentration, VOCs did not. (See Section 7.4 of the Plan.) Further, 40 CFR 93.118(b)(2)(i) requires that motor vehicle emissions budgets must be established, at a minimum, for the last year of the maintenance plan.

[61] 40 CFR 93.118(e)(4).

(1) notifying the public of a SIP submittal, (2) providing the public the opportunity to comment on the budget during a public comment period, and (3) making a finding of adequacy or inadequacy. The process for determining the adequacy of a submitted budget is codified at 40 CFR 93.118(f). The EPA can notify the public by either posting an announcement that the EPA has received SIP budgets on the EPA's adequacy website,[62] or via a **Federal Register** notice of proposed rulemaking when the EPA reviews the adequacy of a maintenance plan budget simultaneously with its review and action on the SIP submittal itself.[63]

The Second 10-Year Maintenance Plan includes budgets for direct $PM_{10}$ and $NO_X$, on an average winter day, for the first year of the maintenance plan (2024), an interim year (2027), and the last year (2033) of the maintenance plan. The applicable source categories within the budget for $PM_{10}$ include direct exhaust (includes tire and brake wear), transportation related (road) construction emissions, re-entrained paved and unpaved road dust. $NO_X$ budgets are based on combustion activity from on-road motor vehicles. In developing the budgets, the District also rounded up the motor vehicle emissions estimates to the nearest tenth of a ton and included a safety margin of 0.5 tpd of $NO_X$ to the 2024 $NO_X$ budgets.[64] The conformity budgets for these categories and years are provided in Table 8 of this document.

TABLE 8—TRANSPORTATION CONFORMITY BUDGETS FOR THE SACRAMENTO COUNTY $PM_{10}$ AREA

[$PM_{10}$ tons per average winter day]

| Source category | 2024 | | 2027 | | 2033 | |
|---|---|---|---|---|---|---|
| | $NO_X$ | $PM_{10}$ | $NO_X$ | $PM_{10}$ | $NO_X$ | $PM_{10}$ |
| Vehicular Exhaust [a] (includes tire and break wear for $PM_{10}$) | 10.68 | 2.09 | 9.57 | 2.17 | 8.30 | 2.27 |
| Re-Entrained Paved Road Dust [b] (Total) | N/A | 8.25 | N/A | 8.52 | N/A | 9.15 |
| Re-Entrained Unpaved Road Dust (City and Country Roads) | N/A | 0.62 | N/A | 0.61 | N/A | 0.59 |
| Road Construction Dust | N/A | 3.65 | N/A | 4.04 | N/A | 4.31 |
| Safety Margin | 0.5 | N/A | N/A | N/A | N/A | N/A |
| Total [c] | 11.18 | 14.62 | 9.57 | 15.34 | 8.30 | 16.32 |
| Motor Vehicle Emissions Budgets [d] | 11.2 | 14.7 | 9.6 | 15.4 | 8.4 | 16.4 |

[a] This reflects the adjustment factor for SAFE Vehicle Rule using EMFAC 2017.

[b] Paved road dust was not measured directly and is based on CARB's Miscellaneous Process Methodology, which computed paved road dust using the emission factor equation provided by EPA's AP–42: Compilation of Air Emissions Factors document.[65]

[c] Values from California Emissions Projection Analysis Model (CEPAM) 2019: External Adjustment Reporting Tool Version 1.02 may not add up due to rounding.

[d] This reflects the adjustment factor for SAFE Vehicle Rule using EMFAC 2017.

Source: Second 10-Year Maintenance Plan, Table 7–1, extracted from CEPAM 2019: External Adjustments Reporting Tool Version 1.02 and EMFAC2017.

The District, the Sacramento County MPO, and CARB jointly developed the budgets, taking into consideration the expected population-related growth trends for the county since the first maintenance plan. Specifically, Sacramento Council of Governments (SACOG), the MPO for the six county Sacramento region,[66] used both the Sacramento Activity-Based Simulation Model (SACSIM) program and data contained within the 2020 Metropolitan Transportation Plan/Sustainable Communities Strategy (''2020 MTP/SCS'') to develop a travel demand model to forecast VMT for future years within the area.[67] Transportation activity data from the 2020 MTP/SCS and emissions modeling generated by CARB's EMFAC 2017 model were used to calculate the budgets. CARB further adjusted the budgets in the Plan to account for the Safer Affordable Fuel-Efficient Vehicle Rule Part 1.[68]

In contrast to $PM_{2.5}$, where road dust applies in transportation conformity only if found to be significant or if budgets include it, for $PM_{10}$ road dust is always considered.[69] The EPA requires road dust emissions to be included in all transportation conformity analyses of direct $PM_{10}$ emissions because fugitive dust from roadways and other sources dominate $PM_{10}$ on-road emissions inventories. The budgets in the Second 10-Year Maintenance Plan, therefore, include paved and unpaved road emissions.

Regional $PM_{10}$ emissions analyses for transportation conformity determinations in $PM_{10}$ nonattainment and maintenance areas must also account for highway and transit project construction-related fugitive $PM_{10}$ emissions if the control strategy or maintenance plan identifies such emissions as a contributor to the air quality problem.[70] Emissions estimates developed for the Second 10-Year Maintenance Plan show that fugitive $PM_{10}$ emissions from highway and transit project construction are a significant portion of total regional $PM_{10}$ emissions for the Sacramento County planning area. Consequently, the budgets in the Plan reflect highway and transit project construction-related fugitive dust.

We evaluated the budgets against our adequacy criteria in 40 CFR 93.118(e)(4) and (5) as part of our review of the budget's approvability. While adequacy and approval are two separate actions,

[62] 40 CFR 93.118(e)(4).

[63] 40 CFR 93.118(f)(2).

[64] The District has determined, based on proportional rollback analysis, that the addition of 0.5 tpd of $NO_X$ in 2024 will increase the future $PM_{10}$ concentrations by less than 0.3 $\mu g/m^3$, which satisfies the requirements outlined in 40 CFR 93.124(a).

[65] AP–42 is the EPA's Compilation of Air Pollutant Emission Factors. It has been published since 1972 as the primary source of the EPA's emission factor information. It contains emission factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emission factors have been developed and compiled from source test data, material balance studies, and engineering estimates.

[66] The six counties are El Dorado, Placer, Sacramento, Sutter, Yolo, and Yuba counties.

[67] Information on SACSIM is located at: *https://www.sacog.org/modelingandthe2020MTP/SCS* is located at: *https://www.sacog.org/2020-metropolitan-transportation-plansustainable-communities-strategy-update.*

[68] 85 FR 24174 (June 29, 2020).

[69] See 40 CFR 93.102(b)(3).

[70] 40 CFR 93.122(e).

reviewing the budgets in terms of the adequacy criteria informs the EPA's decision to propose to approve the budgets. We have completed our detailed review of the Second 10-Year Maintenance Plan for Sacramento County and are proposing herein to approve the Plan including the demonstration of maintenance of the $PM_{10}$ NAAQS in the area through the year 2033. We have also reviewed the budgets in the Plan and found that they are consistent with the maintenance demonstration for which we are proposing approval, are clearly identified and precisely quantified, are based on control measures that have already been adopted and implemented, and meet all other applicable statutory and regulatory requirements, including the adequacy criteria in 40 CFR 93.118(e)(4) and (5).[71] For these reasons, the EPA proposes to approve the 2024, 2027, and 2033 budgets in the Second 10-Year Maintenance Plan.

In addition, in this document the EPA is announcing the beginning of the adequacy process for these budgets. Under the transportation conformity regulation, the EPA can begin this process with our proposed action on the second maintenance plan.[72] The public has 30 days to comment on the adequacy of the budgets, per the transportation conformity rule at 40 CFR 93.118(f)(2)(i) and (ii). Any comments on the adequacy of the budgets should be submitted to the docket for this proposed rulemaking.

When we finalize our proposed approval of the budgets, they must be used by SACOG (*i.e.,* the MPO for this area) for transportation conformity determinations for the Sacramento County planning area effective upon the publication date of our finalized approval.[73]

## V. Proposed Action and Request for Public Comment

Under CAA section 110(k)(3), and for the reasons set forth in this document, the EPA is proposing to approve the Second 10-Year Maintenance Plan submitted by CARB by letter dated October 21, 2021, as a revision to the California SIP. We are proposing to approve the maintenance demonstration and contingency provisions as meeting all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A, and the motor vehicle emissions budgets for 2024, 2027, and 2033 (shown in Table 8) for transportation conformity purposes, as we propose to find they meet all applicable criteria for such budgets including the adequacy criteria under 40 CFR 93.118(e).

We are soliciting comments on these proposed actions, including our concurrence on the exceptional events demonstration for the 2018 exceedances in Sacramento County as part of the technical basis for the approval of the Second 10-Year Maintenance Plan, as well as the adequacy of the motor vehicle emissions budgets. We will accept comments from the public for 30 days following publication of this proposal in the **Federal Register** and will consider any relevant comments before taking final action.

## VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879April 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rulemaking does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The 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.'' The 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 State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. If finalized, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

[71] Technical Support Document for the Adequacy Review of the Motor Vehicle Emissions Budgets within the Second 10-Year $PM_{10}$ Maintenance Plan for Sacramento County can be found within the docket for this rulemaking.

[72] See the transportation conformity regulation at 40 CFR 93.119(f).

[73] 40 CFR 93.118(f)(2)(iii).

reference, Nitrogen dioxide, Particulate matter, Sulfur dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 18, 2023.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2023–20555 Filed 9–21–23; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

## 40 CFR Part 1900

**[Docket Number 2023–001]**

**RIN 3121–AA04**

## Revising Scope of the Mining Sector of Projects That Are Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation Act

**AGENCY:** Federal Permitting Improvement Steering Council.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Permitting Improvement Steering Council (Permitting Council) proposes to amend its regulations to revise the scope of ''mining'' as a sector with infrastructure projects eligible for coverage under Title 41 of the Fixing America's Surface Transportation Act (FAST–41). The Permitting Council added ''mining'' as a FAST–41 sector in January 2021. This proposed rule would: (1) revise the FAST–41 ''mining'' sector to apply solely to critical minerals mining projects; and (2) expand the scope of the sector to include infrastructure constructed to support critical minerals supply chain activities, including critical minerals beneficiation, processing, and recycling. The proposed modification will help ensure that qualified critical minerals supply chain projects beyond critical minerals mining can obtain FAST–41 coverage. FAST–41 was enacted to improve the timeliness, predictability, transparency, and accountability of the Federal environmental review and authorization processes for covered infrastructure projects. FAST–41 coverage does not predetermine or affect the outcome of any Federal decision-making process with respect to a covered project, or modify any required environmental review or public or tribal consultation process.

**DATES:** Please send your comments on this proposal to the Permitting Council Office of the Executive Director on or before October 23, 2023.

**ADDRESSES:** You may send comments, identified by Permitting Council Docket Number 2023–001 or RIN 3121–AA04, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Mail:* Federal Permitting Improvement Steering Council, Office of the Executive Director, 1800 M St. NW, Suite 6006, Washington, DC 20036, Attention: RIN 3121–AA04.

**FOR FURTHER INFORMATION CONTACT:** John G. Cossa, General Counsel, Federal Permitting Improvement Steering Council, 1800 M St. NW, Suite 6006, Washington, DC 20036, *john.cossa@fpisc.gov,* or by telephone at 202–255–6936.

Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact this individual during normal business hours or to leave a message at other times. FIRS is available 24 hours a day, 7 days a week. You will receive a reply to a message during normal business hours.

**SUPPLEMENTARY INFORMATION:**

### I. FAST–41 and the Permitting Council

Established in 2015 by Title 41 of the Fixing America's Surface Transportation Act (FAST–41), 42 U.S.C. 4370m *et seq.,* the Permitting Council is a unique Federal agency charged with improving the transparency and predictability of the Federal environmental review and authorization process for certain infrastructure projects. The Permitting Council is comprised of the Permitting Council Executive Director, who serves as the Council Chair; 13 Federal agency Council members (including deputy secretary-level designees of the Secretaries of Agriculture, Army, Commerce, Interior, Energy, Transportation, Defense, Homeland Security, and Housing and Urban Development, the Administrator of the Environmental Protection Agency, and the Chairs of the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, and the Advisory Council on Historic Preservation); and the Chair of the Council on Environmental Quality and the Director of the Office of Management and Budget. 42 U.S.C. 4370m–1(a) & (b).

The Permitting Council coordinates Federal environmental reviews [1] and authorizations [2] for projects that seek and qualify for FAST–41 coverage. FAST–41 covered projects are entitled to comprehensive permitting timetables and transparent, collaborative management of those timetables on the Federal Permitting Dashboard in compliance with FAST–41 procedural requirements. 42 U.S.C. 4370m–2(c) & (d). Sponsors of FAST–41 covered projects also benefit from the direct engagement of the Permitting Council Executive Director and the Permitting Council members in timely identification and resolution of permitting issues that affect covered projects' permitting timetables. The Permitting Council Executive Director additionally may transfer funds from the Environmental Review and Improvement Fund (ERIF) to Federal agencies and state, local, and tribal governments to make the environmental review and authorization process for FAST–41 covered projects more timely and efficient. 42 U.S.C. 4370m–8(d)(3).

### II. FAST–41 Infrastructure Sectors and Covered Project Criteria

FAST–41 provides that activities located in the United States that require authorization or environmental review by a Federal agency involving construction of infrastructure that are in the following sectors may be eligible for FAST–41 coverage: (1) renewable energy production; (2) conventional energy production; (3) electricity transmission; (4) surface transportation; (5) aviation; (6) ports and waterways; (7) water resource projects; (8) broadband; (9) pipelines; (10) manufacturing; (11) semiconductors; (12) artificial intelligence and machine learning; (13) high-performance computing and advanced computer hardware and software; (14) quantum information science and technology; (15) data storage and data management; (16) cybersecurity; (17) carbon capture; and (18) energy storage. 42 U.S.C. 4370m(6)(A). FAST–41 authorizes the Permitting Council to designate additional sectors by majority vote of the Permitting Council members. *Id.* On January 4, 2021, a majority of the Permitting Council voted to designate ''mining'' as a FAST–41 sector, and on

[1] 42 U.S.C. 4370m(11) (defining ''environmental review'' as ''the agency procedures and processes for applying a categorical exclusion or for preparing an environmental assessment, an environmental impact statement, or other document required under [the National Environmental Policy Act]'').

[2] 42 U.S.C. 4370m(3) (defining ''authorization'' as ''any license, permit, approval, finding, determination, or other administrative decision issued by an agency and any interagency consultation that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency or, in the case of a State that chooses to participate in the environmental review and authorization process in accordance with [42 U.S.C.] 4370m–2(c)(3)(A) . . . , a State agency'').

January 8, 2021, the Permitting Council Promulgated a final rule adding a new Part 1900 to Title 40 of the Code of Federal Regulations (CFR) to reflect this designation. 86 FR 1281 (Jan. 8, 2021); *see* 40 CFR 1900.1 & 1900.2.

To qualify for FAST–41 coverage, an infrastructure project in a FAST–41 sector must be located in the United States, require environmental review and authorization by a Federal agency, and meet one of the four sets of FAST–41 covered project criteria: (1) the ''objective'' criteria; (2) the ''carbon capture'' criterion; (3) the ''Tribal'' criteria; or the (4) ''discretionary'' criteria. 42 U.S.C. 4370m(6)(A).

Under the ''objective'' criteria, a project could qualify for FAST–41 coverage if it: (i) is subject to review under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.;* (ii) is likely to require a total investment of $200 million or more; and (iii) does not qualify for abbreviated authorization or environmental review processes under any applicable law. 42 U.S.C. 4370m(6)(A)(i). The majority of FAST–41 covered projects are covered under the ''objective'' criteria.

Alternatively, under the ''carbon capture'' criterion, an infrastructure project in a FAST–41 sector could qualify for FAST–41 coverage if the project is covered by a programmatic plan or environmental review developed for the primary purpose of facilitating development of carbon dioxide pipelines. 42 U.S.C. 4370m(6)(A)(ii).

To qualify for FAST–41 coverage under the ''Tribal'' criteria, a the project must be: (i) subject to NEPA; (ii) sponsored by an Indian Tribe (as defined in 25 U.S.C. 5304), an Alaska Native Corporation, a Native Hawaiian organization (as defined in section 20 U.S.C. 7517), the Department of Hawaiian Home Lands, or the Office of Hawaiian Affairs; and (iii) located in whole or in part on lands owned or under the jurisdiction of the project sponsor. 42 U.S.C. 4370m(6)(A)(iii).

Finally, a project also could qualify for FAST–41 coverage under the ''discretionary'' criteria if the project: (i) is subject to NEPA; and (ii) in the opinion of the Permitting Council, the size and complexity of the project make it likely to benefit from the enhanced oversight and coordination provided by FAST–41, including projects likely to require environmental review and authorization from multiple agencies or projects for which the preparation of an environmental impact statement is required. 42 U.S.C. 4370m(6)(A)(iv).

Pursuant to section 11503(b) of the FAST Act, projects for which the U.S. Department of Transportation is the sole lead agency under NEPA, and projects that are subject to authorization under Department of the Army's Project Acceleration Procedures pursuant to 33 U.S.C. 2348, are not FAST–41 covered projects. Pub. L. 114–94, 129 Stat. 1312, 1692 (Dec. 4, 2015); *see also* 42 U.S.C. 4370m(6)(B). Additionally, Federal environmental reviews and authorizations issued pursuant to Title 23, 46, or 49 of the U.S. Code, including direct loan and loan guarantee programs, are not subject to the requirements of FAST–41. 129 Stat. at 1692.

The proposed revision of the FAST–41 mining infrastructure sector is not a determination by the Permitting Council that any particular mining project will qualify as a FAST–41 covered project, and it does not predetermine the outcome of the Federal decision-making process with respect to any covered project. FAST–41 is a voluntary program governed by the eligibility criteria in 42 U.S.C. 4370m(6) and the procedural requirements of 42 U.S.C. 4370m–2 and 4370m–4. To become a FAST–41 covered project, a critical minerals mining or critical minerals supply chain project sponsor, like project sponsors in the other FAST–41 sectors, must first demonstrate that its project meets a covered project criteria pursuant to 42 U.S.C. 4370m(6) by submitting a notice of the initiation of a proposed covered project (also known as a FAST–41 Initiation Notice or ''FIN'') to the Permitting Council Executive Director and the appropriate facilitating or lead agency.[3] 42 U.S.C. 4370m–2(a)(1). Within 14 days of receiving the FIN, the Permitting Council Executive Director must create an entry for the project on the Federal Permitting Dashboard,[4] which means that the project is a FAST–41 covered project, unless the Executive Director or the facilitating or lead agency determines that the project is not a FAST–41 covered project. 42 U.S.C. 4370m–2(b)(2)(A)(ii).

Substantively, FAST–41 provides for timely Federal agency review, enhanced interagency coordination, predictability, and accountability in the Federal decision-making process for covered projects, and the option to transfer funds to Federal, state, local, and tribal governments to facilitate timely and efficient environmental reviews and authorizations of covered projects. Participation in the FAST–41 program can provide covered project sponsors with increased certainty of timely Federal action in accordance with publicly available project-specific permitting timetables. 42 U.S.C. 4370m–2; *see* Permitting Dashboard at *https://www.permits.performance.gov/*. FAST–41 provides for early coordination of agencies' schedules and synchronization of environmental reviews and related authorizations without altering the substance or scope of those Federal agency efforts. 42 U.S.C. 4370m–4 (Coordination of required reviews). It provides mechanisms for resolving permitting related disputes. 42 U.S.C. 4370m–2(c)(2)(C) (Dispute resolution). FAST–41 further ensures agency accountability and transparency by providing clear processes and notice requirements for altering project permitting timetables. 42 U.S.C. 4370m–2(c)(2)(D), (E), & (F). The statute also allows the Executive Director to transfer ERIF funds to Federal agencies and state, local, and tribal governments to facilitate timely and efficient environmental reviews and authorizations for the project. 42 U.S.C. 4370m–8(d)(3).

FAST–41 does not mandate or predetermine any substantive result in the permitting process. The provisions of FAST–41 do not supersede or alter any internal procedure or decision-making authority of any Federal agency or official. *See* 42 U.S.C. 4370m–6(d)(1) (FAST–41 does not supersede, amend, or modify any Federal statute or affect the responsibility of any Federal agency officer to comply with or enforce any statute); *id.* 4370m–6(e)(1) (''Nothing in [FAST–41] preempts, limits, or interferes with . . . any practice of seeking, considering, or responding to public comment''); *id.* 4370m–6(e)(2) (''Nothing in [FAST–41] preempts, limits, or interferes with . . . any power, jurisdiction, responsibility, or authority that a Federal, State, or local governmental agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to any project, plan, or program.''); *see also id.* 4370m–11 (NEPA is not amended by FAST–41). Accordingly, revising the FAST–41 mining infrastructure sector will not grant any permit, authorization, or approval for a covered project. *See* 42 U.S.C. 4370m–6(d)(2) (''Nothing in [FAST–41] . . . creates a presumption that a covered project will be approved or favorably reviewed by any agency'').

[3] Project FINs can be filled out or submitted online via the Permitting Dashboard at *https://www.permits.performance.gov/fpisc-content/become-fast-41-covered-project.*

[4] Available at *https://www.permits.performance.gov/.*

## III. Proposal To Revise and Expand the Scope of the FAST–41 Mining Infrastructure Sector

In conjunction with a public notice-and-comment rulemaking effort, on January 4, 2021, the Permitting Council voted to designate ''mining'' as a FAST–41 sector. 86 FR 1281 (Jan. 8, 2021). The definition of ''mining'' finally adopted by the Permitting Council was broad, and encompassed ''the process of extracting ore, minerals, or raw materials from the ground'' except for oil and gas extraction. 40 CFR 1900.1. Accordingly, any infrastructure project in the ''mining'' sector—including any critical minerals mining project—currently can become a FAST–41 covered project, provided that the project meets a FAST–41 ''covered project'' criteria described above.

The Permitting Council coordinates Federal environmental reviews and authorizations for projects that seek and obtain FAST–41 coverage. Sponsors of FAST–41 covered projects are entitled to comprehensive permitting timetables and transparent, collaborative management of those timetables on the public-facing Federal Permitting Dashboard. Project sponsors additionally must be consulted in establishing and managing FAST–41 covered project permitting timetables, and have access to issue elevation and dispute resolution processes that ensure unresolved project permitting issues are expeditiously resolved by high-level Federal decision makers. The Permitting Council Executive Director additionally may transfer funds from the ERIF to Federal agencies and state, local, and tribal governments to make environmental reviews and authorizations for FAST–41 covered projects more timely and efficient. The consultation, enhanced interagency coordination, transparency, issue elevation, funding transfer, and Permitting Dashboard management requirements of FAST–41 represent a significant departure from the business-as-usual scenario for the Federal infrastructure review and authorization process.

To the maximum extent practicable, the Permitting Council is committed to providing Federal environmental review and permitting resources toward infrastructure projects that are most likely to help develop a reliable and environmentally and socially responsible supply of critical minerals necessary for national security, economic prosperity, and fighting the climate crisis. This includes encouraging project sponsors to adopt recognized best practices for tribal and community engagement, such as development of a ''Community Benefits Agreement,'' [5] providing financial support for Tribes and communities to allow for independent technical review of mining proposals, making environmental monitoring data publicly available, and taking other steps to maximize transparency, engagement, and responsiveness to local concerns.

It also is important to inform prospective project sponsors, whose projects are the primary means to achieve these objectives, that their qualified project proposals are welcome for consideration under the FAST–41 rubric. The Biden-Harris Administration has identified the urgent need for better coordination of environmental reviews, permitting processes, consultations, and other agency decisions to facilitate improved efficiency and effectiveness of critical minerals project delivery, and improved transparency and predictability in the Federal environmental review and authorization process for critical minerals projects.

The Administration has called for the application of all current best practices for improving communication and coordination with state regulators, Tribes, and stakeholders, including industry, affected communities, environmental justice leaders, and labor unions, in reviewing and authorizing critical minerals projects.[6] FAST–41 is an ideal tool for achieving these objectives, and the Permitting Council believes that Federal resources should be targeted, to the maximum extent practicable, toward the pool of projects that are most likely to deliver on the Administration's critical minerals priorities and in line with publicly stated mining reform principles.[7]

Accordingly, the Permitting Council proposes to refine the FAST–41 mining infrastructure sector to: (i) limit the scope of potentially covered mining projects to those involving the extraction of critical minerals, as defined by section 7002 of the Energy Act of 2020 [8] and listed by the Director of the U.S. Geological Survey at 87 FR 10381 (Feb. 24, 2022), including any amendments to the definition or list of critical minerals by the U.S. Geological Survey or by Act of Congress; and (ii) critical mineral supply chain activities, including critical mineral beneficiation, processing, and recycling.

## IV. Effect of Revising FAST–41 Mining Infrastructure Sector and Next Steps

Revising the FAST–41 mining sector as proposed would enable sponsors of qualified critical minerals mining, beneficiation, processing, and recycling projects to seek the same benefits of FAST–41 coverage that are currently available to qualified projects in the statutorily identified FAST–41 sectors. Sponsors of infrastructure projects that are not involved in critical minerals-related activities would be ineligible for FAST–41 coverage unless their projects were eligible for coverage under another FAST–41 infrastructure sector.[9] In the time since the Permitting Council voted to designate mining as a FAST–41 sector in January 2021, the Permitting Council has not received any FINs seeking FAST–41 coverage for a non-critical minerals mining project. Limiting the mining sector to critical minerals mining infrastructure projects is not expected to result in a substantial change in the number of mining related project proposals.

After considering the comments received in response to this proposed rule, the Permitting Council will determine whether to revise the scope of the current mining sector. The Permitting Council subsequently will vote on any proposed modifications to the current FAST–41 mining infrastructure sector. If a majority of the Permitting Council votes in favor of modification, the Permitting Council will promulgate a final rule amending 40 CFR part 1900 consistent with the adopted modification. The Permitting Council seeks public comment on all aspects of this proposal and will address all substantive comments that it receives in response to this proposal in the **Federal Register** notice for any final rule.

### *Economic Analysis*

Revising the FAST–41 mining infrastructure sector could result in improved timeliness, predictability, and transparency associated with the projects that ultimately become FAST–41 covered projects, and for the Federal agencies participating in the FAST–41

[5] *See https://www.energy.gov/diversity/community-benefit-agreement-cba-toolkit.*

[6] *See https://www.doi.gov/sites/doi.gov/files/biden-harris-administration-fundamental-principles-for-domestic-mining-reform.pdf*; *see also* 42 U.S.C. 4370m–1(c)(2)(B) (FAST–41 best practices requirement); FY 2022 Best Practices at *https://www.permits.performance.gov/fpisc-content/fy-2022-recommended-best-practices-report.*

[7] *See https://www.doi.gov/sites/doi.gov/files/biden-harris-administration-fundamental-principles-for-domestic-mining-reform.pdf.*

[8] Public Law 116–260, 134 Stat. 1182, 2562 (Dec. 27, 2020), codified at 30 U.S.C. 1606.

[9] *See* Federal Permitting Improvement Steering Council, Adding Mining as a Sector of Projects Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation Act, Proposed Rule, 85 FR 75998, 75999–76000 (Nov. 27, 2020) (describing how the Permitting Council applies the FAST–41 infrastructure sectors to project FINs).

process for those covered projects. However, quantifying any potential economic benefits that might result from revising the FAST–41 mining sector is speculative. Simply providing the option of FAST–41 coverage to qualified critical minerals mining and critical minerals supply chain projects, some of which are currently eligible for FAST–41 coverage under the existing FAST–41 mining sector, does not indicate how many, if any, additional critical minerals project FINs will be submitted to the Permitting Council, or how many projects ultimately will become covered projects. Nor does it guarantee that any economic benefits necessarily would result from such coverage, particularly given that FAST–41 only imposes coordination, transparency, and disclosure requirements related to the Federal environmental review and authorization process for a covered infrastructure project, and not any substantive outcome. Foreclosing FAST–41 eligibility for project sponsors of non-critical minerals mining projects will ensure that such project sponsors will be unable to derive the benefits of FAST–41 coverage. However, quantification of any costs to non-critical mineral mining project sponsors who may be no longer eligible to seek FAST–41 coverage is likewise speculative, particularly given that no such project sponsor has sought or obtained FAST–41 coverage since mining was added as a FAST–41 sector in January 2021. Moreover, quantification of economic benefits or costs to any specific project sponsor is speculative because the permitting and environmental review requirements and permitting timetables for each covered project are unique.

Although the Permitting Council cannot predict how many critical minerals mining and supply chain projects may become covered projects, the number likely will be small. Based on historical experience implementing the current mining sector and the other FAST–41 sectors, and the fact that only a portion of project sponsors, including mining project sponsors, that seek FAST–41 coverage succeed in obtaining it, the Permitting Council anticipates that the proposed modification to the FAST–41 mining sector will result in the submission of 15 or fewer additional project FINs, and likely 10 or fewer additional covered projects. Because critical mineral mining projects are already included in the current FAST–41 mining sector, any increase likely would be due to the expansion of the sector to include critical mineral beneficiation, processing, and recycling infrastructure projects.

The eligibility criteria for FAST–41 coverage are selective; generally, only the largest projects in a given sector become FAST–41 covered projects. All but two of the projects that have become FAST–41 covered projects have been covered pursuant to the FAST–41 ''objective'' criteria, which requires a minimum economic value of $200 million.[10] *See* 42 U.S.C. 4370m(6)(A)(i). Since the enactment of FAST–41 in 2015, a total of 71 projects have become covered projects. Of these projects, 37 were covered as the result of successfully submitted FINs that met the FAST–41 coverage criteria. The remaining 34 projects were statutorily covered as pending projects pursuant to 42 U.S.C. 4370m–1(c)(1)(A)(i) and 4370m–2(b)(2)(A)(i) immediately after the enactment of FAST–41. Of the 18 FAST–41 sectors, only the renewable energy sector, which has been in place since the enactment of FAST–41, represents over 10 FIN-initiated FAST–41 covered projects.

The proposed refinements of the FAST–41 mining infrastructure sector are unlikely to result in a substantial change in the number of projects that may seek and obtain FAST–41 coverage. Based on historical experience, only a portion of mining related FINs likely will become covered projects. Since the enactment of FAST–41 in 2015, the Permitting Council has received seven FINs for projects that involve mining that may potentially have been eligible for coverage under the statutory FAST–41 sectors (*e.g.,* conventional energy) or the mining sector that was designated as a FAST–41 sector in January 2021. Of these FINs, all but one were either rejected for failing to meet the FAST–41 eligibility criteria or were withdrawn by the project sponsor for other reasons. Since the Permitting Council voted to designate mining as a FAST–41 sector in January 2021, only two project sponsors have sought FAST–41 coverage for their mining projects, both of which were critical minerals mining projects. One project sponsor did not perfect its FIN and withdrew its application, and the other mining project has become a FAST–41 covered project.[11] The proposed revision to expressly expand the potential for FAST–41 coverage to critical minerals beneficiation, processing, and recycling infrastructure projects similarly is not expected to result in a significant number of new FAST–41 covered projects. Accordingly, although the Permitting Council believes the proposed revision will result in FAST–41 coverage for some potentially important critical minerals supply chain infrastructure projects, the Permitting Council does not believe that this change alone would result in receiving a large number of new FINs—likely 15 or fewer—for FAST–41 coverage in the revised mining sector. The Permitting council believes that a smaller subset of these FINs—likely 10 or fewer—will result in new FAST–41 covered projects.

Revising the FAST–41 mining sector could result in reduced costs for any critical minerals mining and supply-chain project sponsor that obtains FAST–41 coverage for its project and potentially for the Federal agencies with review and permitting responsibilities for the covered project, by virtue of the potentially improved timeliness, predictability, and transparency in the process; associated increased Federal agency coordination; and reduced duplication of Federal and project sponsor effort. However, these benefits are difficult to quantify, particularly given that the Federal permitting and environmental review requirements and the permitting timetable for each project are unique and vary widely from project to project. Because the Permitting Council cannot know in advance precisely how many projects will be covered as a result of the proposed modification to the FAST–41 mining sector, what the permitting or environmental review requirements might be for any potential future covered mining project, or what opportunities might exist to coordinate any Federal agency reviews that might be necessary for any such covered project, it is impossible to predict with any reliability or specificity what, if any, economic benefit might broadly accrue as a result of revising the FAST–41 mining sector.

The proposed modifications to the FAST–41 mining sector will not directly increase or decrease the costs to agencies of complying with the substantive provisions of FAST–41. Although administering the provisions of FAST–41 have costs associated with them (including staff and resources to administer and coordinate permitting timetables and associated reporting), it is unlikely that the proposed changes to the FAST–41 mining sector will increase the number of FAST–41 covered projects such that these costs

[10] The other two projects, the Santa Fe Indian School Broadband project, and the Alaska Fiber Optic Segment 1 Broadband project, became FAST–41 covered projects pursuant to the ''Tribal criteria'' at 42 U.S.C. 4370m(6)(A)(ii).

[11] *See https://www.permits.performance.gov/permitting-project/fast-41-covered-projects/south32-hermosa-critical-minerals-project.*

would increase significantly. There likely would be costs to the Permitting Council associated with any additional project that might become a covered project, but that is true with or without the proposed modifications, and administering such projects pursuant to the requirements of FAST–41 is a Permitting Council core function for which Congress provides funding in the ERIF.

FAST–41 does not impose any regulatory requirements on covered project sponsors; the implementation obligations of FAST–41 fall primarily on the government. However, because FAST–41 is a voluntary program, sponsors of mining projects potentially eligible for FAST–41 coverage would incur some costs associated with seeking FAST–41 coverage. These costs associated with a request to be a covered project likely are small. Seeking FAST–41 coverage involves formulating and submitting a project FIN, which is expected to take only a few hours. *See* 42 U.S.C. 4370m–2(a)(1)(C). Because the Permitting Council anticipates receiving few additional project FINs as a result of the proposed modifications to the FAST–41 mining sector, and the burden associated with preparing a FIN is minimal, the additional economic cost associated with the proposed modifications the FAST–41 mining sector, if any, would be negligible. The Permitting Council invites comment on this economic analysis, including the expectations about the likely number of FAST–41 applications with and without these changes.

*Procedural Matters*

Regulatory Planning and Review (E.O. 12866) and Improving Regulation and Regulatory Review (E.O. 13563)

This action is a significant regulatory action that was submitted to OMB for review.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 et seq.

Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises. The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for regulatory proposals that are subject to the notice and comment rulemaking requirements of 5 U.S.C. 503 if the proposal would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the Permitting Council certifies that the proposed modifications to the pool of FAST–41 eligible mining projects and expansion of potential FAST–41 eligibility to sponsors of qualified critical mineral beneficiation, processing, and recycling projects that are not already eligible for FAST–41 coverage under any of the statutory FAST–41 sectors, will not have a significant economic impact on a substantial number of small entities.

As explained in the Economic Analysis section of this proposal, the Permitting Council anticipates that the revision of the FAST–41 mining sector will result in the submission of 15 or fewer additional FINs, at least some of which, based on the Permitting Council's past experience with project FINs that involve mining and the other FAST–41 sectors, will not become FAST–41 covered projects. Though the Permitting Council does not conduct an analysis of the business structures of FAST–41 project sponsors to determine whether they are small entities, it is possible that at least some of the 15 or fewer project sponsors that submit FINs for mining projects could be small entities. The Permitting Council reviewed the Small Business Administration size standards for small businesses across the mining industry, and, depending on the nature of the minerals mined, the threshold for small North American Industry Classification System (NAICS) Sector-21 mining entities ranges from below 250 employees to below 1,500 employees. Because 15 or fewer entities likely will be affected, the Permitting Council does not anticipate that the proposed revisions to the FAST–41 mining sector will affect substantial number of small entities.

Nor will revising the FAST–41 mining sector significantly or disproportionately impose costs on any small entity that may be impacted. The requirements for submitting a project FIN are simple and not burdensome. The FAST–41 statute only requires the project sponsor to formulate and send to the Permitting Council Executive Director and the lead or facilitating agency a project FIN that contains: (1) a statement of the purpose and objectives of the project; (2) a description of the general project location; (3) any available geospatial information about project and environmental, cultural, and historic resource locations; (4) a statement regarding the technical and financial ability of the project sponsor to construct the proposed project; (5) a statement of any Federal financing, environmental reviews, and authorizations anticipated to be required to complete the proposed project; and (6) an assessment that the proposed project meets the definition of a covered project pursuant to 42 U.S.C. 4370m(6)(A) with supporting rationale. 42 U.S.C. 4370m–2(a)(1)(A) & (C). Any project sponsor credibly seeking Federal authorization for a project that requires $200 million or more in investment will have the information required to submit a project FIN readily available, and preparing and submitting a project FIN should require only a few hours of effort. FAST–41 contains no pre-FIN requirements (although project sponsors are free to consult the Permitting Council with any questions about the FAST–41 program and FIN preparation or submission), and there are no regulations implementing FAST–41 that impose any additional requirements on the project sponsor. The lead or facilitating agency and the Executive Director will review the FIN in accordance with 42 U.S.C. 4370m–2(a)(1) and (b)(2) and associated guidance [12] to determine whether the project is a FAST–41 covered project. If the project is a covered project, FAST–41 imposes no requirements or obligations on the project sponsor that are additional to those imposed by the substantive Federal authorization or environmental review statutes that otherwise apply to the project. As explained in the Economic Analysis section of this proposal, any potential economic benefits that might accrue to a covered project sponsor by virtue of the project's FAST–41 covered status are speculative and project-specific. Accordingly, the proposed modifications to the FAST–41 mining sector will not significantly affect a substantial number of small entities, and the RFA does not apply.

[12] *See* OMB M–17–14, Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (2017 Guidance) (Jan. 13, 2017) *https://www.permits.performance.gov/tools/fast-41-implementation-guidance*; Permitting Council Executive Director Role and Responsibilities in FAST–41 Project Coverage Determinations, Executive Director Memorandum (Jan. 12, 2021) *https://www.permits.performance.gov/documentation/ed-memo-ed-role-and-responsibilities-fast-41-project-coverage-determinations*; *see also* In re Atlantic Shores North, Executive Director Final Determination of Covered Status No. 2022–02 (Sep. 2, 2022), *https://www.permits.performance.gov/fpisc-content/fpisc-ed-final-determination-covered-project-status-re-atlantic-shores-north.*

Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1501 et seq.

The proposed rule does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector of more than $100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the UMRA is not required. The proposed rule also is not subject to the requirements of UMRA section 203 because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule contains no requirements that apply to small governments, nor does it impose obligations upon them.

Federalism (E.O. 13132)

This action does not have federalism implications under E.O. 13132. The proposed rule will not have a substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the levels of government. The proposal affects only the eligibility of mining project proponents and certain critical minerals supply chain project sponsors to participate in the voluntary FAST–41 program; it will not affect the obligations or rights of states or local governments or state or local governmental entities.

Civil Justice Reform (E.O. 12988)

This proposal complies with section 3(a) of E.O. 12988, which requires agencies to review all rules to eliminate errors and ambiguity and to write all regulations to minimize litigation. This rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq.

The PRA provides that 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 control number issued by OMB. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. *See* 44 U.S.C. 3502(3); 5 CFR 1320.3(c) & (k). The proposed rule does not involve an agency request for information, nor does it require an information response. The proposal would not alter any of the other FAST–41 eligibility criteria or implementation of FAST–41, and does not change the information collected from project sponsors that seek FAST–41 coverage. The proposal could result in a small increase in the number of project sponsors submitting FINs to the Permitting Council.

NEPA, 42 U.S.C. 4321 et seq.

NEPA requires agencies to consider the reasonably foreseeable environmental effects of major Federal actions significantly affecting the quality of the human environment. The proposed rule does not make any project-level decisions and does not affect the human environment. By statute, in order to be a FAST–41 covered project, the project must be subject to NEPA review or a NEPA equivalent process, which FAST–41 does not alter. 42 U.S.C. 4370m(6)(A); *id.* 4370m–4; *id.* 4370m–11 (NEPA unaffected). FAST–41 focuses on facilitating interagency coordination and agency accountability for administering Federally directed environmental reviews and permitting timetables. The statute expressly does not supersede NEPA or affect any internal procedure or decision-making authority of any agency. *See* 42 U.S.C. 4370m–6(d)(2); 42 U.S.C. 4370m–6(d)(1) (FAST–41 does not supersede, amend, or modify any Federal statute or affect the responsibility of any Federal agency officer to comply with or enforce any statute); 42 U.S.C. 4370m–6(e)(1) (''Nothing in [FAST–41] preempts, limits, or interferes with . . . any practice of seeking, considering, or responding to public comment''); 42 U.S.C. 4370m–6(e)(2) (''Nothing in [FAST–41] preempts, limits, or interferes with . . . any power, jurisdiction, responsibility, or authority that a Federal, State, or local governmental agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to any project, plan, or program.''); 42 U.S.C. 4370m–11 (providing that FAST–41 does not amend NEPA). Because FAST–41 coverage does not alter or affect the discretion of any agency to approve or deny any permit or authorization for any project, extending potential FAST–41 eligibility to otherwise qualified critical minerals mining, beneficiation, processing, and recycling projects does not make any such project more or less likely to be permitted, authorized, or constructed, or any environmental effect that may be associated with such a project to occur. *See* 42 U.S.C. 4370m–6(d)(2) (''Nothing in [FAST–41] . . . creates a presumption that a covered project will be approved or favorably reviewed by any agency''). Based on this analysis, the Permitting Council has preliminarily determined that this rulemaking action is not a major Federal Action under NEPA and would not impact the human environment.

Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action for the purposes of E.O. 13211 because it will not have any discernible effect on the energy supply. Revising the FAST–41 mining sector to focus on critical minerals mining and critical minerals beneficiation, processing, and recycling will not itself extend FAST–41 coverage to any specific project—energy related or otherwise—nor will it permit or authorize any mining project. Qualified applicants must first seek and obtain FAST–41 coverage pursuant to FAST–41 statutory criteria. Participation in the FAST–41 program does not alter any agency's existing discretion to approve or deny project permits or authorizations, and does not make ultimate project authorization more or less likely. Accordingly, the proposal to add mining as a FAST–41 sector will not affect the supply, distribution, or use of energy, and is not a ''significant energy action'' for the purpose of E.O. 13211.

**List of Subjects in 40 CFR Part 1900**

Critical minerals, Infrastructure, Mineral beneficiation, Mineral processing, Mineral recycling, Mineral resources, Mines, Permitting, Reporting and recordkeeping requirements, Underground mining.

For the reasons stated in the preamble, and under the authority stated below, the Federal Permitting Improvement Steering Council proposes to revise part 1900 to title 40 of the Code of Federal Regulations as follows:

## PART 1900—FEDERAL PERMITTING IMPROVEMENT

■ 1. The authority citation for part 1900 continues to read as follows:

**Authority:** 42 U.S.C. 4370m *et seq.*

■ 2. Revise § 1900.1 to read as follows:

### § 1900.1 Definitions.

For the purposes of this part, the following terms shall have the meaning indicated:

*Beneficiation* means the preparation of ores to regulate the size (including crushing and grinding) of the product, to remove unwanted constituents, or to improve the quality, purity, or grade of a desired product.

*Critical Mineral* has the meaning given the term in section 7002(a) of the Energy Act of 2020 (30 U.S.C. 1606(a)) and enumerated by the Director of the U.S. Geological Survey at 87 FR 10381 and any successive U.S. Geological Survey Director enumerations made pursuant to that authority, and any amendments to the enumerations by Act of Congress.

*Critical Minerals Project* means a project for which the primary product or co-product by economic value is a critical mineral.

*Extraction* means the activities performed to extract or harvest minerals or natural resources from the ground or a body of water, including, but not limited to, by operating equipment to extract or harvest minerals or natural resources from mines and wells, or to extract minerals or natural resources from the waste or residue of prior extraction.

*FAST–41* means Title 41 of the Fixing America's Surface Transportation Act, 42 U.S.C. 4370m *et seq.*

*Federal Permitting Improvement Steering Council* or *Permitting Council* means the Federal agency established pursuant to 42 U.S.C. 4370m–1(a).

*Mining* means a process for which the primary purpose is extracting minerals from the ground. Mining does not include the process of extracting oil or natural gas.

*Processing* means the refining of materials, including the treating, baking, and coating processes used to convert raw products into constituent materials.

*Recycling* means the process of collecting and processing spent materials and devices and turning the materials and devices into raw materials or components that can be reused either partially or completely.

■ 3. Amend § 1900.2 by revising paragraph (a) to read as follows:

**§ 1900.2 FAST–41 sectors.**

* * * * *

(a) Critical minerals mining, extraction, beneficiation, processing, and recycling.

* * * * *

**Eric Beightel,**

*Executive Director, Federal Permitting Improvement Steering Council.*

[FR Doc. 2023–20270 Filed 9–21–23; 8:45 am]

**BILLING CODE 6820–PL–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R4–ES–2023–0103; FF09E21000 FXES1111090FEDR 234]**

**RIN 1018–BG31**

## Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for the Miami Cave Crayfish

*Correction*

In proposed rule document 2023–20293, appearing on pages 64856–64870 in the issue of Wednesday, September 20, 2023, make the following correction:

**§ 17.46 [Corrected]**

■ On page 64870, in the first column, in the fourth and fifth lines after the table at the top of the page, ''(e) Miami cave crish (*Procambarus milleri*).'' should read ''(e) Miami cave crayfish (*Procambarus milleri*).''

[FR Doc. C1–2023–20293 Filed 9–21–23; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 665

**[Docket No. 230918–0221]**

**RIN 0648–BM34**

## Pacific Island Fisheries; 5-Year Extension of Moratorium on Harvest of Gold Corals

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

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

**SUMMARY:** This proposed rule would extend the current region-wide moratorium on the harvest of gold corals in the U.S. Pacific Islands through June 30, 2028. NMFS intends this proposed rule to prevent overfishing and to stimulate research on gold corals.

**DATES:** NMFS must receive comments by October 23, 2023.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2023–0071, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0071 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Send written comments to Sarah Malloy, Acting Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, will not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Pua Borges, NMFS PIRO Sustainable Fisheries, 808–725–5184.

**SUPPLEMENTARY INFORMATION:** Jewelry designers use small amounts of precious corals to adorn their products. The precious corals fishery in the U.S. Pacific Islands include black, pink, bamboo, and gold corals. They are slow-growing and have low rates of natural mortality and recruitment. Unexploited populations are relatively stable, and a wide range of age classes is generally present in those populations. Due to the great longevity of individuals and the associated slow population turnover rates, a long period of reduced fishing effort is required to restore a stock's ability to produce at the maximum sustainable yield if a stock has been over-exploited. Fishermen harvest precious corals by various methods, including by hand-harvesting and by submersible.

Gold corals are suspension feeders and live in deep water (100–1,500 meters (m)) on hard substrates where bottom currents are strong, such as seamounts, ledges, pinnacles, walls, and cliffs. Prior fishing effort harvested gold corals by submersible or tangle net dredges. There are several beds of gold corals (*Gerardia* spp., *Callogorgia gilberti, Narella* spp., and *Calyptrophora* spp.) in the U.S. Exclusive Economic Zone (EEZ; generally 3–200 nautical miles (6–370 kilometers) from shore) around Hawaii. Gold coral distribution and abundance are unknown in the region beyond Hawaii, but they likely occur in the EEZ around American

Samoa, the Mariana Archipelago (Commonwealth of the Northern Mariana Islands (CNMI) and Guam), and the Pacific Remote Island Areas (PRIA; Baker Island, Howland Island, Jarvis Island, Wake Atoll, Johnston Atoll, Kingman Reef, Midway Atoll, and Palmyra Atoll).

NMFS and the Western Pacific Fishery Management Council (Council) manage precious coral fisheries in the U.S. Pacific Islands under fishery ecosystem plans (FEPs) for American Samoa, Hawaii, the Mariana Archipelago, and the PRIA. The FEPs and associated Federal regulations at 50 CFR part 665 require permits and data reporting, and allow harvesting of precious corals only with selective gear (*e.g.,* submersibles, remotely-operated vehicles, or by hand). There are also bed-specific quotas, refuges from fishing, and size limits. The fishery for gold corals, like most deepwater precious corals other than black corals in Hawaii, has remained dormant since 2001.

The Council considered past and current research on gold corals growth rates and recruitment. Past research on gold corals indicated that the linear growth rate of gold corals is approximately 6.6 centimeters/year, suggesting a relatively young age for large coral colonies of up to 70 years. However, updated research using radiocarbon dating revealed that gold corals in Hawaii may live much longer than previously believed, from 450–2,740 years. Because of these uncertainties, the Council and NMFS established a 5-year moratorium on harvesting gold corals in 2008 (73 FR 47098, August 13, 2008).

Subsequently, additional research offered new but potentially conflicting information about gold coral growth. A study in 2009 estimated that linear growth of gold coral could be 2.2 cm/year but was unable to measure discernable growth during repeated measurements of live colonies with submersibles. This research also identified previously unknown habitat requirements for gold coral, specifically that gold corals may depend on bamboo corals to provide required substrate for gold coral larvae. In light of these additional uncertainties, the Council and NMFS extended the moratorium for another 5 years in 2013 (78 FR 32181, May 29, 2013) and in 2018 (83 FR 27716, June 14, 2018). These moratoria have prevented the potential for overharvesting gold corals if a fishery had re-emerged, and they have allowed for research on gold coral biology. The current moratorium expired on June 30, 2023.

Uncertainties in scientific data have not been satisfactorily resolved, and NMFS has not incorporated new information into estimates of sustainable harvest rates. Research in 2019 provided information on the slow development of Pacific deep-water precious coral communities, highlighting the limited recovery potential of gold coral if overharvested and the need to better understand the life history of the species and deep-sea coral ecology. The Council continues to be concerned about uncertainties related to the growth rates and habitat requirements for gold coral, and recognizes that fishery managers need more research to inform appropriate measures for this fishery. This proposed rule, if adopted, would extend the moratorium through June 30, 2028. The proposed action would prevent the potential for overfishing and allow time for further research on gold corals that could inform sustainable management models and for the Council to consider a long-term management strategy that will ensure the sustainability of the fishery.

NMFS must receive any public comments on this proposed rule by the close of business on October 23, 2023 and will not consider late comments.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEPs for American Samoa, the PRIA, Hawaii, and the Mariana Archipelago, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

### *Regulatory Flexibility Act (RFA) Certification of Finding of No Significant Impact on Substantial Number of Small Entities*

The RFA of 1980, as amended (5 U.S.C. 601 *et seq.*), required Federal agencies to determine to the extent feasible, the economic impact of their regulations on small entities and explore alternatives for reducing any significant economic impacts on a substantial number of such entities. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule would extend the current gold coral harvest moratorium for 5 years. The current moratorium expired on June 30, 2023. The Western Pacific Fishery Management Council (Council) recommended extending the moratorium through June 30, 2028. Extending the moratorium for another 5 years would ensure that no harvesting of gold corals takes place and would allow time for additional research that could inform future management decisions regarding sustainable harvest of this resource.

The proposed action could potentially affect an entity possessing a Federal Western Pacific precious corals permit, because, without the moratorium, these entities could obtain a permit to harvest or land gold corals in addition to black, bamboo, pink, and red corals. Only one entity, based in the State of Hawaii, possessed a precious corals permit from 2013 until 2019 and no entity possessed a precious coral permit after 2019. NMFS believes that this entity would be considered a small entity under the small business size standard that NMFS established, for RFA purposes only, for businesses, including their affiliates, whose primary industry is commercial fishing, because the permit holder is engaged in the commercial fishing industry(NAICS 11411), is independently owned or operated, is not dominant in their field of operation, and has annual gross receipts not in excess of $11 million (50 CFR 200.2).

It is unlikely that the permit holder would begin to harvest gold corals in the absence of a moratorium. The Pacific Islands gold coral fishery had already been dormant when the moratorium initially went into effect in 2008. The moratorium had been extended every five years thereafter, so the gold coral fishery has remained closed. Historically, gold coral harvesting had occurred infrequently. In the late 1970s, one company used a manned submersible to selectively take several thousand kilograms of gold coral off Eastern Oahu, Hawaii. From 1999–2001, a second company used a submersible to take a small amount of gold coral, along with other deepwater precious corals, from exploratory areas off Hawaii. The final year of gold coral harvest was in 2001. Furthermore, this fishery is still characterized by high equipment and operating costs, continued safety concerns and other logistical constraints, and gold coral market prices are not high enough to offset those risks and expenses. Because of these challenges, interest in this fishery will likely remain low even

without the moratorium. Therefore, extending the moratorium on gold coral harvests will not likely cause immediate economic impact to any potential Western Pacific precious corals permit holder.

The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations or government jurisdictions. There does not appear to be disproportionate economic impacts from the proposed rule based on home port, gear type, or relative vessel size.

For the reasons described above, this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required, and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 665**

Administrative practice and procedure, American Samoa, Deep sea coral, Fisheries, Fishing, Guam, Hawaii, Northern Mariana Islands, Pacific Remote Island Areas, Precious coral.

Dated: September 18, 2023.

**Samuel D. Rauch, III,**

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

## PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. Revise § 665.169 to read as follows:

**§ 665.169 Gold coral harvest moratorium.**

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2028.

■ 3. Revise Note 2 to § 665.269 to read as follows:

**§ 665.269 Annual Catch Limits (ACL).**

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(c) * * *

**Note 2 to § 665.269:** A moratorium on gold coral harvesting is in effect through June 30, 2028.

■ 4. Revise § 665.270 to read as follows:

**§ 665.270 Gold coral harvest moratorium.**

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2028.

■ 5. Revise § 665.469 to read as follows:

**§ 665.469 Gold coral harvest moratorium.**

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2028.

■ 6. Revise § 665.669 to read as follows:

**§ 665.669 Gold coral harvest moratorium.**

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2028.

[FR Doc. 2023–20511 Filed 9–21–23; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 88, No. 183

Friday, September 22, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance 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 or other forms of information technology.

Comments regarding this information collection received by October 23, 2023 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.

**Food and Nutrition Service**

*Title:* Turnip the Beet! High Quality Summer Meals Program.

*OMB Control Number:* 0584–0658.

*Summary of Collection:* The Summer Food Service Program (SFSP) and National School Lunch Program (NSLP) Seamless Summer Option (SSO) were established to ensure that children and teens continue to receive nutritious meals when school is not in session. Turnip the Beet is a voluntary award initiative to recognize participating sponsoring organizations (program sponsors) that work hard to offer high quality, nutritious meals during the summer months.

*Need and Use of the Information:* The purpose of this voluntary recognition initiative is to encourage Summer Meal Programs' sponsors to offer higher quality, nutritious meals that make a positive impact on children's healthy development. This information collection allows the Food and Nutrition Service (FNS) to more accurately assess the quality of meal service in order to determine whether the individual sponsor qualifies for recognition, and at what level.

*Description of Respondents:* State, Local and Tribal Governments, Businesses.

*Number of Respondents:* 186.

*Frequency of Responses:* Reporting: Once.

*Total Burden Hours:* 225.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2023–20549 Filed 9–21–23; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance 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 or other forms of information technology.

Comments regarding this information collection received by October 23, 2023 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.

**Food Safety and Inspection Service**

*Title:* Consumer Labeling Research Focus Groups.

*OMB Control Number:* 0583–NEW.

*Summary of Collection:* FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18 and 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged. Safe handling instructions (SHI) are required on the labels of raw or partially cooked (*i.e.,* not considered ready to eat) meat and poultry products if the product is destined for household consumers or institutional uses (9 CFR 317.2(l) and 9 CFR 381.125(b)). FSIS has required the SHI label for raw and

partially cooked meat and poultry products since 1994 (59 FR 7217).

*Need and Use of the Information:* FSIS will collect information using focus groups to test new labels for safe handling of raw and partially cooked meat and poultry products. In Phase 1, new label designs will initially be tested in consumer focus groups to obtain qualitative feedback on the labels, and the findings will be used to refine the label design and messaging. FSIS is requesting approval for a new information collection to conduct Phase 1, consumer focus groups. If the information was not collected or collected less frequently it would reduce the effectiveness of the meat and poultry inspection program.

*Description of Respondents:* Individuals or Households.

*Number of Respondents:* 1,536.

*Frequency of Responses:* Research.

*Total Burden Hours:* 247.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2023–20595 Filed 9–21–23; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Upper Lake Ranger District; California; Pine Mountain Late-Successional Reserve Habitat Protection and Enhancement Project; Withdrawal of Draft Environmental Impact Statement

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice; withdrawal.

**SUMMARY:** The Mendocino National Forest is withdrawing its draft environmental impact statement (DEIS) for the Pine Mountain Late-Successional Reserve Habitat Protection and Enhancement Project on the Upper Lake Ranger District. The Mendocino National Forest's decision to withdraw the DEIS is due to major changes to the landscape after the 2018 Ranch Fire. Multiple challenges delayed the publication of this notification including the government furlough in 2019, Covid pandemic starting in 2020, the 2020 1-million-acre August Complex wildfire and a shift in forest priorities to recover the acres burned in the August Complex.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this notice should be directed to Upper Lake District Ranger Frank Aebly at *frank.aebly@usda.gov* or 707–275–1401. Individuals who use telecommunication devices for the deaf or hard-of-hearing (TDD) may call the Federal Relay Service at 800–877–8339, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The Mendocino National Forest is withdrawing its DEIS for the Pine Mountain Late-Successional Reserve Habitat Protection and Enhancement Project. The original Notice of Intent was published in the **Federal Register** on May 20, 2014 (79 FR 28883), and the Notice of Availability was published in the **Federal Register** on May 5, 2017 (82 FR 21228).

Dated: September 15, 2023.

**Troy Heithecker,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2023–20593 Filed 9–21–23; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Library

### Notice of Stakeholder Listening Sessions Regarding Increasing Public Access to the Results of USDA-Funded Research

**AGENCY:** National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.

**ACTION:** Notice of stakeholder listening sessions.

**SUMMARY:** The U.S. Department of Agriculture's (Department's) National Agricultural Library (NAL) announces virtual listening sessions to receive public comments, recommendations, and suggestions on the Department's planned response to new White House Office of Science and Technology Policy (OSTP) guidance on access to the results of federally-funded research. The Department's plan and policies apply to the results of research funded wholly or in part by any USDA component agency. This effort to obtain input regarding implementation of federal public access requirements will be carried out through online and virtual submission mechanisms. Stakeholder input received from the two mechanisms will be treated equally.

**DATES:**

*Virtual Listening Sessions:* Two listening sessions will be held to obtain virtual input from stakeholders throughout the United States. Stakeholders include members of the public, principal investigators, research institutions, libraries, scholarly publishers, scientific societies, agricultural organizations and associations, data scientists, data repositories, and other stakeholder groups. The first listening session will take place on September 27, 2023. The session will begin at 2 p.m. EST and is scheduled to end no later than 5 p.m. EST. The second listening session will take place on October 12, 2023. The session will begin at 10 a.m. EST and is scheduled to end no later than 1 p.m. EST. Each session will include brief remarks from USDA research leadership, followed by comments from stakeholders. Each registered speaker will receive five minutes to share their comments with the Agency. If time allows after all comments from registered speakers are made, unscheduled speakers will be allowed five minutes to present their comments to the Agency. The length of the sessions will be adjusted according to numbers of participants seeking to provide input.

*Registration:* All parties interested in attending the virtual listening sessions must RSVP no later than one week prior to the scheduled session. Each virtual listening session will be webcast and transcribed. Information about registering for the virtual sessions and viewing the webcast can be found at *https://www.nal.usda.gov/about-us/events/public-access.* This website includes instructions on submitting written comments and registering to attend or speak at the virtual listening session. All parties interested in attending the virtual listening session must RSVP no later than one week prior to the scheduled session they will attend.

If you need a reasonable accommodation or language access services to register for, or participate in, this event, please contact Cynthia Parr, National Agricultural Library, at *Cynthia.Parr@usda.gov,* or 301–837–8917.

*Written Comments:* Submission of written stakeholder input will be open upon publishing of this Notice through 5 p.m. EST on November 15, 2023 via the Federal eRulemaking portal as described below.

**ADDRESSES:**

*Listening sessions:* The virtual listening session Zoom links are shared upon registration for September 27, 2023 and October 12, 2023. All parties interested in attending the virtual listening session must RSVP no later than one week prior to the scheduled session.

*Written comments:* Written comments must be submitted via the Federal eRulemaking Portal at *regulations.gov.* Please go to *www.regulations.gov* to submit your comments electronically.

Information on using *regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available at *https://www.nal.usda.gov/about-us/events/public-access.*

The Department will not accept comments submitted by fax, by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once.

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Parr, National Agricultural Library, at *Cynthia.Parr@usda.gov,* or 301–837–8917.

**SUPPLEMENTARY INFORMATION:**

*Purpose:* USDA seeks public input on its plans for enhancing policy, infrastructure, and outreach to make results of the research it funds more readily available and accessible by the public.

*Background:* USDA developed a public access plan in response to the February 22, 2013 OSTP memorandum entitled ''Increasing Access to the Results of Federally Funded Scientific Research'' and several White House memoranda. Current USDA policy and activities were developed from that original plan. On August 25, 2022, OSTP issued a new public access memorandum: ''Ensuring Free, Immediate, and Equitable Access to Federally Funded Research.'' In response to OSTP's 2022 memo, USDA will enhance policy, infrastructure, and outreach to make its scientific data and publications more readily available and accessible by the public, as described generally in the new plan, which can be viewed at: *https://www.nal.usda.gov/services/public-access/.* This listening effort, organized by the National Agricultural Library on behalf of the USDA Office of the Chief Scientist, allows stakeholders the opportunity to provide feedback on USDA's plan and to inform details of its policy-making and other implementation. The USDA Public Access plan and policies apply to the results of research funded wholly or in part by any USDA component agency. USDA provides the questions listed below to prompt feedback and comments. USDA encourages public comment on any or all of these questions, and also seeks any other information that commenters believe is relevant. The questions to enhance public access of USDA-funded research outcomes are:

- How can USDA best implement its plans to improve public access to USDA-funded research results?
- How can USDA update or refine its policies to improve public access to USDA-funded research results?
- How can USDA ensure equity in publication opportunities?
- How can USDA use partnerships to improve public access and accessibility to results of USDA-funded research?
- How can USDA monitor impacts on communities impacted by its public access policies?

Done at Washington, DC.

**Simon Liu,**

*Administrator, Agricultural Research Service, U.S. Department of Agriculture.*

[FR Doc. 2023–20579 Filed 9–21–23; 8:45 am]

**BILLING CODE 3410–03–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Utah Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** Commission on Civil Rights.

**ACTION:** Notice of public meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 3:00 p.m. MT on Tuesday, October 3, 2023. The purpose of the meeting is to discuss the Committee's project concerning the civil rights implications of disparate outcomes in Utah's K–12 education system.

**DATES:** Tuesday, October 3, 2023, from 3:00 p.m.–4:00 p.m. Mountain Time.

**ADDRESSES:** The meeting will be held via Zoom.

*Registration Link (Audio/Visual): https://www.zoomgov.com/j/1607662226.*

*Join by Phone (Audio Only):* (833) 435–1820 USA Toll-Free; Meeting ID: 160 766 2226.

**FOR FURTHER INFORMATION CONTACT:** David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

**SUPPLEMENTARY INFORMATION:** This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Utah Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

**Agenda**

I. Welcome & Roll Call

II. Discussion: Civil Rights Implications of Disparate Outcomes in Utah's K–12 Education System

III. Public Comment

IV. Next Steps

V. Adjournment

Dated: September 18, 2023.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2023–20542 Filed 9–21–23; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Iowa Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of public meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Iowa Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold public meetings via Zoom on Thursday, October 26, 2023 and Thursday, November 16, 2023 from 3:00 p.m.–4:00 p.m. Central Time. The Committee will continue to discuss mental health and develop project proposal.

**DATES:**

Thursday, October 26, 2023, from 3:00 p.m.–4:00 p.m. Central Time.

Thursday, November 16, 2023, from 3:00 p.m.–4:00 p.m. Central Time.

**ADDRESSES:** The meetings will be held via Zoom.

*October 26th Business Meeting*
*https://www.zoomgov.com/j/1610519135?pwd=Ry9ZTEdSTitlL1JUWGNEM25JckVPUT09*
—Registration Link (Audio/Visual):
—Join by Phone (Audio Only) 1–833–435–1820 USA Toll Free: Meeting ID:161 051 0135.

*November 16th Business Meeting*
*https://www.zoomgov.com/j/1605405595?pwd=cXlQM2YzaVBrbExYcHhvYlBITlJwdz09*
—Registration Link (Audio/Visual):
—Join by Phone (Audio Only) 1–833–435–1820 USA Toll Free: Meeting ID:160 540 5595.

**FOR FURTHER INFORMATION CONTACT:** Ana Fortes, Designated Federal Officer, at *afortes@usccr.gov* or (202) 681–0857.

**SUPPLEMENTARY INFORMATION:** This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Corrine Sanders, Support Specialist, at *csanders@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Ana Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Iowa Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *afortes@usccr.gov.*

**Agenda**

I. Welcome and Chair Remarks
II. SAC discussion regarding mental health and project proposal
III. Public Comment
IV. Adjournment

Dated: September 18, 2023.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2023–20545 Filed 9–21–23; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Hawai'i Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of a virtual business meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Hawai'i Advisory Committee to the U.S. Commission on Civil Rights will convene via ZoomGov on Thursday, October 5, 2023, from 12:00 p.m. to 1:30 p.m. HST. The purpose of the meeting is to plan future briefings.

**DATES:** Thursday, October 5, 2023, from 12:00 p.m.–1:30 p.m. HST.

Zoom Link (Audio/Visual): *https://www.zoomgov.com/j/1610601405?pwd=OEg3ZTVXR2M3VjlQdERCazNHUVZFQT09.*

Audio: (833) 568–8864; Meeting ID: 161 060 1405#

**FOR FURTHER INFORMATION CONTACT:** Kayla Fajota, Designated Federal Officer (DFO) at *kfajota@usccr.gov* or by phone at (434) 515–2395.

**SUPPLEMENTARY INFORMATION:** Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email Angelica Trevino, Support Specialist, at *atrevino@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl0AAA.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above phone number or email address.

**Agenda**

I. Welcome and Roll Call

III. Approval of August 10, 2023, Briefing Minutes
IV. Discussion: Briefing Planning
V. Public Comment
VI. Adjournment

Dated: September 18, 2023.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2023–20546 Filed 9–21–23; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Census Bureau

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Annual Business Survey

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed revision to the Annual Business Survey prior to the submission of these information collection request (ICR) to OMB for approval.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before November 21, 2023.

**ADDRESSES:** Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference Annual Business Survey in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2023–0008, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Patrice Hall, Branch Chief, Business Owners Branch, 301–763–7198, *patrice.n.hall@census.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

In an effort to improve the measurement of business dynamics in the United States, the Census Bureau is conducting the Annual Business Survey (ABS). The ABS combines Census Bureau firm-level collections to reduce respondent burden, increase data quality, reduce operational costs, and operate more efficiently. The ABS provides information on select economic and demographic characteristics for businesses and business owners by sex, ethnicity, race, and veteran status. Further, the survey measures research and development for microbusinesses and nonprofit organizations, business topics such as innovation and technology, as well as other business characteristics. The ABS is sponsored by the National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) and conducted by the Census Bureau. Title 13, United States Code, sections 8(b), 131, and 182; title 42, United States Code, section 1861–76 (National Science Foundation Act of 1950, as amended); and section 505 within the America COMPETES Reauthorization Act of 2010 authorize this collection. Sections 224 and 225 of title 13, United States Code, require response from sampled firms.

The ABS includes all nonfarm employer businesses filing Internal Revenue Service (IRS) tax forms as individual proprietorships, partnerships, or any other type of corporation, with receipts of $1,000 or more. Also included are nonprofit organizations to measure their research activities. Annually the ABS samples 300,000 employer business and 8,000 nonprofit organizations. Every five years, the ABS sample increases to 858,000 to serve as a benchmark and produce detailed comprehensive estimates for women-, minority-, and veteran-owned businesses at the 2–6-digit NAICS, U.S., State, metropolitan statistical area (MSA), county, and economic place levels, while also providing research activities for microbusinesses and nonprofit organizations. The 2023 ABS sampled approximately 858,000 businesses and organizations (850,000 employer businesses + 8,000 nonprofit organizations). The sample size is reduced to approximately 308,000 for the four following years (2024–2027 ABS) to minimize the burden on survey respondents. The smaller sample size will yield summary-level estimates for women-, minority-, and veteran-owned businesses at the 2–4 digit NAICS, U.S., state, and MSA levels. The Census Bureau uses administrative data to estimate the probability that a firm is minority- or women-owned. Each firm is then placed in one of eight frames for sampling. The sampling frames are: American Indian or Alaskan Native, Asian, Black or African American, Hispanic, Non-Hispanic White Men, Native Hawaiian and Other Pacific Islander, Publicly Owned, and Women. The sample is stratified by state, industry, and frame. The Census Bureau selects some companies with certainty based on volume of sales, payroll, number of paid employees or NAICS. All certainty cases are sure to be selected and represent only themselves. The ABS samples approximately 8,000 nonprofit organizations who are required to complete IRS form 990, in order to compile national estimates of R&D performance within this sector. Of note, nonprofit organizations will only see questions relating to research activities and will not be asked any questions relating to owner demographics.

The ABS is designed to allow for incorporating new content each survey year based on topics of relevance. Each year new questions are submitted to the OMB for approval.

The ABS collects the following information from employer businesses:

- Owner characteristics, including sex, ethnicity, race, and veteran status from the principal owner(s) of the business.
- Company information including, worldwide sales, domestic sales, number of employees, and business ownership from all employer businesses in the sample.
- Business characteristics from all employer businesses in the sample.
- Research and development from businesses with between 1–9 employees.

Additional owner topics may include military service, owner acquisition, job functions, number of hours worked, primary income, prior business ownership, age of owner, education and field of degree, citizenship status and place of birth, disability, gender

identity, sexual orientation, and owner's reason for owning the business. Other business topics may include number of owners and percent ownership, family owned and operated, business aspirations, funding sources, profitability, types of customers, types of workers, employee benefits, franchise operations, work from home practices, and business activity. Potential module topics for the ABS may cover innovation, technology and internet usage, technology transfer, climate impact and sustainability practices, management and business practices, exporting practices, domestic and foreign transactions, design, worker training, and financing.

The ABS collects the following information from nonprofit organizations:

- Research activities performed or funded by nonprofit organizations
- Research funding sources
- Type of research
- Research personnel counts

## II. Method of Collection

The ABS is primarily collected electronically using a web-based questionnaire. Those selected for the survey receive an initial letter informing the respondents of their requirement to complete the survey as well as instructions on accessing the survey. Responses will be due approximately 30 days from initial mailing. Respondents will also receive a due date reminder approximately one week before responses are due. The Census Bureau plans to conduct two follow-up mailings and an optional third follow-up if deemed necessary based on check-in rates. Nonrespondents may receive a certified mailing for the second and third follow-up mailings. The Census Bureau may also plan to conduct an email follow-up to select nonrespondents reminding them to submit their report in the electronic instrument. Follow-up operations may also include a paper questionnaire or telephone follow-up to assist with collecting data from select nonrespondents. Response data will be processed as they are received. Upon the close of the collection period, data processing will continue, and records will be edited, reviewed, tabulated, and released publicly.

## III. Data

*OMB Control Number:* 0607–1004.

*Form Number(s):* ABS–1.

*Type of Review:* Regular submission, Request for a Revision of a Currently Approved Collection.

*Affected Public:* Businesses or other for-profit organizations (large and small employer businesses), nonprofit organizations.

*Estimated Number of Respondents:* 308,000.

*Estimated Time per Response:* 58 minutes for employer businesses; 3.5 hours for nonprofit organizations that must complete the entire module, 20 minutes for all other nonprofit organizations.

*Estimated Total Annual Burden Hours:* 296,000.

*Estimated Total Annual Cost to Public:* $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13, United States Code, sections 8(b), 131, and 182; title 42, United States Code, section 1861–76 (National Science Foundation Act of 1950, as amended); and section 505 within the America COMPETES Reauthorization Act of 2010 authorize this collection. Sections 224 and 225 of title 13, United States Code, require response from sampled firms.

## IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–20568 Filed 9–21–23; 8:45 am]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

**[Docket Number: 230918–0222]**

### Bureau of Economic Analysis Advisory Committee Meeting

**AGENCY:** Bureau of Economic Analysis, U.S. Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, the Bureau of Economic Analysis (BEA) announces a meeting of the Bureau of Economic Analysis Advisory Committee (BEAAC or the Committee). The meeting will address proposed improvements, extensions, and research related to BEA's economic accounts. In addition, the meeting will include an update on recent statistical developments.

**DATES:** October 13, 2023. The meeting begins at 10:00 a.m. and adjourns at 2:30 p.m. (ET).

**ADDRESSES:** This meeting will be a hybrid event. Committee members and presenters will have the option to join the meeting in person or via video conference technology. All outside attendees will be invited to attend via video conference technology only. The meeting is open to the public via video conference technology. Contact Gianna Marrone at (301) 278–9282 or *gianna.marrone@bea.gov* by October 6, 2023, to RSVP. The call-in number, access code, and presentation link will be posted 24 hours prior to the meeting on *https://www.bea.gov/about/bea-advisory-committee.*

**FOR FURTHER INFORMATION CONTACT:** Gianna Marrone, Program Analyst, U.S. Department of Commerce, Bureau of Economic Analysis, Suitland, MD 20746; phone (301) 278–9282; email *gianna.marrone@bea.gov.*

**SUPPLEMENTARY INFORMATION:** The Committee was established September 2, 1999, in accordance with the Federal Advisory Committee Act (5 U.S.C. app. section 2). The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, with a focus on new and rapidly growing areas

of the U.S. economy. The Committee provides recommendations from the perspectives of the economics profession, business, and government.

The Committee aims to have a balanced representation among its members, considering such factors as geography, age, sex, race, ethnicity, technical expertise, community involvement, and knowledge of programs and/or activities related to BEAAC. Individual members are selected based on their expertise in or representation of specific areas as needed by BEAAC.

This meeting is open to the public. The meeting is accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids or extensive questions or statements must be submitted in writing by October 6, to Gianna Marrone at (301) 278–9282 or *gianna.marrone@bea.gov.*

*Authority:* Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., app.

Dated: September 19, 2023.

**Ryan Noonan,**

*Designated Federal Officer, Bureau of Economic Analysis.*

[FR Doc. 2023–20601 Filed 9–21–23; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–50–2023]**

### Foreign-Trade Zone (FTZ) 45; Notification of Proposed Production Activity; Epson Portland Inc. (Inkjet Ink Cartridges and Bottles), Hillsboro, Oregon

Epson Portland Inc. submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Hillsboro, Oregon within Subzone 45F. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on September 18, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status materials and components include liquid black dye based unfinished/undiluted inkjet inks, liquid color pigment based unfinished/undiluted inkjet inks for cartridges and bottles (colors include magenta, red, yellow and blue), liquid color dye based unfinished/undiluted inkjet inks for cartridges and bottles (colors include magenta, red, yellow and blue) and solid plastic color additive beads (black and gray) (duty rate ranges from 1.8% to 6.5%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is November 1, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Diane Finver at *Diane.Finver@trade.gov*.

Dated: September 18, 2023

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2023–20547 Filed 9–21–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–423–813]**

### Citric Acid and Certain Citrate Salts From Belgium: Preliminary Results of the Sunset Review of the Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On June 1, 2023, the U.S. Department of Commerce (Commerce) initiated a sunset review of the antidumping duty (AD) order on citric acid and certain citrate salts (citric acid) from Belgium pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). Commerce determined that it was appropriate to conduct a full review. Commerce preliminarily finds that revocation of this AD order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Preliminary Results of Review'' section of this notice.

**DATES:** Applicable September 22, 2023.

**FOR FURTHER INFORMATION CONTACT:** Deborah Cohen, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4521.

**Background**

On June 1, 2023, Commerce published the *Initiation Notice* of the sunset review of the *Order*[1] in the **Federal Register** pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received notices of intent to participate in this sunset review from Archer Daniels Midland Company, Cargill, Incorporated, and Primary Products Ingredients Americas LLC (the domestic interested parties) within 15 days after the date of publication of the *Initiation Notice*.[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States.[4]

On June 30, 2023, Commerce received a substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] On July 3, 2023, Commerce received a substantive response from Citribel nv (Citribel) within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[6] Citribel claimed interested party status under section 771(9)(A) of the Act, as a foreign producer and foreign exporter of citric acid. On July 10, 2023, Commerce received rebuttal comments from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(4).[7]

[1] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia and Thailand: Antidumping Duty Orders, 83 FR 35214* (July 25, 2018) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 35832 (June 1, 2023) (*Initiation Notice*).

[3] *See* Domestic Interested Parties Letters, ''*Five Year (''Sunset'') Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from Belgium–Domestic Industry's Notice of Intent to Participate,*'' dated June 15, 2023.

[4] *Id.*

[5] *See* Domestic Interested Parties' Letter, ''Domestic Interested Party's Substantive Response,'' dated June 30, 2023 (Domestic Interested Parties' Substantive Response).

[6] *See* Citribel's Letter, ''Citribel N.V.'s Substantive Response,'' dated July 3, 2023 (Citribel's Substantive Response).

[7] *See* Domestic Interested Parties' Letter, ''Domestic Industry's Rebuttal to Citribel N.V.'s Substantive Response,'' dated July 10, 2023 (Domestic Interested Parties' Rebuttal).

On July 25, 2023, Commerce notified the U.S. International Trade Commission (ITC) that it received an adequate substantive response from the respondent interested party and that, in accordance with 19 CFR 351.218(e)(2), it would conduct a full sunset review of the *Order*.[8] For further details, *see* the Preliminary Decision Memorandum.[9]

**Scope of the Order**

The merchandise covered by this *Order* includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.

**Analysis of Comments Received**

All issues raised in this sunset review are addressed in the Preliminary Decision Memorandum, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the *Order* is revoked.[10] A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

**Preliminary Results of Sunset Review**

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping at weighted-average dumping margins up to 19.30 percent.

**Public Comment**

Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results of this full sunset review, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[11] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[12] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS. Note that Commerce has temporarily modified certain portions of its requirements for serving documents containing business proprietary information, until further notice.[13] Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed request must be received successfully in its entirely by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice in the **Federal Register**.[14] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[15] Parties should confirm the date, time, and location of the hearing by telephone two days before the scheduled date.

In accordance with section 751(c)(5)(A) of the Act and 19 CFR 351.218(f)(3), Commerce intends to issue the final results of this sunset review, including the results of our analysis of the issues raised in any the written briefs, no later than 240 days after the date of publication of the notice of initiation (*i.e.,* no later than January 29, 2024), unless otherwise extended an additional 90 days pursuant to section 751(c)(5)(B) of the Act and 19 CFR 351.218(f)(3)(ii).

This five-year sunset review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218(f)(1).

Dated: September 15, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of Margin of Dumping Likely To Prevail
VII. Recommendation

[FR Doc. 2023–20589 Filed 9–21–23; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See* Commerce's Letter, ''Sunset Reviews Initiated on June 1, 2023,'' dated July 25, 2023.

[9] *See* Memorandum, ''Preliminary Decision Memorandum for the Preliminary Results of Sunset Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from Belgium,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[10] *Id.*

[11] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2); see also 19 CFR 351.303 (for general filing requirements).

[13] *See Temporary Rule.*

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310(d).

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Open Meeting of the Information Security and Privacy Advisory Board

**AGENCY:** National Institute of Standards and Technology.

**ACTION:** Notice.

**SUMMARY:** The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 25, 2023, from 10:00 a.m. until 4:30 p.m., Eastern Time, and Thursday, October 26, 2023, from 10:00 a.m. until 4:00 p.m., Eastern Time. All sessions will be open to the public.

**DATES:** The meeting will be held on Wednesday, October 25, 2023, from 10:00 a.m. until 4:30 p.m., Eastern Time, and Thursday, October 26, 2023, from 10:00 a.m. until 4:00 p.m., Eastern Time.

**ADDRESSES:** The meeting will be held at JW Marriott Washington, DC, the Senate Room (Lobby Level), 1331 Pennsylvania Ave. NW, Washington, DC 20004. Please note admittance instructions under the Admittance Instructions section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Jeff Brewer, Information Technology Laboratory, NIST, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, Telephone: (301) 975–2489, Email address: *jeffrey.brewer@nist.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the ISPAB will meet Wednesday, October 25, 2023, from 10:00 a.m. until 4:30 p.m., Eastern Time, and Thursday, October 26, 2023, from 10:00 a.m. until 4:00 p.m., Eastern Time. All sessions will be open to the

public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the National Institute of Standards and Technology (NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at *https://csrc.nist.gov/projects/ispab.*

The agenda is expected to include the following items:

—Board Introductions and Member Activities,
—Update from NIST's Information Technology Laboratory (ITL) Acting Director,
—Briefing from NIST on Strategic Objective 4.3.1 from the National Cybersecurity Strategy Implementation Plan on Preparing for our Quantum Future,
—Briefing from ONCD on Strategic Objective 4.1.2 from the National Cybersecurity Strategy Implementation Plan and the Comments Received from the Open Source and Memory Safe Language Request for Information,
—Presentation from NIST and FCC on Strategic Objective 3.2.2 from the National, Cybersecurity Strategy Implementation Plan on U.S. Government IoT Security Labeling,
—A Briefing from OSTP and Discussion on Federal Agency Priorities for Privacy,
—Public comments,
—Board Discussions and Recommendations.

Note that agenda items may change without notice. The final agenda will be posted on the ISPAB event page: *https://cms.csrc.nist.gov/Events/2023/ispab-october-meeting.* Seating will be available for the public and media.

Public Participation: Written questions or comments from the public are invited and may be submitted electronically by email to Jeff Brewer at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. on Tuesday, October 24, 2023.

The ISPAB agenda will include a period, not to exceed thirty minutes, for submitted questions or comments from the public between 3:00 p.m. and 3:30 p.m. on Wednesday, October 25, 2023. Submitted questions or comments from the public will be selected on a first-come, first-served basis and limited to five minutes per person.

Members of the public who wish to expand upon their submitted statements, those who had wished to submit a question or comment but could not be accommodated on the agenda, and those who were unable to attend the meeting are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory by email to: *jeffrey.brewer@nist.gov.*

*Admittance Instructions:* No registration is required for this in-person only event.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2023–20574 Filed 9–21–23; 8:45 am]

**BILLING CODE 3510–13–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Implementation of Vessel Speed Restrictions To Reduce the Threat of Ship Collisions With North Atlantic Right Whales

**AGENCY:** National Oceanic & Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before November 21, 2023.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0580 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Meghan Gahm, NOAA Fisheries Office of Protected Resources, 1315 East-West Highway, 13th Floor, Silver Spring, MD 20910; (301) 427–8494; *meghan.gahm@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The National Marine Fisheries Service (NMFS) is requesting renewal of a currently approved collection of information. On October 10, 2008, NMFS published a final rule with regulations (0648–AS36) implementing seasonal speed restrictions along the east coast of the U.S. to reduce the incidence and severity of vessel collisions with endangered North Atlantic right whales (73 FR 60173). The final rule contained a mandatory collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Specifically, 50 CFR 224.105(c) requires a logbook entry to document that a deviation from the speed limit was necessary for safe maneuverability under certain conditions. On November 18, 2021, the information collection was revised to include a voluntary survey of vessel operators to evaluate their ability and willingness to: (1) comply with North Atlantic right whale mandatory speed restrictions, and (2) cooperate with voluntary speed reduction efforts to protect North Atlantic right whales, which are promoted through NMFS outreach efforts. NOAA collects information from two types of vessels (pleasure yachts and large ocean-going vessels) in two different areas of the North Atlantic right whales' range using voluntary online surveys and small focus groups. The surveys collect information about vessel operators' time spent on the water, experience and knowledge about large whales, knowledge of North Atlantic vessel strike reduction efforts, opinions about these whales and conservation efforts, and their preferred means of receiving information. Results from this information collection will be used to develop effective outreach to these vessel communities, with the long-term goal of improving the communities' compliance with mandatory measures and cooperation with voluntary measures that support North Atlantic right whale vessel strike reduction conservation efforts.

#### II. Method of Collection

Vessel logbook entries are required from vessel operators if an exception to the vessel speed restriction is invoked, and the speed limit exceeded. Typically, paper logbooks are not routinely

submitted to a federal agency and remain entirely on individual vessels. However, logbooks may be requested by federal authorities if questions arise regarding the circumstances under which the deviation was invoked. Voluntary survey effort information is collected in three ways: (1) electronically; (2) in-person focus groups; or (3) virtual focus groups.

**III. Data**

*OMB Control Number:* 0648–0580.

*Form Number(s):* None.

*Type of Review:* Regular submission [extension of an approved information collection].

*Affected Public:* Individuals or households; Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,624.

*Estimated Time per Response:* Five minutes for safety deviation logbook entry; one hour for electronic survey; two hours and 30 minutes for focus groups.

*Estimated Total Annual Burden Hours:* 674.

*Estimated Total Annual Cost to Public:* 0.

*Respondent's Obligation:* Logbook entries are required to lawfully deviate from the speed regulations; survey is voluntary.

*Legal Authority:* Endangered Species Act, 16 U.S.C. 1531 *et seq.;* and Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*

**IV. Request for Comments**

*We are soliciting public comments to permit the Department/Bureau to:* (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–20567 Filed 9–21–23; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD379]**

### Council Coordination Committee Meeting

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

**ACTION:** Notice of a public meeting; information regarding the agenda.

**SUMMARY:** The National Marine Fisheries Service, Office of Sustainable Fisheries will host a hybrid meeting of the Council Coordination Committee, also known as the CCC, consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors from October 11 to October 13, 2023. This meeting will be chaired by the Gulf of Mexico Fishery Management Council. The intent of this meeting is to discuss issues of relevance to the Councils and NMFS, including issues related to the implementation of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

**DATES:** The meeting will begin at 1 p.m. Eastern Standard Time (EST), on Wednesday, October 11, 2023, and recess at 5 p.m. EST, or when business is complete. The meeting will reconvene at 9 a.m. EST, on Thursday, October 12, 2023, and recess at 5 p.m. EST, or when business is complete. The meeting will reconvene on the final day at 9 a.m. EST, on Friday, October 13, 2023, and adjourn by 12 p.m. EST, or when business is complete.

**ADDRESSES:** *Meeting address:* The meeting will be held at the Hilton Arlington National Landing hotel, 2399 Richmond Hwy., Arlington, VA 22202; telephone: (703) 418–6800.

The meeting will also be broadcast via webinar. Connection details and public comment instructions will be available at *https://www.fisheries.noaa.gov/event/2023-october-council-coordination-committee-meeting.*

**FOR FURTHER INFORMATION CONTACT:** Sean Lawler by email at *Sean.Lawler@noaa.gov* or at (301) 427–8561.

**SUPPLEMENTARY INFORMATION:** The 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act established the CCC. The CCC consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils, or their respective proxies. All sessions are open to the public and time will be set aside for public comments at the end of each day and after specific sessions at the discretion of the meeting Chair. The meeting Chair will announce public comment times and instructions to provide comment at the start of each meeting day. There will be opportunities for public comments to be provided in-person and remotely via webinar. Updates to this meeting, briefing materials, public comment instructions and additional information will be posted on *https://www.fisheries.noaa.gov/event/2023-october-council-coordination-committee-meeting.*

**Proposed Agenda**

*Wednesday, October 11, 2023—1 p.m.–5 p.m. EST*

1. Opening of Meeting
2. Approval of Agenda and Minutes
3. NMFS Update and Upcoming Priorities
4. NMFS Budget Update and 2024 Outlook
5. NMFS Science Update
6. Legislative Outlook
7. Public Comment

**Adjourn Day 1**

*Thursday, October 12, 2023—9 a.m.–5 p.m. EST*

1. NMFS Policy Regarding Governance
2. Inflation Reduction Act Climate-Ready Fisheries Council Funding Priorities and Process
3. CCC Subcommittee Updates
4. Process for Establishing Fishing Regulations in National Marine Sanctuaries
5. Overview of the Fiscal Responsibility Act, and Proposed National Environmental Policy Act Regulations
6. Public Comment

**Adjourn Day 2**

*Friday, October 13, 2023—9 a.m.–12 p.m. EST*

1. Endangered Species Act and MSA Integration

2. Public Comment
3. Wrap-up and Other Business

**Adjourn Day 3**

The order in which the agenda items are addressed may be adjusted by the meeting Chair to stay on time. The CCC will meet as late as necessary to complete scheduled business.

**Special Accommodations**

If you have particular access needs please contact Sean Lawler at *sean.lawler@noaa.gov* prior to the meeting for accommodation.

*Authority:* 16 U.S.C. 1852 *et seq.*

Dated: September 14, 2023.

**Jennifer M. Wallace,**

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

[FR Doc. 2023–20289 Filed 9–21–23; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD367]**

### Endangered Species; File No. 20528

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

**ACTION:** Notice; receipt of application for a permit modification.

**SUMMARY:** Notice is hereby given that South Carolina Department of Natural Resources, 217 Fort Johnson Road, Charleston, SC 29412 (Bill Post, Responsible Party), has requested a modification to scientific research Permit No. 20528–04.

**DATES:** Written comments must be received on or before October 23, 2023.

**ADDRESSES:** The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 20528 mod 13 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov*.

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 20528 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov*. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Erin Markin, Ph.D., or Malcolm Mohead, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject modification to Permit No. 20528–04, issued on October 31, 2022 (87 FR 68133, November 14, 2022) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 20528–04 authorizes the permit holder to: conduct research on Atlantic (*Acipenser oxyrinchus*) and shortnose (*A. brevirostrum*) sturgeon to determine their presence, status, health, habitat use, and movements in South Carolina waters. Researchers may use gill nets to capture Atlantic and shortnose sturgeon to measure, weigh, passive integrated transponder tag (PIT), dart tag, tissue sample, fin ray sample, and photograph prior to release. A subset of Atlantic and shortnose sturgeon may receive internal acoustic transmitters, gonad biopsy, and laparoscopy. Early life stages of each species may be lethally sampled to document occurrence of spawning in systems. Up to two sturgeon of each species may unintentionally die annually during sampling activities. The permit holder requests authorization to: 1) increase the number of juvenile Atlantic sturgeon from 10 to 30 in the Santee, Edisto and Savannah Rivers, and from 20 to 30 in the Winyah Bay area to be captured, measured, weighed, PIT tagged, dart tagged, tissue sampled, acoustically tagged, fin ray sampled, and photographed annually prior to release; a subset may be biopsied (gonad) and laparoscopied, and 2) increase the number of juvenile Atlantic sturgeon from 70 to 125 in the Savannah River to be to be captured, measured, weighed, PIT tagged, dart tagged, tissue sampled, fin ray sampled, and photographed annually prior to release. The permit is valid through March 31, 2027.

Dated: September 19, 2023.

**Julia M. Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2023–20576 Filed 9–21–23; 8:45 am]

BILLING CODE 3510–22–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

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

**ACTION:** Proposed additions to the Procurement List.

**SUMMARY:** The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Comments must be received on or before:* October 22, 2023.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Additions**

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

*Service(s)*

*Service Type:* Enterprise Services Center Support.
*Mandatory for:* NASA, NASA Shared Services Center, Stennis Space Center, MS.
*Designated Source of Supply:* InspiriTec, Inc., Philadelphia, PA.
*Contracting Activity:* National Aeronautics and Space Administration, NASA Shared Services Center.
*Service Type:* Janitorial Service.
*Mandatory for:* Federal Aviation Administration, Air Traffic Control Tower, North Charleston, SC.
*Designated Source of Supply:* Palmetto Goodwill Services, North Charleston, SC.
*Contracting Activity:* Federal Aviation Administration, 697DCK Regional

Acquisitions Svcs.

**Michael R. Jurkowski,**

*Acting Director, Business Operations.*

[FR Doc. 2023–20539 Filed 9–21–23; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Addition

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

**ACTION:** Addition to the Procurement List.

**SUMMARY:** This action adds a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Date added to and deleted from the Procurement List:* October 22, 2023.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

### Additions

On 8/18/2023 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.

2. The action will result in authorizing small entities to furnish the 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 service(s) proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following p service(s) are added to the Procurement List:

*Service(s)*

*Service Type:* Custodial Service.
*Mandatory for:* USDA APHIS, National Center for Applied Plant Protection, Support Building B, High Security Building, Modular Office Building, and MS&IF, Laurel, MD.
*Designated Source of Supply:* Melwood Horticultural Training Center, Inc., Upper Marlboro, MD.
*Contracting Activity:* Animal and Plant Health Inspection Service, USDA APHIS MRPBS.

**Michael R. Jurkowski**

*Acting Director, Business Operations.*

[FR Doc. 2023–20540 Filed 9–21–23; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 9:00 a.m. EDT, Friday, September 29, 2023.

**PLACE:** Virtual meeting.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

**CONTACT PERSON FOR MORE INFORMATION:** Christopher Kirkpatrick, 202–418–5964.

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

Dated: September 20, 2023.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2023–20706 Filed 9–20–23; 4:15 pm]

**BILLING CODE 6351–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Wednesday, September 27, 2023—10:00 a.m.

**PLACE:** Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, MD.

**STATUS:** Commission Meeting—Open to the Public.

**MATTERS TO BE CONSIDERED:**

*Briefing Matter:* Notice of Proposed Rulemaking: Safety Standard for Residential Gas Furnaces and Boilers.

A live webcast of the meeting can be viewed at the following link: *https://cpsc.webex.com/weblink/register/rd8d1defa87ecfc9e031a0a22b6818611.*

**CONTACT PERSON FOR MORE INFORMATION:** Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: September 19, 2023.

**Alberta E. Mills,**

*Commission Secretary.*

[FR Doc. 2023–20643 Filed 9–20–23; 11:15 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID: USAF–2023–HQ–0014]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 21, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to HQ USAF/A3OJ, 112 Luke Avenue, Suite 340, JBAB DC, 20032–6400, ATTN: Mr. James Rogers, or call 202–404–7886.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Civil Aircraft Landing Permit System; DD Forms 2400, 2401, and 2402; OMB Control Number 0701–0050.

*Needs and Uses:* The collection of information is necessary to identify the aircraft operator and the aircraft to be operated; establish that purpose for use of military airfields; and protect the U.S. Government against litigation. Access must be managed to ensure that security and operational integrity at the airfields are maintained, and that the government is not held liable for accidents if the civil aircraft becomes involved in an accident or incident while using military airfields, facilities, and services. This collection will identify the services of legal responsibility if an unforeseen incident occurs on the landing airfield after an approval is granted.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 900.

*Number of Respondents:* 5,400.

*Responses per Respondent:* 1.

*Annual Responses:* 5,400.

*Average Burden per Response:* 10 minutes.

*Frequency:* On occasion.

Dated: September 18, 2023.

**Aaron T. Siegel,**

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

[FR Doc. 2023–20536 Filed 9–21–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID: USA–2023–HQ–0013]**

### Proposed Collection; Comment Request

**AGENCY:** U.S. Army Corps of Engineers (USACE), Department of the Army, Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Corps of Engineers announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 21, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to U.S. Army Corps of Engineers, Office of Homeland Security, 441 G Street NW, ATTN: Stephanie Bray, Washington, DC 20314–1000, or call 202–761–4827.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Silver Jackets Program Nomination and Awards; ENG Form 6128; OMB Control Number 0710–0023.

*Needs and Uses:* The information collection request is necessary to obtain input and feedback from our state government partners regarding the performance and achievement of state-led Silver Jackets teams. Through the National Flood Risk Management Program, USACE supports the Silver Jackets Program, which has teams in all states and several territories, bringing together multiple state, federal, local, and tribal agencies to learn from one another and work together to reduce risk from floods and other natural hazards. The ENG Form 6128, ''Silver Jackets State Team of the Year,'' provides the vehicle for Silver Jackets teams to nominate their fellow teams for consideration for the Silver Jackets Team of the Year Award. The responses to this information collection are used to recognize excellent work by teams, thank the team partners for their efforts, and provide incentives for future team participation.

*Affected Public:* Individuals or households; State, Local or Tribal Government.

*Annual Burden Hours:* 18.

*Number of Respondents:* 54.

*Responses per Respondent:* 1.

*Annual Responses:* 54.

*Average Burden per Response:* 20 minutes.

*Frequency:* Annually.

Dated: September 18, 2023.

**Aaron T. Siegel,**

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

[FR Doc. 2023–20537 Filed 9–21–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0087]**

### Proposed Collection; Comment Request

**AGENCY:** National Defense University, Chairman of the Joint Chiefs of Staff (CJCS), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the

National Defense University announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 21, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to National Defense University, 300 5th Avenue SW, Building 62, Washington, DC 20319, ATTN: LTC Ann Summers, or call (202) 685–3323.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* College of International Security Affairs Out-Processing Information Form; OMB Control Number 0704–0598.

*Needs and Uses:* The information is needed for end-of-year event efforts (student-led symposium and graduation) as well as for the organization's alumni database. The collection is to ensure accurate student data is in our records upon departure from the organization. The collection instrument verifies information such as correct title/rank, name spelling, country of origin, organization/branch of service, title of individual research paper, if the student wishes to be involved in the organization's alumni network (yes/no response), personal contact information (phone number and email address), and career information (prior to joining organization and future career path after graduating). It is also utilized for alumni outreach and engagement. The data is shared with the appropriate persons—Thesis Director for symposium, Registrar for graduation, and Director of Outreach for alumni data.

*Affected Public:* Individuals and Households, Foreign Nationals.

*Annual Burden Hours:* 6.7.

*Number of Respondents:* 40.

*Responses per Respondent:* 1.

*Annual Responses:* 40.

*Average Burden per Response:* 10 minutes.

*Frequency:* Annually.

Dated: September 18, 2023.

**Aaron T. Siegel,**

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

[FR Doc. 2023–20533 Filed 9–21–23; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0086]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 21, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact the Office of Information Management, DoD, at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil,* ATTN Ms. Angela James, or call 571–372–7574.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Election Administration and Voting Survey (EAVS) Section B Data Standard (ESB Data Standard); OMB Control Number 0704–0597.

*Needs and Uses:* To help better assist UOCAVA voters, FVAP and the Council of State Governments worked to refine a transformative new data schema called the Election Administration and Voting Survey (EAVS) Section B (ESB) Data Standard. The ESB Data Standard builds on other data standardization efforts and allows FVAP to analyze the three key parts of the voting process: (1) Ballot request, (2) ballot transmission, and (3) ballot return. With this transactional-level data, FVAP will be able to analyze the voters experience from start to finish, identifying drivers for success, and uncovering any areas within the UOCAVA voting process which could be improved upon.

*Affected Public:* State, local, and tribal governments.

*Annual Burden Hours:* 4,135.
*Number of Respondents:* 827.
*Responses per Respondent:* 1.
*Annual Responses:* 827.
*Average Burden per Response:* 5 minutes.
*Frequency:* Annually.

Dated: September 18, 2023.

**Aaron T. Siegel,**

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

[FR Doc. 2023–20535 Filed 9–21–23; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0053]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by October 23, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Department of Defense Consent to Conduct Installation Records Check (IRC); DD Form 3058; OMB Control Number 0704–0586.
*Type of Request:* Extension.
*Number of Respondents:* 14,000.
*Responses per Respondent:* 1.
*Annual Responses:* 14,000.
*Average Burden per Response:* 10 minutes.
*Annual Burden Hours:* 2,333.
*Needs and Uses:* The information collection is required under authority of DoDI 1402.05 Criminal History Background Checks on Individuals in Child Care Services Programs and is used to determine an individual's suitability or fitness for working with children. The information collection requirement is necessary to obtain information pertinent to the criminal history background investigation and suitability determination of individuals working with children in DoD child care programs.

Individuals who are interested in working for DoD or for a program operated by or through a contract with the DoD must complete the form prior to working with children under the age of 18 years. DoD programs and services that use this form include but are not limited to: Child Protective Services (CPS) (including the investigation of child abuse and neglect reports), faith-based (religious) programs, Social Services Programs, Health and Mental Health Care Programs, to include Physicians, Dentists, Nurse Practitioners, Technicians; Childcare, Education Programs (whether or not directly involved in teaching), Foster Care, Residential care, Recreational or Rehabilitative programs, and Detention, Correctional, and Treatment services. The types of individuals screened include civilian applicants and employees, military members, contractors, family child care/home day care providers and their family members, and volunteers.

*Affected Public:* Business or other for-profit; individuals or households.
*Frequency:* Every five years.
*Respondent's Obligation:* Voluntary.
*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 18, 2023.

**Aaron T. Siegel,**

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

[FR Doc. 2023–20603 Filed 9–21–23; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0084]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Office of Local Defense Community Cooperation announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 21, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of Local Defense Community Cooperation, 2231 Crystal Drive, Arlington, VA 22202, ATTN: Ms. Michelle Volkema, or call 703–697–2176.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Community Noise Mitigation Program Grant Proposals; OMB Control Number 0704–CNMP.

*Needs and Uses:* Section 8120 of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103) provided $75 million to the Office of Local Defense Community Cooperation (OLDCC) of the Department of Defense to ''make grants to communities impacted by military aviation noise for the purpose of installing noise mitigating insulation at covered facilities.'' These funds expire if they are not obligated prior to September 30, 2025.

To implement this congressional direction, OLDCC may award grants to local governments under the competitive Community Noise Mitigation Program (CNMP) for the purpose of reducing the impact of fixed wing military aviation noise on ''covered'' facilities. Covered facilities include hospitals, daycare facilities, schools, facilities serving senior citizens, and private residences. Covered facilities that are considered potentially eligible are located either within one (1) mile of a military installation boundary or within an area experiencing day-night average sound level of 65 decibels or greater due to military fixed-wing aviation noise. Information collection from the public is necessary to facilitate the awarding of grants under CNMP. Respondents will be states, territories, counties, municipalities, other political subdivisions of a state, special purpose units of a state or local government, other instrumentalities of a state or local government, and tribal nations supporting a military installation. The collection instrument is a grant proposal package prepared in accordance with the CNMP Notice of Funding Opportunity Announcement posted on the *Grants.gov* website (*https://www.grants.gov/web/grants/view-opportunity.html?oppId=349858*). The Notice of Funding Opportunity Forecast details the elements that will be required for a proposal to be considered complete.

*Affected Public:* State, local, or Tribal government.

*Annual Burden Hours:* 2,000.

*Number of Respondents:* 50.

*Responses per Respondent:* 1.

*Annual Responses:* 50.

*Average Burden per Response:* 40 hours.

*Frequency:* Once.

Dated: September 18, 2023.

**Aaron T. Siegel,**

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

[FR Doc. 2023–20599 Filed 9–21–23; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0039]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by October 23, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Request for Approval for Qualification Training and Approval of Contractor Flight Crewmember; DD Forms 1821, 2627, 2628, 3062; OMB Control Number 0704–0347.

*Type of Request:* Revision.

**[DD Form 1821]**

*Number of Respondents:* 100.

*Number of Responses per Respondent:* 5.

*Number of Total Annual Responses:* 500.

*Response Time:* 30 minutes.

*Respondent Burden Hours:* 250 hours.

**[DD Form 2627]**

*Number of Respondents:* 100.

*Number of Responses per Respondent:* 5.

*Number of Total Annual Responses:* 500.

*Response Time:* 30 minutes.

*Respondent Burden Hours:* 250 hours.

**[DD Form 2628]**

*Number of Respondents:* 100.

*Number of Responses per Respondent:* 5.

*Number of Total Annual Responses:* 500.

*Response Time:* 30 minutes.

*Respondent Burden Hours:* 250 hours.

**[DD Form 3062]**

*Number of Respondents:* 100.

*Number of Responses per Respondent:* 52.

*Number of Total Annual Responses:* 5,200.

*Response Time:* 15 minutes.

*Respondent Burden Hours:* 1,300 hours.

*Total Number of Respondents:* 200.

*Total Responses per Respondent:* 33.5.

*Total Annual Responses:* 6,700.

*Total Average Burden per Response:* 18.36 minutes.

*Total Annual Burden Hours:* 2,050.

*Needs and Uses:* The information collection requirement supported by these DD Forms supports contractor requirements to have government approval of contract flight crewmembers and contract flights as specified in Defense Contract Management Command Instruction (DCMA INST) 8210.1, Contractor's Ground and Flight Operations. The contractor provides information on contractor personnel to the government. The government approves the contractor's request for aircrew training and, eventually, approval for contractor personnel to operate and fly government aircraft. The government also approves all flights under contract.

The DD Form 2627 is used by contractors to request qualification training for contractor crewmembers. The contractor provides a personal history, verifies the crewmember's records, and requests government approval for training in a particular type of government aircraft. The 2627 and supporting documentation can be provided in hard or soft copy.

The DD Form 1821 is used by contractors to provide a succinct

summary of a crewmember's flight history. This form is submitted along with DD Form 2627 as part of the supporting documentation for the request for qualification training.

The DD Form 2628 is used by contractors to request aircrew qualification for contractor crewmembers. The contractor verifies the crewmember's training completion and requests government approval for specific aircrew qualification in a particular type of government aircraft. The 2628 and supporting documentation can be provided in hard or soft copy.

The DD Form 3062 is used by contractors to request approval of flights under contract. The 3062 can be provided in hard or soft copy. Without the approval from the government, the contractor cannot fly under the liability coverage provided by DFARS 252.228–7001, Ground and Flight Risk.

*Affected Public:* Individuals or households.

*Frequency:* DD Forms 1821, 2627, and 2628 are completed once to verify a contractor's aircrew qualification. DD Form 3062 is completed as needed to request approval of flights under contract.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 18, 2023.

**Aaron T. Siegel,**

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

[FR Doc. 2023–20606 Filed 9–21–23; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0025]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by October 23, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Department of Defense Education Activity (DoDEA) Employment Opportunities for Educators; DoDEA Forms 5010, 5011, and 5013; OMB Control Number 0704–0370.

*Type of Request:* Extension.

*Number of Respondents:* 54,000.

*Responses per Respondent:* 1.

*Annual Responses:* 54,000.

*Average Burden per Response:* 25 minutes.

*Annual Burden Hours:* 22,500.

*Needs and Uses:* The information collection requirement is necessary to obtain information on prospective applicants for educator positions with the Department of Defense Education Activity. The information is used to verify employment history of educator applicants and to determine creditable previous experience for pay-setting purposes on candidates selected for positions. In addition, the information is used to ensure that those individuals selected for employment with the Department of Defense Education Activity possess the abilities which give promise of outstanding success under the unusual circumstances they will find working abroad. Completion of all forms is entirely voluntary.

*Affected Public:* Individuals and households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 18, 2023.

**Aaron T. Siegel,**

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

[FR Doc. 2023–20608 Filed 9–21–23; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Notice of Intent To Prepare a Draft Feasibility Report and Environmental Impact Statement for the Cedar Port Navigation District Channel Deepening Project, Baytown, TX

**AGENCY:** Corps of Engineers, Department of the Army, DoD.

**ACTION:** Notice of intent to prepare a draft feasibility study and environmental impact statement for the Cedar Port Navigation and Improvement District Channel Deepening Project, Baytown, TX.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the U.S. Army Corps of Engineers, Galveston District (USACE) intends to prepare an Environmental Impact Statement (EIS) for the Cedar Port Navigation and

Improvement District Channel Deepening Project. The EIS would be prepared in association with a feasibility report prepared by a Non-Federal Interest (NFI)—the Cedar Port Navigation and Improvement District (CPNID) under authority granted by section 203 of WRDA 1986. The study will identify and evaluate the feasibility of providing a deep-water connection between the Houston Ship Channel (HSC) and a planned future deepwater terminal facility at Cedar Port Industrial Park while enhancing efficient, safe, and reliable navigation in the Cedar Bayou Navigation Channel and HSC to existing stakeholder terminals. This notice announces the USACE's intent to determine the scope of the issues to be addressed and identify the significant environmental issues related to the proposed action.

**DATES:** Public scoping comments should be submitted on or before October 23, 2023, electronically or mailed as written letters. Three public scoping meetings will be held between September and October 2023.

**ADDRESSES:** Submit all electronic public comments via email to: *CESWG-Cedar_Port_EIS@usace.army.mil.* Written comments may be mailed to: ATTN: Mr. Christopher Ford, P.O. Box 1229, Galveston, TX 77553–1229.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the proposed Draft EIS can be addressed by contacting Mr. Christopher (Brandon) Ford by phone at (409) 766–3079, or by email at *Christopher.b.ford@usace.army.mil.*

Pertinent information about the study can be found at: *www.cedarportchannelproject.com* or after publication of the draft EIS at: *https://www.swg.usace.army.mil/Business-With-Us/Planning-Environmental-Branch/Documents-for-Public-Review/.*

**SUPPLEMENTARY INFORMATION:**

1. *Authority.* The Cedar Port Navigation District Channel Deepening Study is authorized under section 203 of WRDA 1986. Section 203 authorizes the NFI to perform feasibility studies (FSs) of proposed water resources development projects for submission directly to the Secretary of the Army. Once submitted, the Assistant Secretary of the Army for Civil Works (ASA[CW]) evaluates the FS and prepares a report for congressional committees that describes whether the project is feasible, including recommendations concerning project design or conditions for construction. The feasibility study phase is 100% funded by the NFI.

2. *Background.* The potential project area includes Cedar Bayou Navigation Channel, and portions of Tabbs Bay, Trinity Bay and Galveston Bay (Galveston Bay System) adjacent to the HSC in Chambers and Harris Counties, Texas. The project area also includes the existing Cedar Port terminal at Cedar Port Industrial Park in Baytown, Texas. The Cedar Bayou Navigation Channel is a federally authorized 5-mile shallow water barge channel that supports more than 1.5 million tons of cargo per year. The channel primarily serves chemical, aggregate, steel, and asphalt industries, as well as container-on-barge movement with connections to the Port of Houston container terminal. The Cedar Bayou Navigation Channel is separated into 5 Reaches. Reach 1 begins at the HSC between Hog Island and Atkinson Island. Reach 2 extends most of the way across the Cedar Bayou Channel in Galveston Bay. Reach 3 provides access from the Bay to Cedar Point. Reaches 4 and 5 extend northeast into Cedar Bayou to the CPNID Barge Dock and Trans Global Solutions Finger Lakes Dock, among other industrial facilities and stakeholder barge terminals.

The HSC is the busiest waterway in the U.S. and receives 8,000 vessel calls annually, transporting more than 230 million tons of cargo (PAAC 2022). Due to the rising vessel fleet size and cargo tonnage, the current HSC navigational system and port facilities have experienced higher congestion than forecast, and it is anticipated that the volume of throughput will continue to grow over the next ten to twenty years. The purpose of the project is to evaluate the feasibility of and Federal Interest in providing a deep-water connection between the HSC and a planned future deepwater terminal facility at Cedar Port Industrial Park while enhancing efficient, safe, and reliable navigation in the Cedar Bayou Navigation Channel and HSC to existing stakeholder terminals. The Cedar Port deepwater terminal would provide an alternative port facility to accommodate projected volumes and alleviate congestion within the upper reaches of the HSC. The problems identified in the study area are (1) restricted access for deep and non-barge shallow-draft vessel to the existing Cedar Port, (2) navigational constraints and safety, (3) inefficient cargo movements, and (4) scarcity of environmentally acceptable dredged material for beneficial use.

Expected impacts include short- and long-term impacts to existing aquatic habitats, fish and wildlife including federally protected species and their habitat, water quality, air quality, noise, and recreation features. Impacts to aquatic habitats are anticipated to require compensatory mitigation. Additional details related to sediment testing will be described in the Draft EIS.

3. *Alternatives.* The study will evaluate alternatives that would provide alternative water routes to the deepwater terminal facility. A No Action Alternative is also being considered consistent with the requirements of NEPA. The study examines possible channel widening and deepening to provide for safe and efficient deep draft vessel transit through Reaches 1–3 of the Cedar Bayou Navigation Channel, or approximately 3 miles. The study also will investigate deepening opportunities and widening within the Galveston Bay System to connect HSC to Cedar Bayou Navigation Channel at Reaches 2 and 3.

Alternatives to be considered in Draft EIS are as follows:

- *No Action:* As required by Section 203 and NEPA, a no action alternative must be considered. Under No Action, no channel deepening or widening would occur.
- *Northern Route:* This Alterative considers deepening and widening portions of the existing shallow-draft Cedar Bayou Navigation Channel.
- *Mid-Route(s):* Up to two alternative routes would be considered in this area. Both alternatives would include excavating a new deep-draft channel from the HSC north of the Blue Water Atoll through the existing bay bottom in Upper Galveston Bay to near the mouth of Cedar Bayou.
- *Southern Route:* This Alternative considers excavating a new deep-draft channel route from the HSC south of Blue Water Atoll through the existing bay bottom in Upper Galveston Bay to near the mouth of Cedar Bayou.

The study will evaluate potential benefits and impacts of the reasonable array of alternatives including direct, indirect, and cumulative effects to the human and natural environments that balance the interests of flood damage reduction and environmental impacts.

4. *Public Participation.* Scoping completed prior to and after publication of this NOI will be used to develop the EIS. The scoping comment period will begin on September 22, 2023 and will end 30 days after publication of this notice. All comments received during the scoping period are being used to identify additional measures and alternatives, significant resources, and impacts that should be considered in the EIS. Additional comments received outside the scoping period will be considered prior to the Draft EIS public review period, to the extent possible. For comments that cannot be addressed prior to the public review period, the

comments will be included with the public review period comments and addressed at that time. In October 2023, Cedar Port in conjunction with the USACE will host two in person Public Scoping Meetings, one in Chambers County and one in Harris County, and a virtual meeting. A Public Notice is available on the project website: *www.cedarportchannelproject.com* and in the Legal Notices section of the Houston Chronicle. Public news releases announcing the scoping period timeframe; public meeting dates, times, and locations; and where to send comments were published in the appropriate local newspapers, on the project website, and were distributed to the local stakeholders and known interested parties.

5. *Coordination.* USACE will prepare the EIS based on information and analyses provided by Cedar Point or analyses conducted by USACE as part an agreement with Cedar Point under the authority of Section 203 of WRDA 1986. Other Federal and state agencies have been invited to participate throughout the study process as Coordinating or Participating Agencies. Further coordination with environmental agencies will be conducted by USACE under the NEPA, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Historic and Preservation Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act.

6. *Availability of Draft EIS.* The Draft EIS is estimated to be available for public review and comment during the fall or early winter of 2023/24. At that time a 45-day public review period will be provided for individuals and agencies to review and comment. USACE will notify all interested agencies, organizations, and individuals of the availability of the draft document at that time. To request a hard copy of the Draft EIS, please email *Information@cedarportchannelproject.com* or send a request to Cedar Port Channel Project, P.O. Box 741, Rockport, Texas 783. Please include your mailing address.

**Wesley E. Coleman, Jr.,**

*Programs Director, Southwestern Division.*

[FR Doc. 2023–20598 Filed 9–21–23; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2023–HQ–0012]**

### Submission for OMB Review; Comment Request

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

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by October 23, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Marine Corps Marathon Race Applications; OMB Control Number 0712–0005.

*Type of Request:* Revision.

*Number of Respondents:* 58,600.

*Responses per Respondent:* 1.

*Annual Responses:* 58,600.

*Average Burden per Response:* 5 minutes (MCM Kids Race, MCM 17.75K, Belleau Wood 8K, Quantico 12K, and Turkey Trot registrations); 10 minutes (MCM Weekend and Historic Half Weekend registrations).

*Annual Burden Hours:* 8,992.

*Needs and Uses:* The Marine Corps Marathon Organization (MCMO) is tasked with the management of the Marine Corps Marathon (MCM) races on behalf of the Marine Corps. The MCM Race Application collection is necessary to register individuals for MCM races, identify participants for timing and results purposes, determine award categories, and to ensure appropriate contact information is on file if emergency treatment is required. The collection serves a secondary purpose to foster marketing relationships for the Marine Corps and provide participation data for future event planning and promotion.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 18, 2023.

**Aaron T. Siegel,**

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

[FR Doc. 2023–20602 Filed 9–21–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2022–HQ–0027]**

### Submission for OMB Review; Comment Request

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

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by October 23, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open

for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Navy Family Accountability and Assessment System; OMB Control Number 0703–FAAS.

*Type of Request:* Existing collection in use without an OMB Control Number.

*Number of Respondents:* 1,674.

*Responses per Respondent:* 2.

*Annual Responses:* 3,348.

*Average Burden per Response:* 3.5 minutes.

*Annual Burden Hours:* 195.

*Needs and Uses:* The primary purpose of the Navy Family Accountability and Assessment System (NFAAS) is personnel accountability following a natural or man-made disaster for all Active Duty, Reserve, Navy Civilians, Contractors serving Outside the Continental United States, and their dependents. NFAAS also assesses the impact of the disaster on Navy families and Command's ability to fulfill its missions by providing services and tracking support provided to families in recovery. Additionally, NFAAS supports the sponsor and family members during Sailor Individual Augmentation deployments. This collection of information is authorized by DoDI 3001.02, ''Personnel Accountability in Conjunction with Natural or Manmade Disasters,'' and OPNAVINST 3006.1, ''Personnel Accountability in Conjunction with Catastrophic Events.'' Respondents include all Navy personnel who are responsible for accounting after a disaster and updating or verifying sponsor and dependent information. Per DoDI 3001.02, this includes all active and reserve military personnel, Navy civilian employees, Nonappropriated Fund employees, Navy Exchange employees, and OCONUS contractors. CONUS contractors are not included. For the purposes of complying with the Paperwork Reduction Act, the burden estimates in this information collection request only account for respondents who are members of the public.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 18, 2023.

**Aaron T. Siegel,**

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

[FR Doc. 2023–20604 Filed 9–21–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0134]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; EDGAR Recordkeeping and Reporting Requirements

**AGENCY:** Office of Finance and Operations (OFO), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before October 23, 2023.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Cleveland Knight, 202–987–0064.

**SUPPLEMENTARY INFORMATION:** The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* EDGAR Recordkeeping and Reporting Requirements.

*OMB Control Number:* 1894–0009.

*Type of Review:* An extension without change of a currently approved ICR.

*Respondents/Affected Public:* Private Sector.

*Total Estimated Number of Annual Responses:* 7,800.

*Total Estimated Number of Annual Burden Hours:* 29,975.

*Abstract:* The Education Department General Administrative Regulations (EDGAR) contain several requirements that grantees maintain certain types of records related to their grants and to report or submit certain information to the Department. The current Recordkeeping and Reporting Requirements for discretionary grants has approval through December 31, 2023, we are requesting an extension of this approval.

Dated: September 18, 2023.

**Stephanie Valentine,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–20586 Filed 9–21–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Electricity Advisory Committee

**AGENCY:** Office of Electricity, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Electricity Advisory Committee (EAC). The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:**

Tuesday October 17, 2023; 1:00 p.m.–5:00 p.m. EST.

Wednesday October 18, 2023; 8:30 a.m.–12:00 p.m. EST.

**ADDRESSES:** National Rural Electric Cooperative Association Headquarters in Arlington, VA, 4301 Wilson Blvd., Suite 1, Arlington, VA 22203. Members of the public are encouraged to participate virtually, however, limited physical space is available for members of the public to attend onsite. To register to attend either in-person or virtually, please visit the meeting website: *https://www.energy.gov/oe/october-17-18-2023-electricity-advisory-committee-meeting.* Please note, you must register for each day you would like to attend.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jayne Faith, Designated Federal Officer, Office of Electricity, U.S. Department of Energy, Washington, DC 20585; Telephone: (202) 586–2983 or Email: *Jayne.Faith@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** *Purpose of the Committee:* The EAC was established in accordance with the provisions of FACA, as amended, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing certain sections of the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to the electric sector.

**Tentative Agenda**

*October 17, 2023*

12:45 p.m.–1:00 p.m. WebEx Attendee Sign-On
1:00 p.m.–1:15 p.m. Welcome, Introductions, Developments since June Meeting
1:15 p.m.–1:45 p.m. Update from the Office of Electricity
1:45 p.m.–2:30 p.m. Update on FERC Activities
2:30 p.m.–2:45 p.m. Break
2:45 p.m.–3:45 p.m. Presentation of EAC Reliability Work Product and Vote
3:45 p.m.–4:45 p.m. Moderated Discussion on Reliability
4:45 p.m.–5:00 p.m. Wrap-up and Adjourn Day 1 of October EAC Meeting

*October 18, 2023*

8:00 a.m.–8:30 a.m. WebEx Attendee Sign-On
8:30 a.m.–8:45 a.m. Opening Remarks
8:45 a.m.–9:45 a.m. Moderated Discussion on Energy Storage
9:45 a.m.–10:00 a.m. Break
10:00 a.m.–11:00 a.m. Update from the Office of Cybersecurity, Energy Security and Emergency Response Activities
11:00 a.m.–11:10 a.m. Energy Storage Subcommittee Update
11:10 a.m.–11:20 a.m. Smart Grid Subcommittee Update
11:20 a.m.–11:30 a.m. GRNS Subcommittee Update
11:30 a.m.–11:45 a.m. Public Comments
11:45 a.m.–12:00 p.m. Wrap-up and Adjourn October Meeting of the EAC

The meeting agenda and times may change to accommodate EAC business. For EAC agenda updates, see the EAC website at: *https://www.energy.gov/oe/october-17-18-2023-electricity-advisory-committee-meeting.*

*Public Participation:* The EAC welcomes the attendance of the public at its meetings. Individuals who wish to offer public comments at the EAC meeting may do so on October 18, 2023, but must register in advance by 5:00 p.m. Eastern time on October 17, 2023, by sending a written request identified by ''*Electricity Advisory Committee October 2023 Meeting,*'' to Ms. Jayne Faith at *Jayne.Faith@hq.doe.gov.* Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement identified by ''*Electricity Advisory Committee October 2023 Meeting,*'' to Ms. Jayne Faith at *Jayne.Faith@hq.doe.gov.*

*Minutes:* The minutes of the EAC meeting will be posted on the EAC web page at *https://www.energy.gov/oe/october-17-18-2023-electricity-advisory-committee-meeting.* They can also be obtained by contacting Ms. Jayne Faith at the address above.

Signed in Washington, DC, on September 19, 2023.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2023–20584 Filed 9–21–23; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP23–1039–000.
*Applicants:* Venture Global Gator Express, LLC.
*Description:* § 4(d) Rate Filing: Baseline new to be effective 10/31/2023.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5072.
*Comment Date:* 5 p.m. ET 10/2/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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: September 18, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–20582 Filed 9–21–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER23–2874–000]**

### NorthWestern Energy Public Service Corporation; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of NorthWestern Energy Public Service Corporation's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene, or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 9, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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: September 18, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–20581 Filed 9–21–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP22–489–001]**

### Northern Natural Gas Company; Notice of Request for Extension of Time

Take notice that on September 11, 2023, Northern Natural Gas Company (Northern) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time (2023 Extension of Time Request), until October 13, 2023, to install and operate an approximately 1.57-mile expansion of its 36-inch-diameter MNM80105 Ventura Interconnect to Farmington E-Line in Freeborn and Steele counties, Minnesota, in the Prior Notice Request for Authorization Under Blanket Certificate (Prior Notice) under Docket No. CP22–489–000. On July 25, 2022, the Commission issued a Notice of Request Under Blanket Authorization, which established a 60-day comment period, ending on September 23, 2022, to file protests. No protests were filed during the comment period, and accordingly the project was authorized on September 24, 2022 and by Rule should have been completed within one year.

In its 2023 Extension of Time Request, Northern states that it delayed construction until May 22, 2023, to avoid construction during the winter and spring load restrictions on State and local roads. Northern expected to complete the Project within the one-year time frame. However, during construction, Northern's contractor experienced multiple delays with the horizontal directional drilling (HDD) activities due to drill rig availability and an increased duration for the pilot and reaming activities. Additionally, construction for the associated tie-in facilities was longer than expected due to a change in tie-in plans at the Albert Lea compressor station as described in weekly report 16. The proposed tie-in location on the D-line was not suitable for in-service welding, resulting in additional excavation, backfill, fabrication and pressure testing. Northern currently estimates completing commissioning and testing of the new line the week of October 2, 2023.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Northern's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[1] the Commission will aim to issue an order acting on the request within 45 days.[2] The Commission will

[1] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[2] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[3] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[4] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[5] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*Comment Date:* 5:00 p.m. Eastern Time on, October 5, 2023.

Dated: September 18, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–20570 Filed 9–21–23; 8:45 am]

**BILLING CODE 6717–01–P**

[3] *Id.* at P 40.

[4] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[5] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC23–133–000.
*Applicants:* Fox Squirrel Solar LLC.
*Description:* Application for Authorization Under Section 203 of the Federal Power Act of Fox Squirrel Solar LLC.
*Filed Date:* 9/15/23.
*Accession Number:* 20230915–5222.
*Comment Date:* 5 p.m. ET 10/6/23.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG23–292–000.
*Applicants:* Amcor Storage LLC.
*Description:* Amcor Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
*Filed Date:* 9/15/23.
*Accession Number:* 20230915–5221.
*Comment Date:* 5 p.m. ET 10/6/23.

*Docket Numbers:* EG23–293–000.
*Applicants:* South Energy Investments, LLC.
*Description:* South Energy Investments, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5081.
*Comment Date:* 5 p.m. ET 10/10/23.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER23–2479–001.
*Applicants:* American Electric Power Service Corporation, PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: American Electric Power Service Corporation submits tariff filing per 35.17(b): AEP Amendment Update to Att. 1 of ILDSA, SA No. 1336 in ER23–2479 to be effective 7/1/2023.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5028.
*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2875–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Fourth Amendment to ISA, Service Agreement No. 5548; Queue No. AC1–076/AE2–134 to be effective 11/20/2023.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5017.
*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2876–000.
*Applicants:* CPV Retail Energy LP.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/18/2023.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5042.
*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2877–000.
*Applicants:* CPV Three Rivers, LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/18/2023.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5044.
*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2878–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original ISA, Service Agreement No. 7094; Queue No. AG1–041 to be effective 8/18/2023.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5046.
*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2879–000.
*Applicants:* Hecate Energy Johanna Facility LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/18/2023.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5047.
*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2880–000.
*Applicants:* Hecate Energy Desert Storage 1 LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/18/2023.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5051.
*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2881–000.
*Applicants:* Pennsylvania Electric Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii: Penelec amends 10 ECSAs (4992 5171 5280 5328–5330 5334 5337 5341 6491) to be effective 12/31/9998.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5062.
*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2882–000.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Hancock County Solar Project LGIA Filing to be effective 9/1/2023.
*Filed Date:* 9/18/23.
*Accession Number:* 20230918–5070.
*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2883–000.

*Applicants:* Florida Power & Light Company.

*Description:* § 205(d) Rate Filing: Rate Schedule FERC No. 317 Agreement Regarding Hold Harmless Commitment to be effective 11/18/2023.

*Filed Date:* 9/18/23.

*Accession Number:* 20230918–5073.

*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2884–000.

*Applicants:* Florida Power & Light Company.

*Description:* § 205(d) Rate Filing: Rate Schedule FERC No. 322 Agreement Regarding Hold Harmless Commitment to be effective 11/18/2023.

*Filed Date:* 9/18/23.

*Accession Number:* 20230918–5074.

*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2885–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original NSA, Service Agreement No. 7076; Queue No. AD1–031 to be effective 8/18/2023.

*Filed Date:* 9/18/23.

*Accession Number:* 20230918–5094.

*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2886–000.

*Applicants:* South Energy Investments, LLC.

*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 11/18/2023.

*Filed Date:* 9/18/23.

*Accession Number:* 20230918–5100.

*Comment Date:* 5 p.m. ET 10/10/23.

*Docket Numbers:* ER23–2887–000.

*Applicants:* Arizona Public Service Company.

*Description:* § 205(d) Rate Filing: Rate Schedule No. 265 to be effective 11/18/2023.

*Filed Date:* 9/18/23.

*Accession Number:* 20230918–5107.

*Comment Date:* 5 p.m. ET 10/10/23.

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: September 18, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–20583 Filed 9–21–23; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 2322–069; 2322–071; 2325–100; 2574–092; 2611–091]**

### Brookfield White Pine Hydro, LLC, Merimil Limited Partnership, Hydro-Kennebec, LLC; Notice of Revised Procedural Schedule for Environmental Impact Statement for the Proposed Project Relicense, Interim Species Protection Plan, and Final Species Protection Plan

On January 31, 2020, Brookfield White Pine Hydro, LLC filed an application for a new license to continue to operate and maintain the 8.65-megawatt (MW) Shawmut Hydroelectric Project No. 2322 (Shawmut Project). On June 1, 2021, in a separate compliance proceeding for the Shawmut Project, Brookfield White Pine Hydro, LLC filed an Interim Species Protection Plan (Interim Plan) for Atlantic salmon and requested Commission approval to amend the current Shawmut license to incorporate the Interim Plan. The Interim Plan includes measures to protect endangered Atlantic salmon until the Commission issues a decision on the relicense application for the Shawmut Project.

Also on June 1, 2021, Brookfield Power US Asset Management, LLC (Brookfield), on behalf of the affiliated licensees for the 6.915–MW Lockwood Hydroelectric Project No. 2574, 15.433-MW Hydro-Kennebec Hydroelectric Project No. 2611, and 15.98-MW Weston Hydroelectric Project No. 2325, filed a Final Species Protection Plan (Final Plan) for Atlantic salmon, Atlantic sturgeon, and shortnose sturgeon and requested Commission approval to amend the three project licenses to incorporate the Final Plan. All four projects are located on the Kennebec River, in Kennebec and Somerset Counties, Maine.

On November 23, 2021, Commission staff issued a notice of intent to prepare a draft and final Environmental Impact Statement (EIS) to evaluate the effects of relicensing the Shawmut Project and amending the licenses of all four projects to incorporate the measures in the Interim and Final Plans. The notice of intent included a schedule for preparing a draft and final EIS. The schedule was updated on February 15, 2023, in response to Brookfield's filing of supplemental information for the Final Plan, Interim Plan, and License Application.

On March 29, 2023, Commission staff initiated Tribal consultation with potentially affected Indian Tribes on the proposed license amendments. The Houlton Band of Maliseet Indians filed comments and recommendations on May 4, 2023, and the Penobscot Indian Nation filed comments and recommendations on May 1, 2023, and August 17, 2023. The EIS will consider the comments and recommendations from the Tribes. Therefore, by this notice, Commission staff is updating the procedural schedule for completing a draft and final EIS.

The revised schedule is shown below. Further revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Issue Draft EIS ..... | March 2024. |
| Issue Final EIS ..... | September 2024. |

Any questions regarding this notice may be directed to Matt Cutlip at (503) 552–2762, or by email at *matt.cutlip@ferc.gov.*

Dated: September 18, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–20569 Filed 9–21–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP23–516–000]**

### East Tennessee Natural Gas, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Ridgeline Expansion Project Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Ridgeline Expansion Project (Project) involving construction and operation of facilities by East Tennessee Natural Gas, LLC (East Tennessee) in Trousdale, Smith, Jackson, Putnam, Overton, Fentress, Morgan, and Roane counties, Tennessee. The Commission will use this EIS in its decision-making process to determine whether the Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' By notice issued on July 22, 2022 in Docket No. PF22–7–000, the Commission opened a scoping period during East Tennessee's planning process for the Project and prior to filing a formal application with the Commission, a process referred to as ''pre-filing.'' East Tennessee has now filed an application with the Commission, and staff intends to prepare an EIS that will address the concerns raised during the pre-filing scoping process and comments received in response to this notice. By this notice, the Commission requests public comments on the scope of issues to address in the environmental document, including comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on October 18, 2023. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

As mentioned above, during the pre-filing process, the Commission opened a scoping period which expired on October 20, 2022; however, Commission staff continued to accept comments during the entire pre-filing process. Staff also held three scoping sessions to take oral scoping comments. Those sessions were held in Kingston, Hartsville, and Cookeville, Tennessee on October 3, 4, and 5, 2022, respectively. All substantive written and oral comments provided during pre-filing will be addressed in the EIS. Therefore, if you submitted comments on this Project to the Commission during the pre-filing process in Docket No. PF22–7–000, you do not need to file those comments again.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with State law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

East Tennessee provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

#### Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–516–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

**Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts**

East Tennessee proposes to construct, modify, install, own, and operate 122 miles of 30- and 24-inch-diameter pipeline in Trousdale, Smith, Jackson, Putnam, Overton, Fentress, Morgan, and Roane counties, Tennessee to deliver natural gas to the site of Tennessee Valley Authority's (TVA) Kingston Fossil Plant (Kingston Plant). TVA is evaluating options to replace coal-fired generation with gas-fired generation at the Kingston Plant; including the option of constructing a single gas-fired combined cycle gas plant paired with 16 dual-fuel aeroderivative combustion turbines at the same site.[1] The Project would serve that option and provide about 300,000 dekatherms per day of new firm natural gas transportation capacity and up to 95,000 dekatherms of Customized Delivery Service (*i.e.,* parking capability) from multiple providers to TVA to meet fluctuating peaking power demands.

The Project would consist of the following facilities:

- 110 miles of 30-inch-diameter mainline pipeline and approximately 4 miles of 30-inch-diameter header pipeline (collectively referred to as the Mainline);
- 8 miles of 24-inch-diameter lateral pipeline (Lateral) to connect to the Kingston Plant;
- a new compressor station (Hartsville Compressor Station) consisting of two centrifugal compressor packages driven by electric motor drives rated to 7,300 horsepower (HP) for a total of 14,600 HP;
- a new meter and regulating (M&R) station to receive gas from Columbia Gulf Transmission, LLC (Columbia Gulf);
- modifications to two existing M&R stations to receive gas from Texas Eastern Transmission, LP (Texas Eastern) and Midwestern Gas Transmission Company (Midwestern Gas);
- a new delivery meter station to measure gas delivered to the Kingston Plant; and
- related appurtenances.

The general location of the Project facilities is shown in appendix 1.[2]

Based on the environmental information provided by East Tennessee, construction of the proposed facilities would disturb about 2,514.5 acres of land for the pipelines and aboveground facilities. Following construction, East Tennessee would maintain about 755.7 acres for operation of the Project facilities; the remaining acreage would be restored and revert to former uses. About 91 percent of the proposed pipeline route parallels the existing East Tennessee's 3100 Line and an additional 1.8 miles of the proposed pipeline would be collocated with an existing power transmission right-of-way.

Based on an initial review of East Tennessee's proposal and public comments received during the pre-filing process, Commission staff have identified several expected impacts that deserve attention in the EIS. These include but are not limited to potential impacts on the Flynn Creek Impact Crater, Fort Blount, the Obed Wild & Scenic River and tributary crossings, socioeconomic and environmental justice concerns, water quality, threatened and endangered species, cultural resources, property values, safety concerns, and climate change.

**The NEPA Process and the EIS**

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics and environmental justice;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. The U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and National Park Service are cooperating agencies in the preparation of the EIS.[3] Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary[4] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-* documents). If eSubscribed, you will receive instant email notification when the environmental document is issued.

**Alternatives Under Consideration**

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[5] Alternatives currently under consideration include:

- the no-action alternative, meaning the Project is not implemented;
- existing natural gas transportation system alternatives;
- pipeline alternatives; and
- aboveground facility alternatives.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

**Consultation Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate section 106 consultation with the applicable State Historic Preservation Office(s), and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[6] The EIS will document findings on the impacts on historic

[1] In its Kingston Fossil Plant Retirement Draft Environmental Impact Statement (88 FR 32215).

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40 Code of Federal Regulations (CFR), Section 1501.8 (2021).

[4] For instructions on connecting to eLibrary, refer to the last page of this notice.

[5] 40 CFR 1508.1(z).

[6] The Advisory Council on Historic Preservation's regulations are at Title 36 CFR part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

properties and summarize the status of consultations under section 106.

**Schedule for Environmental Review**

On July 28, 2023, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing Federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a Federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in February 2024.

Issuance of Notice of Availability of the final EIS—September 20, 2024

90-day Federal Authorization Decision Deadline [7]—December 19, 2024

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

**Permits and Authorizations**

The table below lists the anticipated permits and authorizations for the Project required under Federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

| Agency | Permit |
|---|---|
| Federal Energy Regulatory Commission | Certificate of Public Convenience and Necessity under Section 7(c) of the NGA. |
| U.S. Army Corps of Engineers, Nashville District | Authorization under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act; Permission under Section 14 of the Rivers and Harbors Act (Section 408). |
| Tennessee Valley Authority | Section 26a of the Tennessee Valley Authority Act Authorization. |
| U.S. Fish and Wildlife Service, Tennessee Field Office | Consultation under Section 7 of the Endangered Species Act, Bald and Golden Eagle Protection Act, and Migratory Bird Treaty Act. |
| Tennessee Department of Environment and Conservation, Water Division. | Section 401 Water Quality Certification (Joint Application with U.S. Army Corps of Engineers). |
| Tennessee Historical Commission | National Historic Preservation Act, Section 106 Consultation. |

**Environmental Mailing List**

This notice is being sent to the Commission's current environmental mailing list for the Project which includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

*If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:*

Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP23–516–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

*OR*

(1) Return the attached ''Mailing List Update Form'' (appendix 2).

**Additional Information**

Additional information about the Project is 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. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP23–516). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: September 18, 2023.

**Kimberly D. Bose,**

*Secretary.*

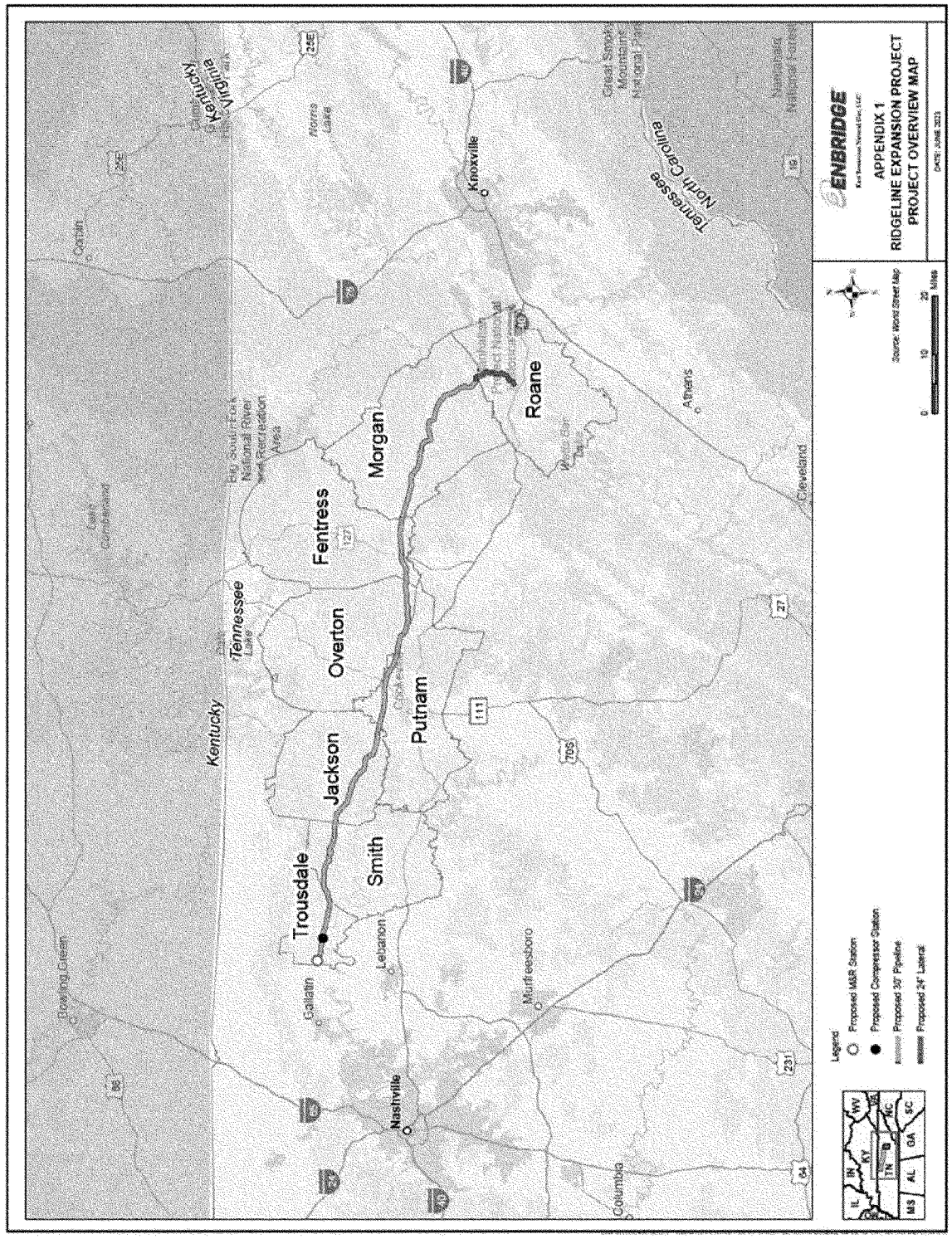
BILLING CODE 6717–01–P

# Appendix 1

[7] The Commission's deadline applies to the decisions of other Federal agencies, and state agencies acting under federally delegated authority, that are responsible for Federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by Federal law.

Docket No. CP23-516-000

Appendix 1



# Appendix 2

Docket No. CP23-516-000 Appendix 2

**MAILING LIST UPDATE FORM**

**Ridgeline Expansion Project**

**Name**_____

**Agency**_____

**Address**_____

**City**_____**State**_____ **Zip Code**_____

☐ **Please update the mailing list**

☐ **Please remove my name from the mailing list**

**FROM**_____

_____

_____

**ATTN: OEP - Gas 2, PJ - 11.2**
**Federal Energy Regulatory Commission**
**888 First Street NE**
**Washington, DC 20426**

**Docket No. CP23-516-000**
**Ridgeline Expansion Project**

**Staple or Tape Here**

[FR Doc. 2023–20571 Filed 9–21–23; 8:45 am]
**BILLING CODE 6717–01–C**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–11389–01–OCSPP]**

## Access to Confidential Business Information by Eastern Research Group (ERG) and Its Subcontractors

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized the following contractor and subcontractors to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA), some of which may be claimed or determined to be confidential business information (CBI): Eastern Research Group Inc. (ERG) of Lexington, MA/Chantilly, VA and its subcontractors as listed in Unit III.

**DATES:** Access will occur no sooner than September 29, 2023.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *https://www.regulations.gov.* Additional instructions on accessing the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Colby Lintner, Program Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8182; email address: *lintner.colby@epa.gov* or Adam Schwoerer; telephone number: (202) 564–4767; email address: *schwoerer.adam@epa.gov.*

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

**SUPPLEMENTARY INFORMATION:**

### I. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Because other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

### II. What is the Agency's authority for taking this action?

This notice is provided pursuant to section 14 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* and EPA implementing regulations in 40 CFR part 2.

### III. What action is the Agency taking?

Under EPA contract number 68HERC23D0006, Eastern Research Group (ERG) and its subcontractors as identified in this unit will provide support for Chemical Screening, Review, and Evaluation of New, Existing, and Safer Choice Chemical Substances in accordance with the Performance Work Statement which are vital to Agency personnel to make informed decisions on environmental issues and other information that maybe claimed as TSCA CBI in accordance with the TSCA Security Manual.

In accordance with 40 CFR 2.306(j), EPA has determined that to perform successfully the duties specified under EPA contract number 68HERC23D0006, the contractor and its subcontractors will require access to information that may contain CBI submitted under all sections of TSCA. As such, personnel of the contractor and its subcontractors will be given access to information that may be claimed or determined to be CBI information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA will provide the herein identified contractor and its subcontractors with access to the CBI

materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, and/or at the following facilities of the contractor and/or subcontractors:

- Eastern Research Group (ERG), located at 110 Hartwell Ave., Lexington, MA 02421 and 14555 Avion Parkway, Suite 200, Chantilly, VA;
- Avanti Corporation, located at 5695 King Centre Dr., #301, Alexandria, VA 22315;
- Kathleen Wolf, located at 22319 43rd Dr. SE, Bothell, WA 98021;
- Lopez Environmental, located at 413 Patton Ave., Piscataway, NJ 08854;
- Northwest Green Chemistry/Institute for Safer Chemical Alternatives, located at 121 Elmwood Road, Lunenburg, MA 01462–1464;
- Park Northwest Pollution Prevention Resource Center, located at 13751 Lake City Way NE, Suite 305, Seattle, WA 98125;
- Research Triangle Institute, located at 3040 E Cornwallis Road, RTP, NC 27709;
- Ross Strategic, located at 1325 4th Ave., Suite 1600, Seattle, WA 98101;
- Rumley Solutions, Inc., DBA Hummingbird, located at 976 Brady Ave. NW, Suite 100, Atlanta, GA 30318;
- Syracuse Research Corporation, Inc. (SRC), located at 7502 Round Pond Rd., North Syracuse, NY 13212; and
- At the telework locations of the personnel of the contractor and subcontractors in accordance with EPA's *TSCA CBI Protection Manual* and the Rules of Behavior for Virtual Desktop Access to OPPT Materials, including TSCA CBI.

Access to TSCA data, including CBI, will continue until November 30, 2027. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

The personnel of the contractor and subcontractors will be required to sign nondisclosure agreements and will be briefed on specific security procedures for TSCA CBI.

*Authority:* 15 U.S.C. 2601 *et seq.*

Dated: September 18, 2023.

**Pamela Myrick,**

*Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2023–20575 Filed 9–21–23; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL OP–OFA–087]**

## 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 September 11, 2023 10 a.m. EST Through September 18, 2023 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. 20230122, Draft, FTA, WA,* Operations and Maintenance Facility South NEPA Draft/SEPA Supplemental Draft, Environmental Impact Statement, *Comment Period Ends:* 11/06/2023, *Contact:* Justin Zweifel 206–220–7538.

*EIS No. 20230123, Final, FERC, VA,* Virginia Reliability Project and Commonwealth Energy Connector Project, *Review Period Ends:* 10/23/2023, *Contact:* Office of External Affairs 866–208–3372.

### Amended Notice

*EIS No. 20230098, Draft, NPS, MT,* Yellowstone National Park Bison Management Plan Draft Environmental Impact Statement, *Comment Period Ends:* 10/10/2023, *Contact:* Morgan Warthin, Public Affairs Specialist, Yellowstone National Park 307–344–2010. Revision to FR Notice Published 08/11/2023; Extending the Comment Period from 09/25/2023 to 10/10/2023.

Dated: September 18, 2023.

**Cindy S. Barger,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2023–20591 Filed 9–21–23; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–11280–01–R1]**

## Notice of Availability of Draft NPDES Non-Contact Cooling Water General Permit

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

**ACTION:** Notice of availability of draft NPDES General Permits MAG250000 and NHG250000.

**SUMMARY:** The Director of the Water Division, U.S. Environmental Protection Agency, Region 1 (EPA), is providing a Notice of Availability for the Draft National Pollutant Discharge Elimination System (NPDES) Non-Contact Cooling Water General Permit (Draft NCCW GP) for discharges to certain waters of the Commonwealth of Massachusetts and the State of New Hampshire. This Draft NCCW GP establishes effluent limitations and requirements, effluent and ambient monitoring requirements, reporting requirements, and standard conditions for existing facilities with non-contact cooling water discharges. The Draft NCCW GP is available on EPA Region 1's website at *https://www.epa.gov/npdes-permits/noncontact-cooling-water-general-permit-nccw-gp-massachusetts-new-hampshire.* The Fact Sheet for the Draft NCCW GP sets forth principal facts and the significant factual, legal, methodological, and policy questions considered in the development of the Draft Permit and is also available at this website.

**DATES:** The public comment period will be open until November 21, 2023. See EPA's web page for the applicable dates, *https://www.epa.gov/npdes-permits/noncontact-cooling-water-general-permit-nccw-gp-massachusetts-new-hampshire.*

**ADDRESSES:** Written comments on the Draft NCCW GP may be sent via email to: *Papadopoulos.George@epa.gov.* If requesting to submit comments in hard copy form, please reach out to the EPA contact above.

**FOR FURTHER INFORMATION CONTACT:** The administrative record and additional information concerning the Draft NCCW GP may be obtained from George Papadopoulos via telephone: 617–918–1579 or email *Papadopoulos.George@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Public Comment Information:* Interested persons may submit written comments on the Draft NCCW GP to EPA Region 1 at the address listed

above. In reaching a final decision on this Draft Permit, the Regional Administrator will respond to all significant comments and make responses available to the public on EPA Region 1's website. All comments must be postmarked or delivered by the close of the public comment period.

*General Information:* The Draft NCCW GP includes effluent limitations and requirements for eligible facilities based on technology and/or water quality considerations of the unique discharges from these facilities. The effluent limits established in the Draft NCCW GP ensure that the surface water quality standards of the receiving water(s) will be attained and/or maintained.

*Obtaining Authorization:* To obtain coverage under the General Permit, facilities meeting the eligibility requirements outlined in Part 1 of this General Permit may submit a notice of intent (NOI) in accordance with Part 5 of this General Permit and 40 CFR 122.28(b)(2)(i) & (ii). The contents of the NOI shall include at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, the receiving stream(s) and be signed by the operator in accordance with the requirements of 40 CFR 122.22.

*Other Legal Requirements: Endangered Species Act (ESA):* In accordance with the ESA, EPA has updated the provisions and necessary actions and documentation related to potential impacts to threatened and endangered species from discharges of NCCW eligible for coverage under the Draft NCCW GP. Concurrently with the public notice of the Draft NCCW GP, EPA plans to initiate an informal consultation with the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) under ESA section 7, through the submission of a biological assessment (BA) and request for concurrence letter summarizing the results of EPA's assessment of the potential effects to endangered and threatened species and their critical habitats under NOAA Fisheries jurisdiction as a result of EPA's issuance of the Draft NCCW GP.

In this document, EPA has made a preliminary determination that the proposed issuance of the Draft NCCW GP is not likely to adversely affect the shortnose sturgeon, Atlantic sturgeon, Atlantic sturgeon designated critical habitat, leatherback sea turtles, loggerhead sea turtles, Kemp's ridley sea turtles, green sea turtles, North Atlantic right whales, North Atlantic right whale designated critical habitat and fin whales. EPA plans to request that NOAA Fisheries review this submittal and inform EPA whether it concurs with this preliminary finding. In addition, EPA has addressed its responsibilities with the U.S. Fish and Wildlife Service (USFWS) under ESA section 7, through an assessment of the potential effects to endangered and threatened species and their critical habitats under USFWS jurisdiction as a result of EPA's issuance of the Draft NCCW GP. As part of the assessment, EPA prepared an Effects Determination for the endangered northern long eared bat. The USFWS recorded the determination of ''No Effect'' on the northern long-eared bat by letter, dated March 30, 2023.[1] The determination of ''No Effect'' concluded EPA's consultation responsibilities for the NCCW GP NPDES permitting action under ESA section 7(a)(2) with respect to the northern long-eared bat. EPA also made the assessment that no action areas expected to be covered by the Draft NCCW GP overlap with the documented habitat of the dwarf wedgemussel[2] in the Connecticut River Watershed. Therefore, no ESA section 7 consultation is required for the dwarf wedgemussel with USFWS for this GP.

*Essential Fish Habitat (EFH):* Under the 1996 Amendments (Pub. L. 104–267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* (1998)), EPA is required to consult with NOAA Fisheries if EPA's actions or proposed actions that it funds, permits or undertakes ''may adversely impact any essential fish habitat.'' 16 U.S.C. 1855(b). In the Fact Sheet accompanying the Draft NCCW GP, EPA notes that the general permit action minimizes adverse effects to aquatic organisms, including those with designated EFH in the receiving waters. EFH species associated with the receiving waters of facilities covered by the Draft NCCW GP may include Atlantic salmon as well as the life stages of a number of coastal EFH designated species, along with three habitat areas of particular concern. EPA has made the determination that additional mitigation is not warranted under section 305(b)(2) of the Magnuson-Stevens Act and has provided this determination to NOAA Fisheries for their review.

*National Historic Preservation Act (NHPA):* Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the NHPA are not authorized to discharge under the Draft NCCW GP. EPA is requesting that facilities certify, prior to obtaining coverage, that there are either no historic properties present or that their discharge and related activities do not have the potential to impact historic properties.

*Coastal Zone Management Act (CZMA):* The CZMA, 16 U.S.C. 1451 *et seq.,* and its implementing regulations (15 CFR part 930) require a determination that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) is consistent with the CZMA.

Concurrent with the public notice, EPA will request that the Executive Office of Environmental Affairs, MA CZM, Project Review Coordinator provide a consistency concurrence that the proposed Draft NCCW GP is consistent with the MA CZMP.

Concurrent with the public notice, EPA will request that the New Hampshire Coastal Program, Project Review Coordinator, provide a consistency concurrence that the proposed Draft NCCW GP is consistent with the NH CZMP.

*Authority:* This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

**David Cash,**

*Regional Administrator, EPA Region 1.*

[FR Doc. 2023–20557 Filed 9–21–23; 8:45 am]

**BILLING CODE 6560–50–P**

[1] USFWS New Hampshire Project code: 2022–0065502, March 30, 2023. USFWS Massachusetts Project code: 2022–0065493, March 30, 2023.

[2] *https://ipac.ecosphere.fws.gov/.*

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2015–0435; FRL–10678–01–OCSPP]**

## Agency Information Collection Activities; Proposed Renewal and Request for Comment; Notification of Chemical Exports Under TSCA Section 12(b)

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this document announces the availability of and solicits public comment on the following Information Collection Request (ICR) that EPA is planning to submit to the Office of Management and Budget (OMB): ''Notification of Chemical Exports—TSCA Section 12(b),'' identified by EPA ICR No. 0795.17 and OMB Control No. 2070–0030. This ICR represents the renewal of an approved ICR that is currently scheduled to expire on May 31, 2024.

Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

**DATES:** Comments must be received on or before November 21, 2023.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0435, 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 or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Katherine Sleasman, Mission Support Division (7602M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1204; email address: *sleasman.katherine@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

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 estimates 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 submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## II. What information collection activity or ICR does this action apply to?

*Title:* Notification of Chemical Exports—TSCA Section 12(b).

*EPA ICR No.:* 0795.17.

*OMB Control No.:* 2070–0030.

*ICR status:* This ICR is currently approved through May 31, 2024. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* This ICR covers the information collection activities associated with the reporting and recordkeeping requirements under section 12(b) of the Toxic Substances Control Act (TSCA) which requires any person who exports or intends to export to a foreign country a chemical substance or mixture for which submission of information is required under TSCA sections 4 or 5(b), or for which a rule, action or order has been proposed or promulgated under TSCA sections 5, 6, or 7, shall notify EPA of such export or intent to export. The Agency must, in turn, notify the government of the importing country of the notice and of EPA's regulatory action with respect to the substance.

In implementing TSCA section 12(b), EPA described the notification requirements applicable to persons exporting chemicals, including frequency of notification, covered chemicals, and content of the notification. See 40 CFR part 707, subpart D. In summary, the export notice must include five easily ascertainable items: (1) The name and address of the exporter; (2) The name of the chemical; (3) The country of import, (4) The date of export or intended export; and (5) The section of TSCA under which EPA has taken action (*i.e.,* TSCA sections 4, 5, 6 or 7). There are currently over 1,000 substances or categories of substances that have been regulated or proposed to be regulated under the applicable sections of TSCA. For additional information about export requirements under TSCA, visit our website at *https://www.epa.gov/tsca-import-export-requirements.*

*Burden statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.62 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

*Respondents/affected entities:* Respondents to this collection are exporters of chemical substances regulated under TSCA, which are mostly chemical companies classified under the North American Industrial Classification System (NAICS) codes 325 and 324.

*Respondent's obligation to respond:* Responses are mandatory under TSCA section 12(b), as implemented by 40 CFR part 707, subpart D.

*Forms:* EPA Form 9600–031.

*Frequency of response:* On occasion.

*Total estimated number of potential respondents:* 266.

*Total estimated average number of responses for each respondent:* 18.

*Total estimated annual number of responses:* 4,788.

*Total estimated annual burden:* 2,968 hours.

*Total estimated annual costs:* $184,690. This includes an estimated burden cost of $184,690 and an estimated cost of $0 for capital investment or maintenance and operational costs.

## III. Are there changes in the estimates from the last approval?

This ICR renewal's estimate reflects a slight increase of 34 hours from that which is currently approved (*i.e.,* 2,934 to 2,968 hours). This is the net result from a decrease in burden caused by assuming 100 percent electronic submissions despite a small increase in burden due to a larger number of respondents compared to the previous ICR.

## IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional

comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Authority:* 44 U.S.C. 3501 *et seq.*

Dated: September 18, 2023.

**Michal Freedhoff,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2023–20548 Filed 9–21–23; 8:45 am]

**BILLING CODE 6560–50–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice–PBS–2023–08; Docket No. 2023–0002; Sequence No. 28]**

## Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Grand Portage Land Port of Entry Modernization and Expansion Project in Grand Portage, Minnesota

**AGENCY:** Public Buildings Service (PBS), General Services Administration (GSA).

**ACTION:** Notice of intent (NOI); announcement of meeting.

**SUMMARY:** GSA intends to prepare an Environmental Impact Statement (EIS) and conduct the section 106 process of the National Historic Preservation Act (NHPA) to address proposed improvements at the Grand Portage Land Port of Entry (LPOE), including site expansion, demolition, and new construction. This NOI also announces the public scoping process for the EIS.

**DATES:**

*Public Scoping Period*—Interested parties are invited to provide comments regarding the scope of the EIS. The public scoping period begins with the publication of this NOI in the **Federal Register** and continues until Sunday, October 22, 2023. Written comments must be received by the last day of the scoping period (see **ADDRESSES** section of this NOI on how to submit comments).

*Meeting Date*—GSA will host a hybrid (virtual and in-person) public and stakeholder meeting on Thursday, October 5, 2023, from 5:00 p.m. to 7:00 p.m., Central Daylight Time (CDT). The purpose of the meeting is to provide information on the project and to encourage public feedback on the scope of the EIS. The meeting will be conducted in-person at the Grand Portage Welcome Center, but members of the public may participate via video-conference on Zoom to view an online broadcast of the meeting (see **ADDRESSES** section for location address). Refer to the Public Meeting Information section of this NOI on how to access the online portion of the public meeting.

**ADDRESSES:** *Meeting Location*—The public may attend the meeting at the Grand Portage Welcome Center, 9393 E MN–61, Grand Portage, MN to view the presentation in-person. GSA staff members will be available (in-person and virtually) to assist the public as they offer comments whether they are participating virtually or in person.

### Public Scoping Comments

In addition to oral comments and written comments provided at the public meeting, members of the public may also submit comments by one of the following methods. All oral and written comments will be considered equally and will be part of the public record.

- *Email: michael.gonczar@gsa.gov.* Please include '*Grand Portage LPOE EIS Scoping Comment*' in the subject line of the message.
- *Mail: ATTN: Michael Gonczar, GSA Grand Portage LPOE EIS;* U.S. General Services Administration, Region 5; 230 S Dearborn Street, Suite 3600, Chicago, IL 60604.

**FOR FURTHER INFORMATION CONTACT:** Michael Gonczar, NEPA Program Manager, GSA, 312–810–2326, *michael.gonczar@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Public Meeting Information

The in-person meeting will begin with an open house format from 5:00 p.m. to 5:30 p.m. CDT. This portion of the meeting will not be broadcasted. The hybrid public meeting will begin at 5:30 p.m. with presentations on the NEPA and NHPA processes and the proposed project. A copy of the presentation slideshow will be made available prior to the meeting at: *https://www.gsa.gov/real-estate/gsa-properties/land-ports-of-entry-and-the-bil/bipartisan-infrastructure-law-construction-project/minnesota.* Following the presentation, there will be a moderated session during which members of the public can provide scoping comments. Members participating virtually or attending in-person will be able to comment. Commenters will be allowed 3 minutes to provide comments. Comments will be recorded. Attendees can also provide written comments at the public meeting should they not wish to speak. In addition, a court reporter will be available after the presentation, should attendees wish to provide a verbal comment in private. All written or verbal comments will be treated with equal importance. Following the presentation and public comment session, the meeting will continue with an open house format until 7:00 p.m. CDT, which will not be broadcasted.

Members of the public may join the EIS virtual public meeting by entering the Meeting ID: 889 5436 6939, using any of the below methods, or by using the following link *https://us06web.zoom.us/j/88954366939?pwd=WDZXQTc2dDM3UUtYc3pyN0FVS1lNUT09.* Note that the meeting is best viewed through the Zoom app. Attendees are encouraged to download the Zoom app at the Zoom website (*https://zoom.us*) on their personal computer or on their mobile device and test their connection prior to the meeting to ensure best results.

- By personal computer (via the Zoom app)—Install the Zoom app at the Zoom website (*https://zoom.us*) and launch the Zoom app. Click '*Join a Meeting*' and enter the above Meeting ID. Follow the prompts to enter your name and email address to access the meeting; or
- By personal computer (via the Zoom website)—Using your computer's browser, go to the Zoom website at *http://zoom.us/join* and enter the above Meeting ID. Click '*Join from your browser*' and follow the prompts to enter your name; or
- By mobile device (via the Zoom mobile app)—Install and launch the Zoom app. Enter the above Meeting ID.

Whether joining through the Zoom app or web browser, attendees should follow the prompts to connect their computer audio. Attendees are encouraged to connect through the '*Computer Audio*' tab and click '*Join Audio by Computer*' under the '*Join Audio*' button on the bottom of their screen. Users who do not have a computer microphone and wish to provide a comment during the meeting may connect by following the prompts under the '*Phone Call*' tab under the '*Join Audio*' button.

For members of the public who do not have access to a personal computer, they may join the meeting audio by dialing the following number: 507–473–4847. When prompted, enter the following information: Meeting ID—889 5436 6939, followed by the pound (#) key; then press pound (#) again when prompted for a participant ID. Note, dialing in to the meeting is only necessary if you are not accessing the meeting through a personal computer or mobile app, or if you would like to provide oral comments during the meeting but do not have a computer microphone.

The public meeting will be recorded and available for viewing on the GSA website in the days following the

meeting. All comments provided will become part of the formal record.

**Scoping Process**

The purpose of the public scoping process is to identify relevant issues that will influence the scope of analysis of the human and natural environment including cultural resources. The scoping process will be accomplished through a hybrid in-person and virtual public scoping meeting, direct mail correspondence to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, an interest in the project. The EIS will include public input on alternatives and impacts.

The public scoping meeting will also initiate GSA's public consultation required by NHPA. GSA seeks input at this meeting that will assist the agency in planning for the Section 106 consultation process. This includes identifying consulting parties, determining the area of the undertaking's potential effects on cultural resources (Area of Potential Effects), and seeking agreement regarding ways to avoid, minimize, or mitigate adverse effects. Federal, state, and local agencies, along with members of the public, are invited to participate in the NEPA scoping and section 106 consultation process.

The NHPA and NEPA are two separate laws which require federal agencies to consider the impacts to historic properties and the human environment before making decisions. NHPA and NEPA are independent statutes, yet may be executed concurrently to optimize efficiencies, transparency, and accountability to better understand the effects to the human, natural, and cultural environment. The EIS will be prepared pursuant to the requirements of the NEPA of 1969, the Council on Environmental Quality NEPA regulations, and the GSA Public Buildings Service *NEPA Desk Guide.* GSA will also consult with appropriate parties in accordance with Section 106 of the NHPA of 1966.

Opportunities for members of the public to become a consulting party during the NHPA Section 106 process will be presented during the public scoping meeting. You may submit a comment to express your interest in being a consulting party if you cannot attend the meeting.

**Background**

The existing 5.7-acre LPOE is located on the far northeast tip of Minnesota where the Pigeon River meets Lake Superior and serves as the port of entry to people and vehicles that connects Grand Portage, Minnesota to the town of Neebing, Ontario, Canada. The LPOE is located within the Grand Portage Band of Lake Superior Chippewa Reservation. The Grand Portage Band of the Lake Superior Chippewa will serve as a Cooperating Agency (CA) for this EIS. The purpose of the Proposed Action is for GSA to support CBP's mission by bringing the Grand Portage LPOE in line with current land port design standards and operational requirements of CBP, while addressing existing deficiencies identified with the ongoing port operations. Current LPOE facilities and configurations do not meet CBP's needs and do not allow for expeditious and safe inspection of the traveling public. The LPOE facilities were constructed in 1965, are too small for CBP's needs, and are served by an inefficient road design. Currently, the LPOE contains a main building with primary and secondary inspection canopies, secondary inspection garage, and public restroom facilities located between the northbound and southbound lanes of Highway 61. There are two inbound primary inspection lanes; one for non-commercial vehicles and one for buses and commercial traffic. A commercial inspection dock and GSA garage are located north of the inbound lanes of Highway 61. There are currently no outbound inspection capabilities at the LPOE.

A feasibility study for this project was completed in 2019. A total of three build alternatives were considered, and a preferred build alternative was identified. This alternative would consist of demolishing the existing building, constructing new facilities at the existing LPOE, and expanding the LPOE to meet the required space standards and increased security requirements of the Federal Inspection Services.

Following the feasibility study, a Program Development Study (PDS) is the next formal step to further refine the build alternatives, so as to develop a facility plan that is respectful of the Grand Portage Band of Lake Superior Chippewa Reservation property and including the Grand Portage State Park. To date, GSA has issued a 35 percent PDS report in December 2022 and 50 percent PDS report in May 2023; the final alternative design that would support construction will be identified in the 100 percent PDS. As of the 50 percent PDS, the identified build alternative is located on an approximately 8.13-acre site on and around the existing Grand Portage LPOE and is located entirely within the Minnesota Department of Transportation (MnDOT) easement along Highway 61.

**Alternatives Under Consideration**

GSA has preliminarily identified one action alternative that may be assessed in the EIS:

- *Alternative 1:* Construct the facilities as described in the 50 percent PDS on an 8.13-acre site on and around the existing Grand Portage LPOE and located entirely within the MnDOT easement.

The No Action Alternative will also be considered to satisfy federal requirements for analyzing ''no action'' under NEPA. Analysis of this alternative will provide a baseline for comparison with impacts from Alternative 1.

The EIS will address the potential environmental impacts of the proposed alternatives on environmental resources including cultural resources, geology and soils, water resources, biological resources, air quality and climate change, noise, traffic and transportation, land use and visual resources, utilities, and human health and safety. The EIS will also address the socioeconomic effects of the project, as well as impacts on environmental justice (EJ) populations. Impacts may occur from air emissions, noise, and traffic delays associated with construction; as well as soil disturbance from earth moving activities and resultant sedimentation of nearby waterways. Close consideration will be given to potential impacts to cultural resources, and GSA will work closely with the Grand Portage Band of the Lake Superior Chippewa to determine if there are any potential impacts to sensitive tribal resources. Wetlands may be present near the project site; and a wetland delineation will be conducted to further investigate potential impacts. Long term benefits to traffic and transportation, air quality, and the local economy are expected from operations of the expanded and modernized LPOE and associated improved traffic flows.

**William Renner,**

*Director, Facilities Management and Services Programs Division, Great Lakes Region 5, U.S. General Services Administration.*

[FR Doc. 2023–20381 Filed 9–21–23; 8:45 am]

BILLING CODE 6820–CF–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Determination Concerning a Petition To Add a Class of Employees to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) gives notice of a determination concerning a petition to add a class of employees from the Sandia National Laboratories in Albuquerque, New Mexico to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

**FOR FURTHER INFORMATION CONTACT:** Grady Calhoun, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–45, Cincinnati, OH 45226–1938, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

**SUPPLEMENTARY INFORMATION:** On August 8, 2023, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

''All personnel that worked in any area at Sandia National Laboratories in Albuquerque, New Mexico, for the period from January 1, 1997, through May 21, 2011.''

*Authority:* [42 U.S.C. 7384q].

**John J. Howard,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.*

[FR Doc. 2023–20538 Filed 9–21–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Office of Refugee Resettlement Annual Survey of Refugees (Office of Management and Budget #0970–0033)

**AGENCY:** Office of Refugee Resettlement, Administration for Children and Families, United States Department of Health and Human Services.

**ACTION:** Request for public comments.

**SUMMARY:** The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services seeks an update to the existing data collection for the Annual Survey of Refugees. The Annual Survey of Refugees is a yearly sample survey of refugee households entering the U.S. in the previous 5 fiscal years. The requested update is based upon results of a multi-year effort in instrument redesign and field testing. ACF estimates the proposed changes will increase response burden from 48 to 50 minutes per respondent.

**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:* Data from the Annual Survey of Refugees are used to meet the Office of Refugee Resettlement's (ORR) Congressional reporting requirements, as set forth in the Refugee Act of 1980 (section 413(a) of the Immigration and Nationality Act). ORR makes survey findings available to the general public and uses findings for the purposes of program planning, policy-making, and budgeting. The requested update reflects changes to the survey instrument to: enhance ORR's understanding of refugees' resettlement experiences; streamline the collection of household-level information; and improve data reliability and validity. As a result of these changes, the estimated time to respond was updated from 48 to 50 minutes.

*Respondents:* The Annual Survey of Refugees secures a nationally representative sample of refugee households arriving in the United States in the previous 5 fiscal years.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Total number of responses per respondent | Average burden hours per response | Total burden hours | Annual burden hours |
|---|---|---|---|---|---|
| Introduction Letter and Postcard | 4,500 | 1 | .05 | 225 | 75 |
| ORR–9 Annual Survey of Refugees | 4,500 | 1 | .83 | 3,735 | 1,245 |

*Estimated Total Annual Burden Hours:* 1,320.

*Authority:* Sec. 413. [8 U.S.C. 1523].

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2023–20544 Filed 9–21–23; 8:45 am]

**BILLING CODE 4184–46–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–D–6530]**

### Formal Meetings Between the Food and Drug Administration and Sponsors or Applicants of Prescription Drug User Fee Act Products; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products.'' This draft guidance outlines the recommendations to industry on formal meetings between the FDA and sponsors or applicants relating to the development and review of new drug or biological drug products. This draft guidance replaces the guidance ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' issued on December 29, 2017.

**DATES:** Submit either electronic or written comments on the draft guidance by December 21, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2017–D–6530 for ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Mercier, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5390, Silver Spring, MD 20993–0002, 301–796–0957; or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products.'' This draft guidance outlines the recommendations to industry on formal meetings between FDA and sponsors or applicants relating to the development and review of drug or biological drug products as agreed upon during the Prescription Drug User Fee Act (PDUFA) VII negotiations. The draft guidance describes the different meeting types, formats, and timelines associated with those requests. It also provides industry with the information necessary to have a complete meeting request and background package to help facilitate the meeting to gain useful feedback for product development. The draft

guidance provides examples to help guide stakeholders on selecting and requesting the proper meeting type for a given scenario.

This draft guidance replaces the draft guidance entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' issued on December 29, 2017 (82 FR 61763). FDA considered comments received on the draft guidance as the guidance was revised. Changes made include the addition of Type D and Initial Targeted Engagement for Regulatory Advice on CDER and CBER ProducTs (INTERACT) meetings, request for clarification/followup opportunity correspondence, and virtual meetings as a face-to-face meeting.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 pertaining to meetings, including ''End-of-phase 2'' and ''pre-NDA'', have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 pertaining to formal meetings between sponsors or applicants and FDA have been approved under OMB control number 0910–0001. The collections of information pertaining to formal meetings between the FDA and sponsors or applicants for biological products have been approved under OMB control number 0910–0718.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 19, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–20592 Filed 9–21–23; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–D–3031]**

### Alternative Tools: Assessing Drug Manufacturing Facilities Identified in Pending Applications; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Alternative Tools: Assessing Drug Manufacturing Facilities Identified in Pending Applications.'' This draft guidance provides information to applicants on how FDA intends to use alternative tools to assess manufacturing facilities identified in a marketing application (*i.e.,* a new drug application (NDA), an abbreviated new drug application (ANDA), a biologics license application (BLA), or a supplement to any of these types of applications). As part of the negotiations relating to the reauthorization of the Prescription Drug User Fee Act (PDUFA) and the Biosimilar User Fee Act (BsUFA), as described in ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027'' (PDUFA VII commitment letter) and ''Biosimilar Biological Product Reauthorization Performance Goals and Procedures for Fiscal Years 2023 Through 2027'' (BsUFA III commitment letter), FDA agreed to issue guidance on the use of alternative tools to assess manufacturing facilities named in pending applications and to incorporate best practices from the use of such tools during the Coronavirus Disease 2019 (COVID–19) pandemic. This draft guidance, within the context of approval and licensure decisions by FDA, describes the use of alternative tools to assess manufacturing facilities identified in an NDA, an ANDA, or a BLA to establish that these facilities meet the applicable requirements, including under the Federal Food, Drug, and Cosmetic (FD&C Act) or the Public Health Service Act (PHS Act).

**DATES:** Submit either electronic or written comments on the draft guidance by November 21, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2023–D–3031 for ''Alternative Tools: Assessing Drug Manufacturing Facilities Identified in Pending Applications.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Jessica Dunn, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4214, Silver Spring, MD 20993–0002, 240–402–8985; or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Alternative Tools: Assessing Drug Manufacturing Facilities Identified in Pending Applications.'' This draft guidance provides information to applicants on how FDA intends to use alternative tools to assess manufacturing facilities identified in an NDA, an ANDA, a BLA, or a supplement to any of these types of applications. As part of the negotiations relating to the reauthorization of BsUFA and PDUFA, FDA agreed to issue guidance on the use of alternative tools to assess manufacturing facilities named in pending applications and to incorporate best practices from the use of such tools during the COVID–19 pandemic. This draft guidance, within the context of approval and licensure decisions by FDA, describes the use of alternative tools to assess manufacturing facilities identified in an NDA, an ANDA, or a BLA to establish that these facilities meet the applicable requirements, including under section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) and either section 505 of the FD&C Act (21 U.S.C. 355) or section 351 of the PHS Act (42 U.S.C. 262).

During the pandemic, FDA expanded its use of alternative tools to evaluate drug manufacturing facilities to support regulatory decision making when facility inspections were not feasible. Given the success of these innovative approaches, FDA intends to continue risk-based use of these alternative tools and to apply certain virtual technological capabilities within a specific inspectional context defined within this draft guidance. When used in advance or in lieu of preapproval inspections (PAIs) and prelicense inspections (PLIs) or to support PAIs and PLIs, the appropriate use of these approaches will help FDA maintain operational flexibility to support timely facility evaluations and application decisions.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Alternative Tools: Assessing Drug Manufacturing Facilities Identified in Pending Applications.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 210 and 211 pertaining to current good manufacturing practice requirements and electronic records and signatures have been approved under OMB control numbers 0910–0139 and 0910–0303, respectively. The collections of information in 21 CFR part 314 pertaining to the submission of NDAs and ANDAs have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 pertaining to BLAs have been approved under OMB control number 0910–0338.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 19, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–20590 Filed 9–21–23; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–N–0917]**

### In-Home Disposal Systems for Opioid Analgesics; Request for Information; Reopening of the Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; reopening of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is reopening the comment period for the notice entitled ''In-Home Disposal Systems for Opioid Analgesics; Request for Information'' published in the **Federal Register** of April 4, 2023. FDA is reopening the comment period to allow interested persons additional time to develop and submit comments.

**DATES:** FDA is reopening the comment period on the notice published April 4, 2023 (88 FR 19959). Either electronic or written comments must be submitted by November 6, 2023.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 6, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2023–N–0917 for ''In-Home Disposal Systems for Opioid Analgesics; Request for Information.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

**FOR FURTHER INFORMATION CONTACT:** Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137, *Kimberly.Lehrfeld@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 4, 2023 (88 FR 19959), FDA published a notice requesting information and comments that will assist the Agency in assessing whether in-home disposal products can be expected to meet the public health goal of mitigating the risk of nonmedical use or overdose if the Agency were to require drug manufacturers to make in-home disposal products available to patients under a risk evaluation and mitigation strategy. The Agency requested information and comments on the issues that were discussed at the public workshop convened by the National Academies of Sciences, Engineering, and Medicine's Forum on Drug Discovery, Development, and Translation entitled ''Defining and Evaluating In-Home Disposal Systems for Opioid Analgesics'' on June 26 and 27, 2023. Interested persons were originally given until August 28, 2023, to submit comments on in-home disposal systems for opioid analgesics.

FDA is reopening the public docket to allow interested persons additional time to submit comments. We note that there is a listening session on October 5, 2023, with federally recognized American Indian and Alaska Native tribes on the safe disposal of opioid analgesics. The Agency believes that reopening the comment period for an additional 45 days will allow adequate time for interested persons to submit comments without significantly delaying Agency decision-making on these important issues. FDA is reopening the comment period for 45 days, until November 6, 2023.

Dated: September 18, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–20516 Filed 9–21–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Secretary's Advisory Committee on Human Research Protections

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP, the full meeting agenda, and instructions for linking to public access will be posted on the SACHRP website at *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.*

**DATES:** The meeting will be held on Wednesday, October 18, 2023, from 9:00 a.m. until 5:00 p.m., and Thursday, October 19, 2023, from 9:00 a.m. until 4:00 p.m. (times are tentative and subject to change). The confirmed times and agenda will be posted on the SACHRP website as this information becomes available.

**ADDRESSES:** This meeting will be held in person and webcast. Members of the public may also attend the meeting via webcast. Instructions for attending via webcast will be posted at least one week prior to the meeting at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html.*

**FOR FURTHER INFORMATION CONTACT:** Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination.

The SACHRP meeting will open to the public at 9:00 a.m., on Wednesday, October 18, 2023, followed by opening remarks from Julie Kaneshiro, Acting Director of OHRP and Dr. Douglas Diekema, SACHRP Chair. The meeting will begin with an expert panel discussion on the ethical and regulatory considerations for the inclusion of LGBTQI+ populations in HHS research. This will be followed by discussion of IRB effectiveness, topic #4 of the recently published GAO report #GAO–23–104721, Institutional Review Boards: Actions Needed to Improve Federal Oversight and Examine Effectiveness. The meeting then will turn to a discussion of the best interests standard for permitting continued participation of subjects in a suspended or terminated research study. Following this the committee will discuss IRB review of research that may be considered uninformative.

On Thursday, October 19th, the committee will welcome ADM Rachel Levine for commentary and remarks; this will be followed by continued discussion of the previous day's topics. The meeting will adjourn by 4:00 p.m. October 19, 2023.

Time will be allotted for public comment on both days of the meeting. The public may submit written public comment in advance to *SACHRP@hhs.gov* no later than midnight October 13, 2023, ET. Written comments will be shared with SACHRP members and may read aloud during the meeting. Public comment must be relevant to topics being addressed by the SACHRP.

Dated: September 13, 2023.

**Julia G. Gorey,**

*Executive Director, SACHRP. Office for Human Research Protections.*

[FR Doc. 2023–20577 Filed 9–21–23; 8:45 am]

**BILLING CODE 4150–36–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; 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 Institute of Mental Health Special Emphasis Panel; Individually Measured Phenotypes to Advance Computational Translation in Mental Health (IMPACT–MH) (U01 & U24).

*Date:* October 19–20, 2023.

*Time:* 9:00 a.m. to 2:30 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:* Rebecca Steiner Garcia, 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 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; ALACRITY: Advanced Laboratories for Accelerating the Reach and Impact of Treatments for Youth and Adults with Mental Illness Centers.

*Date:* October 19, 2023.

*Time:* 1:00 p.m. to 5:00 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:* Regina Dolan-Sewell, 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, (240) 796–6785, *regina.dolan-sewell@nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Brain Behavior Quantification and Synchronization—Data Coordination and Artificial Intelligence Center.

*Date:* October 20, 2023.

*Time:* 11:00 a.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:* Evon Abisaid, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20852, 301–827–0399, *ereifejes@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 18, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–20525 Filed 9–21–23; 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 Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Center for Advancing Translational Sciences Advisory Council.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *http://videocast.nih.gov/.*

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 Advisory Council.

*Date:* September 28, 2023.

*Closed:* 11:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Center for Advancing Translational Sciences, National Institutes of Health, Building 31, Room F/G, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* 1:00 p.m. to 6:00 p.m.

*Agenda:* Report from the Center Director, ARPA–H Presentation, Program Updates (2), Clearance of Concepts (3).

*Place:* National Center for Advancing Translational Sciences, National Institutes of Health, Building 31, Room F/G, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, National Institutes of Health, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice no later than 15 days after the meeting at *NCATSCouncilInput@mail.nih.gov.* The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(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: September 18, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–20532 Filed 9–21–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

*Date:* October 12–13, 2023.

*Time:* 10:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* James W. Mack, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

*Name of Committee:* Biology of Development and Aging Integrated Review Group; Mechanisms of Cancer Therapeutics A Study Section.

*Date:* October 16–17, 2023.

*Time:* 8:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Careen K. Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, *tothct@csr.nih.gov.*

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Pathophysiology of Eye Disease—1 Study Section Pathophysiology of Eye Disease—1 Study Section (PED1).

*Date:* October 16–17, 2023.

*Time:* 9:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Afia Sultana, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827–7083, *sultanaa@mail.nih.gov.*

*Name of Committee:* Healthcare Delivery and Methodologies Integrated Review Group; Clinical Management in General Care Settings Study Section.

*Date:* October 16–17, 2023.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Place Georgetown, 2121 M Street NW, Washington, DC 20037.

*Contact Person:* Jessica Campbell Chambers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–5693, *jessica.chambers@nih.gov.*

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cell Signaling and Molecular Endocrinology Study Section.

*Date:* October 16–17, 2023.

*Time:* 10:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Latha Malaiyandi, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812Q, Bethesda, MD 20892, (301) 435–1999, *malaiyandilm@csr.nih.gov*.

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

*Date:* October 16–17, 2023.

*Time:* 10:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov*.

*Name of Committee:* Oncology 1—Basic Translational Integrated Review Group; Gene Regulation in Cancer Study Section.

*Date:* October 16–17, 2023.

*Time:* 10:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Manzoor A. Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@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: September 18, 2023.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–20524 Filed 9–21–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *http://videocast.nih.gov*.

*Name of Committee:* National Cancer Institute Council of Research Advocates.

*Date:* October 4, 2023.

*Time:* 12:00 p.m. to 3:15 p.m.

*Agenda:* Welcome and Chairwoman's Remarks, NCI Director's Update, NCI Updates, and Legislative Update.

*Place:* Porter Neuroscience Research Center, National Institutes of Health, Building 35A, Room 610, 35 Convent Drive, Bethesda, MD 20892–2580 (Hybrid Meeting).

*Contact Person:* Amy Williams, Acting Director, NCI Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892, (240) 781–3406, *williaam@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: NCRA: *http://deainfo.nci.nih.gov/advisory/ncra/ncra.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 18, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–20526 Filed 9–21–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7076–N–16]**

### 60-Day Notice of Proposed Information Collection: Rental Assistance Demonstration (RAD) Application Forms; OMB Control No.: 2577–0278

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* November 21, 2023.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can 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 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard for a copy of the proposed forms or other available information, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email: *PaperworkReductionActOffice@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Leea Thornton, Office of Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone (202–402–6455). This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Thornton.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

### A. Overview of Information Collection

*Title of Information Collection:* Rental Assistance Demonstration (RAD) Application Forms.

*OMB Approval Number:* 2577–0278.

*Type of Request* Reinstatement to discontinue collection.

*Form Number:* 5260 RAD Application; HUD–5261 RAD Mod Rehab Application.

*Description of the need for the information and proposed use:* The Rental Assistance Demonstration allows Public Housing and Moderate Rehabilitation (Mod Rehab) properties to convert to long-term Section 8 rental assistance contracts; and Rent Supplement (Rent Supp), Rental Assistance Payment (RAP), and Mod Rehab properties, upon contract expiration or termination, to convert tenant protection vouchers (TPVs) to project-based vouchers (PBVs). Participation in the initiative will be voluntary. Public Housing agencies and Mod Rehab owners interested in participating in the Demonstration are required to submit applications to HUD. HUD intends through the conversion process, to assure the physical and financial sustainability of properties and enable owners to leverage private financing to address immediate and long-term capital needs, improve operations, and implement energy efficiency improvements. The RAD applications are Excel based and will be pre-populated with data the Department collects and maintains for each housing agencies. Information collected by the applications will allow the Department to determine which applicants meet the eligibility requirements and have the capacity to successfully meet RAD's mission delineated in PIH Notice PIH–2012–32, REV–2: Rental Assistance Demonstration.

*Respondents* (*i.e.,* affected public): State, Local or Tribal Government.

*Estimated Number of Respondents:* The estimated number of respondents is 8,855 annually with one response per respondent.

*Estimated Number of Responses:* 8,855.

*Frequency of Response:* Once.

*Average Hours per Response:* 2 Hours.

*Total Estimated Burdens:* 17,710.

### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

### C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

**Nicholas Bilka,**

*Chief, Office of Policy, Programs and Legislative Initiatives*

[FR Doc. 2023–20558 Filed 9–21–23; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF THE INTERIOR

### Geological Survey

**[GX23EE000101100]**

### Public Meeting of the National Geospatial Advisory Committee

**AGENCY:** Geological Survey, Department of the Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (FACA) of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal Advisory Committee meeting of the National Geospatial Advisory Committee (NGAC) will take place and is open to members of the public.

**DATES:** The meeting will be held on Wednesday, October 11, 2023, from 9:00 a.m. to 5:00 p.m. and on Thursday, October 12, 2023, from 9:00 a.m. to 5:00 p.m. (Eastern Daylight Time).

**ADDRESSES:** The meeting will be held at the Department of the Interior Building, 1849 C Street NW, Washington, DC 20240 in the South Penthouse Conference Room. Members of the public may attend the meeting in person or can attend via webinar. Instructions for registration to attend the meeting will be posted at *www.fgdc.gov/ngac.* Comments can be sent by email to *gs-faca@usgs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. John Mahoney, Federal Geographic Data Committee (FGDC), USGS, by mail at 909 First Avenue, Room 703, Seattle, WA 98104; by email at *jmahoney@usgs.gov* or by telephone at (206) 375–2565.

**SUPPLEMENTARY INFORMATION:** This meeting is being held consistent with the provisions of the FACA of 1972 (5 U.S.C. ch. 10), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR part 102–3.

*Purpose of the Meeting:* The NGAC provides advice and recommendations related to management of Federal and national geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of the Geospatial Data Act of 2018 (GDA) and the Office of Management and Budget Circular A–16. The NGAC reviews and comments on geospatial policy and management issues and provides a forum to convey views representative of non-federal stakeholders in the geospatial community. The NGAC is one of the primary ways that the FGDC collaborates with its broad network of partners. Additional information about the NGAC is available at: *www.fgdc.gov/ngac.*

### Agenda Topics

—FGDC Update
—Landsat Advisory Group
—3D Elevation Program
—Geospatial Data Act
—NSDI Strategic Planning
—FAIR Data
—Public Comment

*Meeting Accessibility/Special Accommodations:* The meeting is open to the public. Members of the public wishing to attend the meeting should visit *www.fgdc.gov/ngac* or contact Mr. John Mahoney (see **FOR FURTHER INFORMATION CONTACT**). Members of the public may attend the meeting in person or attend via webinar. Seating for in-person attendees may be limited due to room capacity. Webinar/conference line instructions will be provided to registered attendees prior to the meeting.

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to

give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Individuals in the United States who are deaf, blind, 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.

*Public Disclosure of Comments:* There will be an opportunity for public comment during both days of the meeting. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited. Written comments may also be sent to the NGAC for consideration. To allow for full consideration of information by NGAC members, written comments must be provided to John Mahoney (see **FOR FURTHER INFORMATION CONTACT**) at least three (3) business days prior to the meeting. Any written comments received will be provided to NGAC members before the meeting.

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

*Authority:* 5 U.S.C. ch. 10.

**Kenneth Shaffer,**

*Deputy Executive Director, Federal Geographic Data Committee.*

[FR Doc. 2023–20588 Filed 9–21–23; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLHQ320000 L13300000.EP0000; OMB Control Number 1004–0103]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Mineral Materials Disposal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before October 23, 2023.

**ADDRESSES:** Written comments and recommendations for this information collection request (ICR) 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:** To request additional information about this ICR, contact Timothy L. Barnes by email at *tbarnes@blm.gov,* or by telephone at 541–416–6858. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 27, 2023 (88 FR 25685). No comments were received in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The BLM is required by the Materials Act of 1947 (30 U.S.C. 601 and 602) and section 302 of the Federal Land Policy and Management Act (43 U.S.C. 1732) to manage the sale and free use of mineral materials that are not subject to mineral leasing or location under the mining laws (*e.g.,* common varieties of sand, stone, gravel, pumice, pumicite, clay, and rock). The Materials Act authorizes the BLM to sell these mineral materials at fair market value and to grant free-use permits to government agencies and nonprofit organizations. To obtain a sales contract or free-use permit, an applicant must submit information to identify themselves, the location of the site, and the proposed method to remove the mineral materials. The BLM uses the information to process each request for disposal, determine whether the request to dispose of mineral materials meets statutory requirements, and whether to approve the request. This OMB Control Number is currently scheduled to expire on February 29, 2024. The BLM request that OMB renew this OMB Control Number for an additional three (3) years.

*Title of Collection:* Mineral Materials Disposal (43 CFR part 3600).

*OMB Control Number:* 1004–0103.

*Form Numbers:* Form 3600–9, *Contract for the Sale of Mineral Materials.*

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Businesses that submit applications to

purchase or use mineral materials from public lands.

*Total Estimated Number of Annual Respondents:* 155.

*Total Estimated Number of Annual Responses:* 7,097.

*Estimated Completion Time per Response:* Varies from 30 minutes to 30 hours.

*Total Estimated Number of Annual Burden Hours:* 9,487.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* $82,770.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Darrin King,**

*Information Collection Clearance Officer.*

[FR Doc. 2023–20517 Filed 9–21–23; 8:45 am]

**BILLING CODE 4310–84–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1354]**

## Certain Universal Golf Club Shaft and Golf Club Head Connection Adaptors, Certain Components Thereof, and Products Containing the Same (II); Notice of a Commission Determination To Issue a Limited Exclusion Order; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to issue a limited exclusion order (''LEO'') barring entry of certain universal golf club shaft and golf club head connection adaptors, certain components thereof, and products containing the same that are imported by or on behalf of Respondents Top Golf Equipment Co. Limited (''Top Golf''), Volf Sports Co. LTD, and WoFu(Shenzhen)Sports Goods Co., Ltd. (collectively, ''Respondents'').

**FOR FURTHER INFORMATION CONTACT:** Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3316. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On March 8, 2023, the Commission instituted this investigation based on a complaint filed by Club-Conex LLC of Scottsdale, Arizona (''Complainant''). 86 FR 14393 (Mar. 8, 2023). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, due to the importation into the United States, sale for importation, or sale in the United States after importation of certain universal golf club shaft and golf club head connection adaptors, certain components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 11,426,638 (''the '638 patent''). *Id.* The complaint also alleged the existence of a domestic industry. *Id.* The notice of investigation named as respondents Top Golf Equipment Co. Limited, d/b/a All-Fit Golf of Shenzhen, China; Volf Sports Co. LTD of Shenzhen, China; and WoFu(Shenzhen)Sports Goods Co., Ltd. of Shenzhen, China (collectively, ''Respondents''). *Id.* The Office of Unfair Import Investigations was not named as a party. *Id.*

None of the Respondents answered the complaint and notice of investigation or appeared in the investigation, and on April 6, 2023, Complainant moved for an order directing Respondents to show cause as to why they should not be found in default. Complainant stated in its motion that it does not seek a general exclusion order. Mot. at 6 n.5. On April 25, 2023, the ALJ issued Order No. 6, directing Respondents to show cause, no later than May 10, 2023, as to why they should not be found in default. Order No. 6 at 2 (Apr. 25, 2023). No response to the show cause order was filed.

On May 17, 2023, the ALJ issued Order No. 7, finding Respondents in default pursuant to 19 CFR 210.16. The Commission determined not to review Order No. 7 on July 13, 2023, and issued a notice requesting submissions on remedy, public interest, and bonding. Comm'n Notice, 88 FR 46183 (July 19, 2023).

On July 27, 2023, Complainant responded to the Commission's Notice by filing a submission on remedy, public interest, and bonding, seeking a limited exclusion order (''LEO'') against the Respondents and a bond in the amount of one hundred percent (100%) of entered value. No other submissions were filed.

When the conditions in section 337(g)(1)(A)–(g)(1)(E) (19 U.S.C. 1337(g)(1)(A)–(g)(1)(E)) have been satisfied, section 337(g)(1) and Commission Rule 210.16(c) (19 CFR 210.16(c)) direct the Commission, upon request, to issue a limited exclusion order or a cease and desist order or both against a respondent found in default, based on the allegations regarding a violation of section 337 in the Complaint, which are presumed to be true, unless after consideration of the public interest factors in section 337(g)(1), it finds that such relief should not issue.

Having examined the record in this investigation, the Commission has determined pursuant to section 337(g)(1) and Commission Rule 210.16(c) to issue an LEO prohibiting the unlicensed entry of certain universal golf club shaft and golf club head connection adapters, certain components thereof, and products containing the same that infringe one or more of claims 1, 2–5, 10, 12–13, 15, and 16–19 of the '638 patent that are manufactured abroad by, or on behalf of, or imported by or on behalf of the Respondents. The Commission has determined that the public interest factors enumerated in section 337(g)(1) do not preclude the issuance of the LEO. The Commission has further determined that the bond during the period of Presidential review pursuant to section 337(j) (19 U.S.C. 1337(j)) shall be set in the amount of one hundred percent (100%) of the entered value of the imported articles that are subject to the LEO.[1] The investigation is hereby terminated.

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission

[1] Commissioner Schmidtlein finds that section 337 does not authorize respondents subject to remedial relief under subsection 337(g)(1) to import infringing products under bond during the Presidential review period for the reasons explained in *Certain Centrifuge Utility Platform and Falling Film Evaporator Systems and Components Thereof,* Inv. No. 337–TA–1311, Comm'n Notice at 5, n.5 (March 23, 2023). She therefore would not permit the Respondents to import infringing products under bond during the Presidential review period.

Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission vote for this determination took place on September 18, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 18, 2023.

**Sharon Bellamy,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2023–20527 Filed 9–21–23; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–570 and 731–TA–1346 (Review)]**

## Aluminum Foil From China

### Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping and countervailing duty orders on aluminum foil from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### Background

The Commission instituted these reviews on March 1, 2023 (88 FR 12990) and determined on June 5, 2023 that it would conduct expedited reviews (88 FR 44155, July 11, 2023).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on September 19, 2023. The views of the Commission are contained in USITC Publication 5459 (September 2023), entitled *Aluminum Foil from China: Investigation Nos. 701–TA–570 and 731–TA–1346 (Review).*

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

By order of the Commission.

Issued: September 19, 2023.

**Katherine Hiner,**

*Supervisory Attorney.*

[FR Doc. 2023–20594 Filed 9–21–23; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

## Office of the Attorney General

**[A.G. Order No. 5801–2023]**

## Attorney General Designation of the United Kingdom as a ''Qualifying State''

**AGENCY:** Department of Justice.

**ACTION:** Notice.

**SUMMARY:** In accordance with an Executive order, the Attorney General has designated the United Kingdom and Gibraltar (the ''United Kingdom'' or ''UK'') as a ''qualifying state.''

**DATES:** September 22, 2023. The designation is to become effective on the date of entry into force of regulations in the United Kingdom implementing a data bridge for the UK Extension to the Data Privacy Framework for the European Union (''EU'') and the United States of America (''U.S.'' or the ''United States'').

**FOR FURTHER INFORMATION CONTACT:** J. Bradford Wiegmann, Deputy Assistant Attorney General, National Security Division, United States Department of Justice, Washington, DC 20530; telephone: (202) 514–1057. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Executive Order 14086 of October 7, 2022 (Enhancing Safeguards for United States Signals Intelligence Activities), establishes a two-level redress mechanism for the review of qualifying complaints by individuals filed through an appropriate public authority in a ''qualifying state'' and alleging certain violations of U.S. law concerning signals intelligence activities. A country or regional economic integration organization may be designated as a qualifying state by the Attorney General if he determines, in consultation with the Secretary of State, the Secretary of Commerce, and the Director of National Intelligence, that it meets the requirements set forth in section 3(f) of Executive Order 14086. The Attorney General has made those determinations on the basis of the information contained in the ''Memorandum in Support of Designation of the United Kingdom as a Qualifying State Under Executive Order 14086'' prepared by the National Security Division of the Department of Justice, available at *https://www.justice.gov/opcl/redress-data-protection-review-court.*

Designation of the United Kingdom Pursuant to Section 3(f) of Executive Order 14086 Consistent with section 3(f) of Executive Order 14086, and on the basis of the information contained in the memorandum referenced above, the Attorney General has determined, in consultation with the Secretary of State, the Secretary of Commerce, and the Director of National Intelligence, that:

(1) The laws of the United Kingdom require appropriate safeguards in the conduct of signals intelligence activities for United States persons' personal information that is transferred from the United States to the territory of the United Kingdom;

(2) The United Kingdom is anticipated, pursuant to the adoption of regulations in the United Kingdom implementing a data bridge for the UK Extension to the EU–U.S. Data Privacy Framework, to permit the transfer of personal information for commercial purposes between the territory of the United Kingdom and the territory of the United States; and

(3) Designation of the United Kingdom would advance the national interests of the United States.

The Attorney General designated the United Kingdom as a qualifying state for purposes of eligibility for the redress mechanism established in section 3 of Executive Order 14086, with the designation to become effective on the date of entry into force of regulations in the United Kingdom implementing a data bridge for the UK Extension to the EU–U.S. Data Privacy Framework.

Dated: September 18, 2023.

**Merrick B. Garland,**

*Attorney General.*

[FR Doc. 2023–20587 Filed 9–21–23; 8:45 am]

BILLING CODE 4410–01–P

## DEPARTMENT OF JUSTICE

## Bureau of Prisons

## Annual Determination of Average Cost of Incarceration Fee (COIF)

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Fiscal Year (FY) 2021 and FY 2022 Cost of Incarceration Fee (COIF) for Federal inmates.

**DATES:** Notice is applicable on September 22, 2023.

**ADDRESSES:** Office of General Counsel, Federal Bureau of Prisons, 320 First Street NW, Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Crooks III, Assistant General Counsel/Rules Administrator, Federal Bureau of Prisons, at the address above or at (202) 353–4885.

**SUPPLEMENTARY INFORMATION:** Title 28 of the Code of Federal Regulations, part 505, allows for assessment of a fee to cover the average cost of incarceration for Federal inmates. We calculate the cost of incarceration fee (COIF) by dividing the number representing the Bureau of Prisons (Bureau) facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the fiscal year, and then by multiplying the quotient by the number of days in the fiscal year.

Based on FY 2021 data, the average annual COIF for a Federal inmate housed in a Bureau or non-Bureau facility in FY 2021 was $43,836 ($120.10 per day). The average annual COIF for a Federal inmate housed in a Residential Reentry Center for FY 2021 was $37,012 ($101.40 per day). (Please note: There were 365 days in FY 2021.)

Based on FY 2022 data, the average annual COIF for a Federal inmate housed in a Bureau or non-Bureau facility in FY 2022 was $42,672 ($116.91 per day). The average annual COIF for a Federal inmate housed in a Residential Reentry Center for FY 2022 was $39,197 ($107.39 per day). (Please note: There were 365 days in FY 2022.)

**James Wills,**

*Assistant Director/General Counsel, Federal Bureau of Prisons.*

[FR Doc. 2023–20585 Filed 9–21–23; 8:45 am]

**BILLING CODE 4410–05–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Agency Information Collection Activities; Comment Request; Contribution Operations

**ACTION:** Notice.

**SUMMARY:** The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''ETA 581 Contribution Operations.'' The ETA 581 provides information on volume of work and state agency performance in determining the taxable status of employers and the processing of wage items; in the collection of past due contributions and payments in lieu of contributions, and delinquent reports; and in field audit activity. The data provide measures of the effectiveness of the tax program. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received December 28, 2023.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Larry Newcomb by telephone at 202–693–2720 (this is not a toll-free number), or by email at *newcomb.larry.a@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW, Room S–4519, Washington, DC 20210; by email: *newcomb.larry.a@dol.gov;* or by fax 202–693–3975.

**FOR FURTHER INFORMATION CONTACT:** Larry Newcomb by telephone at 202–693–2720 (this is not a toll-free number) or by email at *newcomb.larry.a@dol.gov.*

*Authority:* 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:** DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure 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 can be properly assessed. 44 U.S.C. 3506(c)(2)(A) authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0178.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL 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; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

*Agency:* DOL–ETA.

*Type of Review:* Extension without Changes.

*Title of Collection:* Contribution Operations.

*Form:* ETA 581.

*OMB Control Number:* 1205–0178.

*Affected Public:* State governments.

*Estimated Number of Respondents:* 53.

*Frequency:* Quarterly.

*Total Estimated Annual Responses:* 212.

*Estimated Average Time per Response:* 7.5 hours.

*Estimated Total Annual Burden Hours:* 1,590 hours.

*Total Estimated Annual Other Cost Burden:* $0.

**Brent Parton,**

*Principal Deputy Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2023–20510 Filed 9–21–23; 8:45 am]

**BILLING CODE 4510–FW–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Crawler, Locomotive, and Truck Cranes Standard

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before October 23, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The Crawler, Locomotive, and Truck Cranes Standard requires that monthly inspections be performed on cranes and running ropes and that a certification record be prepared. Ropes which have been idle for a month or more are required to undergo a thorough inspection and that a certification record be generated. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 9, 2023 (88 FR 37907).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–OSHA.

*Title of Collection:* Crawler, Locomotive, and Truck Cranes Standard.

*OMB Control Number:* 1218–0221.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 3,399.

*Total Estimated Number of Responses:* 78,584.

*Total Estimated Annual Time Burden:* 29,639 hours.

*Total Estimated Annual Other Costs Burden:* $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

**Nicole Bouchet,**

*Acting Departmental Clearance Officer.*

[FR Doc. 2023–20512 Filed 9–21–23; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request; National Training, Education, and Workforce Survey

**AGENCY:** National Center for Science and Engineering Statistics, National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

**DATES:** Written comments on this notice must be received by November 21, 2023 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7400, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* The 2024 National Training, Education, and Workforce Survey.

*OMB Control Number:* 3145–0264.

*Expiration Date:* November 30, 2024.

*Type of Request:* Intent to seek approval to extend an information collection for three years.

*Abstract:* The *CHIPS Act of 2022, Public Law 117–167, § 10314,* requires the Director of NSF to provide a portfolio analysis of NSF's investments in the skilled technical workforce. With the widespread integration of science and technology in society, including its central role in the economy, work has changed for individuals at all education levels, making skilled technical workers increasingly important to U.S. economic competitiveness, national security, and scientific progress. American workers who use science, technology, engineering, and mathematics (STEM) knowledge and skills in their jobs but do not require a bachelor's degree or above comprise the skilled technical workforce (STW). While some limited federal data exist to quantify the number of skilled technical workers, the National Training, Education, and Workforce Survey (NTEWS) allows for a longitudinal analysis to measure the pathways of how individuals enter, maintain relevance, or seek advancement in STW occupations.

The NTEWS continues to be a voluntary response data collection sponsored by the National Center for

Science and Engineering Statistics (NCSES) within the National Science Foundation and cosponsored by the National Center for Education Statistics (NCES) within the U.S. Department of Education. The NTEWS serves the purpose of measuring and understanding two research concepts that are of national interest: (1) the education, training, and career pathways of skilled technical workers, and (2) the prevalence and interplay of education (postsecondary degrees and certificates), work credentials (certifications and licenses), and work experience programs among American workers.

The NTEWS will collect information on the following topics to examine the relationship between credentials and employment outcomes:

- Credential types
- Education characteristics
- Initial work training
- Employment characteristics
- Demographic characteristics

Given these areas of mutual interest for NCSES and NCES, the NTEWS will reduce public burden by fielding one cosponsored survey that meets the information needs of both federal agencies.

The 2024 NTEWS data collection effort will be the second cycle for a planned, biennial, rotating-panel design. Respondents can complete the survey in English or Spanish by web, paper, or computer-assisted telephone interviewing. The sponsoring agencies plan to include questions about sexual orientation and gender identity (SOGI) as experimental modules to examine the response rates and data quality for possible future inclusion of SOGI questions in the NTEWS. The agencies will analyze the 2024 NTEWS data to inform and resolve any statistical, methodological, operational, and content issues before the subsequent NTEWS collection cycle in the planned, biennial survey cycle design.

The U.S. Census Bureau, the agency responsible for the American Community Survey (ACS), will serve as the Federal data collection contractor for NCSES and NCES. The 2024 NTEWS sample will be selected from the 2022 ACS and the 2022 NTEWS, providing the needed coverage of the STW working in the United States. The NTEWS collection and data will be protected under the applicable Census Bureau confidentiality statutes.

*Use of the information:* NCSES and NCES intend to publish national estimates from the 2024 NTEWS and use the results to inform the next survey cycle. NCSES anticipates that the NTEWS data will be used for the two congressionally mandated biennial reports authored by NCSES: *Women, Minorities, and Persons with Disabilities in Science and Engineering (https://www.nsf.gov/statistics/women/)* and *Science and Engineering Indicators (https://ncses.nsf.gov/indicators).* NCES plans to release statistical reports and web tables on the status of educational and professional credentials in the United States. In addition, a public release file of collected data, designed to protect respondent confidentiality, will be made available to policymakers, researchers, and the public on the internet.

Established within NSF by the America COMPETES Reauthorization Act of 2010 § 505, codified in the NSF Act of 1950, as amended, NCSES serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public. NCSES also provides data to support the Science and Engineering Equal Opportunities Act of 1980, which directs NSF to provide to Congress and the Executive Branch an ''accounting and comparison, by sex, race, and ethnic group and by discipline, of the participation of women and men in scientific and engineering positions.''

NCSES has historically met these legislative mandates through its surveys and biennial publications measuring the education, employment, and demographic characteristics of the nation's college-educated scientists and engineers. However, an emerging research and policy interest in the STW creates a need for continued collection of the relatively new NTEWS data to expand and supplement NCSES's efforts on the college-educated science and engineering workforce.

*Expected Respondents:* Eligible individuals are ages 16 through 75, not enrolled in high school or institutionalized, and living in the U.S. or Puerto Rico. The NTEWS sample design will meet the needs of the sponsoring agencies by providing coverage of the workforce-eligible adult population and including an oversample of adults in skilled technical occupations. A statistical sample of approximately 120,000 individuals (17,000 returning sample members from the 2022 NTEWS and 103,000 new sample members from the 2022 ACS) will be contacted in 2024 for the NTEWS production. Another 3,000 individuals known to have a certificate will form a seeded sample that will not be included in the production of NTEWS official statistics. Information from the seeded sample will be used for agencies' research purposes to evaluate questions on the NTEWS.

*Estimate of Burden:* The expected response rate is 62.5 percent, or 75,000 completed cases, a calculation that is based on the 2022 NTEWS. The time to complete the survey may vary depending on an individual's circumstances and response mode (web, paper, or telephone). NCSES estimates an average completion time of 15 minutes. NCSES estimates that the average annual burden for the initial NTEWS over the course of the three-year OMB clearance period will be no more than 6,250 hours [75,000 completed cases × 15 minutes) / 3 years].

*Comments:* Comments are invited on (a) aspects of the data collection effort (including, but not limited to, the following: the availability of administrative and supplemental sources of data on the skilled technical workforce, survey content, contact strategy, and statistical methods); (b) whether the proposed collection of information is necessary for the proper performance of the functions of NCSES, including whether the information shall have practical utility; (c) the accuracy of the NCSES's estimate of the burden of the proposed collection of information; (d) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 18, 2023.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2023–20515 Filed 9–21–23; 8:45 am]

**BILLING CODE 7555–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2023–271 and CP2023–274]**

### 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:* September 26, 2023.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. Docketed Proceeding(s)

## 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).:* MC2023–271 and CP2023–274; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 56 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 18, 2023; *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:* September 26, 2023.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2023–20572 Filed 9–21–23; 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).

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# POSTAL REGULATORY COMMISSION

**[Docket No. C2023–6; Order No. 6688]**

## Complaint Proceeding

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is appointing a presiding officer to set a procedural schedule and conduct limited discovery for the purpose of determining disputed issues of fact in the case. This notice informs the public of the filing and takes other administrative steps.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. Background
III. Commission Analysis and Limited Discovery
IV. Ordering Paragraphs

## I. Introduction

On July 7, 2023, Mark Allan Edwards (Complainant) filed a complaint pursuant to 39 U.S.C. 3662(a), 401(2), and 403(c) with the Commission challenging the Postal Service's decision to terminate delivery of oversized packages to his front door.[1] On July 27, 2023, the Postal Service filed a motion to dismiss the Complaint.[2] Complainant did not respond to the Motion to Dismiss.

For the reasons discussed below, the Commission concludes that the Complaint raises material issues of fact, and therefore denies in part the Postal Service's Motion to Dismiss pursuant to 39 U.S.C. 3662(b) and 39 CFR 3022.30(a)(1). Accordingly, the Commission appoints a presiding officer to set a procedural schedule and conduct limited discovery for the purpose of determining the disputed issues of fact in the case. 39 CFR 3030.21. The scope of the discovery proceeding will be limited only to fact-finding conducted by the presiding officer on the specific matters of fact identified in this order.

## II. Background

### *A. General Background*

Complainant is an individual resident of Clayton, Georgia and resides in the Mountain Creek Estates housing development. Complaint at 2; Motion to Dismiss at 3. The approved method of delivery for Mountain Creek Estates is central delivery with cluster mailboxes located at the entrance of the community, which is more than one-half mile from Complainant's home. Complaint at 1; Motion to Dismiss at 3. The Complaint alleges that from December 2019 until March 2022, the Postal Service delivered oversized packages to his door, even though it was more than one-half mile away from the centralized mailbox location. Complaint at 1.

### *B. Federal Court Proceedings*

After the Postal Service stopped delivery of oversized packages, Complainant filed suit in the Northern District of Georgia, and sought resumption of that delivery and alleged a violation of the Postal Operations Manual. Complaint, *Edwards* v. *United States Postal Service,* No. 2:22–CV–160–SCJ (N.D. Ga. Aug. 15, 2022); Amended Complaint by Court Order, *Edwards* v. *United States Postal Service,* No. 2:22–CV–160–SCJ (N.D. Ga. Dec. 15, 2022). The United States filed a Motion to Dismiss in which it argued that the district court lacked subject matter jurisdiction to consider the complaint because Complainant failed to identify a specific statute that expressly waived

[1] Complaint of Mark Allan Edwards, July 7, 2023 (Complaint). Citations to the Complaint will be to the page number of the PDF.

[2] United States Postal Service's Motion to Dismiss, July 27, 2023 (Motion to Dismiss).

sovereign immunity and the complaint raised a service-related claim over which the Commission has exclusive jurisdiction. Memorandum in Support of Defendant's Motion to Dismiss at 3–8, *Edwards* v. *United States Postal Service,* No. 2:22–CV–160–SCJ (March 6, 2023). The motion to dismiss is pending before the district court.

*C. Complaint*

While his case was pending in Federal district court, Complainant filed the Complaint with the Commission. As noted above, he alleges that from December 2019 until March 2022, the Postal Service delivered oversized packages that would not fit into his mailbox to his door. Complaint at 2. The Complaint alleges that because the Postal Service delivered oversized packages to his door for over 2 years, it improperly changed that mode of delivery without his consent in violation of the Postal Operations Manual (POM) sections 631.1 and 631.8 and 39 U.S.C. 401(2). *Id.* at 2–3.

The Complaint further asserts that Complainant was given inconsistent reasons for the change in the method of delivery. *Id.* at 4–6. First, he asserts, he was told the change was prompted by safety concerns in that his driveway was '''too narrow for a safe turnaround for the carrier.' '' *Id.* at 4–5. Complainant then asserts that after he filed an informal complaint with the Commission, a letter carrier informed him that delivery of oversized packages to his door was discontinued because his home was too far from the central delivery point. *Id.* at 5. The Complaint alleges that this constituted improper retaliation. *Id.* at 4–5.

Finally, the Complaint also alleges that because, currently, the Postal Service ''delivers to homes on the first western circular road with the furthest home getting oversized package delivery just over ½ mile from the [cluster] mailboxes[,]'' discontinuing delivery to Complainant's home, which is similarly situated to other homes that receive delivery of oversized packages, constitutes discrimination in violation of 39 U.S.C. 403(c). *Id.* at 4–6. Complainant requests that the Commission order the Postal Service to resume delivery of oversized packages to his door as a remedy to this alleged discrimination. *Id.* at 9–10.

*D. Motion To Dismiss*

In its Motion to Dismiss, the Postal Service asserts that the Commission lacks jurisdiction over the claims related to POM section 631.81 and retaliation because those claims do not fall under the enumerated bases for jurisdiction set forth in 39 U.S.C. 3662(a). Motion to Dismiss at 6–10. While the Complaint references 39 U.S.C. 401(2), which is an enumerated basis to bring a complaint, that statute applies only to scenarios where the Postal Service adopts, amends, or repeals rules or regulations inconsistent with title 39. *Id.* at 8–9. Since, according to the Postal Service, application of POM section 631.8, even if incorrect, does not involve the Postal Service ''adopting, amending, or repealing'' a rule or regulation in a manner that is inconsistent with title 39, the Commission lacks jurisdiction over the claim. *Id.* at 9–10.

Regarding, the 39 U.S.C. 403(c) discrimination claim, the Postal Service asserts that Complainant fails to state a claim for which relief may be granted. *Id.* at 11–14. For purposes of the Motion to Dismiss, the Postal Service accepted as fact that ''customers in Mountain Creek Estates and elsewhere in Rabun County who live more than one-half mile from the carrier's line of travel or delivery route'' receive delivery of oversized packages to their doors. *Id.* at 12. Still, the Postal Service argues, Complainant cannot succeed on a 39 U.S.C. 403(c) claim because there is a rational and legitimate basis to deny the same delivery to Complainant—it ''is contrary to section 331.21 of PO–603, which limits door delivery of oversized packages to residences and businesses 'on the line of travel, or within one-half mile of the route . . . .' '' *Id.* (quoting the Postal Service's Rural Carrier Duties and Responsibilities Handbook (PO–603) section 331.21).

**III. Commission Analysis and Limited Discovery**

The Commission finds that the pleadings raise issues of fact relevant to whether the actions or inactions of the Postal Service violate 39 U.S.C. 403(c). Viewed in the light most favorable to Complainant, the allegations in the Complaint may raise a cognizable claim of undue or unreasonable discrimination. The Commission also recognizes that the Postal Service has the legal obligation to ''adopt, amend, and repeal such rules and regulations, . . . as may be necessary in the execution of its functions'' under title 39.[3] Accordingly, the Commission's role in this inquiry is not to question that obligation, but to determine if the current postal policy, as applied to the Complainant, presents a potential violation of 39 U.S.C. 403(c).[4]

*A. Violations of POM Section 631.8 and Retaliation*

The Commission has jurisdiction over complaints that meet the statutory requirements of 39 U.S.C. 3662(a). Section 3662(a) permits any interested person, including the Public Representative, to file a complaint with the Commission if they believe the Postal Service is not operating in conformance with the requirements of 39 U.S.C. chapter 36; 39 U.S.C. 101(d), 401(2), 403(c), 404a, or 601; or any regulations promulgated under any of these provisions.[5] Within 90 days after receiving a complaint under section 3662(a), the Commission must either (1) begin proceedings on the complaint upon finding that such complaint raises material issues of fact or law; or (2) issue an order dismissing the complaint.[6] The Commission must issue a written statement setting forth the bases of its determination. 39 U.S.C. 3662(b)(1)(B).

The first two claims raised by Complainant are (1) that the Postal Service violated POM section 631.8 and (2) the Postal Service improperly retaliated against him for making a complaint after the Postal Service discontinued door delivery of oversized packages. While the alleged violation of POM section 631.8 refers to 39 U.S.C. 401(2), which is an enumerated basis of the Commission's complaint jurisdiction, because Complainant alleges that the Postal Service is violating a provision of the POM untethered to any statute or regulation, it fails to invoke the Commission's jurisdiction under 39 U.S.C. 3662(a).

As the Postal Service argues, and the Commission has previously concluded,[7] the mere reference to 39 U.S.C. 401(2) does not create a tether for jurisdiction over the claim because it applies only to scenarios where the Postal Service adopts, amends, or repeals rules or regulations inconsistent with title 39. Motion to Dismiss at 8–9. And because, as the Postal Service correctly argues, application of POM section 631.8, even if incorrect, does not involve the Postal Service ''adopting, amending, or repealing'' a rule or regulation in a

[3] *See* 39 U.S.C. 401(2).

[4] The Commission's authority, should a complaint be justified, is to ''order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance . . . .'' *See* 39 U.S.C. 3662(c).

[5] 39 U.S.C. 3662(a); *see* 39 CFR 3022.2. The Public Representative is an officer of the Commission representing the interests of the general public. 39 U.S.C. 3662(a), 505.

[6] 39 U.S.C. 3662(b)(1)(A); *see* 39 CFR 3022.30(a).

[7] *See* Docket No. C2015–1, Order Granting Motion to Dismiss, March 4, 2015, at 6–7 (Order No. 2377); Docket No. C2015–3, Order Dismissing Complaint, August 26, 2015, at 18 (Order No. 2687).

manner that is inconsistent with title 39, *id.* at 9–10, the Commission lacks jurisdiction over the claim. Second, a claim for retaliation does not fall within any of the enumerated bases of the Commission's complaint jurisdiction as it does not implicate the requirements of 39 U.S.C. chapter 36; 39 U.S.C. 101(d), 401(2), 403(c), 404a, or 601; or any regulations promulgated under any of these provisions.[8]

Complainant objects to the Postal Service's alleged noncompliance with its own regulations, not to the regulations themselves. Thus, the Complaint does not fall within the Commission's jurisdiction under 39 U.S.C. 401(2) and neither of the first two claims are encompassed under the Commission's complaint jurisdiction. Therefore, the Postal Service's Motion to Dismiss is granted as to these two claims.

*B. Undue Discrimination*

Complainant's third claim alleges a potential violation of 39 U.S.C. 403(c) because other similarly situated members of his community are receiving delivery of oversized packages to their doors. Complaint at 4–6. The Postal Service is prohibited from making any undue or unreasonable discrimination among mail users. 39 U.S.C. 403(c). When evaluating claims of discrimination among mail users, the Commission follows the guidance set forth in *Egger* v. *USPS,* 436 F. Supp. 138 (W.D. Va. 1977). In *Egger,* the district court held that it is ''obvious that the Postal Service may provide different levels of delivery service to different groups of mail users so long as the distinctions are reasonable.'' *Egger,* 436 F. Supp. at 142. Thus, the Postal Service may differentiate among customers where the differences have a rational basis.[9]

Thus, in order to state a claim for a violation of 39 U.S.C. 403(c), the Commission requires a complainant to plead three things: (1) the complainant is receiving less favorable services than those provided to one or more other postal customers, (2) the complainant is similarly situated to those postal customers receiving more favorable service, and (3) there is no rational or legitimate basis for denying the complainant the more favorable service currently being provided to those similarly situated postal customers.[10]

The Postal Service, solely for the purposes of the Motion to Dismiss, accepts that Complainant can meet the first two prongs. Motion to Dismiss at 12. The third prong of the test used to determine whether a 403(c) claim is actionable is that there is no rational or legitimate basis for the Postal Service to deny the Complainant the more favorable rates or terms and conditions offered to others.[11] The Postal Service argues that delivery to homes outside of the half-mile radius violates Postal Service policy, and that constitutes a legitimate basis for the Postal Service to deny Mr. Edwards more favorable rates, terms, or conditions offered to others. Motion to Dismiss at 12–13.

The Commission finds that this argument ignores the fact that, if Complainant can meet the first two prongs of the test, it means that other customers are receiving those exact ''rates or terms and conditions'' in violation of Postal Service policy. Accepting the Postal Service's argument on this point would in effect request the Commission to ignore potential discrimination because its preferential treatment of other customers violates its own policies. Thus, the Commission finds the Postal Service's arguments on the Complaint's failure to state a claim unpersuasive. Therefore, the Postal Service's Motion to Dismiss is denied as it relates to the potential violation of 39 U.S.C. 403(c) pursuant to 39 U.S.C. 3662(b).

The outstanding issues of fact required to resolve whether a violation of 39 U.S.C. 403(c) occurred are:

1. Whether any similarly situated postal customers in Complainant's neighborhood are receiving delivery of oversized packages to their doors.

2. Whether postal management followed non-discriminatory processes in the discontinuation of door delivery of oversized packages to Complainant's residence.

Pursuant to 39 CFR 3010.106, the Commission appoints John Avila to serve as presiding officer to ascertain outstanding issues of material fact in this matter. Parties may request that the presiding officer obtain specific discovery but may not independently propound discovery. The presiding officer shall examine the disputed issues identified above and provide a public, written intermediate decision including findings of fact and conclusions of law on the issues raised in this proceeding. 39 CFR 3010.335.

The Commission finds good cause to waive the appointment of an officer of the Commission designated to represent the interests of the general public in this proceeding as required by 39 CFR 30.30(c) because the violations alleged in the Complaint pertain solely to Complainant rather than the general public.

**IV. Ordering Paragraphs**

*It is ordered:*

1. The Commission finds that the Complaint of Mark Allan Edwards, filed July 7, 2023, raises material issues of fact.

2. The United States Postal Service's Motion to Dismiss the Complaint of Mark Allan Edwards, filed July 27, 2023, is granted on all grounds except for the claim related to the alleged violation of 39 U.S.C. 403(c).

3. Pursuant to 39 CFR 3010.106, the Commission appoints John Avila as a presiding officer in this proceeding.

4. Parties may request that the presiding officer obtain specific discovery but may not independently propound discovery.

5. The presiding officer shall, pursuant to 39 CFR 3010.335, provide a public written intermediate decision including findings of fact and conclusions of law on the issues raised in this proceeding.

6. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2023–20560 Filed 9–21–23; 8:45 am]

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[8] 39 U.S.C. 3662(a).

[9] *See* Docket No. C2015–2, Order Granting Motion to Dismiss, July 15, 2015, at 12 (Order No. 2585).

[10] *See* Docket No. C2020–2, Order Granting the Postal Service's Motion to Dismiss Complaint with Prejudice, April 28, 2020, at 8 (Order No. 5491) (citing Docket No. 2009–1, Order on Complaint, April 20, 2011, at 28 (Order No. 718)).

[11] Docket No. C2020–2, Order Granting the Postal Service's Motion to Dismiss Complaint with Prejudice, April 28, 2020, at 8 (Order No. 5491) (citing Docket No. 2009–1, Order on Complaint, April 20, 2011, at 28 (Order No. 718)).

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–037, OMB Control No. 3235–0031]**

## Submission for OMB Review; Comment Request; Extension: Rule 17f–2(e)

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of

extension of the previously approved collection of information provided for in Rule 17f–2(e) (17 CFR 240.17f–2(e)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17f–2(e) requires every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency (''covered entities'') claiming an exemption from the fingerprinting requirements of Rule 17f–2 to make and keep current a statement entitled ''Notice Pursuant to Rule 17f–2'' (''Notice'') containing the information specified in paragraph (e)(1) to support their claim of exemption.

Rule 17f–2(e) contains no filing requirement. Instead, paragraph (e)(2) requires covered entities to keep a copy of the Notice in an easily accessible place at the organization's principal office and at the office employing the persons for whom exemptions are claimed and to make the Notice available upon request for inspection by the Commission, appropriate regulatory agency (if not the Commission), or other designated examining authority. Notices prepared pursuant to Rule 17f–2(e) must be maintained for different lengths of time depending on the type of entity maintaining the Notice. Under Rule 240.17a–1, every registered clearing agency must keep and preserve at least one copy of all documents made or received by it in the course of its business for a period of not less than five years. Under Rule 240.17a–4 certain members of national securities exchanges, brokers, and dealers must maintain the Notice during the life of their enterprise. Under Rule 240.17Ad–7, registered transfer agents must maintain the Notice in an easily accessible place. The recordkeeping requirement under Rule 17f–2(e) assists the Commission and other regulatory agencies with ensuring compliance with Rule 17f–2. This rule does not involve the collection of confidential information.

We estimate that approximately 75 respondents will incur an average burden of 30 minutes per year to comply with this rule, which represents the time it takes for a staff person at a covered entity to properly document a claimed exemption from the fingerprinting requirements of Rule 17f–2 in the required Notice and to properly retain the Notice according to the entity's record retention policies and procedures. The total annual burden for all covered entities is approximately 38 hours (75 entities × .5 hours, rounded up).

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

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by October 23, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*.

Dated: September 18, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–20528 Filed 9–21–23; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98420; File No. SR–CboeBZX–2023–071]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Related to the Options Regulatory Fee

September 18, 2023.

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 September 12, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule related to the Options Regulatory Fee. The text of the proposed rule change is provided in Exhibit 5.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to increase the Options Regulatory Fee (''ORF'') from $0.0001 per contract to $0.0003 per contract.[3]

The ORF is assessed by BZX Options to each Member for options transactions cleared by the Member that are cleared by the Options Clearing Corporation (''OCC'') in the customer range, regardless of the exchange on which the transaction occurs. In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a Member, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Member or non-Member that ultimately clears the transaction. With respect to linkage transactions, BZX Options reimburses its routing broker providing Routing Services (pursuant to BZX Options Rule 21.9) for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Member customer options business including performing routine surveillances, investigations,

[3] The Exchange initially filed the proposed fee change on September 1, 2023 (SR–CboeBZX–2023–066). On September 12, 2023, the Exchange withdrew that filing and submitted this filing.

examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, compliance, information technology, facilities and accounting. These indirect expenses are estimated to be approximately 50.5% of BZX Options' total regulatory costs for 2023. Thus, direct expenses are estimated to be approximately 49.5% of total regulatory costs for 2023. In addition, it is BZX Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs. These expectations are estimated, preliminary and may change. There can be no assurance that our final costs for 2023 will not differ materially from these expectations and prior practice; however, the Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs.

The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange also notifies Members of adjustments to the ORF via an Exchange Notice, including for the change being proposed herein.[4] Based on the Exchange's most recent semi-annual review, the Exchange is proposing to increase the amount of ORF that will be collected by the Exchange from $0.0001 per contract side to $0.0003 per contract side. The proposed increase is based on the Exchange's estimated projections for its regulatory costs, which have increased.[5] Particularly, based on the Exchange's estimated projections for its regulatory costs, the revenue being generated by ORF using the current rate, would result in projected revenue that is insufficient to cover a material portion of its regulatory costs (*i.e.,* less than 75% of total annual regulatory costs). Further, when combined with the Exchange's projected other non-ORF regulatory fees and fines, the revenue being generated by ORF using the current rate results is projected to result in combined revenue that is less than 100% of the Exchange's estimated regulatory costs for the year.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

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.[6] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, would help offset, but not exceed, the Exchange's total regulatory costs. As discussed, the Exchange has designed the ORF to generate revenues that would be less than or equal to 75% of the Exchange's regulatory costs, which is consistent with the practice across the options industry and the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. The Exchange determined to increase ORF after its semi-annual review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines. The Exchange notes that although recent options volumes have increased, it has not increased its ORF rate since it was adopted in 2015. In fact, the Exchange has been steadily decreasing the rate over the last several years.[9] Accordingly, the Exchange believes it's reasonable to increase the ORF. Additionally, the proposed change is reasonable as it would offset the anticipated increased regulatory costs, while still not exceeding 75% of the Exchange's total regulatory costs. Moreover, the proposed amount is still significantly lower than the amount of ORF assessed on other exchanges[10] and lower than the Exchange has assessed previously.[11]

As noted above, the Exchange will also continue to monitor on at least a semi-annual basis the amount of revenue collected from the ORF, even as amended, to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues would exceed its regulatory costs in a given year, the Exchange will reduce the ORF by submitting a fee change filing to the Commission.[12]

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Members on all their transactions that clear in the customer range at the OCC. The Exchange believes the ORF ensures fairness by

[4] *See* Exchange Notice, C2023080104 ''Cboe BZX Options Exchange Regulatory Fee Update Effective September 1, 2023.'' The Exchange endeavors to provide at least 30 calendar days notice prior to any effective change to ORF.

[5] The Exchange notes that in connection with proposed ORF rate changes, it provides the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a breakout of its projected regulatory expenses, including both direct and indirect allocations.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 89471 (August 4, 2020), 85 FR 49405 (August 13, 2020) (SR–CboeBZX–2020–057) and Securities Exchange Act Release No. 83879 (August 17, 2018), 83 FR 42739 (August 23, 2018) (SR–CboeBZX–2018–063). *See also* Securities Exchange Act Release No. 82660 (February 8, 2018), 83 FR 6664 (February 14, 2018) (SR–CboeBZX–2018–008), Securities Exchange Act Release No. 80050 (February 16, 2017), 82 FR 11491 (February 23, 2017) (SR–CboeBZX–2017–013) and Securities Exchange Act Release No. 74214 (February 5, 2015), 80 FR 7665 (February 11, 2011) (SR–BATS–2015–08).

[10] *See e.g.,* NYSE Arca Options Fees and Charges, Options Regulatory Fee (''ORF'') and NYSE American Options Fees Schedule, Section VII(A), which provide that ORF is assessed at a rate of $0.0055 per contract for each respective exchange. *See also* Nasdaq PHLX, Options 7 Pricing Schedule, Section 6(D), which provides for an ORF rate of $0.0034 per contract.

[11] *See* Securities Exchange Act Release No. 89471 (August 4, 2020), 85 FR 49405 (August 13, 2020) (SR–CboeBZX–2020–005) and Securities Exchange Act Release No. 83879 (August 17, 2018), 83 FR 42739 (August 23, 2018) (SR–CboeBZX–2018–063). *See also* Securities Exchange Act Release No. 82660 (February 8, 2018), 83 FR 6664 (February 14, 2018) (SR–CboeBZX–2018–008), Securities Exchange Act Release No. 80050 (February 16, 2017), 82 FR 11491 (February 23, 2017) (SR–CboeBZX–2017–013) and Securities Exchange Act Release No. 74214 (February 5, 2015), 80 FR 7665 (February 11, 2011) (SR–BATS–2015–08).

[12] Consistent with Rule 15.2 (Regulatory Revenue), the Exchange notes that should excess ORF revenue be collected prior to any reduction in an ORF rate, such excess revenue will not be used for nonregulatory purposes.

assessing higher fees to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program.[13] Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to its Members' activities, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'')[14] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to its Members' customer trading activity.

*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 not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[15] of the Act and subparagraph (f)(2) of Rule 19b–4[16] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[17] 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–CboeBZX–2023–071 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–071 and should be submitted on or before October 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–20519 Filed 9–21–23; 8:45 am]

**BILLING CODE 8011–01–P**

[13] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on Member proprietary transactions if the Exchange deems it advisable.

[14] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98422; File No. SR–NYSEARCA–2023–62]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

September 18, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 12, 2023, 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 modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') to add the Customer Take Fee Discount Tiers. The Exchange proposes to implement the fee change effective September 12, 2023. 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 purpose of this filing is to amend the Fee Schedule to introduce a new pricing incentive, the Customer Take Fee Discount Tiers (''Take Fee Discounts''). The Exchange proposes to implement the rule change on September 12, 2023.[4]

If an OTP Holder or OTP Firm (collectively, ''OTP Holders'') executes a transaction that removes or ''takes'' liquidity on the Exchange, the OTP Holder is charged a ''Take Liquidity'' fee (referred to herein as a ''Take Fee'') and such liquidity may be referred to as ''liquidity removing'' or ''liquidity taking.'' [5] To offset such costs and encourage market participants to direct order flow to the Exchange, the Exchange offers Take Fee discounts to some market participants for executions in Penny and non-Penny issues.[6]

Currently, Customer executions in Penny and non-Penny issues are subject to Take Fees of $0.49 and $0.85, respectively.[7] The Exchange now proposes to offer tiered Take Fee discounts on Customer executions in both Penny and non-Penny issues. Specifically, the Exchange proposes tiered per contract discounts on Customer Take Fees based on an OTP Holder's achievement of certain volume qualifications in average electronic executions per day. As proposed, Tier 1 of the Take Fee Discounts would offer a $0.01 discount on Customer Take Fees if an OTP Holder achieves at least 0.20% of TCADV from Customer liquidity removing interest in all issues; Tier 2 would offer a $0.02 discount on Customer Take Fees to an OTP Holder that achieves at least 0.40% of TCADV from Customer liquidity removing interest in all issues and 1% of TCADV from Customer posting in all issues; and Tier 3 would offer a $0.03 discount on Customer Take Fees to an OTP Holder that achieves at least 0.60% of TCADV from Customer liquidity removing interest in all issues and 1.50% of TCADV from Customer posting in all issues. The Take Fee Discounts would only apply to Customer orders, and the qualifications for the discounts are based only on activity in the Customer range; activity in the Professional Customer range is not included in the qualifications and is not eligible to receive any of the proposed discounts, as Professional Customer orders are already eligible for other discounts on Take Fees.[8] OTP Holders may earn only the highest discount for which they qualify.

Although the Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for the Take Fee Discounts, the Exchange believes that the proposed change would encourage OTP Holders to direct interest, and, in particular, Customer liquidity removing interest, to the Exchange to earn the proposed discounts on Take Fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange previously filed to amend the Fee Schedule on September 1, 2023 (SR–NYSEARCA–2023–60) and withdrew such filing on September 12, 2023.

[5] *See* Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS—PER CONTRACT.

[6] *See, e.g.,* Fee Schedule, DISCOUNT IN TAKE LIQUIDITY FEES FOR PROFESSIONAL CUSTOMER AND NON-CUSTOMER LIQUIDITY REMOVING INTEREST.

[7] *See* note 5, *supra.*

[8] *See* note 6, *supra.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

equity and ETF options trades.[12] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in July 2023, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.[13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed Take Fee Discounts would incent OTP Holders to increase the amount of Customer interest sent to the Exchange, especially liquidity removing interest, which benefits all market participants by providing more trading opportunities, thereby making the Exchange a more attractive execution venue. The Exchange further believes that the proposed qualifications for the Take Fee Discounts are attainable for OTP Holders based on recent volumes and that the proposed amounts of the discounts are reasonable, as the Exchange's rates for Customer liquidity removing interest would remain in range of and competitive with the rates assessed by at least one other options exchange.[14]

To the extent the proposed rule change attracts greater volume and liquidity by encouraging OTP Holders to increase their options volume on the Exchange, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors, including another options exchange that offers tiered rates for certain Customer liquidity removing interest.[15]

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders can attempt to qualify for the discounts or not. Moreover, the proposal is designed to incent OTP Holders to continue to direct Customer liquidity removing interest to the Exchange and to aggregate all liquidity removing interest at the Exchange as a primary execution venue. To the extent that the proposed change attracts more opportunities for execution of Customer interest on the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes is the proposed Take Fee Discounts are not unfairly discriminatory because they would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange also believes that the proposed change is not unfairly discriminatory to Professional Customers and non-Customers, as those market participants are already afforded discounts on Take Fees under the current Fee Schedule.[16]

The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders are not obligated to try to achieve the proposed qualifications to earn the Take Fee Discounts, nor are they obligated to direct liquidity removing interest or posted interest to the Exchange. To the extent that the proposed change attracts more interest, including liquidity removing interest, to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [17]

*Intramarket Competition.* The proposed change is designed to attract additional order flow to the Exchange, including both liquidity removing interest and posting interest. The Exchange believes that the proposed change would incent OTP Holders to continue to direct their liquidity removing order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange and

[12] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[13] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options increased slightly from 11.30% for the month of July 2022 to 11.50% for the month of July 2023.

[14] *See, e.g.,* Cboe BZX Options Fee Schedule, Standard Rates, available at: *https://www.cboe.com/us/options/membership/fee_schedule/bzx/* (providing for rates of $0.46 to $0.48 for Customer liquidity removing interest in Penny issues and rate of $0.85 for Customer liquidity removing interest in non-Penny issues).

[15] *See, e.g.,* Cboe BZX Options Fee Schedule, Customer, Firm, Broker Dealer and Joint Back Office Penny Take Volume Tiers, available at: *https://www.cboe.com/us/options/membership/fee_schedule/bzx/* (providing tiered rates for Customer liquidity removing volume in Penny issues based on volume qualifications, which, similar to the Exchange's proposal, represent $0.01 or $0.02 discounts on standard fee for take volume).

[16] *See* note 6, *supra.*

[17] *See* Reg NMS Adopting Release, *supra* note 11, at 37499.

increased liquidity removing order flow would increase opportunities for execution of other trading interest. The proposed modifications would be available to all similarly-situated market participants and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[18] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in July 2023, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.[19]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent OTP Holders to direct trading to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including another options exchange that currently also offers tiered rates for some Customer liquidity removing interest,[20] by encouraging additional orders to be sent to the Exchange for execution.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[21] of the Act and subparagraph (f)(2) of Rule 19b–4[22] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] 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–2023–62 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–62 and should be submitted on or before October 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Sherry R. Haywood,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

[18] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[19] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options increased slightly from 11.30% for the month of July 2022 to 11.50% for the month of July 2023.

[20] *See* note 14, *supra.*

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Guidelines for Reporting Bundled and Consolidated Contracts

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Small Business Administration (SBA) submits an annual Contract Bundling Report to Congress which provides the total bundled contract dollars and information regarding bundled contracts for the prior fiscal year (FY). Section 873 of the National Defense Authorization Act (NDAA) for FY 2023 amended the U.S. Code (U.S.C.) requiring data and information on the consolidation of contract requirements to be included in the annual Contract Bundling and Consolidation Report to Congress. Beginning in December 2023, the Federal agencies shall provide data

and information on all bundled or consolidated contract requirements in their annual reports to SBA.

**FOR FURTHER INFORMATION CONTACT:** Donna Fudge, Procurement Analyst, Office of Policy, Planning, and Liaison, Small Business Administration, at *Donna.fudge@sba.gov,* (202) 205–6363.

**SUPPLEMENTARY INFORMATION:** The National Defense Authorization Act (NDAA) for FY 2023, section 873, amended 15 U.S.C. 644(p) requiring data and information on the consolidation of contract requirements to be included in the annual Contract Bundling and Consolidation Report to Congress. Beginning in December 2023, the Federal agencies shall provide data and information on all bundled or consolidated contract requirements in their annual reports to SBA.

Each annual report shall include the following information:

- Data on the number, arranged by NAICS, of small business concerns displaced as prime contractors as a result of the award of bundled or consolidated contracts by Federal agencies; and
- A description of the activities with respect to previously bundled or consolidated contracts of each Federal agency during the preceding year, including—
- Data on the number and total dollar amount of all contract requirements that were included in bundled or consolidated contracts; and

With respect to each bundled or consolidated contract, data or information on—

- The justification for the bundling of contract requirements or consolidation of contract requirements (as applicable);
- The cost savings realized by the bundling of contract requirements or the consolidation of contract requirements (as applicable) over the life of the contract;
- The extent to which maintaining contract requirements in a bundled or consolidated contract is projected to result in continued savings;
- The extent to which the bundling of contract requirements or the consolidation of contract requirements (as applicable) complied with the contracting agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and
- The impact of the bundling of contract requirements or the consolidation of contract requirements (as applicable) on small business concerns unable to compete as prime contractors for the contract and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

If SBA does not receive a Contract Bundling and Consolidation Report from an agency, SBA will report the agency and *SAM.gov* data regarding the agency's bundled or consolidated contracts to Congress with the consolidated annual report.

If the agency determines that actions were incorrectly coded as bundled or consolidated in *SAM.gov,* the agency is responsible for correcting *SAM.gov* to reflect the accurate status. SBA will not adjust the *SAM.gov* data on its own.

The report must be submitted to SBA in a Section 508 compliant PDF. Agencies should verify the report is section 508 compliant with their office responsible for section 508 compliance prior to submission to SBA.

### Periodic Report for Bundled Contract Database

Agencies must submit information to SBA on a periodic basis to include in the bundling-affected contractors database, as required by section 15(p)(2) of the Small Business Act, 15 U.S.C. 644(p)(2). The database identifies each small business concern that has been displaced as a prime contractor as the result of a bundled contract.

In accordance with section 15(p)(2), agencies must provide to SBA on a periodic basis—and no less than annually—(1) a list of the bundled contracts awarded by the Federal agency since the agency's last report and (2) the name and unique entity identifier (UEI) for each small business concern that has been displaced as a prime contractor as a result of the award of the bundled contract.

**Larry Stubblefield,**

*Acting Associate Administrator, Office of Government Contracting and Business Development.*

[FR Doc. 2023–20521 Filed 9–21–23; 8:45 am]

BILLING CODE 8026–09–P

## DEPARTMENT OF STATE

**[Public Notice: 12189]**

## Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Afterlives: Contemporary Art in the Byzantine Crypt'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Afterlives: Contemporary Art in the Byzantine Crypt'' at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

**Nicole L. Elkon,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2023–20529 Filed 9–21–23; 8:45 am]

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## DEPARTMENT OF STATE

**[Public Notice 12166]**

## 60-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public

comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to *November 21, 2023.*

**ADDRESSES:** You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2023–0028 in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.*

You must include the information collection title in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Lauren Vinson who may be reached on *PRA_BurdenComments@state.gov* or (202) 485–7635.

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Supplemental Questions for Visa Applicants.
- *OMB Control Number:* 1405–0226.
- *Type of Request:* Extension of a currently approved collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–5535.
- *Respondents:* Immigrant visa applicants, nonimmigrant visa applicants.
- *Estimated Number of Respondents:* 50,000.
- *Estimated Number of Responses:* 50,000.
- *Average Time per Response:* 55 minutes.
- *Total Estimated Burden Time:* 45,833 hours.
- *Frequency:* Once per respondent's application.
- *Obligation to Respond:* Required to obtain or retain a benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information submitted with them, will be available for public review.

**Abstract of Proposed Collection**

The Immigration and Nationality Act (''INA''), 8 U.S.C. 1101 *et seq.,* sets out application and eligibility requirements for an applicant seeking to obtain nonimmigrant or immigrant visa. Most of the standards for determining visa ineligibility are detailed in INA 212(a), 8 U.S.C. 1182(a), which includes terrorist activities and other security and related grounds at INA 212(a)(3), 8 U.S.C. 1182(a)(3).

INA 221(a), 8 U.S.C. 1201(a) provides that a consular officer may issue an immigrant or nonimmigrant visa to an individual who has made a proper application, subject to applicable conditions and limitations in the INA and related regulations. Under INA 222(c), 8 U.S.C. 1202(c), every applicant for a nonimmigrant visa must provide certain identifying particulars—name, date of birth and birthplace, nationality, purpose and length of intended stay in the United States, marital status—and ''such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulations prescribed.'' Similar requirements apply to applicants for immigrant visas, pursuant to INA 222(a), 8 U.S.C. 1201(a). Under regulations set out in Ttitle 22 of the Code of Federal Regulations, visa applications must be made on a standard form and a consular officer ''may require the submission of additional necessary information or question an applicant on any relevant matter whenever the consular officer believes that the information provided in the application is inadequate to permit a determination of the applicant's eligibility to receive a nonimmigrant visa.'' 22 CFR 41.103; see also 22 CFR 42.63 (immigrant visas).

Consular officers may require submission of a completed DS–5535 to supplement the immigrant and nonimmigrant visa applications forms by asking the following questions of a subset of nonimmigrant and immigrant visa applicants:

- The applicant's travel history over the last 15 years;
- The full names and dates of birth of any siblings/children/former spouses/domestic partners not recorded in the applicant's visa application form;
- The applicant's addresses during the last 15 years, if different from the applicant's current address.
- The applicant's prior passport numbers; and
- The applicant's prior occupation(s) and employers (plus a brief description, if applicable) looking back 15 years.

Regarding travel history, an applicant may be requested to provide details of his or her international or domestic (within their country of nationality or residence) travel if the information is necessary to determine the applicant's eligibility for the visa, including cases involving applicants who have been in an area while the area was under the operational control of a terrorist organization as defined in INA 212(a)(3)(B)(vi), 8 U.S.C. 1182(a)(3)(B)(vi). Applicants may be asked to recount or explain the details of their travel and when possible, provide supporting documentation.

**Methodology**

Consular officers will be asking these questions of a subset of nonimmigrant and immigrant visa applicants worldwide either orally or by providing a copy of the questions electronically or on paper. The applicant can respond orally, via email, via written response or via Microsoft e-version. The e-version of the information collection asks identical questions to the paper version. There are slight differences in formatting due to the different platforms. In some instances, when a paper copy is provided the applicant may still be permitted to return it electronically.

**Julie M. Stufft,**

*Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2023–20565 Filed 9–21–23; 8:45 am]

BILLING CODE 4710–06–P

## SURFACE TRANSPORTATION BOARD

### 60-Day Notice of Intent To Seek Extension of Approval of Collection: Demurrage Liability Disclosure Requirements

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice and request for comments.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of

the collection of Demurrage Liability Disclosure Requirements, as described below.

**DATES:** Comments on this information collection should be submitted by November 21, 2023.

**ADDRESSES:** Direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Demurrage Liability Disclosure Requirements.'' For further information regarding this collection, contact Pedro Ramirez at (202) 245–0333 or *pedro.ramirez@stb.gov.* If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

**SUPPLEMENTARY INFORMATION:** Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

**Description of Collection**

*Title:* Demurrage Liability Disclosure Requirements.

*OMB Control Number:* 2140–0021.

*Form Number:* None.

*Type of Review:* Extension without change.

*Respondents:* Freight railroads subject to the Board's jurisdiction.

*Number of Respondents:* Approximately 620 (including six Class I carriers).

*Estimated Time per Response:* One hour for each disclosure.

*Frequency:* On occasion. The existing demurrage liability disclosure requirement is triggered in two circumstances: (1) when a shipper initially arranges with a railroad for transportation of freight pursuant to the rail carrier's tariff; or (2) when a rail carrier changes the terms of its demurrage tariff.

*Total Burden Hours (annually including all respondents):* 1,330.7 hours. Consistent with the existing, approved information collection, Board staff estimates that: (1) six Class I carriers would each take on 18 new customers each year (108 hours); (2) each of the six Class I carriers would update its demurrage tariffs annually (6 hours); (3) 620 non-Class I carriers (which are already subject to the existing collection requirements, but which will not be subject to the new requirements) would each take on one new customer a year (620 hours); and (4) each of the non-Class I carriers would update its demurrage tariffs every three years (206.7 hours annualized). For the requirement that Class I carriers must directly bill the shipper for demurrage when the shipper and warehouseman agree to the arrangement and so notify the rail carrier, Board staff estimates that annually six Class I carriers would each receive 65 direct-billing agreements per year at one hour per agreement (390 hours).

The total hourly burdens are also set forth in the table below.

TABLE—TOTAL BURDEN HOURS

[Per year]

| Respondents | New customer burden (hours) | Tariff update burden (hours) | Burden for invoicing agreement (hours) | Total annual burden hours |
|---|---|---|---|---|
| 6 Class I Carriers | 108 | 6 | 390 | 504 |
| 620 Non-Class I Carriers | 620 | 206.7 | ..... | 826.7 |
| Totals | 728 | 212.7 | 390 | 1,330.7 |

*Total ''Non-hour Burden'' Cost:* There are no other costs identified. Any submissions may be submitted electronically.

*Needs and Uses:* Demurrage is subject to Board regulation under 49 U.S.C. 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices, and under 49 U.S.C. 10746, which requires railroads to compute demurrage charges, and establish rules related to those charges, in a way that will fulfill the national needs related to freight car use and distribution and maintenance of an adequate car supply. Demurrage is a charge that serves principally as an incentive to prevent undue car detention and thereby encourage the efficient use of rail cars in the rail network, while also providing compensation to rail carriers for the expense incurred when rail cars are unduly detained beyond a specified period of time (*i.e.,* ''free time'') for loading and unloading. *See Pa. R.R.* v. *Kittaning Iron & Steel Mfg. Co.,* 253 U.S. 319, 323 (1920) (''The purpose of demurrage charges is to promote car efficiency by penalizing undue detention of cars.''); 49 CFR 1333.1; *see also* 49 CFR part 1201, category 106.

Under 49 CFR 1333.3, a railroad's ability to charge demurrage pursuant to its tariff is conditional on its having given, prior to rail car placement, actual notice of the demurrage tariff to the person receiving rail cars for loading and unloading. Once a shipper receives a notice as to a particular tariff, additional notices are required only when the tariff changes materially. The parties rely on the information in the demurrage tariffs to avoid demurrage disputes, and the Board uses the tariffs to adjudicate demurrage disputes that come before it. Class I carriers are required to include certain minimum information on or with demurrage invoices, take appropriate action to ensure that demurrage charges are accurate and warranted, and directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier. This collection and use of this information by the Board enable the Board to meet its statutory duties.

The Board makes this submission because, under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public.

Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: September 19, 2023.

**Kenyatta Clay,**

*Clearance Clerk.*

[FR Doc. 2023–20552 Filed 9–21–23; 8:45 am]

**BILLING CODE 4915–01–P**

## SURFACE TRANSPORTATION BOARD

### 60-Day Notice of Intent To Seek Extension of Approval of Collection: Waybill Sample

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice and request for comments.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of Waybill Sample, described below.

**DATES:** Comments on this information collection should be submitted by November 21, 2023.

**ADDRESSES:** Direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, and to *PRA@stb.gov*. When submitting comments, please refer to ''Paperwork Reduction Act Comments, Waybill Sample.'' For further information regarding this collection, contact Pedro Ramirez at (202) 245–0333 or *pedro.ramirez@stb.gov*. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

**SUPPLEMENTARY INFORMATION:** Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

*Subjects:* In this notice, the Board is requesting comments on the extension of the following information collection:

**Description of Collection**

*Title:* Waybill Sample.

*OMB Control Number:* 2140–0015.

*Form Number:* None.

*Type of Review:* Extension without change.

*Respondents:* Respondents include any railroad that is subject to the Interstate Commerce Act and that terminated at least 4,500 carloads on its line in any of the three preceding years or that terminated at least 5% of the revenue carloads terminating in any state in any of the three preceding years. For the purposes of this analysis, the Board categorizes railroads required to report Waybill Sample data as either quarterly or monthly and as either sampling their own waybills or having a third party conduct their sampling. As a result, there are four categories of respondents, as shown in Table below.

TABLE—RESPONDENTS

| Categories of respondents | Number of respondents |
|---|---|
| Railroads that conduct their own sampling and report monthly | 5 |
| Railroads that conduct their own sampling and report quarterly | 3 |
| Railroads that have a third party sample their waybills and report monthly | 2 |
| Railroads that have a third party sample their waybills and report quarterly | 43 |
| Total Respondents | 53 |

*Number of Respondents:* 53.

*Estimated Time per Response:* The estimated hourly burden for waybill samples submitted to the Board varies depending on each respondent's particular circumstances. (Note: respondents that are identified as reporting monthly (Class I carriers) report monthly, quarterly, and annually (or 17 times per year). All other respondents (non-Class I carriers) report quarterly and annually (five times a year)).

*Frequency of Response:* Six respondents report monthly; and 46 other respondents report quarterly.

*Total Burden Hours* (annually including all respondents): 420 hours. This estimated total burden hours is shown in the Table below.

TABLE—TOTAL BURDEN HOURS

| Categories of respondents | Total annual hours for samples submitted |
|---|---|
| Railroads that conduct their own sampling and report monthly | 150 |
| Railroads that conduct their own sampling and report quarterly | 20 |
| Railroads that have a third party sample their waybills and report monthly | 30 |
| Railroads that have a third party sample their waybills and report quarterly | 220 |
| Total Annual Burden Hours | 420 |

*Total Annual ''Non-Hour Burden'' Cost:* There are no other costs identified because filings are submitted electronically to the Board.

*Needs and Uses:* The Board is, by statute, responsible for the economic regulation of common carrier rail transportation in the United States and collects rail-carload waybills for this purpose. The Board has authority to collect these waybills under 49 U.S.C. 11144, 11145, and the Board often uses the information in rail-carload waybills to carry out its responsibilities.

A rail-carload waybill is a ''document or instrument prepared from the bill of lading contract or shipper's instructions as to the disposition of the freight, and [is] used by the railroad(s) involved as the authority to move the shipment and as the basis for determining the freight charges and interline settlements.'' 49 CFR 1244.1(c). From these carload waybills, the Board creates an aggregate compilation of the sampled waybills of all reporting carriers, referred to as the Waybill Sample. The Waybill Sample is the Board's principal source of data about freight rail shipments. The information in the Waybill Sample is used by the Board, other federal and state agencies, and industry stakeholders to monitor traffic flows and rate trends in the industry, and to develop testimony in Board proceedings. The Board's collection and use of this data enables it to meet its statutory duty to regulate the rail industry.

The Board makes this submission because, under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep

records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Information from certain schedules contained in these reports is available at the Board's website at *www.stb.gov* by navigating to ''Reports & Data'' and clicking on ''Economic Data.'' Information in these reports is not available from any other source.

Dated: September 19, 2023.

**Kenyatta Clay,**

*Clearance Clerk.*

[FR Doc. 2023–20553 Filed 9–21–23; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket Number: 2023–1724]**

### Airport Investment Partnership Program

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

**ACTION:** Notice of receipt of application of Avon Park Executive Airport (AVO), Avon Park Florida; commencement of 60-day public review and comment period.

**SUMMARY:** The FAA has accepted for review the application for Avon Park Executive Airport's (AVO) participation in the Airport Investment Partnership Program (AIPP), under the terms and conditions of the AIPP and the FAA's Notice of AIPP Application Procedures. The filing date for AVO's application is noted as July 7, 2023. The City of Avon Park, the airport sponsor, selected Florida Airport Management as the private operator and negotiated a draft agreement for FAA review. The FAA has determined that the final application is substantially complete and accepted for review. The determination that the application is substantially complete results in the commencement of the FAA's review and is not an approval or disapproval of the proposed privatization application. The FAA is seeking information and comments from interested parties on the final application. The FAA will review the application, public comments, and any other relevant additional submission by the applicant or the public and issue a decision approving or disapproving the application. The AVO application is available for public review at *http://www.regulations.gov.* The docket number is FAA Docket Number 2023–1724.

**DATES:** September 22, 2023. Comments must be received by November 21, 2023. Comments that are received after that date will be considered only to the extent possible.

**ADDRESSES:** You may send written comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically. Docket Number: FAA 2023–1724;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001;
- *Hand Delivery:* Deliver to mail address above between 9:00 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays;
- *Fax:* (202) 493–2251.

Identify all transmissions with ''Docket Number FAA–2023–1724'' at the beginning of the document.

**FOR FURTHER INFORMATION CONTACT:** Heather Haney, Airport Compliance Specialist, Airport Compliance and Management Analysis Division, ACO–100, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–3085; or email *Heather.Haney@faa.gov.*

**SUPPLEMENTARY INFORMATION:** Title 49 U.S.C. 47134 establishes the AIPP and authorizes the DOT to grant exemptions from certain Federal statutory and regulatory requirements for airport privatization projects. The application procedures require the FAA to publish a notice of receipt of the final application in the **Federal Register** and accept public comment on the final application for a period of 60 days.

*Examining the Application:* The final application was filed under Docket Number FAA–2023–1724. You may examine the final application on the internet at: *http://www.regulations.gov* or in person at the Docket Operations office between 9:00 a.m. and 5:00 p.m. EST, Monday through Friday, except Federal holidays. The Docket Operations Office (800–647–5527) is located at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. The Docket contains the application, the agreements, any comments received and other information. The City of Avon Park has also made copies of the final application available at *https://www.avonpark.city/airport.*

Title 49 of the U.S.C. 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale or lease of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the FAA issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (Notice of final application procedures for the Airport Privatization Pilot program: Application Procedures, 62 **Federal Register** 48693–48708, September 16, 1997, as modified, 62 FR 63211, Nov. 26, 1997). The FAA Reauthorization Act of 2018 amended Section 47134 by changing the name to Airport Investment Partnership Program, eliminated limitations on the number of airports that could participate along with several other changes. On April 20, 2021, the FAA issued a notice revising the application procedures for applying for FAA approval of the privatization or partial privatization of a federally obligated public airport to reflect the provisions of the AIPP (86 **Federal Register** 20586–20592, April 20, 2021). A request for participation in the Program must be initiated by the filing of either a preliminary or final application for exemption with the FAA.

The City of Avon Park submitted its final application to the Program, for Avon Park Executive on July 7, 2023. The FAA accepted the final application on August 4, 2023. The City intends to lease Avon Park Executive Airport (with the exception of the City's utility facility and the baseball field, located on airport property) in a partnership with Florida Airport Management, a private operator, for a lease term of 30 years, with a 10-

year option and a nine-year option. Florida Airport Management intends to execute day-to-day operations and maintenance at the airport as well as complete the airport projects set forth in the 2014 Master Plan; the final term of the projects will complete by 2028. The 2014 Master Plan includes 13 remaining projects totaling $14,366,000 in 2015 dollars.

The City of Avon Park requested an exemption under 49 U.S.C. 47134(b)(1) and 47133 to permit the use of revenue from the lease of airport property, 49 U.S.C. 47134(b)(2) to forego the repayment of Federal grants; and Florida Airport Management asked for an exemption under 49 U.S.C. 47134(b)(3) to permit Florida Airport Management to earn compensation from the operation of the airport.

As part of its review of the final application, the FAA will consider all comments that are submitted by interested parties during the 60-day comment period for this notice.

Issued in Washington, DC, on September 19, 2023.

**Kevin C. Willis,**

*Director, Office of Airport Compliance and Management Analysis.*

[FR Doc. 2023–20597 Filed 9–21–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2023–1978]**

### Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Advanced Qualification Program (AQP)

**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 Advanced Qualification Program uses data informed quality control processes for validating and maintaining the effectiveness of air carrier training program curriculum content.

**DATES:** Written comments should be submitted by November 21, 2023.

**ADDRESSES:** Please send written comments:

*By Electronic Docket: www.regulations.gov* (Enter docket number into search field).

*By Mail:* Sandra Ray, Federal Aviation Administration, AFS–260, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

*By Fax:* 412–239–3063.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Ray by email at: *Sandra.ray@faa.gov*; phone: 412–546–7344.

**SUPPLEMENTARY INFORMATION:**

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*OMB Control Number:* 2120–0701.

*Title:* Advanced Qualification Program (AQP) Subpart Y to 14 CFR 121.

*Form Numbers:* N/A.

*Type of Review:* Renewal of an information collection.

*Background:* Under 14 CFR part 121, subpart Y, Advanced Qualification Program (AQP), the FAA provides certificated air carriers, as well as training centers they employ, with a regulatory alternative for training, checking, qualifying, and certifying aircrew personnel subject to the requirements of 14 CFR parts 121 and 135. Data collection and analysis processes ensure that the certificate holder provides performance information on its crewmembers, flight instructors, and evaluators that will enable them and the FAA to determine whether the form and content of training and evaluation activities are satisfactorily accomplishing the overall objectives of the curriculum.

*Respondents:* 25 Respondents with approved Advanced Qualification Programs.

*Frequency:* Monthly.

*Estimated Average Burden per Response:* 7 Hours.

*Estimated Total Annual Burden:* 2,100 Hours.

Issued in Washington, DC, on September 19, 2023.

**Sandra L Ray,**

*Aviation Safety Inspector, AFS–260.*

[FR Doc. 2023–20543 Filed 9–21–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number MARAD–2023–0191]**

### Aquaculture Support Operations Waiver Request for the Vessels Colby Perce, Ronja Carrier, Sadie Jane, Miss Mildred 1, KC Commander

**AGENCY:** Maritime Administration (MARAD), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** Pursuant to a delegation of authority from the Secretary of Transportation, the Maritime Administrator is authorized to issue Aquaculture Support Operations Waivers to U.S. documented vessels with registry endorsements or foreign flag vessels in operations that treat aquaculture fish or protect aquaculture fish from disease, parasitic infestation, or other threats to their health upon a finding that suitable vessels of the United States are not available that could perform those operations. MARAD has received an Aquaculture Support Operations waiver request and is publishing this notice to solicit comments that may assist MARAD in determining whether suitable vessels of the United States are available that could perform the proposed aquaculture support operations set forth in the request. A brief description of the proposed aquaculture support operations is listed in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** Submit comments on or before October 23, 2023.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2023–0191 by any of the following methods:

- On-line via the Federal Electronic Portal: *https://www.regulations.gov.* Search using ''MARAD–2023–0191'' and follow the instructions for submitting comments.
- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. Submit comments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

*Reference Materials and Docket Information:* You may view the complete application, including the aquaculture support technical service requirements, and all public comments at the DOT Docket on-line via *https://*

*www.regulations.gov.* Search using ''MARAD–2023–0191.'' All comments received will be posted without change to the docket, including any personal information provided. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Email: *Patricia.Hagerty@dot.gov.* Phone: 202–366–0903. If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

**SUPPLEMENTARY INFORMATION:** Pursuant to 46 CFR 106.115, vessel owners, operators, or charterers of U.S. documented vessels with registry endorsements or foreign flag vessels are required to provide prior notification to the United States Coast Guard (USCG) of aquaculture support operations in U.S. waters. The notification, in part, must include a copy of a MARAD-issued Aquaculture Support Operations Waiver. Pursuant to 46 U.S.C. 12102(d), the Secretary of Transportation has the authority to issue Aquaculture Support Operations Waivers to U.S. documented vessels with registry endorsements or foreign flag vessels engaged in operations that treat aquaculture fish or protect aquaculture fish from disease, parasitic infestation, or other threats to their health after a finding that suitable vessels of the United States are not available that could perform those operations. The Secretary has delegated this authority to the Maritime Administrator.

MARAD has received an Aquaculture Support Operations Waiver request from Cooke Aquaculture USA, Inc. (Cooke) for the operations of the Canadian-flag vessels Colby Perce, Ronja Carrier, Sadie Jane, Miss Mildred 1, KC Commander. Cooke proposes, in part, ''to use highly-specialized foreign-flag vessels'' referred to as a ''wellboat'' (or ''live fish carrier'') to treat Cooke's swimming inventory of farmed Atlantic salmon in the company's salt-water grow-out pens off Maine's North Atlantic Coast. This treatment prevents against parasitic infestation by sea lice that is highly destructive to the salmon's health.'' Cooke proposes to operate the vessels off Maine's North Atlantic Coast during the 2024 calendar year, from January 1 to December 31, 2024. Further details of Cooke's proposed operations may be found in the waiver request posted in the docket.

The public may submit comments providing detailed information relating to the availability of U.S.-flag vessels to perform the proposed aquaculture support operations set forth in Cooke's waiver request. Comments should reference the docket number of this notice, the vessel names, the commenter's interest in the application, and address whether there are suitable U.S. vessels available to conduct the proposed aquaculture support operations.

**Privacy Act**

In accordance with 5 U.S.C. 553(c), MARAD solicits comments from the public to inform its decision determining the availability of suitable U.S.-flag vessels to conduct the aquaculture support operations proposed in this notice. All timely comments will be considered; however, to facilitate comment tracking, commenters should provide their name or the name of their organization. If comments contain proprietary or confidential information, commenters may contact the agency for alternate submission instructions. Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(w))

By order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2023–20563 Filed 9–21–23; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing updates to the identifying information of two persons currently included on the SDN List. All property and interests in property subject to U.S. jurisdiction of these persons remain blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

**FOR FURTHER INFORMATION CONTACT:** OFAC: Bradley Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

**Notice of OFAC Actions**

On September 15, 2023, OFAC updated the entries on the SDN List for the following persons, whose property and interests in property subject to U.S. jurisdiction remain blocked under the relevant sanctions authority listed below.

1. NAJIB, Atif (a.k.a. NAJEEB, Atef; a.k.a. NAJIB, Atef); POB Jablah, Syria; Brigadier General; Position: Former head of the Syrian Political Security Directorate for Dar'a Province (individual) [SYRIA].

-to-

NAJIB, Atif (a.k.a. NAJEEB, Atef; a.k.a. NAJIB, Atef), Syria; DOB 1960; POB Jablah, Syria; nationality Syria; Gender Male; Former head of the Syrian Political Security Directorate for Dar'a Province (individual) [SYRIA].

Designated on April 29, 2011, pursuant to section 1(a) of Executive Order 13572 ''Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria,'' of April 29, 2011, 76 FR 24787, 3 CFR, 2011 Comp., p. 236 (E.O. 13572), for being a person listed in the Annex to E.O. 13572.

2. SALIMI, Hosein (a.k.a. SALAMI, Hoseyn; a.k.a. SALAMI, Hossein; a.k.a. SALAMI, Hussayn); nationality Iran; citizen Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Passport D08531177 (Iran) (individual) [SDGT] [NPWMD] [IRGC] [IFSR].

-to-

SALIMI, Hosein (a.k.a. SALAMI, Hoseyn; a.k.a. SALAMI, Hossein; a.k.a. SALAMI, Hussayn), Tehran, Iran; DOB 1960; POB Golpayegan, Isfahan province, Iran; nationality Iran; citizen Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport D08531177 (Iran); Commander-in-Chief of the Islamic Revolutionary Guard Corps (individual) [SDGT] [NPWMD] [IRGC] [IFSR].

Designated on October 25, 2007, pursuant to section 1(a)(iv) of Executive Order 13382 ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,'' of June 28, 2005, 70 FR 38567, 3 CFR, 2005 Comp., p. 170 (E.O. 13382), for acting or purporting to act for or on behalf

of, directly or indirectly, the Islamic Revolutionary Guard Corps, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Dated: September 15, 2023.

**Bradley Smith,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2023–20556 Filed 9–21–23; 8:45 am]

BILLING CODE 4810–AL–P

## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## Notice of OFAC Sanctions Action

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons (SDN) List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

**FOR FURTHER INFORMATION CONTACT:** OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://ofac.treasury.gov*).

### Notice of OFAC Action(s)

On September 19, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

### Individuals

1. A'INI, Husayn (a.k.a. A'INI, Hosein Omid; a.k.a. AYINI, Hosein), Iran; DOB 15 Jan 1976; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 3801669696 (Iran) (individual) [NPWMD] [IFSR] (Linked To: IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY).

Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,'' 70 FR 38567, 3 CFR, 2005 Comp., p. 170 (''E.O. 13382''), for acting or purporting to act for or on behalf of, directly or indirectly, IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. AYKUT, Alaaddin, Istanbul, Turkey; DOB 03 Jan 1965; POB Kilis, Turkey; nationality Turkey; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Identification Number 61516474396 (Turkey) (individual) [NPWMD] [IFSR] (Linked To: IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. DONG, Wenbo, China; DOB 23 May 1992; POB Guangxi, China; nationality China; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport E02849013 (China) issued 23 Aug 2012 expires 22 Aug 2022 (individual) [NPWMD] (Linked To: GUILIN ALPHA RUBBER & PLASTICS TECHNOLOGY CO., LTD).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, GUILIN ALPHA RUBBER & PLASTICS TECHNOLOGY CO., LTD, a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. GOGERDCHIAN, Mehdi (a.k.a. GUGERDCHIAN, Mehdi), Iran; DOB 14 Aug 1975; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 1286966558 (Iran) (individual) [NPWMD] [IFSR] (Linked To: IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. NOORI, Hamid Reza (a.k.a. NURI, Hamid Reza), Iran; DOB 04 Feb 1974; POB Esfahan, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport G10506784 (Iran); alt. Passport G9329064 (Iran); National ID No. 1290992118 (Iran) (individual) [NPWMD] [IFSR] (Linked To: IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

6. SU, Chunpeng, China; DOB 10 Dec 1980; POB Tai'an, China; nationality China; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport G57293067 (China) issued 21 Dec 2011 expires 20 Dec 2021; National ID No. 370602198012102115 (China) (individual) [NPWMD] (Linked To: SHENZHEN JIASIBO TECHNOLOGY CO., LTD.).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, SHENZHEN JIASIBO TECHNOLOGY CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13382.

7. TOKDEMIR, Mehmet, Istanbul, Turkey; DOB 11 Nov 1978; POB Dogubayazit, Turkey; nationality Turkey; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 22054198168 (Turkey) (individual) [NPWMD] [IFSR] (Linked To: IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

### Entities

1. DELTA–AERO TECHNICAL SERVICE CENTER LLC (a.k.a. LIMITED LIABILITY COMPANY TECHNICAL SERVICE CENTER DELTA–AERO; a.k.a. LLC TSTO DELTA–AERO), Vn. Ter. Settlement Moskovsky, Kievskoe Highway 22 km, household 4, building 1, floor 6, room/office 620 A/37, Moscow 108511, Russia; Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 12 Apr 2021; Tax ID No. 7730263823 (Russia); Business Registration Number 1217700171809 (Russia) [NPWMD] [IFSR] (Linked To: IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. JOINT STOCK COMPANY SCIENTIFIC PRODUCTION ENTERPRISE AEROSILA (a.k.a. JSC SPE AEROSILA; a.k.a. NPP AEROSILA, AO), 6, Zhdanov Str, Stupino, Moscow region, 142800, Russia; website *www.aerosila.ru;* Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 09

Sep 2002; Tax ID No. 5045002261 (Russia); Business Registration Number 1025005917023 (Russia) [NPWMD] [IFSR] (Linked To: IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. JOINT STOCK COMPANY STAR (a.k.a. AO ODK–STAR; a.k.a. JSC UEC STAR), Ul. Kuibysheva D. 140A, Perm 614990, Russia; website *www.ao-star.ru;* Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 1943; Tax ID No. 5904100329 (Russia); Business Registration Number 1025900895712 (Russia) [NPWMD] [IFSR] (Linked To: IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. SHENZHEN JIASIBO TECHNOLOGY CO., LTD. (a.k.a. SHENZHEN JIA SIBO SCIENCE AND TECHNOLOGY CO., LTD.), No. 57, Busha Road, Buji, Longgang, Shenzhen, Guangdong, China; Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 08 May 2012; Registration Number 440307106211599 (China); Unified Social Credit Code (USCC) 91440300595653122J (China) [NPWMD] [IFSR] (Linked To: IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

On September 19, 2023, OFAC published the following revised information for the entry on the SDN List for the following person blocked under the relevant sanctions authority listed below.

## Entity

1. IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY (Arabic: شركت صنايع هواپيماسازى ايران) (a.k.a. HESA TRADE CENTER; a.k.a. IRAN AIRCRAFT MANUFACTURING COMPANY; a.k.a. IRAN AIRCRAFT MANUFACTURING INDUSTRIES; a.k.a. KARKHANEJATE SANAYE HAVAPAYMAIE IRAN; a.k.a. "HAVA PEYMA SAZI-E IRAN"; a.k.a. "HAVAPEYMA SAZHRAN"; a.k.a. "HAVAPEYMA SAZI IRAN"; a.k.a. "HESA"; a.k.a. "HEVAPEIMASAZI"; a.k.a. "HTC"; a.k.a. "IAMCO"; a.k.a. "IAMI"; a.k.a. "SHAHIN CO."), P.O. Box 83145-311, 28 km Esfahan - Tehran Freeway, Shahin Shahr, Esfahan, Iran; P.O. Box 14155-5568, No. 27 Shahamat Ave, Vallie Asr Sqr, Tehran 15946, Iran; P.O. Box 81465-935, Esfahan, Iran; Shahih Shar Industrial Zone, Esfahan, Iran; P.O. Box 8140, No. 107 Sepahbod Gharany Ave, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; National ID No. 10100722073 (Iran); Registration Number 26740 (Iran) [NPWMD] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS; Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

Dated: September 19, 2023.

**Bradley T. Smith,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2023–20573 Filed 9–21–23; 8:45 am]

**BILLING CODE 4810–AL–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee: Correction

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting: correction.

**SUMMARY:** In the **Federal Register** that was originally published on September 13, 2023, the time for this meeting is being changed to 3:30 p.m. Eastern Time. All other meeting details remain unchanged. This meeting will be held via teleconference.

**DATES:** The meeting will be held Tuesday, October 10, 2023.

**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 Tuesday, October 10, 2023, at 3:30 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 a committee discussion involving 57139 Digital Assets/Cryptocurrency; and 64919 Decedent and Trust forms and publications.

Dated: September 19, 2023.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2023–20609 Filed 9–21–23; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2004–47

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Relief From Ruling Process For Making Late Reverse QTIP Election.

**DATES:** Written comments should be received on or before November 21, 2023 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 Number 1545–1898—Relief From Ruling Process For Making Late Reverse QTIP Election'' in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Relief From Ruling Process For Making Late Reverse QTIP Election.

*OMB Number:* 1545–1898.

*Revenue Procedure Number:* 2004–47.

*Abstract:* This revenue procedure provides alternative relief for taxpayers who failed to make a reverse QTIP election on an estate tax return. Instead of requesting a private letter ruling and paying the accompanying user fee, taxpayers may file certain documents with the Cincinnati Service Center directly to request relief.

*Current Actions:* There are no changes to the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 6.

*Estimated Annual Average Time per Respondent:* 9 hours.

*Estimated Total Annual Burden Hours:* 54.

The following paragraph applies to all of 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 as long as 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. Comments will be 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 has 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 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: September 15, 2023.

**Martha R. Brinson,**

*Tax Analyst.*

[FR Doc. 2023–20513 Filed 9–21–23; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Community Development Financial Institutions (CDFI) Program and Native American CDFI Assistance (NACA) Program Applications

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

**DATES:** Comments should be received on or before October 23, 2023 to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

**Community Development Financial Institutions Fund (CDFI Fund)**

*Title:* CDFI Program and NACA Program Applications.

*OMB Control Number:* 1559–0021.

*Type of Review:* Reinstatement of a previously approved collection.

*Description:* Pursuant to the Riegle Community Development Banking and Financial Institutions Act of 1994, as amended (the Act, 12 U.S.C. 4701 *et seq.*), the Community Development Financial Institutions (CDFI) Program provides financial and technical assistance to selected Applicants and Community Development Financial Institutions (CDFIs) in order to enhance their ability to make loans and investments and provide services for the benefit of designated Investment Areas and Targeted Populations.

The Application questions for the CDFI Fund's Community Development Financial Institutions Program (CDFI Program) and Native American CDFI Assistance Program (NACA Program) Financial Assistance (FA) and Technical Assistance (TA) programs have been modified to reflect public comments received through the request for public comment as required by the Paperwork Reduction Act (PRA). The revised FA Application includes the Base-FA Application as well as the following Applications for awards that are provided as supplemental to the Base-FA award: Persistent Poverty County Financial Assistance (PPC–FA), Healthy Food Financing Initiative-Financial Assistance (HFFI–FA), and Disability Funds-Financial Assistance (DF–FA). The supplemental Applications are only completed if the Applicant is requesting those specific funds.

*Forms:* FA Application, TA Application, PPC–FA, HFFI–FA and DF–FA.

*Affected Public:* Businesses or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in CDFI Fund programs.

*Frequency of Response:* Annually.

*Estimated Number of Respondents for Financial Assistance:* 458.

*Estimated Annual Time per Respondent for Financial Assistance including optional questions:* 122 hours.

*Estimated Total Annual Burden Hours for Financial Assistance:* 55,759.

*Estimated Number of Respondents for Technical Assistance:* 261.

*Estimated Annual Time per Respondent for Technical Assistance:* 85 hours.

*Estimated Total Annual Burden Hours for Technical Assistance:* 22,185.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Spencer W. Clark,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2023–20580 Filed 9–21–23; 8:45 am]

BILLING CODE 4810–70–P

# FEDERAL REGISTER

Vol. 88 Friday,

No. 183 September 22, 2023


Part II

## Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Atlantic Shores South Project Offshore of New Jersey; Proposed Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 217**

**[Docket No. 230907–0215]**

**RIN 0648–BL73**

# Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Atlantic Shores South Project Offshore of New Jersey

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

**ACTION:** Proposed rule; proposed letter of authorization; request for comments.

**SUMMARY:** NMFS has received a request from Atlantic Shores Offshore Wind LLC (Atlantic Shores), a joint venture between EDF–RE Offshore Development LLC (a wholly owned subsidiary of EDF Renewables, Inc.) and Shell New Energies US LLC, for Incidental Take Regulations (ITR) and associated Letters of Authorization (LOAs) pursuant to the Marine Mammal Protection Act (MMPA). The requested regulations would govern the authorization of take, by Level A harassment and Level B harassment, of small numbers of marine mammals over the course of 5 years (2025–2029) incidental to the construction of Atlantic Shores South located offshore of New Jersey within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS–A 0499 (Lease Area) and associated ECCs (ECR Area). Atlantic Shores South would be divided into two projects: Project 1 and Project 2 (the combined hereafter referred to as the ''Project Area'') and Atlantic Shores has requested a 5-year LOA for each Project, both issued under these proposed regulations. Atlantic Shores' activities likely to result in incidental take include impact and vibratory pile driving and site assessment surveys using high-resolution geophysical (HRG) equipment within the Lease Area and Export Cable Corridor (ECC). NMFS requests comments on its proposed rule. NMFS will consider public comments prior to making any final decision on the promulgation of the requested ITR and issuance of the LOA; agency responses to public comments will be summarized in the final rule documenting our decision.

**DATES:** The regulations and LOA, if issued, would be effective January 1, 2025 through December 31, 2029. Comments and information must be received no later than October 23, 2023.

**ADDRESSES:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2023–0068 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

## Availability

A copy of Atlantic Shores' Incidental Take Authorization (ITA) application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

## Purpose and Need for Regulatory Action

This proposed rule, if promulgated, would provide a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) for NMFS to authorize the take of marine mammals incidental to construction of Atlantic Shores South within the Lease Area and along ECCs to two landfall locations in New Jersey. NMFS received a request from Atlantic Shores to incidentally take individuals of 16 species of marine mammals (9 species by Level A harassment and Level B harassment and 7 species by Level B harassment only), comprising 17 stocks, incidental to Atlantic Shores' 5 years of construction activities. No mortality or serious injury is anticipated or proposed for authorization. Please see the *Legal Authority for the Proposed Action* section below for definitions of harassment, serious injury, and incidental take.

### *Legal Authority for the Proposed Action*

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking; ''other means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the monitoring and reporting of such takings.

As noted above, no serious injury or mortality is anticipated or proposed for authorization in this proposed rule. Relevant definitions of MMPA statutory and regulatory terms are included below:

- *U.S. Citizen*—individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) (50 CFR 216.103);
- *Take*—to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13); 50 CFR 216.3);
- *Incidental harassment, incidental taking, and incidental, but not intentional, taking*—an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are

infrequent, unavoidable or accidental (see 50 CFR 216.103);

• *Serious Injury*—any injury that will likely result in mortality (50 CFR 216.3);

• *Level A harassment*—any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3); and

• *Level B harassment*—any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362(18); 50 CFR 216.3).

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for proposing and, if appropriate, issuing regulations and an associated LOA(s). This proposed rule describes permissible methods of taking and mitigation, monitoring, and reporting requirements for Atlantic Shores' proposed activities.

*Summary of Major Provisions Within the Proposed Rule*

The major provisions of this proposed rule include:

• The proposed take of marine mammals by Level A harassment and/or Level B harassment;

• No mortality or serious injury of any marine mammal is anticipated or proposed to be authorized;

• The establishment of a seasonal moratorium on wind turbine generator (WTG), meteorological tower (Met Tower), and offshore substation (OSS) foundation impact pile driving during the months of highest North Atlantic right whale (*Eubalaena glacialis*) presence in the Project Area (December 1st–April 30th), unless NMFS allows for pile driving to occur in December;

• A requirement for both visual and passive acoustic monitoring to occur by trained, NOAA Fisheries-approved Protected Species Observers (PSOs) and Passive Acoustic Monitoring (PAM; where required) operators before, during, and after select activities;

• A requirement for training for all Atlantic Shores personnel to ensure marine mammal protocols and procedures are understood;

• The establishment of clearance and shutdown zones for all in-water construction activities to prevent or reduce the risk of Level A harassment and to minimize the risk of Level B harassment;

• A requirement to use sound attenuation device(s) during all foundation impact pile driving installation activities to reduce noise levels to those modeled assuming 10 decibels (dB);

• A delay to the start of foundation installation if a North Atlantic right whale is observed at any distance by PSOs or acoustically detected within certain distances;

• A delay to the start of foundation installation if other marine mammals are observed entering or within their respective clearance zones;

• A requirement to shut down impact pile driving (if feasible) if a North Atlantic right whale is observed or if any other marine mammals are observed entering their respective shutdown zones;

• A requirement to implement sound field verification during impact pile driving of foundation piles to measure *in situ* noise levels for comparison against the modeled results;

• A requirement to implement soft-starts during impact pile driving using the least amount of hammer energy necessary for installation;

• A requirement to implement ramp-up during the use of high-resolution geophysical (HRG) marine site characterization survey equipment;

• A requirement for PSOs to continue to monitor for 30 minutes after any impact pile driving for foundation installation;

• A requirement for the increased awareness of North Atlantic right whale presence through monitoring of the appropriate networks and Channel 16, as well as reporting any sightings to the sighting network;

• A requirement to implement various vessel strike avoidance measures;

• A requirement to implement measures during fisheries monitoring surveys, such as removing gear from the water if marine mammals are considered at-risk or are interacting with gear; and

• A requirement for frequently scheduled and situational reporting including, but not limited to, information regarding activities occurring, marine mammal observations and acoustic detections, and sound field verification monitoring results.

NMFS must withdraw or suspend any LOA(s), if issued under these regulations, after notice and opportunity for public comment, if it finds the methods of taking or the mitigation, monitoring, or reporting measures are not being substantially complied with (16 U.S.C. 1371(a)(5)(B); 50 CFR 216.206(e)). Additionally, failure to comply with the requirements of the LOA(s) may result in civil monetary penalties and knowing violations may result in criminal penalties (16 U.S.C. 1375).

**National Environmental Policy Act (NEPA)**

To comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate the proposed action (*i.e.,* promulgation of regulations) and alternatives with respect to potential impacts on the human environment.

Accordingly, NMFS proposes to adopt the BOEM Environmental Impact Statement (EIS) for Atlantic Shores South, provided our independent evaluation of the document finds that it includes adequate information analyzing the effects of promulgating the proposed regulations and issuance of the LOA(s) on the human environment. NMFS is a cooperating agency on BOEM's EIS. BOEM's Atlantic Shores South Draft Environmental Impact Statement for Commercial Wind Lease OCS–A 0499 (DEIS), was made available for public comment through a Notice of Availability on May 19, 2023 (88 FR 32242), available at *https://www.boem.gov/renewable-energy/state-activities/atlantic-shores-south*. The DEIS had a 45-day public comment period; the comment period was open from May 19, 2023 to July 3, 2023. Additionally, BOEM held two in-person public meetings, on June 21, 2023 and June 22, 2023, and two virtual public hearings, on June 26, 2023, and June 28, 2023.

Information contained within Atlantic Shores' ITA application and this **Federal Register** document provide the environmental information related to these proposed regulations and associated 5-year LOA for public review and comment. NMFS will review all comments submitted in response to this proposed rulemaking prior to concluding our NEPA process or making a final decision on the requested 5-year ITR and associated LOAs.

**Fixing America's Surface Transportation Act (FAST–41)**

This project is covered under Title 41 of the Fixing America's Surface Transportation Act or ''FAST–41.'' FAST–41 includes a suite of provisions designed to expedite the environmental review for covered infrastructure projects, including enhanced interagency coordination as well as milestone tracking on the public-facing Permitting Dashboard. FAST–41 also places a 2-year limitations period on

any judicial claim that challenges the validity of a Federal agency decision to issue or deny an authorization for a FAST–41 covered project (42 U.S.C. 4370m-6(a)(1)(A)).

Atlantic Shores' proposed project is listed on the Permitting Dashboard, where milestones and schedules related to the environmental review and permitting for the project can be found at *https://www.permits.performance.gov/permitting-project/atlantic-shores-south*.

**Summary of Request**

On February 8, 2022, NMFS received a request from Atlantic Shores for the promulgation of regulations and the issuance of associated LOAs to take marine mammals incidental to construction activities associated with the Atlantic Shores South project located offshore of New Jersey in Lease Area OCS–A 0499 and associated ECCs. Atlantic Shores' request is for the incidental, but not intentional, take of a small number of 16 marine mammal species (comprising 17 stocks) by Level A harassment and/or Level B harassment. Neither Atlantic Shores nor NMFS expects serious injury and/or mortality to result from the specified activities, and Atlantic Shores did not request, and NMFS is not proposing, to authorize mortality or serious injury of any marine mammal species or stock.

In response to our questions and comments and following extensive information exchanges with NMFS, Atlantic Shores submitted a final, revised application on August 12, 2022 that NMFS deemed adequate and complete on August 25, 2022. The final version of the application is available on NMFS' website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-construction-atlantic-shores*.

On September 29, 2022, NMFS published a notice of receipt (NOR) of the adequate and complete application in the **Federal Register** (87 FR 59061), requesting public comments and information related to Atlantic Shores' request during a 30-day public comment period. Due to a request, NMFS extended the public comment period for an additional 15 days (87 FR 65193, October 28, 2022) for a total of a 45-day public comment period. During the 45-day NOR public comment period, NMFS received 5 comments and letters from the public, including a citizen, environmental non-governmental organization (eNGO), and local citizen group. NMFS has reviewed all submitted material and has taken these into consideration during the drafting of this proposed rule.

In June 2022, Duke University's Marine Spatial Ecology Laboratory released updated habitat-based marine mammal density models (Roberts *et al.,* 2016; Roberts *et al.,* 2023). Because Atlantic Shores applied previous marine mammal densities to their analysis in their application, Atlantic Shores submitted a final Updated Density and Take Estimation Memo (herein referred to as Updated Density and Take Estimation Memo) on March 28, 2023 that included marine mammal densities and take estimates based on these new models. This memo can be found on NMFS' website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-construction-atlantic-shores*.

In January and February 2023, Atlantic Shores informed NMFS that the proposed activity had changed from what was presented in the adequate and complete MMPA application. Specifically, Atlantic Shores committed to installing only monopile WTG foundations for Project 1 (and any found in the associated Overlap Area), as opposed to either monopile or jacket foundations. All WTGs built for Project 2 (and any remaining Overlap Area) may still consist of either monopiles or jacket foundations and remain unchanged as presented in the adequate and complete MMPA application. Additionally, all OSS foundations that could be developed across both Projects 1 and 2 continue to maintain build-outs using only jacket foundations. Atlantic Shores provided a memo and supplemental materials outlining these changes to NMFS on March 31, 2023. These supplemental materials can be found on NMFS' website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-construction-atlantic-shores*.

NMFS has previously issued seven Incidental Harassment Authorizations (IHAs), including one renewed IHA and one correction to an issued IHA, to Atlantic Shores authorizing take incidental to high-resolution site characterization surveys offshore New Jersey (see 85 FR 21198, April 16, 2020; 86 FR 21289, April 22, 2021 (renewal); 87 FR 24103, April 22, 2022; and 88 FR 38821, June 14, 2023).

To date, Atlantic Shores has complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding Atlantic Shores' take estimates and monitoring results may be found in the Estimated Take section. Final monitoring reports can be found on NMFS' website, along with previously issued IHAs: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations (87 FR 46921, August 1, 2022) to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (UME). Should a final vessel speed rule be issued and become effective during the effective period of these regulations (or any other MMPA incidental take authorization), the authorization holder would 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 would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published on the effective date, NMFS would also notify Atlantic Shores if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer required.

**Description of the Specified Activities**

*Overview*

Atlantic Shores has proposed to construct and operate two offshore wind projects (Project 1 and Project 2), collectively known as Atlantic Shores South in Lease Area OCS–A 0499. This lease area is located within the New Jersey Wind Energy Area (NJ WEA). Collectively, Atlantic Shores South will consist of up to 200 WTGs, 10 OSSs, and 1 Met Tower divided into two projects: Project 1 and Project 2. These Projects would assist the State of New Jersey to meet its renewable energy goals under the New Jersey Offshore Wind Economic Development Act (OWEDA). Atlantic Shores has been given an allowance by the New Jersey

Board of Public Utilities, through an Offshore Renewable Energy Certificate (OREC), to construct a facility capable of delivering 1,510 megawatts (MW) of renewable energy to the State of New Jersey through Project 1 (owned by an affiliate of Atlantic Shores, called Atlantic Shores Offshore Wind Project 1, LLC). Atlantic Shores also intends to compete for a second OREC award through a competitive solicitation process to develop Project 2, which will be owned by another affiliate company of Atlantic Shores, Atlantic Shores Offshore Wind Project 2, LLC.

The Project would consist of several different types of permanent offshore infrastructure, including up to 200 15–MW WTGs and up to 10 OSSs; a single Met Tower; and OSS array cables and interconnector cables. All permanent foundations (WTGs, OSSs, and the single Met Tower) would be installed using impact pile driving only. For the permanent foundations, Atlantic Shores originally considered three construction scenarios for the completion of Projects 1 and 2. All three schedules assume a start year of 2026 for WTG, Met Tower, and OSS foundation installation. Construction Schedules 1 and 3 assume monopile foundations for all WTGs and the Met Tower across both Projects 1 and 2. Construction Schedule 2 originally assumed a full jacket foundation buildout for both Project 1 and Project 2. However, Atlantic Shores has modified Schedule 2 to now assume that all WTGs and the Met Tower in Project 1 would be built using monopiles; the WTGs for Project 2 would still consist of either jacket or monopile foundations. In all Construction Schedules, the OSS foundations would always be built out using jacket foundations. However, these may vary in size between the two Projects (*i.e.,* small, medium, or large OSSs). Under Schedules 1 and 2, foundations would be constructed in 2 years. Under Schedule 3, all permanent foundations would be installed within a single year.

Atlantic Shores would also conduct the following specified activities: temporarily install and remove, by vibratory pile driving, up to eight nearshore cofferdams to connect the offshore export cables to onshore facilities; deploy up to four temporary meteorological and oceanographic (metocean) buoys (three in Project 1 and one in Project 2); several types of fishery and ecological monitoring surveys; the placement of scour protected, trenching, laying, and burial activities associated with the installation of the export cable route from OSSs to shore-based switching and substations and inter-array cables between turbines; HRG vessel-based site characterization and assessment surveys using active acoustic sources with frequencies of less than 180 kilohertz (kHz); transit within the Project Area and between ports and the Lease Area to transport crew, supplies, and materials to support pile installation via vessels; and WTG operation. All offshore cables would be connected to onshore export cables at the sea-to-shore transition points located in Atlantic City, New Jersey (Atlantic Landfall Site) and in Sea Girt, New Jersey (Monmouth Landfall Site). From the sea-to-shore transition point, onshore underground export cables are then connected in series to switching stations/substations, overhead transmission lines, and ultimately to the grid connection. No detonations of unexploded ordnance or munitions and explosives of concern (UXOs/MECs) were planned to occur, nor are they included in this proposed rule. Therefore, these are not discussed further.

Marine mammals exposed to elevated noise levels during impact and vibratory pile driving and site characterization surveys may be taken, by Level A harassment and/or Level B harassment, depending on the specified activity. No serious injury or mortality is anticipated or proposed for authorization.

*Dates and Duration*

Atlantic Shores anticipates that activities with the potential to result in incidental take of marine mammals would occur throughout all 5 years of the proposed regulations which, if issued, would be effective from January 1, 2025 through December 31, 2029. Based on Atlantic Shores' proposed schedule, the installation of all permanent structures would be completed by the end of November 2026. More specifically, the installation of WTG and OSS foundations is expected to occur between May–December in both 2026 and 2027. The temporary cofferdams used for nearshore cable landfall construction would be installed and subsequently removed anytime within 2025 and 2026. The Met Tower would be installed alongside WTGs in Project 1 (2026). Lastly, Atlantic Shores anticipates HRG survey activities using boomers, sparkers, and Compressed High-Intensity Radiated Pulses (CHIRPs) to occur annually and across the entire 5-year effective period of the proposed rule. These HRG surveys are not planned to occur concurrently to pile driving activities but they may occur across the entire Atlantic Shores South Lease Area and ECCs and may take place at any time of year.

Atlantic Shores has provided a schedule for all of their proposed construction activities (Table 1). This table also presents a breakdown of the timing and durations of the activities proposed to occur during the construction and operation of the Atlantic Shores South project.

TABLE 1—ESTIMATED ACTIVITY SCHEDULE TO CONSTRUCT AND OPERATE ATLANTIC SHORES SOUTH, PER THE CONSTRUCTION AND OPERATIONS PLAN

| Activity | Duration [a] (months) | Expected schedule [b] | Project 1 start date | Project 2 start date |
|---|---|---|---|---|
| Onshore Interconnection Cable Installation | 9–12 | 2024–2025 | Q1–2024 | Q1–2024 |
| Onshore Substation and/or Onshore Converter Station Construction | 18–24 | 2024–2026 | Q1–2025 | Q1–2025 |
| HRG Survey Activities | 3–6 | 2025–2029 | Q2–2025 | Q3–2025 |
| Export Cable Installation | 6–9 | 2025 | Q2–2025 | Q3–2025 |
| Temporary Cofferdam Installation and Removal | 18–24 | 2025–2026 | Q2–2025 | Q3–2025 |
| OSS installation and Commissioning | 5–7 | 2025–2026 | Q2–2026 | Q2–2026 |
| WTG Foundation and Met Tower Installation [c] | 10 | 2026–2027 | Q1–2026 | [c] Q1–2026 |
| Inter-Array Cable Installation | 14 | 2026–2027 | Q2–2026 | [d] Q3–2026 |
| WTG Installation and Commissioning [e] | 17 | 2026–2027 | Q2–2026 | [d] Q1–2027 |
| Met Buoy Deployments | 36 | 2025–2027 | Q1–2025 | Q1–2025 |
| Scour Protection Pre-Installation | 17 | 2025–2027 | Q2–2025 | Q3–2025 |
| Scour Protection Post-Installation | 17 | 2025–2027 | Q2–2025 | Q3–2025 |
| Site Preparation | 60 | 2025–2029 | Q1–2025 | Q4–2029 |

TABLE 1—ESTIMATED ACTIVITY SCHEDULE TO CONSTRUCT AND OPERATE ATLANTIC SHORES SOUTH, PER THE CONSTRUCTION AND OPERATIONS PLAN—Continued

| Activity | Duration [a] (months) | Expected schedule [b] | Project 1 start date | Project 2 start date |
|---|---|---|---|---|
| Fishery Monitoring Surveys | 60 | 2025–2029 | Q1–2025 | Q4–2029 |

**Note:** Q1 = January through March; Q2 = April through June; Q3 = July through September; Q4 = October through December.
[a] These durations are a total across all years the activity may occur.
[b] The expected timeframe is indicative of the most probable duration for each activity; the timeframe could shift and/or extend depending on supply chains.
[c] Pile driving may occur from May to December, annually.
[d] The expected timeframe is dependent on the completion of the preceding Project 1 activities (*i.e.,* Project 1 inter-array cable installation and WTG installation) and the Project 2 foundation installation schedule.
[e] Atlantic Shores anticipates that WTGs for each Project would be commissioned starting in 2026 and 2027 but turbines would not become operational until 2028 and 2029.

Atlantic Shores anticipates the installation of all offshore components for Atlantic Shores South are expected to take up to 3 years to complete. During the construction period, Atlantic Shores plans for Project 1 WTGs to be commissioned in 2026 and for Project 2 WTGs to be commissioned in 2027. Atlantic Shores anticipates that Projects 1 and 2 would become operational in 2028 and 2029, respectively. However, these schedules are subject to change based on the contracting and permitting needs of the projects.

*Specific Geographic Region*

Atlantic Shores would construct and operate Atlantic Shores South (both Project 1 and Project 2) in Federal and state waters offshore New Jersey within Lease Area OCS–A–0499 and associated ECCs (Figure 1). The Lease Area covers approximately 413.3 square kilometers ($km^2$; 102,124 acres) and begins approximately 8.7 miles (mi; 14 km) from the New Jersey shoreline. The area for Project 1 measures approximately 219.2 $km^2$ (54,175 acres) and is located in the western part of the Project Area; the area for Project 2 consists of approximately 182.2 $km^2$ (45,013 acres) and is located along the eastern part of the Project Area. The Overlap Area, which would be split between Projects 1 and 2, consists of an area measuring approximately 11.9 $km^2$ (2,936 acres). The water depths in the Lease Area range from 19 to 37 meters (m; 62 to 121 feet (ft)) while water depths along the Atlantic City ECC range from 0 to 22 m (0 to 72 ft) and the Monmouth ECC ranges from 0 to 30 m (0 to 98 ft). Within the Project Area, water depths gradually increase based on distance from shore. Cable landfall construction work (*i.e.,* temporary cofferdams) would be conducted in shallow waters of 4 to 7.5 m (13.1 to 24.6 ft) deep. Sea surface temperatures range from 41 to 73 degrees Fahrenheit (°F; 5 to 23 degrees Celsius (°C)).

Atlantic Shores' specified activities would occur within the Northeast U.S. Continental Shelf Large Marine Ecosystem (NES LME), an area of approximately 260,000 $km^2$ (64,247,399.2 acres) from Cape Hatteras in the south to the Gulf of Maine in the north. Specifically, the lease area and cable corridor are located within the Mid-Atlantic Bight sub-area of the NES LME which extends between Cape Hatteras, North Carolina, and Martha's Vineyard, Massachusetts, extending westward into the Atlantic to the 100-m isobath. In the Middle Atlantic Bight, the pattern of sediment distribution is relatively simple. The continental shelf south of New England is broad and flat, dominated by fine grained sediments. Most of the surficial sediments on the continental shelf are sands and gravels. Silts and clays predominate at and beyond the shelf edge, with most of the slope being 70–100 percent mud. Fine sediments are also common in the shelf valleys leading to the submarine canyons. There are some larger materials, left by retreating glaciers, along the coast of Long Island and to the north and east.

Primary productivity is highest in the nearshore and estuarine regions, with coastal phytoplankton blooms initiating in the winter and summer, although the timing and spatial extent of blooms varies from year to year. The relatively productive continental shelf supports a wide variety of fauna and flora, making it important habitat for various benthic and fish species and marine mammals, including but not limited to, fin whales, humpback whales, North Atlantic right whales, and other large whales as they migrate through the area. The Cold Pool, a bottom-trapped cold, nutrient-rich pool and distinct oceanographic feature of the Mid-Atlantic Bight, creates habitat that provides thermal refuge to cold water species in the area (Atlantic Shores South Construction and Operations Plan (COP), Volume II; Lentz, 2017). Cold Pool waters, when upwelled to the surface, promote primary productivity within this region (Voynova *et al.,* 2013).

The seafloor in the Atlantic Shores South Project Area is dynamic and changes over time due to current, tidal flows, and wave conditions. The benthic habitat of the Project Area contains a variety of seafloor substrates, physical features, and associated benthic organisms. The soft bottom sediments in the Project Area are reflective of the rest of the Mid-Atlantic Bight region, and are characterized by fine sand as well as gravel and silt/sand mixes (Milliman, 1972; Steimle and Zetlin, 2000). The offshore Project Area is dominated by fine, medium, and coarse sand. The ECCs consist of medium to coarse sand offshore. The Atlantic City ECC is characterized by fine sand nearshore while the Monmouth ECC largely consists of medium and fine sand in the nearshore portion (Atlantic Shores, 2021). The benthic community within the offshore Project Area is characterized by echinoderms, bivalves, gastropods, polychaetes, oligochaetes, amphipods, crustaceans, and cnidarians (Atlantic Shores, 2021).

Additional information on the underwater environment's physical resources can be found in the COP for the Atlantic Shores South project (Atlantic Shores, 2021) available at *https://www.boem.gov/renewable-energy/state-activities/atlantic-shores-offshore-wind-construction-and-operations-plan.*

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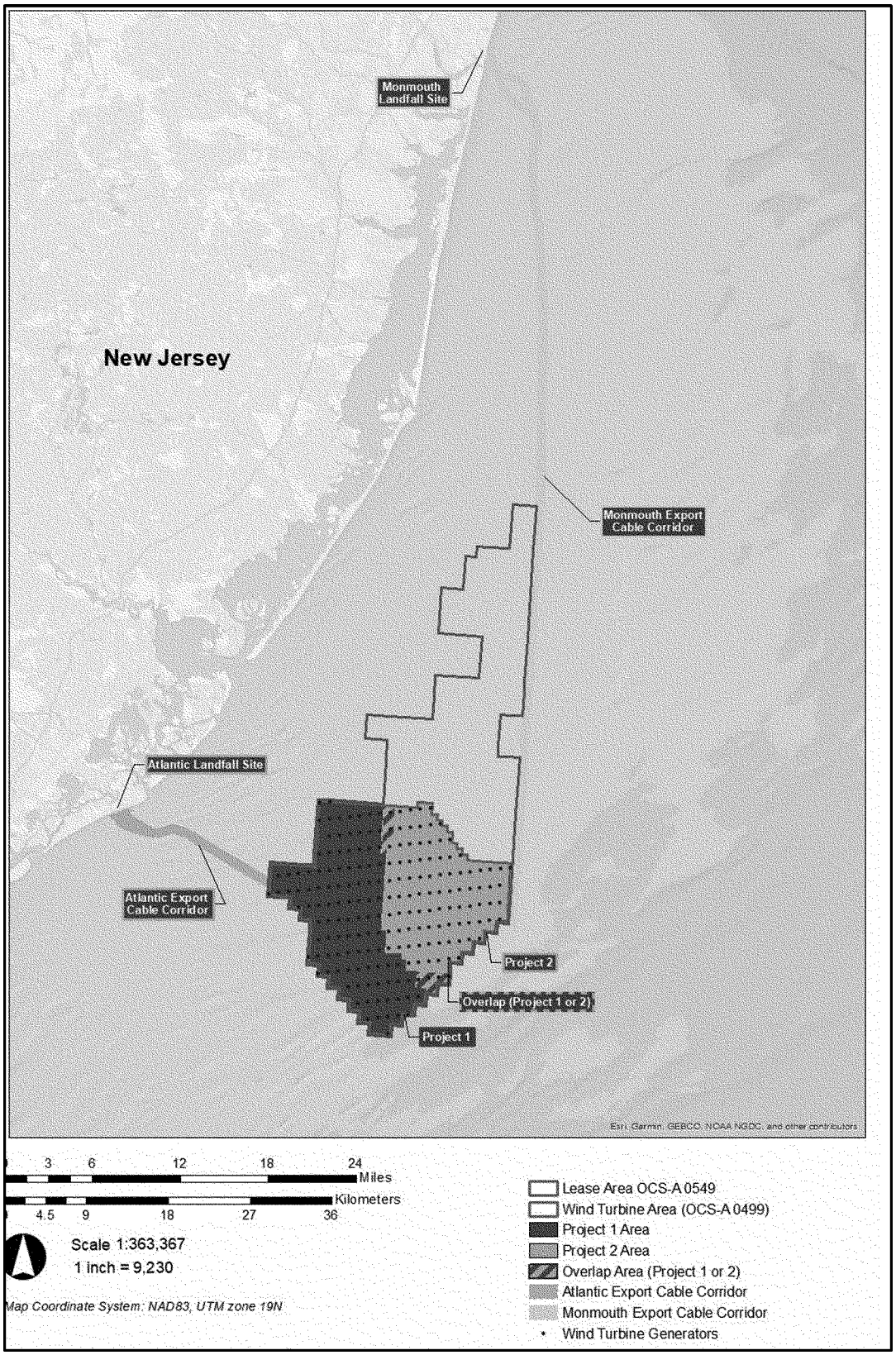


**Figure 1—Project Location**

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*Detailed Description of Specified Activities*

Below we provide detailed descriptions of Atlantic Shores' proposed activities, explicitly noting those that are anticipated to result in the take of marine mammals and for which an incidental take authorization is requested. Additionally, a brief

explanation is provided for those activities that are not expected to result in the take of marine mammals.

WTG, OSS, and Met Tower Foundation Installation

Atlantic Shores South, in total, includes up to 200 WTGs, a single Met Tower, and up to 10 OSS. As described above, Atlantic Shores has proposed to divide Atlantic Shores South into two projects. Project 1 and Project 2 (including any relevant Overlap Area allocated) would be electrically distinct in all ways and energy produced from the Projects' OSSs would transmit energy to shore via 230–275 kilovolts (kV) High Voltage Alternating Current (HVAC) and/or 320–525 kV high voltage direct current (HVDC) export cables (a maximum of eight cables would be used) to two landfall locations located near Atlantic City, New Jersey and at the Monmouth site located near Sea Girt, New Jersey. Project 1 would include 105 to 111 WTGs on monopile foundations while Project 2 would include 89 to 95 WTGs on either monopile or jacket foundations. Monopiles would be either 12 m (39.37 ft) or 15 m (49.21 ft) in diameter. The number of OSSs in each project is dependent upon the foundation size. Project 1 may contain five small, two medium, or two large OSSs while Project 2 may contain up to five small, three medium, or two large OSSs. OSSs would be located on jacket foundations using 5 m (16.4 ft) pin piles and could consist of a four-legged (small OSS), six-legged (medium OSS), or eight-legged (large OSS) design. Atlantic Shores would also construct a Met Tower in Project 1 on a monopile foundation. Atlantic Shores has indicated that monopiles, suction bucket jackets, mono-suction buckets, and gravity-base structures may also be used (particularly for the construction of the Met Tower and depending on the size of OSSs built, per Atlantic Shores' Project Design Envelope (PDE) refinement memo). However, for purposes of this analysis, the use of suction buckets and gravity-bases to secure bottom-frame foundations are not being considered further in this analysis as the installation of bottom-frame foundations using suction buckets or gravity-base foundations are not anticipated to result in noise levels that would cause harassment to marine mammals. Small OSSs built on monopile foundations would produce less Level B harassment than if they were built on jacket foundations, as indicated in the ITA application, as more piles would need to be driven by an impact hammer. Hence, we limit our analysis in this proposed rule to foundations which require the maximum amount of impact pile driving possible.

A monopile foundation typically consists of a single steel tubular section with several sections of rolled steel plate welded together and secured to the seabed. Secondary structures on each WTG monopile foundation could include a boat landing or alternative means of safe access, ladders, a crane, and other ancillary components. A typical monopile installation sequence begins with the monopiles transported directly to the Project Area for installation or to the construction staging port by an installation vessel or a feeding barge. At the foundation location, the main installation vessel upends the monopile in a vertical position in the pile gripper mounted on the side of the vessel. The hammer is then lifted on top of the pile and pile driving commences with a soft-start and proceeds to completion. Piles are driven until the target embedment depth is met, then the pile hammer is removed and the monopile is released from the pile gripper. Once installation of the monopile is complete, the vessel moves to the next installation location.

All monopile foundations (*i.e.,* 15-m or 12-m) would be installed using a 4,400 kilojoule (kJ) impact hammer (*i.e.,* Menck MHU 4400S) to obtain a maximum penetration depth of 60 m (197 ft). Atlantic Shores estimates that a 15-m monopile could require up to 15,387 strikes at a rate of up to 30 blows per minute (bpm) to reach the target penetration depth, while a 12-m monopile could require 12,350 total strikes at a rate of 30 bpm. Each monopile is estimated to take between 7 to 9 hours to install using an impact hammer. In most cases, Atlantic Shores anticipates installing one monopile per day. However, they may install up to two monopiles per day if possible. For jacket foundations, pin piles would be installed using a 2,500 kJ hammer (*i.e.,* IHC S–2500) to reach a maximum penetration depth of 70 m (230 ft). Each pin pile would need an estimated 3 hours of impact hammering to reach the target penetration depth, with up to 12 hours needed per day to install four pin piles (one jacket foundation). Impact hammering for pin piles would require up to 6,750 strikes at a rate of up to 30 bpm.

Jackets would be lifted off the transport or installation vessel and lowered to the seabed with the correct orientation. The piles would be driven to the engineered depth, following the same process described above for monopiles. The jacket piles are expected to be pre-piled (*i.e.,* the jacket structure will be set on pre-installed piles) or post-piled (*i.e.,* the jacket is placed on the seafloor and piles are subsequently driven through guides at the base of each leg). Figure 2 in Atlantic Shores' ITA application provides a conceptual design of monopile and jacket foundations that may be used for Atlantic Shores South.

No concurrent pile driving is planned to occur (*i.e.,* only one pile would be installed at any given time). Pile driving would not be initiated at night. Nighttime pile driving is not planned; however, if a pile is started 1.5 hours prior to civil sunset and does not pause for more than 30 minutes once visibility is diminished due to darkness during daylight and would necessitate being finished during nighttime hours, Atlantic Shores may complete impact pile driving during night to avoid stability or safety issues. Pile driving associated with foundation installation could occur within the 8-month period of May through December, annually.

Atlantic Shores presented three schedules in their application to construct Atlantic Shores South which contained various foundation types for both projects. However, since that time, Atlantic Shores has narrowed their scope for Project 1 which effectively eliminates Schedule 1 and Schedule 3 from potential scenarios. Atlantic Shores has determined all WTG and Met Tower foundations in Project 1 would be monopiles (maximum size of 15-m). However, they retained the description for Project 2 such that either monopiles or jacket foundations could be used. For both Project 1 and Project 2, OSSs would still be built out using jacket foundations. The 2-year construction timeline described for Schedule 2 in their application remains valid. Hence, NMFS is considering this modified Schedule 2 for purposes of this proposed rule.

All foundation installation for Project 1 plus the Overlap Area (*i.e.,* 112 WTGs, 1 Met Tower, and 2 OSSs) would occur during construction year 1. For Project 2, 6 WTG foundations would be installed in year 1 and 89 WTG foundations and 2 OSS would be installed in construction year 2. All foundations would be installed in 2026 and 2027, the second and third year of the proposed effective period of this rulemaking. Based on the overall pile driving schedule, Atlantic Shores estimates up to 112 pile driving days for WTGs/Met Tower and up to 12 days for OSS pin pile installation would be needed in construction year 1 (2026). Up to 89 days for WTG installation would be needed in construction year 2 (2027) with another 12 days necessary

for the installation of Project 2's OSSs. This estimates a total of 201 days needed to install WTGs (on either a jacket or monopile foundation) and up to 24 days for OSS jacket foundation installation.

Installation of the WTG, Met Tower, and OSS foundations is anticipated to result in the take, by Level A harassment and Level B harassment, of marine mammals due to noise generated during impact pile driving. No vibratory pile driving or drilling of foundations would occur.

Cable Landfall Construction

Atlantic Shores would bring the Atlantic Shores South offshore export cables to shore at the Atlantic landfall site for Project 1, located east of the Project Area and the Monmouth landfall site for Project 2, located north of the Project Area (see Figure 1). The Atlantic Shores South export cable would be connected to the onshore transmission cable at the landfall locations using horizontal directional drilling (HDD) and potentially a backhoe dredge. Atlantic Shores would construct temporary cofferdams using sheet piles to temporarily ''dewater'' a specified enclosed area using pumps to allow for excavation of the HDD pit. Once excavation and drilling are completed and the HDD conduit and export cable are installed, the seabed would be restored and water would be allowed to flow back in, following the removal of the temporary cofferdam.

Atlantic Shores anticipates installing up to eight temporary cofferdams, with four located at each of two main landfall locations (although fewer may be needed). Each cofferdam is anticipated to measure 30 m x 8 m (98.4 ft x 26.2 ft) in size and would be made up of up to 109 sheet piles which would be both installed and removed by vibratory pile driving methods. This yields a total of 436 sheet piles across all four cofferdams at each landfall location, yielding a total of 872 sheet piles for both landfall locations. Atlantic Shores estimates they can install or remove approximately 13–14 sheet piles per day, assuming 8 hours of vibratory pile driving would occur within any 24-hour period. Given different depths found at the Monmouth and Atlantic landfall sites, the work at Monmouth would take longer (due to deeper waters). The shallower depths found at the Atlantic landfall site would necessitate shorter vibratory pile driving durations. Hence, up to 16 days of work (8 days to install, 8 days to remove) would be required for all cofferdams at the Monmouth landfall site and up to 12 days of work (6 days to install, 6 days to remove) would be necessary for all cofferdams at the Atlantic landfall site. In total, to install and remove all eight cofferdams across both sites, 28 days of vibratory hammering/removal would need to occur. Installation of the temporary cofferdams is anticipated to result in the take, by Level B harassment, of marine mammals due to noise during vibratory driving.

Marine Site Assessment Surveys (e.g., HRG)

Atlantic Shores would conduct site assessment surveys in the Project Area, including the Lease Area and along potential ECCs to landfall locations in New Jersey throughout construction and operation occurring within the 5-year period of the proposed rulemaking. These activities would include:

- Shallow penetration sub-bottom profiler (pingers/CHIRPs) to map the near surface stratigraphy (top 0 ft to 16 ft (0 m to 5 m) soils below seabed);
- Medium penetration sub-bottom profiler (CHIRPs/parametric profilers/sparkers) to map deeper subsurface stratigraphy as needed (soils down to 246 ft (75 m) to 328 ft (100 m) below the seabed);
- Grab sampling to validate seabed classification using typical sample sizes between 0.1 square meters ($m^2$) and 0.2 $m^2$;
- Depth sounding (multibeam depth sounder and single beam echosounder) to determine water depths and general bottom topography (currently estimated to range from approximately 16 ft (5 m) to 131 ft (40 m) in depth);
- Seafloor imaging (side scan sonar survey) for seabed sediment classification purposes, to identify natural and man-made acoustic targets resting on the bottom as well as any anomalous features; and
- Magnetic intensity measurements (gradiometer) for detecting local variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom.

These site assessment surveys may utilize acoustic equipment such as multibeam echosounders, side scan sonars, shallow penetration sub-bottom profilers (SBPs) (*e.g.,* CHIRP non-parametric SBP), medium penetration sub-bottom profilers (*e.g.,* sparkers), and ultra-short baseline positioning equipment, some of which are expected to result in the take of marine mammals. Surveys would occur annually, with durations dependent on the activities occurring in that year (*i.e.,* construction years versus operational years). Use of gradiometers and grab sampling techniques do not have the potential to result in harassment of marine mammals (*e.g.,* 85 FR 7926, February 12, 2020) and will not be discussed further. Of the HRG equipment proposed for use, the following sources have the potential to result in take of marine mammals:

- Shallow penetration SBPs to map the near-surface stratigraphy (top 0 to 5 m (0 to 16 ft) of sediment below seabed). A CHIRP system emits sonar pulses that increase in frequency over time. The pulse length frequency range can be adjusted to meet project variables. These are typically mounted on the hull of the vessel or from a side pole.
- Medium penetration SBPs (sparkers) to map deeper subsurface stratigraphy as needed. A sparker creates acoustic pulses from 50 Hz to 4 kHz omni-directionally from the source that can penetrate several hundred meters into the seafloor. These are typically towed behind the vessel with adjacent hydrophone arrays to receive the return signals.

Table 2 identifies all the representative HRG survey equipment that may be used during construction of Atlantic Shores South.

TABLE 2—SUMMARY OF REPRESENTATIVE SITE ASSESSMENT EQUIPMENT

| HRG survey equipment (sub-bottom profiler) | Representative equipment type | Operating frequency ranges (kHz) | Operational source level ranges ($dB_{RMS}$) | Beamwidth ranges (degrees) | Typical pulse durations $RMS_{90}$ (millisecond) | Pulse repetition rate (Hz) |
|---|---|---|---|---|---|---|
| Sparker | Applied Acoustics Dura-Spark 240*. | 0.01 to 1.9 [a] | 203 [a] | 180 | 3.4 [a] | 2. |
| | Geo Marine Geo-Source* | 0.2 to 5 | 195 [b] | 180 | 7.2 [b] | 0.41. |
| Compressed High-Intensity Radiated Pulses (CHIRP). | Edgetech 2000–DSS* | 2 to 16 | 195 [c] | 24 [d] | 6.3 | 10. |
| | Edgetech 216* | 2 to 16 | 179 [e] | 17, 20, or 24. | 10 | 10. |

TABLE 2—SUMMARY OF REPRESENTATIVE SITE ASSESSMENT EQUIPMENT—Continued

| HRG survey equipment (sub-bottom profiler) | Representative equipment type | Operating frequency ranges (kHz) | Operational source level ranges ($dB_{RMS}$) | Beamwidth ranges (degrees) | Typical pulse durations $RMS_{90}$ (millisecond) | Pulse repetition rate (Hz) |
|---|---|---|---|---|---|---|
| | Edgetech 424 * | 4 to 24 [f] | 180 [f] | 71 [f] | 4 | 2. |
| | Edgetech 512i * | 0.7 to 12 [f] | 179 [f] | 80 [f] | 9 | 8. |
| | Pangeosubsea Sub-bottom Imager™ *. | 4 to 12.5 [d] | 190 [d g] | 120 [d] | 4.5 | 44. |
| INNOMAR | INNOMAR SES–2000 Medium-100 Parametric [h]. | 85 to 115 [d] | 241 | 2 [d] | 2 | 40. |
| | INNOMAR deep-36 Parametric [h]. | 30 to 42 | 245 | 1.5 | 0.15 to 5 | 40. |
| Gradiometer | Geometrics G–882 Marine Magnetometer Transverse Gradiometer Array. | n/a | n/a | n/a | n/a | n/a. |
| Side-scan Sonar | EdgeTech 4200 | 100 or 400 | 201 at 100 kHz; 205 at 400 kHz. | 0.5° × 50°–0.26° × 50°. | 1.1 to 7.2 at 100 kHz; 1.1 to 1.3 at 400 kHz. | 5 to 11 or 5 to 20 dependent on pulse duration. |
| | Edgetech 4205 Tri-Freq | 300, 600, or 900 | 220 at 300 kHz; 2019 at 600 kHz; 221 at 900 kHz. | 0.5° × 50°–0.26° × 50°. | 1.0 to 3.0 at 300 kHz; 0.5 to 5.0 at 600 kHz; 0.4–2.8 at 900 kHz. | 5 to 11 or 10 to 25 dependent on pulse duration. |
| Multibeam Echosounder. | Dual Head Kongsberg EM2040. | 200 to 400 | 204.5 | 0.4 to 1.5 | 0.014 to 12 | 50. |
| | Norbit iWMBS | 200 to 700 | 220 | 0.5 to 1.9 | 0.5 | Up to 60. |

**Note:** RMS stands for root mean square, SPL stands for sound pressure level; * = Sources expected to cause take of marine mammals and that were carried forward into the take estimation analysis.

[a] The operational source level for the Dura-Spark 240 is assigned based on the value closest to the field operational history of the Dura-Spark 240 (operating between 500 to 600 joules (J)) found in Table 10 in Crocker and Fratantonio (2016), which reports a 203 $dB_{RMS}$ for 500 J source setting and 400 tips. Because Crocker and Fratantonio (2016) did not provide other source levels for the Dura-Spark 240 near the known operational range, the SIG ELC 820 @750 J at 5 m depth assuming an omnidirectional beam width was considered as a proxy or comparison to the Dura-Spark 240. The corresponding 203 $dB_{RMS}$ level is considered a realistic and conservative value that aligns with the history of operations of the Dura-Spark 240 over 3 years of surveys by Atlantic Shores. Operational information was provided by Atlantic Shores and assumes that the Geo Marine Survey System would be operating at 400 J.

[b] Information on the source level was obtained from Gene Andella (Edgetech) with JASCO Applied Sciences.

[c] Manufacturer specifications and/or correspondence with manufacturer.

[d] Considered EdgeTech Chirp as a proxy source for levels as the Chirp512i has similar operation settings as the Chirp 2000–DSS tow vehicle. See Table 18 in Crocker and Fratantonio (2016) for source levels for 100% power and 2–12 kHz.

[e] Values from Crocker and Fratantonio (2016) for 100% power and comparable bandwidth.

[f] For a frequency of 4 kHz.

[g] Parametric sub-bottom profilers do not have the potential to harass marine mammals due to their lower frequencies and extremely narrow beamwidth (see 87 FR 24103, April 22, 2022). Therefore, these sources were not considered in calculating the maximum r value for the ensonified area calculation.

[h] The specification sheet indicates a peak source level of 247 dB re 1 μPa m (based on personal communications with Atlantic Shores to Jens Wunderlich, Innomar, 7–18–2019). The average difference between the peak SPL source levels for sub-bottom profilers measured by Crocker and Fratantonio (2016) was 6 dB. Atlantic Shores therefore estimates the SPL source level is 241 dB re 1 μPa m.

While the Applied Acoustics Dura-Spark 240 is planned to be used during project activities, the equipment specifications and subsequent analysis are based on the SIG ELC 820 with a power level of 750 J at a 5 meter depth (Crocker and Fratantonio (2016)). However, while 750 J was used as a worst-case scenario to conservatively account for take of marine mammals as these higher electrical outputs would only be used in areas with denser substrates (700 to 800 J), Atlantic Shores expects a more reasonable power level to be 500 to 600 J based on prior experience with HRG surveys.

Of the sources described in Table 2 above, the only sources expected to result in the harassment of marine mammals are CHIRPs and sparkers. Given the combination of characteristics of the non-impulsive sources planned for use, which include operating frequencies mostly above 180 kHz (considered outside of the hearing range of most marine mammals) and/or very narrow beamwidths, harassment is not expected to result from the operation of any of these sources; therefore, they are not considered further in this proposed rule.

Atlantic Shores' HRG surveys would utilize up to three vessels working concurrently in different sections of the Lease Area and ECCs. No HRG surveys would occur concurrently with impact pile driving activities. All vessels would be operating several kilometers apart at any one time. On average, 55 km (34.2 mi) would be surveyed each survey day, per vessel, at a speed of approximately 6.5 km/hour (3.5 knots (kn; 4 miles per hour (mph))) on a 24-hour basis. During the 5 years the proposed rule would be effective, an estimated area of 413.3 $km^2$ (102,124 acres) would be surveyed across the Project Area. Atlantic Shores anticipates up to 60 days of survey activities would occur annually, with 300 days total expected throughout the entire 5-year effective period of the proposed rule.

Meteorological Buoy Deployment

Atlantic Shores will also deploy up to four meteorological and oceanographic (called ''metocean'') buoys within the Atlantic Shores South Project Area. Three of these would be located in Project 1 and one would be located in Project 2. These buoys would be designed to collect different data than obtained by the Met Tower and would only be anticipated to collect data (*e.g.,* wind resource and metocean data) during 1–2 years of the pre-construction period to support the development of Atlantic Shores' projects. Buoys would be deployed approximately 6 months prior to the start of construction and would remain deployed throughout construction activities. Deployed buoys would be decommissioned after construction was completed.

At the time of drafting this proposed rule, Atlantic Shores had not chosen a buoy supplier, so exact design specifics are not certain. However, the buoys will be similar, though smaller, than those deployed in Atlantic Shores' Site Assessment Plan (SAP). We discuss those here for context and to support our analysis of likely buoy effects. Available information on Atlantic Shores' proposed buoy deployments is also available in their COP (Volume I, Section 4.6.2 Temporary Metocean Buoys).

Under the SAP, four buoys (specifically the Fugro SEAWATCH™ Wind light detection and ranging (LiDAR) buoy) would be deployed (numbered IA1–IA4 in the SAP, with one located in the northern portion of the project (IA2) and three located in the

middle and southern portion (IA1, IA3, and IA4) (Figure1–1; Tetra Tech, 2020). The mooring design for the buoys consists of galvanized chains that would connect the buoy to a large link steel chain weight located on the seafloor. A second steel link chain would connect to a water-level acoustic modem via a bottom weight. The chain for the buoy would attach to the base of the SEAWATCH™ Wavescan platform via a long keel structure. The diameter of the link in the chafe section of the mooring is 19 millimeters. The maximum area that the anchor chain could sweep is estimated as 3.1 acres (0.0048 square miles ($mi^2$)), assuming the chain's radius is 63 meters (207 feet). The approximate sweep of the acoustic modem's chain is approximately 50 meters (164 ft). Figure 3–2 in the SAP demonstrates the buoy mooring design (Tetra Tech, 2020).

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. Atlantic Shores incorporated BOEM's Mid-Atlantic Environmental Assessment (EA), which references a NMFS Biological Opinion on the Cape Wind Energy Project (NMFS, 2010) in Nantucket Sound where metocean buoys were used. The EA, as well as a study by Harnois *et al.* (2015) assessed the potential entanglement risk of metocean buoy mooring systems on marine mammals and determined that there is an extremely low probability that animals would interact with the buoys, which would indicate a low risk of entanglement. Based on the high tension of the chain proposed for use, as well as the material of the chain (galvanized chains versus rope), Harnois *et al.* (2015) determined that the risk of entanglement to marine mammals was low. Furthermore, given that these buoys would not have any active acoustic components and do not pose a risk of take of marine mammals, Atlantic Shores did not request, and NMFS does not propose to authorize, take associated with the metocean buoys and these are not analyzed further in this document.

Cable Laying and Installation

Cable burial operations would occur both in the Lease Area and ECCs from the lease area to shore. The inter-array cables would connect the WTGs to any one of the OSSs. Cables within the ECCs would carry power from the OSSs to shore at the landfall locations in Atlantic City, New Jersey and Sea Girt, New Jersey. The offshore export and inter-array cables would be buried in the seabed at a target depth of up to 1.5 m (5 ft) to 2 m (6.6 ft), although the exact depth will depend on the substrate in the area. All cable burial operations would follow installation of the WTG and OSS foundations, as the foundations must be in place to provide connection points for the export cables and inter-array cables.

Cable laying, cable installation, and cable burial activities planned to occur during the construction of the Atlantic Shores South project would include the following methods: simultaneous lay and burial for export cable installation, post-lay burial for inter-array cables, and pre-lay trenching for cable burial that is necessary to be deeper than target depth and/or cable burial in firmer ground such as clays or dense sands. Atlantic Shores is evaluating the use of the following techniques to achieve the target cable burial depth: jet plowing for simultaneous lay and burial, jet trenching for simultaneous lay and burial or post-lay burial in soft soils, and in a more limited capacity, the use of mechanical trenching for pre-lay trenching, simultaneous lay and buy, and post-lay burial in areas more challenging for cable burial. As the noise levels generated from cable laying and installation work are low, the potential for take of marine mammals to result is discountable. Atlantic Shores is not requesting and NMFS is not proposing to authorize take associated with cable laying activities. Therefore, cable laying activities are not analyzed further in this document.

Site Preparation and Scour Protection

For export cable installation, site preparation typically includes required sand bedform leveling, boulder clearance, pre-lay grapnel runs, and a pre-lay survey. Due to the presence of mobile sand bedforms, some dredging may be required prior to cable laying. Sand bedform leveling may include the removal of tops of sand bedforms and is typically undertaken where cable exposure is predicted over the lifetime of a project due to seabed mobility. This facilitates cable burial below the reference seabed. Alternatively, sand bedform removal may be undertaken where slopes become greater than approximately 10 degrees (17.6 percent), which could cause instability to the burial tool. If necessary to remove sand bedforms, Atlantic Shores will clear the area using subsea excavation methods. The work could be undertaken by traditional dredging methods such as a trailing suction hopper. Controlled flow excavation may be used to induce water currents to force the seabed into suspension, where it would otherwise be directed to eventually settle (Atlantic Shores, 2021). A route clearance plow may be used to push sand aside and clear the way for cable installation. In areas of hard or rocky seabed substrate, cutterhead dredging may be used in place of the trailing suction hopper dredge. This method involves the use of a larger drill and may be necessary along the ECCs. Backhoe dredging may be used in shallow, nearshore areas where only small amounts of material need to be removed. This equipment operates in a similar way to an onshore backhoe excavator yet is mounted on a small barge (Atlantic Shores, 2021).

Boulder clearance may also be required in targeted locations to clear boulders along the ECCs, inter-array cable routes, and/or foundations prior to installation. Boulder removal can be performed using a combination of methods to optimize clearance of boulder debris of varying size and frequency. Boulder clearance trials are normally performed prior to wide-scale seafloor preparation activities to evaluate efficacy of boulder clearing techniques. If boulders are encountered during installation activities, Atlantic Shores would move them from the ECCs using subsea grabs as the presence of boulders is expected to be minimal and this type of technique has minimal impacts on the seafloor. A boulder grab involves a grab most likely deployed from a dynamic positioning offshore support vessel being lowered to the seabed, over the targeted boulder. Once ''grabbed,'' the boulder is relocated away from the cable route and/or foundation location. A displacement plow may be used if more boulders than expected are encountered. This type of plow has a simple Y-shaped design and clears an approximately 10-m wide corridor. The plow is towed along the seafloor by a vessel and displaces boulders along a clearance path as it passes over the seabed surface (Atlantic Shores, 2021). The size of boulders that can be relocated is dependent on a number of factors including the boulder weight, dimensions, embedment, density and ground conditions. Typically, boulders with dimensions less than 2.5 m (8 ft) can be relocated with standard tools and equipment.

Additionally, pre-lay grapnel runs may be undertaken to remove any seafloor debris along the ECCs. A specialized vessel will tow an approximately 1-m wide grapnel train consisting of a series of hooks designed to snag debris. Tension measurements on the grapnel train towing rope will indicate whether the hooks have caught debris. Atlantic Shores plans to make three passes with the grapnel train along each cable alignment.

Atlantic Shores would conduct pre-lay surveys along the final planned cable alignments prior to cable installation. The purpose of these surveys would be to confirm seabed morphology and bathymetry and to detect any objects that may impact the future infrastructure. Multi-beam echosounders would be used to survey a 20-m (65.6-ft) wide corridor centered on the cable alignments to examine the total width of the seabed area to be disturbed by cable installation activities (Atlantic Shores, 2021).

Atlantic Shores would also deposit rock around each foundation as scour protection. Installation of the rock would be conducted from a fallpipe vessel using a pipe that extends to just above the seafloor to deposit rock contained in the vessel's hopper in a controlled manner. Scour protection placement would occur prior to and/or after foundation installation.

NMFS does not expect scour protection placement or site preparation work, including boulder removal, sand leveling (*i.e.,* dredging) pre-lay grapnel runs, and pre-lay surveys, to generate noise levels that would cause take of marine mammals. Dredging, bedform leveling, and boulder clearance is expected to be extremely localized at any given time, and NMFS expects that any marine mammals would not be exposed at levels or durations likely to disrupt behavioral patterns (*i.e.,* migrating, foraging, calving, *etc.*). Therefore, the potential for take of marine mammals to result from these activities is so low as to be discountable. Atlantic Shores did not request and NMFS is not proposing to authorize any takes associated with seabed preparation activities; therefore, they are not analyzed further in this document.

Vessel Operation

During construction of the project, Atlantic Shores estimates that approximately 550 to 2,050 vessel round trips to the Lease Area will occur annually during the projects' operations, which is an average of two to six vessel trips per day in support of both Project 1 and 2 (COP Volume 1 section 5.6). Atlantic Shores expects up to 51 vessels to be used during construction, though a maximum of 16 vessels are expected to operate at one time for a given construction activity. Construction vessels would make an estimated 1,745 trips to the Project Area, including trips from the future New Jersey Wind Port, Paulsboro Marine Terminal, and Repauno Port and Rail Terminal in New Jersey; Portsmouth Marine Terminal in Virginia; and the Port of Corpus Christi in Texas. Atlantic Shores generally expects 5 to 16 maintenance vessels to operate at a given time, though up to 22 vessels may be required in some repair scenarios. Maintenance vessels would make an estimated 1,861 trips to the Project Area, the majority of which would originate from the O&M facility in Atlantic City, with a smaller number originating from the New Jersey Wind Port (DEIS Section 3.6.6).

Atlantic Shores plans that their vessel usage will be divided into different campaigns, including: foundation installation, scour protection installation, OSS installation, WTG installation, inter-array cable installation, inter-link cable installation (if needed), and export cable installation. When performing the specific construction task, the vessels would either anchor, jack-up, or maintain their position using dynamic positioning systems, where a continually adjusting propulsion system keeps the vessel in a single location.

Many of these vessels will remain in the Wind Farm Area or ECC for days or weeks at a time, potentially making only infrequent trips to port for bunkering and provisioning, as needed. The actual number of vessels involved in the project at one time is highly dependent on the project's final schedule, the final design of the project's components, and the logistics needed to ensure compliance with the Jones Act, a Federal law that regulates maritime commerce in the United States. Table 3 below shows the number of vessels and the number of vessel trips anticipated during construction activities related to Atlantic Shores South.

TABLE 3—TYPE AND NUMBER OF VESSELS AND NUMBER OF VESSEL TRIPS ANTICIPATED DURING CONSTRUCTION ACTIVITIES OVER THE EFFECTIVE PERIOD OF THE REQUESTED RULEMAKING

| Vessel role | Vessel type | Number of vessels | Approximated operational speed (kn) [a] |
|---|---|---|---|
| **WTG, Met Tower, and OSS Foundation installation** | | | |
| Foundation installation | Bulk carrier | 1 | 10 |
| | Medium heavy lift vessel | 1 | 10 |
| | Jack-up vessel | 1 | 10 |
| Bubble curtain support vessel | Tugboat | 1 | 10 |
| Transport barge | Barge | 2–3 | 3–10 |
| Towing tugboat | Tugboat | 2–6 | 3–10 |
| Support vessel | Service Operation Vessel | 1 | 10 |
| Crew transfer and noise monitoring | Crew transfer vessel | 1 | 29 |
| **OSS Installation** | | | |
| OSS installation | Large heavy lift vessel | 1 | 10 |
| | Medium heavy lift vessel | 1 | 10 |
| Bubble curtain support vessel | Tugboat | 1 | 10 |
| Transport barge | Barge | 4 | 10 |
| Towing tugboat | Tugboat | 4 | 10 |
| Assistance tugboat | Tugboat | 2 | 10 |
| Crew transfer and noise monitoring | Crew transfer vessel | 1 | 29 |
| **Scour protection** | | | |
| Scour protection installation | Fall pipe vessel | 1 | 10 |
| Dredging | Dredger | 1 | 10 |

TABLE 3—TYPE AND NUMBER OF VESSELS AND NUMBER OF VESSEL TRIPS ANTICIPATED DURING CONSTRUCTION ACTIVITIES OVER THE EFFECTIVE PERIOD OF THE REQUESTED RULEMAKING—Continued

| Vessel role | Vessel type | Number of vessels | Approximated operational speed (kn) [a] |
|---|---|---|---|
| **Cofferdam installation and removal** | | | |
| Cofferdam installation and removal | Spread-moored barge | 1 | 10 |
| | DP barge | 1 | 10 |

[a] All vessels will follow required proposed vessel strike mitigation measures and any vessel speed restrictions required by this proposed rule (*i.e.,* all vessels will travel at 10 kn (11.5 mph) or less in Dynamic Management Areas (DMAs) and Seasonal Management Areas (SMAs)).

Atlantic Shores estimates that up to 37 round trips, monthly, from various ports would be necessary associated with the installation of the WTG and OSS foundations, topside construction associated with WTGs and OSSs, and the necessary scour protection. They further estimate that about 19 monthly round trips would be needed from the port in Atlantic City, up to 17 would be needed from the New Jersey Wind port, and a single monthly round trip would occur from European ports. Where a tug and barge combination would be used, a single vessel trip is assumed from the joint approach as these two vessels would be used conjointly.

While marine mammals are known to respond to vessel noise and the presence of vessels in different ways, we do not expect Atlantic Shores' vessel operations to result in the take of marine mammals. As existing vessel traffic in the vicinity of the Project Area off of New Jersey is relatively high, we expect that marine mammals in the area are likely somewhat habituated to vessel noise. As part of various construction related activities, including cable laying and construction material delivery, dynamic positioning thrusters may be utilized to hold vessels in position or move slowly. Sound produced through use of dynamic positioning thrusters is similar to that produced by transiting vessels, in that dynamic positioning thrusters are typically operated either in a similarly predictable manner or used for short durations around stationary activities. Sound produced by dynamic positioning thrusters would be preceded by, and associated with, sound from ongoing vessel noise and would be similar in nature; thus, any marine mammals in the vicinity of the activity would be aware of the vessel's presence, further reducing the potential for startle or flight responses on the part of marine mammals. Accordingly, noise from construction-related vessel activity, including the use of dynamic positioning thrusters, is not expected to result in take of marine mammals. In addition, any construction vessels would be stationary for significant periods of time when on-site and any large vessels would travel to and from the site at relatively low speeds. Project-related vessels would be required to adhere to several mitigation measures designed to avoid vessel strikes; these measures are described further below (see the Proposed Mitigation section). Vessel strikes are neither anticipated nor authorized. Atlantic Shores did not request, and NMFS does not propose to authorize, take associated with vessel activity. However, NMFS acknowledges the aggregate impacts of Atlantic Shores South's vessel operations on the acoustic habitat of marine mammals and has considered it in the analysis and preliminary determinations contained herein.

Helicopter Usage

Atlantic Shores may supplement vessel-based transport with helicopters to transfer crew to and from the shore and the Lease Area. Crew transport via helicopter may be utilized during offshore construction, commissioning, and testing phases as well as during maintenance of the WTGs (Atlantic Shores, 2021). Helicopters could be used when rapid-response operations and maintenance (O&M) activities are needed or when poor weather limits the use of crew transport vessels. Helicopters would be based within a reasonable distance of the project at a general aviation airport (COP Volume 1 section 5.6). The most intense helicopter activity would occur during construction phases and mostly likely during shift changes. Atlantic Shores does not currently anticipate installing helicopter pads on the OSSs, though this feature may be added depending on the O&M strategy employed. If a helicopter pad is installed, it would be designed to support a U.S. Coast Guard helicopter, including appropriate lighting and marking as required (COP Volume 1 section 5.5; DEIS section 2).

In addition, fixed wing aircraft may be used to support environmental monitoring and mitigation efforts (Atlantic Shores, 2021). Aircraft usage would align with the best practices from regulators when determining routes and altitudes for travel. Helicopters and fixed wing aircraft produce sounds that can be audible to marine mammals; however, most sound energy from aircraft reflects off the air-water interface as only sound radiated downward within a 26-degree cone penetrates below the surface water (Urick, 1972).

Due to the intermittent nature and the small area potentially ensonified by this sound source for a very limited duration, Atlantic Shores did not request, and NMFS is not proposing to authorize, take of marine mammals incidental to helicopter and fixed wing aircraft flights; therefore, these activities will not be discussed further in this proposed action.

Fisheries and Benthic Monitoring

Fisheries and benthic monitoring surveys have been designed in accordance with recommendations set forth by the Responsible Offshore Science Alliance (ROSA) Offshore Wind Project Monitoring Framework and Guidelines (*https://www.rosascience.org/offshore-wind-and-fisheries-resources/;* ROSA, 2021). The purpose of the surveys are to document environmental conditions relevant to fisheries in the Project Area throughout the construction and operation phases of the proposed project. Atlantic Shores would conduct demersal otter trawl surveys, ventless trap surveys, and hydraulic clam dredge surveys to enhance existing data for specific benthic and pelagic species of concern. The demersal otter trawl surveys would follow methodology based upon the Northeast Monitoring and Assessment Program (NEAMAP) annual trawl surveys, throughout all four seasons to monitor fish and mega-invertebrate communities. The trawl net would be a four-seam, three bridle, 400 centimeter (cm; 157.48 inch (in)) x 12 cm (4.7 in) net with a cookie sweep and 1 in (2.54 cm) knotless liner in the cod

end. The fishing circle would be 400 meshes of 12 cm (4.72 in), 4 millimeter (mm; 0.157 in) braided polyethylene twine (4,800 cm (1889.76 in) fishing circle). The total headrope length, including extension chains, hammerlocks, shackles, and combination cable would be 24.6 m (80.7 ft) long, with extension cables fully slacked out while fishing. Sixty 20.3 cm (8 in) orange center-hole floats would run the length of the headrope. The upper and lower wing ends would be made of stainless-steel combination cable and measure 552 cm (217.3 in) and 459 cm (180.7 in) respectively. The total footrope length including hammerlocks, shackles, and extension wires would be approximately 27 m (88.6 ft) long. The doors would be Thyboron type IV, 167.64 cm (425.8 in) otter trawl doors with 2.25 meters squared ($m^2$; 24.2 feet square ($ft^2$)) area. A Netmind digital trawl net monitoring system would be incorporated with sensors measuring wing spread, vertical net opening, bottom contact, and a catch sensor in the cod end to trip at approximately 5,000 pounds (lbs; 2,268 kilograms (kg)). Prior to sampling, salinity, temperature, and dissolved oxygen would be measured during a cast to the seafloor with an appropriate oceanographic probe. Sampling would only occur between 30 minutes after sunrise and 30 minutes before sunset. Oceanographic conditions would be recorded at each station before beginning trawl. The tow cable would be deployed to a length of at least 3 times the water column depth. The tow duration would be 20 minutes at a speed of approximately 3 kn (3.45 mph), with the towpath being regularly logged. Once onboard, the catch would be dumped and sorted by species into buckets and baskets unless the tow is deemed a failure. Demersal otter trawl surveys would be conducted during preconstruction and construction years as well as for 3 years post construction.

The ventless trap surveys, or fish pot surveys, would follow survey design adapted from a Rutgers University and New Jersey Department of Environmental Protection (NJDEP) trap survey of artificial reefs offshore of New Jersey (Jensen *et al.,* 2018). The purpose of the trap surveys would be to monitor the presence and size of dominant structure-associated species. Unbaited ventless traps (110.5 cm x 56 cm x 38 cm (43.5 in x 22 in x 15 in)) would be deployed in a trawl attached to a groundline. Each trap would be affixed with a temperature logger and a camera facing outward above the entrance. The groundline on each trap would serve to prevent gear loss and protected species entanglement. Trap surveys would be conducted during all four seasons during preconstruction and construction phases as well as for 3 years post construction. Once traps are set, they would soak for two periods of 5–7 days, depending upon weather. All gear would be removed from the water in between surveys.

Hydraulic clam dredge surveys would use a dredge similar to the NJDEP surf clam survey gear and follow a NMFS Northeast Fisheries Science Center (NEFSC) clam dredge survey methodology (Atlantic Shores, 2023). The purpose of the clam dredge survey would be to detect significant changes in the presence and size of ocean quahogs and Atlantic surf clams from cumulative project effects. Dredge surveys would take place during the summer during preconstruction and construction phases as well as for 3 years post construction. More information about Atlantic Shores' fishery and benthic monitoring surveys can be found in the Atlantic Shores Fisheries Monitoring Plan, Appendix II–K found on our website *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-construction-atlantic-shores.*

In addition to the above mentioned fishery monitoring surveys, Atlantic Shores would also partner with Rutgers University to conduct a multi-phase modeling study to gain a better understanding of how Mid-Atlantic wind farms and climate change may influence the distribution and abundance of surf clams (Atlantic Shores, 2023). This study builds off an existing simulation of the surf clam fishery in the Mid-Atlantic Bight. The simulation, Spatially-explicit Ecological agent-based Fisheries and Economic Simulator (SEFES), currently models the interactions between surf stock biology, fishery captain and fleet behavior, Federal management decisions, fishery economics, port structure, and wind farm development. Atlantic Shores will partner with Rutgers University to expand the capabilities of SEFES to assess fisheries and wind development activities from present day to 30 years into the future and run scenarios that factor in the presence of the proposed project. Atlantic Shores would also partner with Stockton University to study the ecological succession of newly submerged artificial reefs off New Jersey through the use of acoustic and video observation. Surveys would be conducted using side scan sonar, multibeam echosounder, and direct observation via a remotely operated vehicle (ROV) to collect data for 3–D mapping of artificial reef structures. Maps would provide base layers to overlay biological assessments to better understand ecological succession of newly submerged reef structures. Atlantic Shores does not anticipate, and NMFS is not proposing to authorize, take of marine mammals incidental to these activities and they are not discussed further in this document.

In general, trap and trawl surveys have the potential to result in the take of marine mammals given there is a risk of entanglement. However, Atlantic Shores would implement mitigation and monitoring measures to avoid taking marine mammals, including, but not limited to, use of bycatch reduction gear such as ropeless gear for trap surveys, monitoring for marine mammals before and during trawling activities, not deploying or pulling trawl gear in certain circumstances, limiting tow times, fully repairing nets, and reporting protected species interactions to the NMFS Greater Atlantic Region Field Office (GARFO). All trap and trawl surveys would also comply with take reduction team regulations for Atlantic large whales, harbor porpoises, and bottlenose dolphins, and Atlantic Trawl Take Reduction Strategy measures to reduce the potential for interactions between small cetaceans and trawl (bottom and mid-water) gear (Atlantic Shores, 2023). A full description of mitigation measures can be found in the Proposed Mitigation section.

With the implementation of these measures, Atlantic Shores does not anticipate, and NMFS is not proposing to authorize, take of marine mammals incidental to research trap and trawl surveys. Given no take is anticipated from these surveys, impacts from fishery surveys will not be discussed further in this document (with the exception of the description of measures in the Proposed Mitigation section).

**Description of Marine Mammals in the Geographic Area of Specified Activities**

Thirty-eight marine mammal species under NMFS' jurisdiction have geographic ranges within the western North Atlantic OCS (Hayes *et al.,* 2022). However, for reasons described below, Atlantic Shores has requested, and NMFS proposes to authorize, take of only 16 species (comprising 17 stocks) of marine mammals. Sections 3 and 4 of Atlantic Shores' ITA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species (JASCO, 2022). NMFS fully considered all of this information,

and we refer the reader to these descriptions in the application instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS's 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's website (*https://www.fisheries.noaa.gov/find-species*).

Of the 38 marine mammal species and/or stocks with geographic ranges that include the Project Area (*i.e.,* found in the coastal and offshore waters of New Jersey), 22 are not expected to be present or are considered rare or unexpected in the Project Area based on sighting and distribution data (see Table 11 in Atlantic Shores' ITA application); they are, therefore, not discussed further beyond the explanation provided here. Specifically, the following cetacean species are known to occur off of New Jersey but are not expected to occur in the Project Area due to the location of preferred habitat outside the Lease Area and ECCs, based on the best available information: Blue whale (*Balaenoptera musculus*), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whales (*Mesoplodon densitostris, M. europaeus, M. mirus,* and *M. bidens*), clymene dolphin (*Stenella clymene*), false killer whale (*Pseudorca crassidens*), Fraser's dolphin (*Lagenodelphis hosei*), killer whale (*Orcinus orca*), melon-headed whale (*Peponocephala electra*), pantropical spotted dolphin (*Stenella attenuata*), pygmy killer whale (*Feresa attenuata*), rough-toothed dolphin (*Steno bredanensis*), spinner dolphin (*Stenella longirostris*), striped dolphin (*Stenella coeruleoalba*), white-beaked dolphin (*Lagenorhynchus albirostris*), Northern bottlenose whale (*Hyperoodon ampullatus*), dwarf sperm whale (*Kogia sima*), and the pygmy sperm whale (*Kogia breviceps*). Two species of phocid pinnipeds are also uncommon in the Project Area, including: harp seals (*Pagophilus groenlandica*) and hooded seals (*Cystophora cristata*).

In addition, the Florida manatees (*Trichechus manatus;* a sub-species of the West Indian manatee) has been previously documented as an occasional visitor to the Mid-Atlantic region during summer months (Morgan *et al.,* 2002; Cummings *et al.,* 2014). However, as manatees are managed solely under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS), they are not considered or discussed further in this document.

Table 4 lists all species and stocks for which take is expected and proposed to be authorized for this action and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined 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'' (16 U.S.C. 1362(20)). While no mortality is anticipated or proposed to be authorized, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 4 are the most recent available data at the time of publication, which can be found in NMFS' final2022 SARs (Hayes *et al.,* 2023) available online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

TABLE 4—MARINE MAMMAL SPECIES [5] THAT MAY OCCUR IN THE PROJECT AREA AND BE TAKEN, BY HARASSMENT

| Common name | Scientific name | Stock | ESA/MMPA status; strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Artiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | | |
| *Family Balaenidae:* | | | | | | |
| North Atlantic right whale | *Eubalaena glacialis* | Western Atlantic | E, D, Y | 338 (0; 332; 2020) | 0.7 | 8.1 |
| *Family Balaenopteridae (rorquals):* | | | | | | |
| Fin whale | *Balaenoptera physalus* | Western North 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; 1,380; 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 |
| **Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | | |
| *Family Physeteridae:* | | | | | | |
| Sperm whale | *Physeter macrocephalus* | North Atlantic | E, D, Y | 4,349 (0.28; 3,451; 2016) | 3.9 | 0 |
| *Family Delphinidae:* | | | | | | |
| Atlantic spotted dolphin | *Stenella frontalis* | Western North Atlantic | -, -, N | 39,921 (0.27; 32,032; 2016) | 320 | 0 |
| Atlantic white-sided dolphin. | *Lagenorhynchus acutus* | Western North Atlantic | -, -, N | 93,233 (0.71; 54,433; 2016) | 544 | 27 |
| Bottlenose dolphin | *Tursiops truncatus* | Western North Atlantic—Offshore. | -, -, N | 62,851 (0.23; 51,914; 2016) | 519 | 28 |
| | | Northern Migratory Coastal | -, -, Y | 6,639 (0.41; 4,759; 2016) | 48 | 12.2–21.5 |
| Common dolphin | *Delphinus delphis* | Western North Atlantic | -, -, N | 172,897 (0.21; 145,216; 2016) | 1,452 | 390 |
| Long-finned pilot whale [6] | *Globicephala melas* | Western North Atlantic | -, -, N | 39,215 (0.3; 30,627; 2016) | 306 | 29 |
| Short-finned pilot whale [6] | *Globicephala macrorhynchus* | Western North Atlantic | -, -, N | 28,924 (0.24, 23,637, 2016) | 236 | 136 |
| Risso's dolphin | *Grampus griseus* | Western North Atlantic | -, -, N | 35,215 (0.19; 30,051; 2016) | 301 | 34 |
| *Family Phocoenidae (porpoises):* | | | | | | |

TABLE 4—MARINE MAMMAL SPECIES [5] THAT MAY OCCUR IN THE PROJECT AREA AND BE TAKEN, BY HARASSMENT—Continued

| Common name | Scientific name | Stock | ESA/MMPA status; strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| Harbor porpoise | *Phocoena phocoena* | Gulf of Maine/Bay of Fundy | -, -, N | 95,543 (0.31; 74,034; 2016) | 851 | 164 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| *Family Phocidae (earless seals):* | | | | | | |
| Gray seal [4] | *Halichoerus grypus* | Western North Atlantic | -, -, N | 27,300 (0.22; 22,785; 2016) | 1,458 | 4,453 |
| Harbor seal | *Phoca vitulina* | Western North Atlantic | -, -, N | 61,336 (0.08; 57,637; 2018) | 1,729 | 339 |

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS' marine mammal stock assessment reports can be found online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*. CV is the coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual M/SI value given is for the total stock.

[5] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2023)).

[6] Although both species are described here, the requested take for both short-finned and long-finned pilot whales has been summarized into a single group (pilot whales spp.).

As indicated above, all 16 species and 17 stocks in Table 4 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Four of the marine mammal species for which take is requested are listed as threatened or endangered under the ESA, including North Atlantic right, fin, sei, and sperm whales.

In addition to what is included in Sections 3 and 4 of Atlantic Shores' ITA application (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-construction-atlantic-shores*), the SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), and NMFS' website (*https://www.fisheries.noaa.gov/species-directory/marine-mammals*), we provide further detail below informing the baseline for select species (*e.g.,* information regarding current UMEs and known important habitat areas, such as Biologically Important Areas (BIAs) (Van Parijs, 2015). There are no ESA-designated critical habitats for any species within the Project Area (*https://www.fisheries.noaa.gov/resource/map/national-esa-critical-habitat-mapper*).

Under the MMPA, a UME is defined as ''a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response'' (16 U.S.C. 1421h(6)). As of May 2023, five UMEs are active. Four of these UMEs are occurring along the U.S. Atlantic coast for various marine mammal species. Of these, the most relevant to the Project Area are the North Atlantic right whale, humpback whale, and harbor and gray seal UMEs given the prevalence of these species in the Project Area. More information on UMEs, including all active, closed, or pending, can be found on NMFS' website at *https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events.*

Below, we include information for a subset of the species that presently have an active or recently closed UME occurring along the Atlantic coast or for which there is information available related to areas of biological significance. For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (*e.g.,* ''western North Atlantic'') for management purposes. This includes the ''Canadian east coast'' stock of minke whales, which includes all minke whales found in U.S. waters and is also a generic stock for management purposes. For humpback and sei whales, NMFS defines stocks on the basis of feeding locations (*i.e.,* Gulf of Maine and Nova Scotia, respectively). However, references to humpback whales and sei whales in this document refer to any individuals of the species that are found in the project area. Any areas of known biological importance (including the BIAs identified in LaBrecque *et al.,* 2015) that overlap spatially (or are adjacent) with the project area are addressed in the species sections below.

*North Atlantic Right Whale*

The North Atlantic right whale has been listed as Endangered since the ESA's enactment in 1973. The species was recently uplisted from Endangered to Critically Endangered on the International Union for Conservation of Nature (IUCN) Red List of Threatened Species (Cooke, 2020). The uplisting was due to a decrease in population size (Pace *et al.,* 2017), an increase in vessel strikes and entanglements in fixed fishing gear (Daoust *et al.,* 2017; Davis & Brillant, 2019; Knowlton *et al.,* 2012; Knowlton *et al.,* 2022; Moore *et al.,* 2021; Sharp *et al.,* 2019), and a decrease in birth rate (Pettis *et al.,* 2022; Reed *et al.,* 2022). The Western Atlantic stock is considered depleted under the MMPA (Hayes *et al.,* 2022). There is a recovery plan (NMFS, 2005) for the North Atlantic right whale, and NMFS completed 5-year reviews of the species in 2012, 2017, and 2022 which concluded no change to the listing status is warranted.

Designated by NMFS as a Species in the Spotlight, the North Atlantic right whale is considered among the species with the greatest risk of extinction in the near future (*https://www.fisheries.noaa.gov/topic/endangered-species-conservation/species-in-the-spotlight*).

The North Atlantic right whale population had only a 2.8 percent recovery rate between 1990 and 2011 and an overall abundance decline of 23.5 percent from 2011–2019 (Hayes *et al.,* 2022). Since 2010, the North Atlantic right whale population has been in decline (Pace *et al.,* 2017; Pace

*et al.,* 2021), with a 40 percent decrease in calving rate (Kraus *et al.,* 2016; Moore *et al.,* 2021). North Atlantic right whale calving rates dropped from 2017 to 2020 with zero births recorded during the 2017–2018 season. The 2020–2021 calving season had the first substantial calving increase in 5 years with 20 calves born followed by 15 calves during the 2021–2022 calving season. However, mortalities continue to outpace births, and best estimates indicate fewer than 70 reproductively active females remain in the population.

Critical habitat for North Atlantic right whales is not present in the project area. However, the project area both spatially and temporally overlaps a portion of the migratory corridor BIA within which North Atlantic right whales migrate south to calving grounds generally in November and December, followed by a northward migration into feeding areas north of the Project Area in March and April (LaBrecque *et al.,* 2015; Van Parijs *et al.,* 2015). The Project Area does not overlap any North Atlantic right whale feeding BIAs.

NMFS' regulations at 50 CFR 224.105 designated Seasonal Management Areas (SMAs) for North Atlantic right whales in 2008 (73 FR 60173, October 10, 2008). SMAs were developed to reduce the threat of collisions between ships and North Atlantic right whales around their migratory route and calving grounds. There is an SMA for the Ports of New York/New Jersey near the proposed Project Area; this SMA is currently active from November 1 through April 30 of each year and may be used by North Atlantic right whales for feeding (although to a lesser extent than the area to the north near Nantucket Shoals) and/or migrating. As noted above, independent of the action considered here, NMFS is proposing changes to the North Atlantic right whale speed rule (87 FR 46921, August 1, 2022). Due to the current status of North Atlantic right whales and the spatial proximity overlap of the proposed project with areas of biological significance, (*i.e.,* a migratory corridor, SMA), the potential impacts of the proposed project on North Atlantic right whales warrant particular attention.

North Atlantic right whale presence in the Project Area is predominately seasonal. However, year-round occurrence is documented (Davis *et al.,* 2017). Abundance is highest in winter with irregular occurrence during summer months and similar occurrence rates in spring and fall (O'Brien *et al.,* 2022; Quintana-Rizzo *et al.,* 2021; Estabrook *et al.,* 2022). North Atlantic right whale distribution can also be derived from acoustic data. A review of passive acoustic monitoring data from 2004 to 2014 collected throughout the western North Atlantic demonstrated nearly continuous year-round North Atlantic right whale presence across their entire habitat range with a decrease in summer months, including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Observations of these transitions in North Atlantic right whale habitat use, variability in seasonal presence in identified core habitats, and utilization of habitat outside of previously focused survey effort prompted the formation of a NMFS' Expert Working Group, which identified current data collection efforts, data gaps, and provided recommendations for future survey and research efforts (Oleson *et al.,* 2020). Recent research indicates understanding of their movement patterns remains incomplete and not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017; Gowan *et al.,* 2019; Krzystan *et al.,* 2018). Non-calving females may remain in the feeding grounds, during the winter in the years preceding and following the birth of a calf to increase their energy stores (Gowen *et al.,* 2019).

To describe seasonal trends in North Atlantic right whale presence, Estabrook *et al.* (2022) analyzed North Atlantic right whale acoustic detections collected between 2011–2015 during winter (January through March), spring (April through June), summer (July through September), and autumn (October–December) off Rhode Island and Massachusetts. Winter had the highest presence (75 percent array-days, n=193), and summer had the lowest presence (10 percent array-days, n=27). Spring and autumn were similar, where 45 percent (n=117) and 51 percent (n=121) of the array-days had detections, respectively. Across all years, detections were consistently lowest in August and September. In Massachusetts Bay and Cape Cod Bay, located further north from the Atlantic Shores South Project Area, acoustic detections of North Atlantic right whales increased in more recent years in both the peak season of late winter through early spring and in summer and fall, likely reflecting broad-scale regional habitat changes (Charif *et al.,* 2020). NMFS' Passive Acoustic Cetacean Map (PACM) contains up-to-date acoustic data that contributes to our understanding of when and where specific whales (including North Atlantic right whales), dolphin, and other cetacean species are acoustically detected in the North Atlantic. These data augment the findings of the aforementioned literature.

In late fall (*i.e.,* November), a portion of the North Atlantic right whale population (including pregnant females) typically departs the feeding grounds in the North Atlantic, moves south along the migratory corridor BIA, including through the Project Area, to North Atlantic right whale calving grounds off Georgia and Florida. However, recent research indicates understanding of their movement patterns remains incomplete and not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017; Gowan *et al.,* 2019; Krzystan *et al.,* 2018). The results of multistate temporary emigration capture-recapture modeling, based on sighting data collected over the past 22 years, indicate that non-calving females may remain in the feeding grounds, during the winter in the years preceding and following the birth of a calf to increase their energy stores (Gowan *et al.,* 2019).

New Jersey waters are a migratory corridor in the spring and early winter for North Atlantic right whales; these waters are not known foraging or calving habitat. North Atlantic right whales feed primarily on the copepod, *Calanus finmarchicus,* a species whose availability and distribution has changed both spatially and temporally over the last decade due to an oceanographic regime shift that has been ultimately linked to climate change (Meyer-Gutbrod *et al.,* 2021; Record *et al.,* 2019; Sorochan *et al.,* 2019). This distribution change in prey availability has led to shifts in North Atlantic right whale habitat-use patterns within the region over the same time period (Davis *et al.,* 2020; Meyer-Gutbrod *et al.,* 2022; Quintana-Rizzo *et al.,* 2021; O'Brien *et al.,* 2022). Since 2010, North Atlantic right whales have reduced their use of foraging habitats in the Great South Channel and Bay of Fundy while increasing their use of habitat within Cape Cod Bay as well as a region south of Martha's Vineyard and Nantucket Islands (Stone *et al.,* 2017; Mayo *et al.,* 2018; Ganley *et al.,* 2019; Record *et al.,* 2019; Meyer-Gutbrod *et al.,* 2021). While the Project Area is south of Martha's Vineyard and Nantucket Island, these foraging habitats are all located several hundred kilometers north of the Project Area.

In August 2023, NMFS released its final 2022 SARs, which updated the population estimate ($N_{best}$) of North Atlantic right whales from 368 to 338 individuals and the annual M/SI value from 8.1 to 31.2 due to the addition of estimated undetected mortality and

serious injury, as described above, which had not been previously included in the SAR. The population estimate is slightly lower than the North Atlantic Right Whale Consortium's 2022 Report Card, which identifies the population estimate as 340 individuals (Pettis *et al.,* 2023). Elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast, with the leading category for the cause of death for this UME determined to be ''human interaction,'' specifically from entanglements or vessel strikes. Since publication of the proposed rule, the number of animals considered part of the UME has increased. As of August 16, 2023, there have been 36 confirmed mortalities (dead, stranded, or floaters), 0 pending mortalities, and 34 seriously injured free-swimming whales for a total of 70 whales. As of October 14, 2022, the UME also considers animals (n=45) with sub-lethal injury or illness (called ''morbidity'') bringing the total number of whales in the UME to 115. More information about the North Atlantic right whale UME is available online at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-north-atlantic-right-whale-unusual-mortality-event.*

*Humpback Whale*

Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. On September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the species-level listing, and, in its place, listed four DPSs as endangered and one DPS as threatened (81 FR 62259, September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whales that is expected to occur in the project area. Bettridge *et al.* (2015) estimated the size of the West Indies DPS population at 12,312 (95 percent confidence interval (CI) 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

Humpback whales are migratory off coastal New Jersey, moving seasonally between northern feeding grounds in New England and southern calving grounds in the West Indies (Hayes *et al.,* 2022). Although sightings of humpback whales used to occur infrequently off New Jersey, they are now common along the Mid-Atlantic States during the winter when most humpback whales are at the breeding grounds (Swingle *et al.,* 1993; Barco *et al.,* 2002; Brown *et al.,* 2022). This shift is also supported by passive acoustic monitoring data (*e.g.,* Davis *et al.,* 2020). Recently, Brown *et al.* (2022) investigated site fidelity, population composition and demographics of individual whales in the New York Bight apex (which includes New Jersey waters and found that although mean occurrence was low (2.5 days), mean occupancy was 37.6 days, and 31.3 percent of whales returned from 1 year to the next. The majority of whales were seen during summer (July to September, 62.5 percent), followed by autumn (October to December, 23.5 percent) and spring (April to June, 13.9 percent). When data were available to evaluate age, most individuals were either confirmed or suspected juveniles, including 4 whales known to be 2 to 4 years old based on known birth year, and 13 whales with sighting histories of 2 years or less on primary feeding grounds. Three individuals were considered adults based on North Atlantic sighting records. The young age structure in the nearshore waters of the New York Bight apex is consistent with other literature (Stepanuk *et al.,* 2021; Swingle *et al.,* 1993; Barco *et al.,* 2002). It remains to be determined whether humpback whales in the New York Bight apex represent a northern expansion of individuals that had wintered off Virginia, a southern expansion of individuals from the adjacent Gulf of Maine, or is the result of another phenomenon.

In addition to a migratory pathway, the mid-Atlantic region also represents a supplemental winter feeding ground for juveniles and mature whales (Barco *et al.,* 2002). Records of humpback whales off the U.S. mid-Atlantic coast (New Jersey south to North Carolina) suggest that these waters are used as a winter feeding ground from December through March (Mallette *et al.,* 2017; Barco *et al.,* 2002; LaBrecque *et al.,* 2015) and represent important habitat for juveniles, in particular (Swingle *et al.,* 1993; Wiley *et al.,* 1995). Humpback whales have been observed feeding off the coast of New Jersey (Swingle *et al.,* 1993; Geo-Marine, Inc., 2010; Whitt *et al.,* 2015). A sighting of a cow-calf pair seen north of the study area boundary supports the theory that the nearshore waters off of New Jersey may provide important feeding and nursery habitats for humpback whales (Geo-Marine, 2010). In addition, recent research by King *et al.* (2021) has demonstrated a higher occurrence and foraging use of the New York Bight area by humpback whales than previously known. According to Roberts *et al.* (2023) density models, the highest density of humpback whales in the vicinity of the proposed Project Area is expected to occur during the month of April (0.25–0.40 individuals/100 $km^2$).

The Project Area does not overlap any ESA-designated critical habitat, BIAs, or other important areas for the humpback whales. A humpback whale feeding BIA extends throughout the Gulf of Maine, Stellwagen Bank, and Great South Channel from May through December, annually (LaBrecque *et al.,* 2015). However, this BIA is located further north of, and thus does not overlap, the Project Area.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. This event was declared a UME in April 2017. Partial or full necropsy examinations have been conducted on approximately half of the 204 known cases (as of August 16, 2023). Of the whales examined (approximately 90), about 40 percent had evidence of human interaction, either vessel strike or entanglement (refer to *https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast*). While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Since December 1, 2022, the number of humpback strandings along the mid-Atlantic coast, including New Jersey, has been elevated. In some cases, the cause of death is not yet known. In others, vessel strike has been deemed the cause of death. As the humpback whale population has grown, they are seen more often in the Mid-Atlantic. These whales may be following their prey (small fish) which are reportedly close to shore in the winter. These prey also attract fish that are of interest to recreational and commercial fishermen. This increases the number of boats and

fishing gear in these areas. More whales in the water in areas traveled by boats of all sizes increases the risk of vessel strikes. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales.

*Minke Whale*

Minke whales are common and widely distributed throughout the U.S. Atlantic Exclusive Economic Zone (EEZ) (CETAP, 1982; Hayes *et al.,* 2022), although their distribution has a strong seasonal component. Individuals have often been detected acoustically in shelf waters from spring to fall and more often detected in deeper offshore waters from winter to spring (Risch *et al.,* 2013). Minke whales are abundant in New England waters from May through September (Pittman *et al.,* 2006; Waring *et al.,* 2014), yet largely absent from these areas during the winter, suggesting the possible existence of a migratory corridor (LaBrecque *et al.,* 2015). A migratory route for minke whales transiting between northern feeding grounds and southern breeding areas may exist to the north and east of the proposed Project Area as minke whales may track warmer waters along the continental shelf while migrating (Risch *et al.,* 2014). Overall, minke whale use of the Project Area is likely highest during winter and spring months when foundation installation would not be occurring. Density data from Roberts *et al.* (2023) confirm that the highest average density of minke whales in the vicinity of the Project Area occurs in April (0.63–1.00 individuals/100 km$^2$). Construction is planned for May through December.

There are two minke whale feeding BIAs identified in the southern and southwestern section of the Gulf of Maine, including Georges Bank, the Great South Channel, Cape Cod Bay and Massachusetts Bay, Stellwagen Bank, Cape Anne, and Jeffreys Ledge from March through November, annually (LeBrecque *et al.,* 2015). However, these BIAs do not overlap the Project Area as they are located approximately 378.7 km (235.3 mi) away. No mating or calving grounds have been identified along the U.S. Atlantic coast (LaBrecque *et al.,* 2015).

Since January 2017, a UME has been declared based on elevated minke whale mortalities detected along the Atlantic coast from Maine through South Carolina. As of August 16, 2023, a total of 156 minke whales have stranded during this UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings have shown evidence of human interactions or infectious disease in several of the whales, but these findings are not consistent across all of the whales examined, so more research is needed. This UME has been declared non-active and is pending closure. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-minke-whale-unusual-mortality-event-along-atlantic-coast.*

*Phocid Seals*

Since June 2022, elevated numbers of harbor seal and gray seal mortalities have occurred across the southern and central coast of Maine. This event was declared a UME in July 2022. Preliminary testing of samples has found some harbor and gray seals are positive for highly pathogenic avian influenza. While the UME is not occurring in the Project Area, the populations affected by the UME are the same as those potentially affected by the Project. However, due to the two states being approximately 352 km (219 mi) apart, by water (from the most northern point of New Jersey to the most southern point of Maine), NMFS does not expect that this UME would be further conflated by the activities related to the Project. Information on this UME is available online at: *https://www.fisheries.noaa.gov/2022-2023-pinniped-unusual-mortality-event-along-maine-coast.*

The above event was preceded by a different UME, occurring from 2018–2020 (closure of the 2018–2020 UME is pending). Beginning in July 2018, elevated numbers of harbor seal and gray seal mortalities occurred across Maine, New Hampshire, and Massachusetts. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers, therefore the UME investigation encompassed all seal strandings from Maine to Virginia. A total of 3,152 reported strandings (of all species) occurred from July 1, 2018, through March 13, 2020. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 5.

TABLE 5—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. |

TABLE 5—MARINE MAMMAL HEARING GROUPS—Continued

[NMFS, 2018]

| Hearing group | Generalized hearing range * |
|---|---|
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013). For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

NMFS notes that in 2019a, Southall *et al.* recommended new names for hearing groups that are widely recognized. However, this new hearing group classification does not change the weighting functions or acoustic thresholds (*i.e.,* the weighting functions and thresholds in Southall *et al.* (2019a) are identical to NMFS 2018 Revised Technical Guidance). When NMFS updates our Technical Guidance, we will be adopting the updated Southall *et al.* (2019a) hearing group classification.

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks. General background information on marine mammal hearing was provided previously (see the Description of Marine Mammals in the Area of the Specified Activities section). Here, the potential effects of sound on marine mammals are discussed.

Atlantic Shores has requested, and NMFS proposes to authorize, the take of marine mammals incidental to the construction activities associated with the Project Area. In their application and Application Update Report, Atlantic Shores presented their analyses of potential impacts to marine mammals from the acoustic sources. NMFS both carefully reviewed the information provided by Atlantic Shores, as well as independently reviewed applicable scientific research and literature and other information to evaluate the potential effects of the project's activities on marine mammals.

The proposed activities would result in the construction and placement of up to 205 permanent foundations to support 200 WTGs, 4 large OSSs, and a single Met Tower. There are a variety of types and degrees of effects to marine mammals, prey species, and habitat that could occur as a result of the project. Below we provide a brief description of the types of sound sources that would be generated by the project, the general impacts from these types of activities, and an analysis of the anticipated impacts on marine mammals from the project, with consideration of the proposed mitigation measures.

*Description of Sound Sources*

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983) as well as the Discovery of Sound in the Sea (DOSITS) website at *https://dosits.org/.* Sound is a vibration that travels as an acoustic wave through a medium such as a gas, liquid or solid. Sound waves alternately compress and decompress the medium as the wave travels. These compressions and decompressions are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones (underwater microphones). In water, sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam (narrow beam or directional sources) or sound beams may radiate in all directions (omnidirectional sources).

Sound travels in water more efficiently than almost any other form of energy, making the use of acoustics ideal for the aquatic environment and its inhabitants. In seawater, sound travels at roughly 1,500 meters per second (m/s). In-air, sound waves travel much more slowly, at about 340 m/s. However, the speed of sound can vary by a small amount based on characteristics of the transmission medium, such as water temperature and salinity. The basic components of a sound wave are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water.

The intensity (or amplitude) of sounds are measured in dB, which are a relative unit of measurement that is used to express the ratio of one value of a power or field to another. Decibels are measured on a logarithmic scale, so a small change in dB corresponds to large changes in sound pressure. For example, a 10-dB increase is a 10-fold increase in acoustic power. A 20-dB increase is then a 100-fold increase in power and a 30-dB increase is a 1,000-fold increase in power. However, a ten-fold increase in acoustic power does not mean that the sound is perceived as being 10 times louder. Decibels are a relative unit comparing two pressures, therefore, a reference pressure must

always be indicated. For underwater sound, this is 1 microPascal (μPa). For in-air sound, the reference pressure is 20 μPa. The amplitude of a sound can be presented in various ways. However, NMFS typically considers three metrics. In this proposed rule, all decibel levels referenced to 1μPa.

Sound exposure level (SEL) represents the total energy in a stated frequency band over a stated time interval or event, and considers both amplitude and duration of exposure (represented as dB re 1 $\mu Pa^2$-s). SEL is a cumulative metric; it can be accumulated over a single pulse (for pile driving this is often referred to as single-strike SEL; $SEL_{ss}$), or calculated over periods containing multiple pulses ($SEL_{cum}$). Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. The SEL metric is useful because it allows sound exposures of different durations to be related to one another in terms of total acoustic energy. The duration of a sound event and the number of pulses, however, should be specified as there is no accepted standard duration over which the summation of energy is measured.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure. Along with SEL, this metric is used in evaluating the potential for PTS (permanent threshold shift) and TTS (temporary threshold shift).

Sounds can be either impulsive or non-impulsive. The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing *(e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see NMFS *et al.* (2018) and Southall *et al.* (2007, 2019a) for an in-depth discussion of these concepts. Impulsive sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than 1 second), broadband, atonal transients (American National Standards Institute (ANSI), 1986, 2005; Harris, 1998; National Institute for Occupational Safety and Health (NIOSH), 1998; International Organization for Standardization (ISO), 2003) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features. Impulsive sounds are typically intermittent in nature.

Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. Sounds are also characterized by their temporal component. Continuous sounds are those whose sound pressure level remains above that of the ambient sound with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005) while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). NMFS identifies Level B harassment thresholds based on whether a sound is continuous or intermittent.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (International Council for the Exploration of the Sea (ICES), 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz, and if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Human-generated sound is a significant contributor to the acoustic environment in the project location.

*Potential Effects of Underwater Sound on Marine Mammals*

Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life from none or minor to potentially severe responses depending on received levels, duration of exposure, behavioral context, and various other factors. Broadly, underwater sound from active acoustic sources, such as those in the project, can

potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015).

In general, the degree of effect of an acoustic exposure is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure, in addition to the contextual factors of the receiver (*e.g.,* behavioral state at time of exposure, age class, *etc.*). In general, sudden, high level sounds can cause hearing loss as can longer exposures to lower level sounds. Moreover, any temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We describe below the specific manifestations of acoustic effects that may occur based on the activities proposed by Atlantic Shores.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur in relation to distance from a source and assuming that the signal is within an animal's hearing range. First (at the greatest distance) is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone (closer to the receiving animal) corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. The third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

Below, we provide additional detail regarding potential impacts on marine mammals and their habitat from noise in general, starting with hearing impairment, as well as from the specific activities Atlantic Shores plans to conduct, to the degree it is available (noting that there is limited information regarding the impacts of offshore wind construction on marine mammals).

Hearing Threshold Shift

Marine mammals exposed to high-intensity sound or to lower-intensity sound for prolonged periods can experience hearing threshold shift (TS), which NMFS defines as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level expressed in decibels (NMFS, 2018). Threshold shifts can be permanent, in which case there is an irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range or temporary, in which there is reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range and the animal's hearing threshold would fully recover over time (Southall *et al.,* 2019a). Repeated sound exposure that leads to TTS could cause PTS.

When PTS occurs, there can be physical damage to the sound receptors in the ear (*i.e.,* tissue damage) whereas TTS represents primarily tissue fatigue and is reversible (Henderson *et al.,* 2008). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997; Southall *et al.,* 2019a). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans. However, such relationships are assumed to be similar to those in humans and other terrestrial mammals. Noise exposure can result in either a permanent shift in hearing thresholds from baseline (PTS; a 40 dB threshold shift approximates a PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974; Henderson *et al.,* 2008) or a temporary, recoverable shift in hearing that returns to baseline (a 6 dB threshold shift approximates a TTS onset; *e.g.,* Southall *et al.,* 2019a). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds, expressed in the unweighted peak sound pressure level metric (PK), for impulsive sounds (such as impact pile driving pulses) are at least 6 dB higher than the TTS thresholds and the weighted PTS cumulative sound exposure level thresholds are 15 (impulsive sounds) to 20 (non-impulsive sounds) dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2019a). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, PTS is less likely to occur as a result of these activities, but it is possible and a small amount has been proposed for authorization for several species.

TTS is the mildest form of hearing impairment that can occur during exposure to sound, with a TTS of 6 dB considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000; Finneran *et al.,* 2002). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. There is data on sound levels and durations necessary to elicit mild TTS for marine mammals, but recovery is complicated to predict and dependent on multiple factors.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious depending on the degree of interference with marine mammals' hearing. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical (*e.g.,* for successful mother/calf interactions, consistent detection of prey) could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocaena asiaeorientalis*)) and six species of

pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, ring seal, spotted seal, bearded seal, and California sea lion (*Zalophus californianus*)) that were exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise with limited numbers of exposure to impulsive sources such as seismic airguns or impact pile driving) in laboratory settings (Southall *et al.,* 2019a). There is currently no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS or PTS in marine mammals or for further discussion of TTS or PTS onset thresholds, please see Southall *et al.* (2019a) and NMFS (2018).

Recent studies with captive odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale) have observed increases in hearing threshold levels when individuals received a warning sound prior to exposure to a relatively loud sound (Nachtigall and Supin, 2013, 2015; Nachtigall *et al.,* 2016a, 2016b, 2016c; Finneran, 2018; Nachtigall *et al.,* 2018). These studies suggest that captive animals have a mechanism to reduce hearing sensitivity prior to impending loud sounds. Hearing change was observed to be frequency dependent and Finneran (2018) suggests hearing attenuation occurs within the cochlea or auditory nerve. Based on these observations on captive odontocetes, the authors suggest that wild animals may have a mechanism to self-mitigate the impacts of noise exposure by dampening their hearing during prolonged exposures of loud sound or if conditioned to anticipate intense sounds (Finneran, 2018; Nachtigall *et al.,* 2018).

Behavioral Effects

Exposure of marine mammals to sound sources can result in, but is not limited to, no response or any of the following observable responses: increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). More recent reviews address studies conducted since 1995 and focused on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated (Nowacek *et al.,* 2007; DeRuiter *et al.,* 2012 and 2013; Ellison *et al.,* 2012; Gomez *et al.,* 2016). Gomez *et al.* (2016) conducted a review of the literature considering the contextual information of exposure in addition to received level and found that higher received levels were not always associated with more severe behavioral responses and vice versa. Southall *et al.* (2021) states that results demonstrate that some individuals of different species display clear yet varied responses, some of which have negative implications while others appear to tolerate high levels and that responses may not be fully predictable with simple acoustic exposure metrics (*e.g.,* received sound level). Rather, the authors state that differences among species and individuals along with contextual aspects of exposure (*e.g.,* behavioral state) appear to affect response probability.

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately predisposed to respond to certain sounds in certain ways) (Southall *et al.,* 2019a). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), the similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.,* calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007, DeRuiter *et al.,* 2013). Individuals (of different age, gender, reproductive status, *etc.*) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.,* proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors, such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Overall, the variability of responses to acoustic stimuli depends on the species receiving the sound, the sound source, and the social, behavioral, or environmental contexts of exposure (*e.g.,* DeRuiter *et al.,* 2012). For example, Goldbogen *et al.* (2013a) demonstrated that individual behavioral state was critically important in determining response of blue whales to sonar, noting that some individuals engaged in deep (greater than 50 m) feeding behavior had greater dive responses than those in shallow feeding or non-feeding conditions. Some blue whales in the Goldbogen *et al.* (2013a) study that were engaged in shallow feeding behavior demonstrated no clear changes in diving or movement even when received levels were high (~160 dB re 1μPa) for exposures to 3–4 kHz sonar signals, while deep feeding and non-feeding whales showed a clear response at exposures at lower received levels of sonar and pseudorandom noise. Southall *et al.* (2011) found that blue whales had a different response to sonar exposure depending on behavioral state, more pronounced when deep feeding/travel modes than when engaged in surface feeding.

With respect to distance influencing disturbance, DeRuiter *et al.* (2013) examined behavioral responses of Cuvier's beaked whales to mid-frequency sonar and found that whales responded strongly at low received levels (89–127 dB re 1μPa) by ceasing normal fluking and echolocation, swimming rapidly away, and extending both dive duration and subsequent non-foraging intervals when the sound source was 3.4–9.5 km away. Importantly, this study also showed that whales exposed to a similar range of received levels (78–106 dB re 1μPa) from distant sonar exercises (118 km away) did not elicit such responses, suggesting that context may moderate reactions. Thus, distance from the source is an important variable in influencing the type and degree of behavioral response and this variable is independent of the effect of received levels (*e.g.,* DeRuiter *et al.,* 2013; Dunlop *et al.,* 2017a, 2017b; Falcone *et al.,* 2017; Dunlop *et al.,* 2018; Southall *et al.,* 2019a).

Ellison *et al.* (2012) outlined an approach to assessing the effects of sound on marine mammals that incorporates contextual-based factors. The authors recommend considering not just the received level of sound but also the activity the animal is engaged in at the time the sound is received, the nature and novelty of the sound (*i.e.,* is this a new sound from the animal's perspective), and the distance between the sound source and the animal. They submit that this ''exposure context,'' as described, greatly influences the type of behavioral response exhibited by the animal. Forney *et al.* (2017) also point out that an apparent lack of response

(*e.g.,* no displacement or avoidance of a sound source) may not necessarily mean there is no cost to the individual or population, as some resources or habitats may be of such high value that animals may choose to stay, even when experiencing stress or hearing loss. Forney *et al.* (2017) recommend considering both the costs of remaining in an area of noise exposure such as TTS, PTS, or masking, which could lead to an increased risk of predation or other threats or a decreased capability to forage, and the costs of displacement, including potential increased risk of vessel strike, increased risks of predation or competition for resources, or decreased habitat suitable for foraging, resting, or socializing. This sort of contextual information is challenging to predict with accuracy for ongoing activities that occur over large spatial and temporal expanses. However, distance is one contextual factor for which data exist to quantitatively inform a take estimate, and the method for predicting Level B harassment in this rule does consider distance to the source. Other factors are often considered qualitatively in the analysis of the likely consequences of sound exposure where supporting information is available.

Behavioral change, such as disturbance manifesting in lost foraging time, in response to anthropogenic activities is often assumed to indicate a biologically significant effect on a population of concern. However, individuals may be able to compensate for some types and degrees of shifts in behavior, preserving their health and thus their vital rates and population dynamics. For example, New *et al.* (2013) developed a model simulating the complex social, spatial, behavioral and motivational interactions of coastal bottlenose dolphins in the Moray Firth, Scotland, to assess the biological significance of increased rate of behavioral disruptions caused by vessel traffic. Despite a modeled scenario in which vessel traffic increased from 70 to 470 vessels a year (a 6-fold increase in vessel traffic) in response to the construction of a proposed offshore renewables' facility, the dolphins' behavioral time budget, spatial distribution, motivations and social structure remained unchanged. Similarly, two bottlenose dolphin populations in Australia were also modeled over 5 years against a number of disturbances (Reed *et al.,* 2020) and results indicate that habitat/noise disturbance had little overall impact on population abundances in either location, even in the most extreme impact scenarios modeled.

Friedlaender *et al.* (2016) provided the first integration of direct measures of prey distribution and density variables incorporated into across-individual analyses of behavior responses of blue whales to sonar and demonstrated a fivefold increase in the ability to quantify variability in blue whale diving behavior. These results illustrate that responses evaluated without such measurements for foraging animals may be misleading, which again illustrates the context-dependent nature of the probability of response.

The following subsections provide examples of behavioral responses that give an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound, contextual factors, and the wide range of potential acoustic sources to which a marine mammal may be exposed. Behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists, along with contextual factors.

Avoidance and Displacement

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales (*Eschrichtius robustus*) and humpback whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984; Dunlop *et al.,* 2018). Avoidance is qualitatively different from the flight response but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, *etc.*). Avoidance may be short-term with animals returning to the area once the noise has ceased (*e.g.,* Malme *et al.,* 1984; Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007; Dähne *et al.,* 2013; Russel *et al.,* 2016). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006; Forney *et al.,* 2017). Avoidance of marine mammals during the construction of offshore wind facilities (specifically, impact pile driving) has been documented in the literature with some significant variation in the temporal and spatial degree of avoidance and with most studies focused on harbor porpoises as one of the most common marine mammals in European waters (*e.g.,* Tougaard *et al.,* 2009; Dähne *et al.,* 2013; Thompson *et al.,* 2013; Russell *et al.,* 2016; Brandt *et al.,* 2018).

Available information on impacts to marine mammals from pile driving associated with offshore wind is limited to information on harbor porpoises and seals, as the vast majority of this research has occurred at European offshore wind projects where large whales and other odontocete species are uncommon. Harbor porpoises and harbor seals are considered to be behaviorally sensitive species (*e.g.,* Southall *et al.,* 2007) and the effects of wind farm construction in Europe on these species has been well documented. These species have received particular attention in European waters due to their abundance in the North Sea (Hammond *et al.,* 2002; Nachtsheim *et al.,* 2021). A summary of the literature on documented effects of wind farm construction on harbor porpoise and harbor seals is described below.

Brandt *et al.* (2016) summarized the effects of the construction of eight offshore wind projects within the German North Sea (*i.e.,* Alpha Ventus, BARD Offshore I, Borkum West II, DanTysk, Global Tech I, Meerwind Süd/Ost, Nordsee Ost, and Riffgat) between 2009 and 2013 on harbor porpoises, combining PAM data from 2010–2013 and aerial surveys from 2009–2013 with data on noise levels associated with pile driving. Results of the analysis revealed significant declines in porpoise detections during pile driving when compared to 25–48 hours before pile driving began, with the magnitude of decline during pile driving clearly decreasing with increasing distances to the construction site. During the majority of projects, significant declines in detections (by at least 20 percent) were found within at least 5–10 km of the pile driving site, with declines at up to 20–30 km of the pile driving site documented in some cases. Similar results demonstrating the long-distance displacement of harbor porpoises (18—25 km) and harbor seals (up to 40 km) during impact pile driving have also been observed during the construction at multiple other European wind farms (Tougaard *et al.,* 2009; Bailey *et al.,* 2010; Dähne *et al.,* 2013; Lucke *et al.,* 2012; Haelters *et al.,* 2015).

While harbor porpoises and seals tend to move several kilometers away from

wind farm construction activities, the duration of displacement has been documented to be relatively temporary. In two studies at Horns Rev II using impact pile driving, harbor porpoise returned within 1–2 days following cessation of pile driving (Tougaard *et al.,* 2009; Brandt *et al.,* 2011). Similar recovery periods have been noted for harbor seals off England during the construction of four wind farms (Brasseur *et al.,* 2012; Carroll *et al.,* 2010; Hamre *et al.,* 2011; Hastie *et al.,* 2015; Russell *et al.,* 2016). In some cases, an increase in harbor porpoise activity has been documented inside wind farm areas following construction (*e.g.,* Lindeboom *et al.,* 2011). Other studies have noted longer term impacts after impact pile driving. Near Dogger Bank in Germany, harbor porpoises continued to avoid the area for over 2 years after construction began (Gilles *et al.,* 2009). Approximately 10 years after construction of the Nysted wind farm, harbor porpoise abundance had not recovered to the original levels previously seen, although the echolocation activity was noted to have been increasing when compared to the previous monitoring period (Teilmann and Carstensen, 2012). However, overall, there are no indications for a population decline of harbor porpoises in European waters (*e.g.,* Brandt *et al.,* 2016). Notably, where significant differences in displacement and return rates have been identified for these species, the occurrence of secondary project-specific influences such as use of mitigation measures (*e.g.,* bubble curtains, acoustic deterrent devices (ADDs)) or the manner in which species use the habitat in the Project Area are likely the driving factors of this variation.

NMFS notes the aforementioned studies from Europe involve installing much smaller piles than Atlantic Shores proposes to install and, therefore, we anticipate noise levels from impact pile driving to be louder. For this reason, we anticipate that greater distances of displacement than those observed in harbor porpoise and harbor seals in Europe are likely to occur off New Jersey. However, we do not anticipate any greater severity of response due to harbor porpoise and harbor seal habitat use off New Jersey or population-level consequences similar to European findings. In many cases, harbor porpoises and harbor seals are resident to the areas where European wind farms have been constructed. However, off New Jersey, harbor porpoises are primarily transient (with higher abundances in winter when foundation installation would not occur) and a very small percentage of the large harbor seal population are only seasonally present with no rookeries established. In summary, we anticipate that harbor porpoise and harbor seals will likely respond to pile driving by moving several kilometers away from the source but return to typical habitat use patterns when pile driving ceases.

Some avoidance behavior of other marine mammal species has been documented to be dependent on distance from the source. As described above, DeRuiter *et al.* (2013) noted that distance from a sound source may moderate marine mammal reactions in their study of Cuvier's beaked whales (an acoustically sensitive species), which showed the whales swimming rapidly and silently away when a sonar signal was 3.4–9.5 km away while showing no such reaction to the same signal when the signal was 118 km away even though the received levels were similar. Tyack *et al.* (1983) conducted playback studies of Surveillance Towed Array Sensor System (SURTASS) low frequency active (LFA) sonar in a gray whale migratory corridor off California. Similar to North Atlantic right whales, gray whales migrate close to shore (approximately +2 kms) and are low frequency hearing specialists. The LFA sonar source was placed within the gray whale migratory corridor (approximately 2 km offshore) and offshore of most, but not all, migrating whales (approximately 4 km offshore). These locations influenced received levels and distance to the source. For the inshore playbacks, not unexpectedly, the louder the source level of the playback (*i.e.,* the louder the received level), the more whales avoided the source at greater distances. Specifically, when the source level was 170 dB rms and 178 dB rms, whales avoided the inshore source at ranges of several hundred meters, similar to avoidance responses reported by Malme *et al.* (1983, 1984). Whales exposed to source levels of 185 dB rms demonstrated avoidance levels at ranges of +1 km. Where the offshore source broadcast at source levels of 185 and 200 dB, avoidance responses were greatly reduced. While there was observed deflection from course, in no case did a whale abandon its migratory behavior.

The signal context of the noise exposure has been shown to play an important role in avoidance responses. In a 2007–2008 Bahamas study, playback sounds of a potential predator—a killer whale—resulted in a similar but more pronounced reaction in beaked whales (an acoustically sensitive species), which included longer inter-dive intervals and a sustained straight-line departure of more than 20 km from the area (Boyd *et al.,* 2008; Southall *et al.,* 2009; Tyack *et al.,* 2011). Atlantic Shores does not anticipate, and NMFS is not proposing to authorize take of beaked whales and, moreover, the sounds produced by Atlantic Shores do not have signal characteristics similar to predators. Therefore we would not expect such extreme reactions to occur. Southall *et al.* (2011) found that blue whales had a different response to sonar exposure depending on behavioral state, more pronounced when deep feeding/travel modes than when engaged in surface feeding.

One potential consequence of behavioral avoidance is the altered energetic expenditure of marine mammals because energy is required to move and avoid surface vessels or the sound field associated with active sonar (Frid and Dill, 2002). Most animals can avoid that energetic cost by swimming away at slow speeds or speeds that minimize the cost of transport (Miksis-Olds, 2006), as has been demonstrated in Florida manatees (Miksis-Olds, 2006). Those energetic costs increase, however, when animals shift from a resting state, which is designed to conserve an animal's energy, to an active state that consumes energy the animal would have conserved had it not been disturbed. Marine mammals that have been disturbed by anthropogenic noise and vessel approaches are commonly reported to shift from resting to active behavioral states, which would imply that they incur an energy cost.

Forney *et al.* (2017) detailed the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking, noting that a lack of observed response does not imply absence of fitness costs and that apparent tolerance of disturbance may have population-level impacts that are less obvious and difficult to document. Avoidance of overlap between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts because (particularly for animals with high site fidelity) there may be a strong motivation to remain in the area despite negative impacts. Forney *et al.* (2017) stated that, for these animals, remaining in a disturbed area may reflect a lack of alternatives rather than a lack of effects.

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other

avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Frid and Dill, 2002). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, beaked whale strandings (Cox *et al.,* 2006; D'Amico *et al.,* 2009). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response. Flight responses of marine mammals have been documented in response to mobile high intensity active sonar (*e.g.,* Tyack *et al.,* 2011; DeRuiter *et al.,* 2013; Wensveen *et al.,* 2019), and more severe responses have been documented when sources are moving towards an animal or when they are surprised by unpredictable exposures (Watkins, 1986; Falcone *et al.,* 2017). Generally speaking, however, marine mammals would be expected to be less likely to respond with a flight response to either stationary pile driving (which they can sense is stationary and predictable) or significantly lower-level HRG surveys, unless they are within the area ensonified above behavioral harassment thresholds at the moment the source is turned on (Watkins, 1986; Falcone *et al.,* 2017).

Diving and Foraging

Changes in dive behavior in response to noise exposure can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a; Goldbogen *et al.,* 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (*e.g.,* increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure, the type and magnitude of the response, and the context within which the response occurs (*e.g.,* the surrounding environmental and anthropogenic circumstances).

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of vessel strike. The alerting stimulus was in the form of an 18 minute exposure that included three 2-minute signals played three times sequentially. This stimulus was designed with the purpose of providing signals distinct to background noise that serve as localization cues. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Although source levels for the proposed pile driving activities may exceed the received level of the alerting stimulus described by Nowacek *et al.* (2004), proposed mitigation strategies (further described in the Proposed Mitigation section) will reduce the severity of response to proposed pile driving activities. Converse to the behavior of North Atlantic right whales, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach, and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.,* 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the equivocal nature of behavioral effects and consequent difficulty in defining and predicting them.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the cessation of secondary indicators of foraging (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006a; Yazvenko *et al.,* 2007; Southall *et al.,* 2019b). An understanding of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal can facilitate the assessment of whether foraging disruptions are likely to incur fitness consequences (Goldbogen *et al.,* 2013b; Farmer *et al.,* 2018; Pirotta *et al.,* 2018; Southall *et al.,* 2019a; Pirotta *et al.,* 2021).

Impacts on marine mammal foraging rates from noise exposure have been documented, though there is little data regarding the impacts of offshore turbine construction specifically. Several broader examples follow, and it is reasonable to expect that exposure to noise produced during the 5 years the proposed rule would be effective could have similar impacts.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006a; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.,* 2009). Miller *et al.* (2009) noted that more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior.

Balaenopterid whales exposed to moderate low-frequency signals similar to the ATOC sound source demonstrated no variation in foraging activity (Croll *et al.,* 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.,* 2004). Although the received sound pressure levels (SPLs)

were similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. The source levels of both the proposed construction and HRG activities exceed the source levels of the signals described by Nowacek *et al.* (2004) and Croll *et al.* (2001), and noise generated by Atlantic Shores' activities at least partially overlap in frequency with the described signals. Blue whales exposed to mid-frequency sonar in the Southern California Bight were less likely to produce low frequency calls usually associated with feeding behavior (Melcón *et al.,* 2012). However, Melcón *et al.* (2012) were unable to determine if suppression of low frequency calls reflected a change in their feeding performance or abandonment of foraging behavior and indicated that implications of the documented responses are unknown. Further, it is not known whether the lower rates of calling actually indicated a reduction in feeding behavior or social contact since the study used data from remotely deployed, passive acoustic monitoring buoys. Results from the 2010–2011 field season of a behavioral response study in Southern California waters indicated that, in some cases and at low received levels, tagged blue whales responded to mid-frequency sonar but that those responses were mild and there was a quick return to their baseline activity (Southall *et al.,* 2011; Southall *et al.,* 2012b, Southall *et al.,* 2019).

Information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal will help better inform a determination of whether foraging disruptions incur fitness consequences. Foraging strategies may impact foraging efficiency, such as by reducing foraging effort and increasing success in prey detection and capture, in turn promoting fitness and allowing individuals to better compensate for foraging disruptions. Surface feeding blue whales did not show a change in behavior in response to mid-frequency simulated and real sonar sources with received levels between 90 and 179 dB re 1 μPa, but deep feeding and non-feeding whales showed temporary reactions including cessation of feeding, reduced initiation of deep foraging dives, generalized avoidance responses, and changes to dive behavior (DeRuiter *et al.,* 2017; Goldbogen *et al.,* 2013b; Sivle *et al.,* 2015). Goldbogen *et al.* (2013b) indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual whale could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication that individual fitness and health would be impacted, particularly since unconsumed prey would likely still be available in the environment in most cases following the cessation of acoustic exposure.

Similarly, while the rates of foraging lunges decrease in humpback whales due to sonar exposure, there was variability in the response across individuals, with one animal ceasing to forage completely and another animal starting to forage during the exposure (Sivle *et al.,* 2016). In addition, almost half of the animals that demonstrated avoidance were foraging before the exposure but the others were not; the animals that avoided while not feeding responded at a slightly lower received level and greater distance than those that were feeding (Wensveen *et al.,* 2017). These findings indicate the behavioral state of the animal and foraging strategies play a role in the type and severity of a behavioral response. For example, when the prey field was mapped and used as a covariate in examining how behavioral state of blue whales is influenced by mid-frequency sound, the response in blue whale deep-feeding behavior was even more apparent, reinforcing the need for contextual variables to be included when assessing behavioral responses (Friedlaender *et al.,* 2016).

Vocalizations and Auditory Masking

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, production of echolocation clicks, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result directly from increased vigilance or a startle response, or from a need to compete with an increase in background noise (see Erbe *et al.,* 2016 review on communication masking), the latter of which is described more below.

For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004) and blue whales increased song production (Di Iorio and Clark, 2009), while North Atlantic right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease or reduce sound production during production of aversive signals (Bowles *et al.,* 1994; Thode *et al.,* 2020; Cerchio *et al.,* 2014; McDonald *et al.,* 1995). Blackwell *et al.* (2015) showed that whales increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels.

Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, or navigation) (Richardson *et al.,* 1995; Erbe and Farmer, 2000; Tyack, 2000; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age, or TTS hearing loss), and existing ambient noise and propagation conditions.

Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations. Masking can lead to behavioral changes including vocal changes (*e.g.,* Lombard effect, increasing amplitude, or changing frequency), cessation of foraging or lost foraging opportunities, and leaving an area, to both signalers and receivers, in an attempt to compensate for noise levels (Erbe *et al.,* 2016) or because sounds that would typically have triggered a behavior were not detected. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of

common biomechanical cochlear properties across taxa.

Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting behavioral patterns. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which only occurs during the sound exposure. Because masking (without resulting in threshold shift) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009; Matthews *et al.,* 2017) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013; Cholewiak *et al.,* 2018).

The echolocation calls of toothed whales are subject to masking by high-frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (*i.e.,* upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (*e.g.,* adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high-frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980). A study by Nachtigall and Supin (2008) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals.

Impacts on signal detection, measured by masked detection thresholds, are not the only important factors to address when considering the potential effects of masking. As marine mammals use sound to recognize conspecifics, prey, predators, or other biologically significant sources (Branstetter *et al.,* 2016), it is also important to understand the impacts of masked recognition thresholds (often called ''informational masking''). Branstetter *et al.* (2016) measured masked recognition thresholds for whistle-like sounds of bottlenose dolphins and observed that they are approximately 4 dB above detection thresholds (energetic masking) for the same signals. Reduced ability to recognize a conspecific call or the acoustic signature of a predator could have severe negative impacts. Branstetter *et al.* (2016) observed that if ''quality communication'' is set at 90 percent recognition the output of communication space models (which are based on 50 percent detection) would likely result in a significant decrease in communication range.

As marine mammals use sound to recognize predators (Allen *et al.,* 2014; Cummings and Thompson, 1971; Curé *et al.,* 2015; Fish and Vania, 1971), the presence of masking noise may also prevent marine mammals from responding to acoustic cues produced by their predators, particularly if it occurs in the same frequency band. For example, harbor seals that reside in the coastal waters off British Columbia are frequently targeted by mammal-eating killer whales. The seals acoustically discriminate between the calls of mammal-eating and fish-eating killer whales (Deecke *et al.,* 2002), a capability that should increase survivorship while reducing the energy required to attend to all killer whale calls. Similarly, sperm whales (Curé *et al.,* 2016; Isojunno *et al.,* 2016), long-finned pilot whales (Visser *et al.,* 2016), and humpback whales (Curé *et al.,* 2015) changed their behavior in response to killer whale vocalization playbacks; these findings indicate that some recognition of predator cues could be missed if the killer whale vocalizations were masked. The potential effects of masked predator acoustic cues depends on the duration of the masking noise and the likelihood of a marine mammal encountering a predator during the time that detection and recognition of predator cues are impeded.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio.

Masking affects both senders and receivers of acoustic signals and, at higher levels and longer duration, can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009; Cholewiak *et al.,* 2018). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from commercial vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

In addition to making it more difficult for animals to perceive and recognize acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' (or communication space) of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004; Marten and Marler, 1977; Patricelli and Blickley, 2006). Most species that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli and Blickley, 2006).

Vocalizing animals can make adjustments to vocalization characteristics such as the frequency structure, amplitude, temporal structure, and temporal delivery (repetition rate), or ceasing to vocalize.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments are not directly known in all instances, like most other trade-offs animals must make, some of these strategies likely come at a cost (Patricelli and Blickley, 2006; Noren *et al.,* 2017; Noren *et al.,* 2020). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

Marine mammals are also known to make vocal changes in response to anthropogenic noise. In cetaceans, vocalization changes have been reported from exposure to anthropogenic noise sources such as sonar, vessel noise, and seismic surveying (see the following for examples: Gordon *et al.,* 2003; Di Iorio and Clark, 2009; Hatch *et al.,* 2012; Holt *et al.,* 2009; Holt *et al.,* 2011; Lesage *et al.,* 1999; McDonald *et al.,* 2009; Parks *et al.,* 2007; Risch *et al.,* 2012; Rolland *et al.,* 2012; Sorenson *et al.,* 2023), as well as changes in the natural acoustic environment (Dunlop *et al.,* 2014). Vocal changes can be temporary, or can be persistent. For example, model simulation suggests that the increase in starting frequency for the North Atlantic right whale upcall over the last 50 years resulted in increased detection ranges between right whales. The frequency shift, coupled with an increase in call intensity by 20 dB, led to a call detectability range of less than 3 km to over 9 km (Tennessen and Parks, 2016). Holt *et al.* (2009) measured killer whale call source levels and background noise levels in the 1 to 40 kHz band and reported that the whales increased their call source levels by 1 dB SPL for every 1 dB SPL increase in background noise level. Similarly, another study on St. Lawrence River belugas reported a similar rate of increase in vocalization activity in response to passing vessels (Scheifele *et al.,* 2005). Di Iorio and Clark (2009) showed that blue whale calling rates vary in association with seismic sparker survey activity, with whales calling more on days with surveys than on days without surveys. They suggested that the whales called more during seismic survey periods as a way to compensate for the elevated noise conditions.

In some cases, these vocal changes may have fitness consequences, such as an increase in metabolic rates and oxygen consumption, as observed in bottlenose dolphins when increasing their call amplitude (Holt *et al.,* 2015). A switch from vocal communication to physical, surface-generated sounds such as pectoral fin slapping or breaching was observed for humpback whales in the presence of increasing natural background noise levels, indicating that adaptations to masking may also move beyond vocal modifications (Dunlop *et al.,* 2010).

While these changes all represent possible tactics by the sound-producing animal to reduce the impact of masking, the receiving animal can also reduce masking by using active listening strategies such as orienting to the sound source, moving to a quieter location, or reducing self-noise from hydrodynamic flow by remaining still. The temporal structure of noise (*e.g.,* amplitude modulation) may also provide a considerable release from masking through comodulation masking release (a reduction of masking that occurs when broadband noise, with a frequency spectrum wider than an animal's auditory filter bandwidth at the frequency of interest, is amplitude modulated) (Branstetter and Finneran, 2008; Branstetter *et al.,* 2013). Signal type (*e.g.,* whistles, burst-pulse, sonar clicks) and spectral characteristics (*e.g.,* frequency modulated with harmonics) may further influence masked detection thresholds (Branstetter *et al.,* 2016; Cunningham *et al.,* 2014).

Masking is more likely to occur in the presence of broadband, relatively continuous noise sources, such as vessels. Several studies have shown decreases in marine mammal communication space and changes in behavior as a result of the presence of vessel noise. For example, right whales were observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007) as well as increasing the amplitude (intensity) of their calls (Parks, 2009; Parks *et al.,* 2011). Clark *et al.* (2009) observed that right whales' communication space decreased by up to 84 percent in the presence of vessels. Cholewiak *et al.* (2018) also observed loss in communication space in Stellwagen National Marine Sanctuary for North Atlantic right whales, fin whales, and humpback whales with increased ambient noise and shipping noise. Although humpback whales off Australia did not change the frequency or duration of their vocalizations in the presence of ship noise, their source levels were lower than expected based on source level changes to wind noise, potentially indicating some signal masking (Dunlop, 2016). Multiple delphinid species have also been shown to increase the minimum or maximum frequencies of their whistles in the presence of anthropogenic noise and reduced communication space (for examples see: Holt *et al.,* 2009; Holt *et al.,* 2011; Gervaise *et al.,* 2012; Williams *et al.,* 2013; Hermannsen *et al.,* 2014; Papale *et al.,* 2015; Liu *et al.,* 2017). While masking impacts are not a concern from lower intensity, higher frequency HRG surveys, some degree of masking would be expected in the vicinity of turbine pile driving and concentrated support vessel operation. However, pile driving is an intermittent sound and would not be continuous throughout a day.

Habituation and Sensitization

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance having a neutral or positive outcome (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

Both habituation and sensitization require an ongoing learning process. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; National Research Council (NRC), 2003; Wartzok *et al.,* 2003; Southall *et al.,* 2019b). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (*e.g.,* Ridgway *et al.,* 1997; Finneran *et al.,* 2003; Houser *et al.,*

2013a; Houser *et al.,* 2013b; Kastelein *et al.,* 2018). Observed responses of wild marine mammals to loud impulsive sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007; Tougaard *et al.,* 2009; Brandt *et al.,* 2011; Brandt *et al.,* 2012; Dähne *et al.,* 2013; Brandt *et al.,* 2014; Russell *et al.,* 2016; Brandt *et al.,* 2018).

Stone (2015) reported data from at-sea observations during 1,196 airgun surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in 3 or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior with indications that cetaceans remained near the water surface at these times. Behavioral observations of gray whales during an airgun survey monitored whale movements and respirations pre-, during-, and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and after considering natural variation, none of the response variables were significantly associated with survey or vessel sounds. Many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Physiological Responses

An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Lusseau and Bejder, 2007; Romano *et al.,* 2002a; Rolland *et al.,* 2012). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales.

These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003, 2017).

Respiration naturally varies with different behaviors and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.,* 2007). Studies with captive harbor porpoises show increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.,* 2001; Kastelein *et al.,* 2006a) and emissions for underwater data transmission (Kastelein *et al.,* 2005). However, exposure of the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.,* 2006a), again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

Stranding

The definition for a stranding under title IV of the MMPA is that (A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance (16 U.S.C. 1421h).

Marine mammal strandings have been linked to a variety of causes, such as illness from exposure to infectious agents, biotoxins, or parasites; starvation; unusual oceanographic or weather events; or anthropogenic causes including fishery interaction, vessel strike, entrainment, entrapment, sound exposure, or combinations of these stressors sustained concurrently or in series. There have been multiple events worldwide in which marine mammals (primarily beaked whales, or other deep divers) have stranded coincident with relatively nearby activities utilizing loud sound sources (primarily military training events), and five in which mid-frequency active sonar has been more definitively determined to have been a contributing factor.

There are multiple theories regarding the specific mechanisms responsible for

marine mammal strandings caused by exposure to loud sounds. One primary theme is the behaviorally mediated responses of deep-diving species (odontocetes), in which their startled response to an acoustic disturbance (1) affects ascent or descent rates, the time they stay at depth or the surface, or other regular dive patterns that are used to physiologically manage gas formation and absorption within their bodies, such that the formation or growth of gas bubbles damages tissues or causes other injury, or (2) results in their flight to shallow areas, enclosed bays, or other areas considered ''out of habitat,'' in which they become disoriented and physiologically compromised. For more information on marine mammal stranding events and potential causes, please see the Mortality and Stranding section of NMFS Proposed Incidental Take Regulations for the Navy's Training and Testing Activities in the Hawaii-Southern California Training and Testing Study Area (50 CFR part 218, Volume 83, No. 123, June 26, 2018).

The construction activities proposed by Atlantic Shores (*i.e.,* pile driving) do not inherently have the potential to result in marine mammal strandings. While vessel strikes could kill or injure a marine mammals (which may eventually strand), the required mitigation measures would reduce the potential for take from these activities to *de minimis* levels (see Proposed Mitigation section for more details). As described above, no mortality or serious injury is anticipated or proposed to be authorized from any project activities.

Of the strandings documented to date worldwide, NMFS is not aware of any being attributed to pile driving or the types of HRG equipment proposed for use during the project. Recently, there has been heightened interest in HRG surveys and their potential role in recent marine mammals strandings along the U.S. east coast. HRG surveys involve the use of certain sources to image the ocean bottom, which are very different from seismic airguns used in oil and gas surveys or tactical military sonar, in that they produce much smaller impact zones. Marine mammals may respond to exposure to these sources by, for example, avoiding the immediate area, which is why offshore wind developers have authorization to allow for Level B (behavioral) harassment, including Atlantic Shores. However, because of the combination of lower source levels, higher frequency, narrower beam-width (for some sources), and other factors, the area within which a marine mammal might be expected to be behaviorally disturbed by HRG sources is much smaller (by orders of magnitude) than the impact areas for seismic airguns or the military sonar with which a small number of marine mammal have been causally associated. Specifically, estimated harassment zones for HRG surveys are typically less than 200 m (656.2 ft; such as those associated with the project), while zones for military mid-frequency active sonar or seismic airgun surveys typically extend for several kms ranging up to 10s of km. Further, because of this much smaller ensonified area, any marine mammal exposure to HRG sources is reasonably expected to be at significantly lower levels and shorter duration (associated with less severe responses), and there is no evidence suggesting, or reason to speculate, that marine mammals exposed to HRG survey noise are likely to be injured, much less strand, as a result. Last, all but one of the small number of marine mammal stranding events that have been causally associated with exposure to loud sound sources have been deep-diving toothed whale species (not mysticetes), which are known to respond differently to loud sounds.

*Potential Effects of Disturbance on Marine Mammal Fitness*

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, *etc.*) of an animal. There is numerous data relating the exposure of terrestrial mammals from sound to effects on reproduction or survival, and data for marine mammals continues to grow. Several authors have reported that disturbance stimuli may cause animals to abandon nesting and foraging sites (Sutherland and Crockford, 1993); may cause animals to increase their activity levels and suffer premature deaths or reduced reproductive success when their energy expenditures exceed their energy budgets (Daan *et al.,* 1996; Feare, 1976; Mullner *et al.,* 2004); or may cause animals to experience higher predation rates when they adopt risk-prone foraging or migratory strategies (Frid and Dill, 2002). Each of these studies addressed the consequences of animals shifting from one behavioral state (*e.g.,* resting or foraging) to another behavioral state (*e.g.,* avoidance or escape behavior) because of human disturbance or disturbance stimuli.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or subconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time; when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging or resting. These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (*e.g.,* multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (*e.g.,* when they are giving birth or accompanied by a calf).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand while decreasing their caloric intake/energy). In a study of northern resident killer whales off Vancouver Island, exposure to boat traffic was shown to reduce foraging opportunities and increase traveling time (Holt *et al.,* 2021). A simple bioenergetics model was applied to show that the reduced foraging opportunities equated to a decreased energy intake of 18 percent while the

increased traveling incurred an increased energy output of 3–4 percent, which suggests that a management action based on avoiding interference with foraging might be particularly effective.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant for fitness if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). It is important to note the difference between behavioral reactions lasting or recurring over multiple days and anthropogenic activities lasting or recurring over multiple days. For example, just because certain activities last for multiple days does not necessarily mean that individual animals will be either exposed to those activity-related stressors (*i.e.,* sonar) for multiple days or further exposed in a manner that would result in sustained multi-day substantive behavioral responses. However, special attention is warranted where longer-duration activities overlay areas in which animals are known to congregate for longer durations for biologically important behaviors.

There are few studies that directly illustrate the impacts of disturbance on marine mammal populations. Lusseau and Bejder (2007) present data from three long-term studies illustrating the connections between disturbance from whale-watching boats and population-level effects in cetaceans. In Shark Bay, Australia, the abundance of bottlenose dolphins was compared within adjacent control and tourism sites over three consecutive 4.5-year periods of increasing tourism levels. Between the second and third time periods, in which tourism doubled, dolphin abundance decreased by 15 percent in the tourism area and did not change significantly in the control area. In Fiordland, New Zealand, two populations (Milford and Doubtful Sounds) of bottlenose dolphins with tourism levels that differed by a factor of seven were observed and significant increases in traveling time and decreases in resting time were documented for both. Consistent short-term avoidance strategies were observed in response to tour boats until a threshold of disturbance was reached (average 68 minutes between interactions), after which the response switched to a longer-term habitat displacement strategy. For one population, tourism only occurred in a part of the home range. However, tourism occurred throughout the home range of the Doubtful Sound population and once boat traffic increased beyond the 68-minute threshold (resulting in abandonment of their home range/preferred habitat), reproductive success drastically decreased (increased stillbirths) and abundance decreased significantly (from 67 to 56 individuals in a short period).

In order to understand how the effects of activities may or may not impact species and stocks of marine mammals, it is necessary to understand not only what the likely disturbances are going to be but how those disturbances may affect the reproductive success and survivorship of individuals and then how those impacts to individuals translate to population-level effects. Following on the earlier work of a committee of the U.S. National Research Council (NRC, 2005), New *et al.* (2014), in an effort termed the Potential Consequences of Disturbance (PCoD), outline an updated conceptual model of the relationships linking disturbance to changes in behavior and physiology, health, vital rates, and population dynamics. This framework is a four-step process progressing from changes in individual behavior and/or physiology, to changes in individual health, then vital rates, and finally to population-level effects. In this framework, behavioral and physiological changes can have direct (acute) effects on vital rates, such as when changes in habitat use or increased stress levels raise the probability of mother-calf separation or predation; indirect and long-term (chronic) effects on vital rates, such as when changes in time/energy budgets or increased disease susceptibility affect health, which then affects vital rates; or no effect to vital rates (New *et al.,* 2014).

Since the PCoD general framework was outlined and the relevant supporting literature compiled, multiple studies developing state-space energetic models for species with extensive long-term monitoring (*e.g.,* southern elephant seals, North Atlantic right whales, Ziphiidae beaked whales, and bottlenose dolphins) have been conducted and can be used to effectively forecast longer-term, population-level impacts from behavioral changes. While these are very specific models with very specific data requirements that cannot yet be applied broadly to project-specific risk assessments for the majority of species, they are a critical first step towards being able to quantify the likelihood of a population level effect. Since New *et al.* (2014), several publications have described models developed to examine the long-term effects of environmental or anthropogenic disturbance of foraging on various life stages of selected species (*e.g.,* sperm whale, Farmer *et al.* (2018); California sea lion, McHuron *et al.* (2018); blue whale, Pirotta *et al.* (2018a); humpback whale, Dunlop *et al.* (2021)). These models continue to add to refinement of the approaches to the PCoD framework. Such models also help identify what data inputs require further investigation. Pirotta *et al.* (2018b) provides a review of the PCoD framework with details on each step of the process and approaches to applying real data or simulations to achieve each step.

Despite its simplicity, there are few complete PCoD models available for any marine mammal species due to a lack of data available to parameterize many of the steps. To date, no PCoD model has been fully parameterized with empirical data (Pirotta *et al.,* 2018a) due to the fact they are data intensive and logistically challenging to complete. Therefore, most complete PCoD models include simulations, theoretical modeling, and expert opinion to move through the steps. For example, PCoD models have been developed to evaluate the effect of wind farm construction on the North Sea harbor porpoise populations (*e.g.,* King *et al.,* 2015; Nabe-Nielsen *et al.,* 2018). These models include a mix of empirical data, expert elicitation (King *et al.,* 2015) and simulations of animals' movements, energetics, and/or survival (New *et al.,* 2014; Nabe-Nielsen *et al.,* 2018).

PCoD models may also be approached in different manners. Dunlop *et al.* (2021) modeled migrating humpback whale mother-calf pairs in response to seismic surveys using both a forwards and backwards approach. While a typical forwards approach can determine if a stressor would have population-level consequences, Dunlop *et al.* demonstrated that working backwards through a PCoD model can be used to assess the ''worst case'' scenario for an interaction of a target species and stressor. This method may be useful for future management goals when appropriate data becomes available to fully support the model. In another example, harbor porpoise PCoD model investigating the impact of seismic surveys on harbor porpoise included an investigation on underlying drivers of vulnerability. Harbor porpoise movement and foraging were modeled for baseline periods and then for periods

with seismic surveys as well; the models demonstrated that temporal (*i.e.,* seasonal) variation in individual energetics and their link to costs associated with disturbances was key in predicting population impacts (Gallagher *et al.,* 2021).

Behavioral change, such as disturbance manifesting in lost foraging time, in response to anthropogenic activities is often assumed to indicate a biologically significant effect on a population of concern. However, as described above, individuals may be able to compensate for some types and degrees of shifts in behavior, preserving their health and thus their vital rates and population dynamics. For example, New *et al.* (2013) developed a model simulating the complex social, spatial, behavioral and motivational interactions of coastal bottlenose dolphins in the Moray Firth, Scotland, to assess the biological significance of increased rate of behavioral disruptions caused by vessel traffic. Despite a modeled scenario in which vessel traffic increased from 70 to 470 vessels a year (a 6-fold increase in vessel traffic) in response to the construction of a proposed offshore renewables' facility, the dolphins' behavioral time budget, spatial distribution, motivations, and social structure remain unchanged. Similarly, two bottlenose dolphin populations in Australia were also modeled over 5 years against a number of disturbances (Reed *et al.,* 2020), and results indicated that habitat/noise disturbance had little overall impact on population abundances in either location, even in the most extreme impact scenarios modeled.

By integrating different sources of data (*e.g.,* controlled exposure data, activity monitoring, telemetry tracking, and prey sampling) into a theoretical model to predict effects from sonar on a blue whale's daily energy intake, Pirotta *et al.* (2021) found that tagged blue whales' activity budgets, lunging rates, and ranging patterns caused variability in their predicted cost of disturbance. This method may be useful for future management goals when appropriate data becomes available to fully support the model. Harbor porpoise movement and foraging were modeled for baseline periods and then for periods with seismic surveys as well; the models demonstrated that the seasonality of the seismic activity was an important predictor of impact (Gallagher *et al.,* 2021).

In Table 1 of Keen *et al.* (2021), the authors summarize the emerging themes in PCoD models that should be considered when assessing the likelihood and duration of exposure and the sensitivity of a population to disturbance (see Table 1 from Keen *et al.,* 2021, below). The themes are categorized by life history traits (movement ecology, life history strategy, body size, and pace of life), disturbance source characteristics (overlap with biologically important areas, duration and frequency, and nature and context), and environmental conditions (natural variability in prey availability and climate change). Keen *et al.* (2021) then summarize how each of these features influence an assessment, noting, for example, that individual animals with small home ranges have a higher likelihood of prolonged or year-round exposure, that the effect of disturbance is strongly influenced by whether it overlaps with biologically important habitats when individuals are present, and that continuous disruption will have a greater impact than intermittent disruption.

Nearly all PCoD studies and experts agree that infrequent exposures of a single day or less are unlikely to impact individual fitness, let alone lead to population level effects (Booth *et al.,* 2016; Booth *et al.,* 2017; Christiansen and Lusseau 2015; Farmer *et al.,* 2018; Wilson *et al.,* 2020; Harwood and Booth 2016; King *et al.,* 2015; McHuron *et al.,* 2018; National Academies of Sciences, Engineering, and Medicine (NAS), 2017; New *et al.,* 2014; Pirotta *et al.,* 2018a; Southall *et al.,* 2007; Villegas-Amtmann *et al.,* 2015). As described through this proposed rule, NMFS expects that any behavioral disturbance that would occur due to animals being exposed to construction activity would be of a relatively short duration, with behavior returning to a baseline state shortly after the acoustic stimuli ceases or the animal moves far enough away from the source. Given this, and NMFS' evaluation of the available PCoD studies, and the required mitigation discussed later, any such behavioral disturbance resulting from Atlantic Shores' activities is not expected to impact individual animals' health or have effects on individual animals' survival or reproduction, thus no detrimental impacts at the population level are anticipated. Marine mammals may temporarily avoid the immediate area but are not expected to permanently abandon the area or their migratory or foraging behavior. Impacts to breeding, feeding, sheltering, resting, or migration are not expected nor are shifts in habitat use, distribution, or foraging success.

*Potential Effects From Vessel Strike*

Vessel collisions with marine mammals, also referred to as vessel strikes or ship strikes, can result in death or serious injury of the animal. Wounds resulting from vessel strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. Lethal interactions are typically associated with large whales, which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known vessel strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike occurs and, if so, whether it results in injury, serious injury, or mortality (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Pace and Silber, 2005; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 kn (34.52 mph).

Jensen and Silber (2003) detailed 292 records of known or probable vessel strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these 58 cases, 39 (or 67 percent) resulted in serious injury or death (19 of those resulted in serious injury as determined by blood in the

water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 kn (2.3 to 58.68 mph). The majority (79 percent) of these strikes occurred at speeds of 13 kn (34.52 mph) or greater. The average speed that resulted in serious injury or death was 18.6 kn (21.4 mph). Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn (11.51 to 16.11 mph) and exceeded 90 percent at 17 kn (19.56 mph). Higher speeds during collisions result in greater force of impact and also appear to increase the chance of severe injuries or death. While modeling studies have suggested that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne, 1999; Knowlton *et al.,* 1995), this is inconsistent with Silber *et al.* (2010), which demonstrated that there is no such relationship (*i.e.,* hydrodynamic forces are independent of speed).

In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn (17.26 mph). The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn (9.9 mph). At speeds below 11.8 kn (13.58 mph), the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward 100 percent above 15 kn (17.26 mph).

The Jensen and Silber (2003) report notes that the Large Whale Ship Strike Database represents a minimum number of collisions, because the vast majority probably goes undetected or unreported. In contrast, the project's personnel are likely to detect any strike that does occur because of the required personnel training and lookouts, along with the inclusion of Protected Species Observers (as described in the Proposed Mitigation section), and they are required to report all ship strikes involving marine mammals.

There are no known vessel strikes of marine mammals by any offshore wind energy vessel in the U.S. Given the extensive mitigation and monitoring measures (see the Proposed Mitigation and Proposed Monitoring and Reporting section) that would be required of Atlantic Shores, NMFS believes that a vessel strike is not likely to occur.

*Potential Effects to Marine Mammal Habitat*

Atlantic Shores' proposed activities could potentially affect marine mammal habitat through the introduction of impacts to the prey species of marine mammals (through noise, oceanographic processes, or reef effects), acoustic habitat (sound in the water column), water quality, and biologically important habitat for marine mammals.

Effects on Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, and zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). The most likely effects on fishes exposed to loud, intermittent, low-frequency sounds are behavioral responses (*i.e.,* flight or avoidance). Short duration, sharp sounds (such as pile driving or airguns) can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to acoustic sources depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality. While it is clear that the behavioral responses of individual prey, such as displacement or other changes in distribution, can have direct impacts on the foraging success of marine mammals, the effects on marine mammals of individual prey that experience hearing damage, barotrauma, or mortality is less clear, though obviously population scale impacts that meaningfully reduce the amount of prey available could have more serious impacts.

Fishes, like other vertebrates, have a variety of different sensory systems to glean information from ocean around them (Astrup and Mohl, 1993; Astrup, 1999; Braun and Grande, 2008; Carroll *et al.,* 2017; Hawkins and Johnstone, 1978; Ladich and Popper, 2004; Ladich and Schulz-Mirbach, 2016; Mann, 2016; Nedwell *et al.,* 2004; Popper *et al.,* 2003; Popper *et al.,* 2005). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008) (terrestrial vertebrates generally only detect pressure). Most marine fishes primarily detect particle motion using the inner ear and lateral line system while some fishes possess additional morphological adaptations or specializations that can enhance their sensitivity to sound pressure, such as a gas-filled swim bladder (Braun and Grande, 2008; Popper and Fay, 2011).

Hearing capabilities vary considerably between different fish species with data only available for just over 100 species out of the 34,000 marine and freshwater fish species (Eschmeyer and Fong, 2016). In order to better understand acoustic impacts on fishes, fish hearing groups are defined by species that possess a similar continuum of anatomical features, which result in varying degrees of hearing sensitivity (Popper and Hastings, 2009a). There are four hearing groups defined for all fish species (modified from Popper *et al.,* 2014) within this analysis, and they include: fishes without a swim bladder (*e.g.,* flatfish, sharks, rays, *etc.*); fishes with a swim bladder not involved in hearing (*e.g.,* salmon, cod, pollock, *etc.*); fishes with a swim bladder involved in hearing (*e.g.,* sardines, anchovy, herring, *etc.*); and fishes with a swim bladder involved in hearing and high-frequency hearing (*e.g.,* shad and menhaden). Most marine mammal fish prey species would not be likely to perceive or hear mid- or high-frequency sonars. While hearing studies have not been done on sardines and northern anchovies, it would not be unexpected for them to have hearing similarities to Pacific herring (up to 2–5 kHz) (Mann *et al.,* 2005). Currently, less data are available to estimate the range of best sensitivity for fishes without a swim bladder.

In terms of physiology, multiple scientific studies have documented a lack of mortality or physiological effects to fish from exposure to low- and mid-frequency sonar and other sounds (Halvorsen *et al.,* 2012a; Jørgensen *et al.,* 2005; Juanes *et al.,* 2017; Kane *et al.,* 2010; Kvadsheim and Sevaldsen, 2005; Popper *et al.,* 2007; Popper *et al.,* 2016; Watwood *et al.,* 2016). Techer *et al.* (2017) exposed carp in floating cages for up to 30 days to low-power 23 and 46 kHz source without any significant physiological response. Other studies

have documented either a lack of TTS in species whose hearing range cannot perceive sonar (such as Navy sonar), or for those species that could perceive sonar-like signals, any TTS experienced would be recoverable (Halvorsen *et al.,* 2012a; Ladich and Fay, 2013; Popper and Hastings, 2009a, 2009b; Popper *et al.,* 2014; Smith, 2016). Only fishes that have specializations that enable them to hear sounds above about 2,500 Hz (2.5 kHz), such as herring (Halvorsen *et al.,* 2012a; Mann *et al.,* 2005; Mann, 2016; Popper *et al.,* 2014), would have the potential to receive TTS or exhibit behavioral responses from exposure to mid-frequency sonar. In addition, any sonar induced TTS to fish whose hearing range could perceive sonar would only occur in the narrow spectrum of the source (*e.g.,* 3.5 kHz) compared to the fish's total hearing range (*e.g.,* 0.01 kHz to 5 kHz).

In terms of behavioral responses, Juanes *et al.* (2017) discuss the potential for negative impacts from anthropogenic noise on fish, but the author's focus was on broader based sounds, such as ship and boat noise sources. Watwood *et al.* (2016) also documented no behavioral responses by reef fish after exposure to mid-frequency active sonar. Doksaeter *et al.* (2009; 2012) reported no behavioral responses to mid-frequency sonar (such as naval sonar) by Atlantic herring; specifically, no escape reactions (vertically or horizontally) were observed in free swimming herring exposed to mid-frequency sonar transmissions. Based on these results (Doksaeter *et al.,* 2009; Doksaeter *et al.,* 2012; Sivle *et al.,* 2012), Sivle *et al.* (2014) created a model in order to report on the possible population-level effects on Atlantic herring from active sonar. The authors concluded that the use of sonar poses little risk to populations of herring regardless of season, even when the herring populations are aggregated and directly exposed to sonar. Finally, Bruintjes *et al.* (2016) commented that fish exposed to any short-term noise within their hearing range might initially startle, but would quickly return to normal behavior.

Pile-driving noise during construction is of particular concern as the very high sound pressure levels could potentially prevent fish from reaching breeding or spawning sites, finding food, and acoustically locating mates. A playback study in West Scotland revealed that there was a significant movement response to the pile-driving stimulus in both species at relatively low received sound pressure levels (sole: 144 to 156 dB re 1μPa Peak; cod: 140 to 161 dB re 1 μPa Peak, particle motion between $6.51 \times 10^3$ and $8.62 \times 10^4$ m/s$^2$ peak) (Mueller-Blenkle *et al.,* 2010). The swimming speed of the sole increased significantly during the playback of construction noise when compared to the playbacks of before and after construction. While not statistically significant, cod also displayed a similar behavioral response during before, during, and after construction playbacks. However, cod demonstrated a specific and significant freezing response at the onset and cessation of the playback recording. In both species, indications were present displaying directional movements away from the playback source. During wind farm construction in the Eastern Taiwan Strait, Type 1 soniferous fish chorusing showed a relatively lower intensity and longer duration while Type 2 chorusing exhibited higher intensity and no changes in its duration. Deviation from regular fish vocalization patterns may affect fish reproductive success, cause migration, augmented predation, or physiological alterations.

Occasional behavioral reactions to activities that produce underwater noise sources are unlikely to cause long-term consequences for individual fish or populations. The most likely impact to fish from impact and vibratory pile driving activities at the Project Areas would be temporary behavioral avoidance of the area. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected.

SPLs of sufficient strength have been known to cause fish auditory impairment, injury and mortality. Popper *et al.* (2014) found that fish with or without air bladders could experience TTS at 186 dB $SEL_{cum}$. Mortality could occur for fish without swim bladders at >216 dB $SEL_{cum}$. Those with swim bladders or at the egg or larvae life stage, mortality was possible at >203 dB $SEL_{cum}$. Other studies found that 203 dB $SEL_{cum}$ or above caused a physiological response in other fish species (Casper *et al.,* 2012, Halvorsen *et al.,* 2012a, Halvorsen *et al.,* 2012b, Casper *et al.,* 2013a; Casper *et al.,* 2013b). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

As described in the Proposed Mitigation section below, Atlantic Shores would utilize a sound attenuation device which would reduce potential for injury to marine mammal prey. Other fish that experience hearing loss as a result of exposure to impulsive sound sources may have a reduced ability to detect relevant sounds such as predators, prey, or social vocalizations. However, PTS has not been known to occur in fishes and any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (Popper *et al.,* 2005; Popper *et al.,* 2014; Smith *et al.,* 2006). It is not known if damage to auditory nerve fibers could occur, and if so, whether fibers would recover during this process.

Several studies have demonstrated that airgun sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). Required soft-starts would allow prey and marine mammals to move away from the source prior to any noise levels that may physically injure prey and the use of the noise attenuation devices would reduce noise levels to the degree any mortality or injury of prey is also minimized. Use of bubble curtains, in addition to reducing impacts to marine mammals, for example, is a key mitigation measure in reducing injury and mortality of ESA-listed salmon on the U.S. West Coast. However, we recognize some mortality, physical injury and hearing impairment in marine mammal prey may occur, but we anticipate the amount of prey impacted in this manner is minimal compared to overall availability. Any behavioral responses to pile driving by marine mammal prey are expected to be brief. We expect that other impacts, such as stress or masking, would occur in fish that serve as marine mammal prey (Popper *et al.,* 2019). However, those impacts would be limited to the

duration of impact pile driving and if prey were to move out the area in response to noise, these impacts would be minimized.

In addition to fish, prey sources such as marine invertebrates could potentially be impacted by noise stressors as a result of the proposed activities. However, most marine invertebrates' ability to sense sounds is limited. Invertebrates appear to be able to detect sounds (Pumphrey, 1950; Frings and Frings, 1967) and are most sensitive to low-frequency sounds (Packard *et al.,* 1990; Budelmann and Williamson, 1994; Lovell *et al.,* 2005; Mooney *et al.,* 2010). Data on response of invertebrates such as squid, another marine mammal prey species, to anthropogenic sound is more limited (de Soto, 2016; Sole *et al.,* 2017). Data suggest that cephalopods are capable of sensing the particle motion of sounds and detect low frequencies up to 1–1.5 kHz, depending on the species, and so are likely to detect airgun noise (Kaifu *et al.,* 2008; Hu *et al.,* 2009; Mooney *et al.,* 2010; Samson *et al.,* 2014). Sole *et al.* (2017) reported physiological injuries to cuttlefish in cages placed at-sea when exposed during a controlled exposure experiment to low-frequency sources *(315 Hz, 139 to 142 dB re 1* $\mu Pa^2$ and *400 Hz, 139 to 141 dB re 1* $\mu Pa^2$). Fewtrell and McCauley (2012) reported squids maintained in cages displayed startle responses and behavioral changes when exposed to seismic airgun sonar (136–162 re 1 $\mu Pa^2 \cdot s$). Jones *et al.* (2020) found that when squid (*Doryteuthis pealeii*) were exposed to impulse pile driving noise, body pattern changes, inking, jetting, and startle responses were observed and nearly all squid exhibited at least one response. However, these responses occurred primarily during the first eight impulses and diminished quickly, indicating potential rapid, short-term habituation.

Cephalopods have a specialized sensory organ inside the head called a statocyst that may help an animal determine its position in space (orientation) and maintain balance (Budelmann, 1992). Packard *et al.* (1990) showed that cephalopods were sensitive to particle motion, not sound pressure, and Mooney *et al.* (2010) demonstrated that squid statocysts act as an accelerometer through which particle motion of the sound field can be detected. Auditory injuries (lesions occurring on the statocyst sensory hair cells) have been reported upon controlled exposure to low-frequency sounds, suggesting that cephalopods are particularly sensitive to low-frequency sound (Andre *et al.,* 2011; Sole *et al.,* 2013). Behavioral responses, such as inking and jetting, have also been reported upon exposure to low-frequency sound (McCauley *et al.,* 2000; Samson *et al.,* 2014). Squids, like most fish species, are likely more sensitive to low frequency sounds and may not perceive mid- and high-frequency sonars.

With regard to potential impacts on zooplankton, McCauley *et al.* (2017) found that exposure to airgun noise resulted in significant depletion for more than half the taxa present and that there were two to three times more dead zooplankton after airgun exposure compared with controls for all taxa, within 1 km of the airguns. However, the authors also stated that in order to have significant impacts on r-selected species (*i.e.,* those with high growth rates and that produce many offspring) such as plankton, the spatial or temporal scale of impact must be large in comparison with the ecosystem concerned, and it is possible that the findings reflect avoidance by zooplankton rather than mortality (McCauley *et al.,* 2017). In addition, the results of this study are inconsistent with a large body of research that generally finds limited spatial and temporal impacts to zooplankton as a result of exposure to airgun noise (*e.g.,* Dalen and Knutsen, 1987; Payne, 2004; Stanley *et al.,* 2011). Most prior research on this topic, which has focused on relatively small spatial scales, has showed minimal effects (*e.g.,* Kostyuchenko, 1973; Booman *et al.,* 1996; Sætre and Ona, 1996; Pearson *et al.,* 1994; Bolle *et al.,* 2012).

A modeling exercise was conducted as a follow-up to the McCauley *et al.* (2017) study (as recommended by McCauley *et al.*), in order to assess the potential for impacts on ocean ecosystem dynamics and zooplankton population dynamics (Richardson *et al.,* 2017). Richardson *et al.* (2017) found that a full-scale airgun survey would impact copepod abundance within the survey area, but that effects at a regional scale were minimal (2 percent decline in abundance within 150 km of the survey area and effects not discernible over the full region). The authors also found that recovery within the survey area would be relatively quick (3 days following survey completion), and suggest that the quick recovery was due to the fast growth rates of zooplankton, and the dispersal and mixing of zooplankton from both inside and outside of the impacted region. The authors also suggest that surveys in areas with more dynamic ocean circulation in comparison with the study region and/or with deeper waters (*i.e.,* typical offshore wind locations) would have less net impact on zooplankton.

Notably, a recently described study produced results inconsistent with those of McCauley *et al.* (2017). Researchers conducted a field and laboratory study to assess if exposure to airgun noise affects mortality, predator escape response, or gene expression of the copepod *Calanus finmarchicus* (Fields *et al.,* 2019). Immediate mortality of copepods was significantly higher, relative to controls, at distances of 5 m or less from the airguns. Mortality 1 week after the airgun blast was significantly higher in the copepods placed 10 m from the airgun but was not significantly different from the controls at a distance of 20 m from the airgun. The increase in mortality, relative to controls, did not exceed 30 percent at any distance from the airgun. Moreover, the authors caution that even this higher mortality in the immediate vicinity of the airguns may be more pronounced than what would be observed in free-swimming animals due to increased flow speed of fluid inside bags containing the experimental animals. There were no sub-lethal effects on the escape performance or the sensory threshold needed to initiate an escape response at any of the distances from the airgun that were tested. Whereas McCauley *et al.* (2017) reported an SEL of 156 dB at a range of 509–658 m, with zooplankton mortality observed at that range, Fields *et al.* (2019) reported an SEL of 186 dB at a range of 25 m, with no reported mortality at that distance.

The presence of large numbers of turbines has been shown to impact meso- and sub-meso-scale water column circulation, which can affect the density, distribution, and energy content of zooplankton and thereby, their availability as marine mammal prey. Topside, atmospheric wakes result in wind speed reductions influencing upwelling and downwelling in the ocean while underwater structures such as WTG, OSS, and Met tower foundations may cause turbulent current wakes, which impact circulation, stratification, mixing, and sediment resuspension (Daewel *et al.,* 2022). Overall, the presence and operation of structures such as wind turbines are, in general, likely to result in local and broader oceanographic effects in the marine environment and may disrupt marine mammal prey, such as dense aggregations and distribution of zooplankton through altering the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Chen *et al.,* 2021; Johnson *et al.,* 2021;

Christiansen *et al.,* 2022; Dorrell *et al.,* 2022). However, the scale of impacts is difficult to predict and may vary from meters to hundreds of meters for local individual turbine impacts (Schultze *et al.,* 2020) to large-scale dipoles of surface elevation changes stretching hundreds of kilometers (Christiansen *et al.,* 2022).

Atlantic Shores intends to install up to 200 WTGs, up to 10 OSSs, and 1 Met Tower. Turbine operations would commence in 2028 (Project 1) and 2029 (Project 2), with all turbines being operational in 2029. As described above, there is scientific uncertainty around the scale of oceanographic impacts (meters to kilometers) associated with turbine operation. The project is located offshore of New Jersey, within a migratory BIA for North Atlantic right whales. Although right whales and humpback whales have been observed feeding off the New Jersey coast (Whitt *et al.,* 2013; Whitt *et al.,* 2015), the majority of whales are expected to be moving through the area. In addition, seasonal pile driving restrictions from January through April will reduce the potential for overlap between construction activities and any foraging whales.

Potential impacts on prey could impact the distribution of marine mammals within the Project Area, potentially necessitating additional energy expenditure to find and capture prey, but at the temporal and spatial scales anticipated for this activity are not expected to impact the reproduction or survival of any individual marine mammals. Although studies assessing the impacts of offshore wind development on marine mammals are limited, the repopulation of wind energy areas by harbor porpoises (Brandt *et al.,* 2016; Lindeboom *et al.,* 2011) and harbor seals (Lindeboom *et al.,* 2011; Russell *et al.,* 2016) following the installation of wind turbines are promising. Overall, any impacts to marine mammal foraging capabilities due to effects on prey aggregation from the turbine presence and operation during the effective period of the proposed rule is likely to be limited. As the nearest North Atlantic right whale feeding BIA and humpback whale feeding BIA are approximately 419.1 km away from the proposed Project Area, these areas would likely be unaffected by the project's operation.

In general, impacts to marine mammal prey species are expected to be relatively minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected. NMFS does not expect HRG acoustic sources to impact fish and most sources are likely outside the hearing range of the primary prey species in the Project Area. Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. Overall, however, the combined impacts of sound exposure, water quality, and oceanographic impacts on marine mammal habitat resulting from the proposed activities would not be expected to have measurable effects on populations of marine mammal prey species.

Reef Effects

The presence of monopile foundations, scour protection, and cable protection will result in a conversion of the existing sandy bottom habitat to a hard bottom habitat with areas of vertical structural relief. This could potentially alter the existing habitat by creating an ''artificial reef effect'' that results in colonization by assemblages of both sessile and mobile animals within the new hard-bottom habitat (Wilhelmsson *et al.,* 2006; Reubens *et al.,* 2013; Bergström *et al.,* 2014; Coates *et al.,* 2014). This colonization by marine species, especially hard-substrate preferring species, can result in changes to the diversity, composition, and/or biomass of the area thereby impacting the trophic composition of the site (Wilhelmsson *et al.,* 2010, Krone *et al.,* 2013; Bergström *et al.,* 2014, Hooper *et al.,* 2017; Raoux *et al.,* 2017; Harrison and Rousseau, 2020; Taormina *et al.,* 2020; Buyse *et al.,* 2022a; ter Hofstede *et al.,* 2022).

Artificial structures can create increased habitat heterogeneity important for species diversity and density (Langhamer, 2012). The WTG and OSS foundations will extend through the water column, which may serve to increase settlement of meroplankton or planktonic larvae on the structures in both the pelagic and benthic zones (Boehlert and Gill, 2010). Fish and invertebrate species are also likely to aggregate around the foundations and scour protection which could provide increased prey availability and structural habitat (Boehlert and Gill, 2010; Bonar *et al.,* 2015). Further, instances of species previously unknown, rare, or nonindigenous to an area have been documented at artificial structures, changing the composition of the food web and possibly the attractability of the area to new or existing predators (Adams *et al.,* 2014; de Mesel, 2015; Bishop *et al.,* 2017; Hooper *et al.,* 2017; Raoux *et al.,* 2017; van Hal *et al.,* 2017; Degraer *et al.,* 2020; Fernandez-Betelu *et al.,* 2022). Notably, there are examples of these sites becoming dominated by marine mammal prey species, such as filter-feeding species and suspension-feeding crustaceans (Andersson and Öhman, 2010; Slavik *et al.,* 2019; Hutchison *et al.,* 2020; Pezy *et al.,* 2020; Mavraki *et al.,* 2022).

Numerous studies have documented significantly higher fish concentrations including species like cod and pouting (*Trisopterus luscus*), flounder (*Platichthys flesus*), eelpout (*Zoarces viviparus*), and eel (*Anguilla anguilla*) near in-water structures than in surrounding soft bottom habitat (Langhamer and Wilhelmsson, 2009; Bergström *et al.,* 2013; Reubens *et al.,* 2013). In the German Bight portion of the North Sea, fish were most densely congregated near the anchorages of jacket foundations, and the structures extending through the water column were thought to make it more likely that juvenile or larval fish encounter and settle on them (Rhode Island Coastal Resources Management Council (RI–CRMC), 2010; Krone *et al.,* 2013). In addition, fish can take advantage of the shelter provided by these structures while also being exposed to stronger currents created by the structures, which generate increased feeding opportunities and decreased potential for predation (Wilhelmsson *et al.,* 2006). The presence of the foundations and resulting fish aggregations around the foundations is expected to be a long-term habitat impact, but the increase in prey availability could potentially be beneficial for some marine mammals.

The most likely impact to marine mammal habitat from the project is expected to be from pile driving, which may affect marine mammal food sources such as forage fish and could also cause acoustic habitat effects on marine mammal prey (*e.g.,* fish).

Water Quality

Temporary and localized reduction in water quality will occur as a result of in-water construction activities. Most of this effect will occur during pile driving and installation of the cables, including auxiliary work such as dredging and scour placement. These activities will disturb bottom sediments and may cause a temporary increase in suspended sediment in the Project Area. Currents should quickly dissipate any raised total suspended sediment (TSS) levels, and levels should return to background levels once the project activities in that area cease. No direct impacts on marine mammals is anticipated due to increased TSS and turbidity; however, turbidity within the

water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish species in the proposed Project Area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the proposed Project Area would be able to move away from and avoid the areas where plumes may occur. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary.

Equipment used by Atlantic Shores within the Project Area, including ships and other marine vessels, potentially aircrafts, and other equipment, are also potential sources of by-products (*e.g.,* hydrocarbons, particulate matter, heavy metals). All equipment is properly maintained in accordance with applicable legal requirements. All such operating equipment meets Federal water quality standards, where applicable. Given these requirements, impacts to water quality are expected to be minimal.

Acoustic Habitat

Acoustic habitat is the soundscape, which encompasses all of the sound present in a particular location and time, as a whole when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays) or for Navy training and testing purposes (as in the use of sonar and explosives and other acoustic sources). Anthropogenic noise varies widely in its frequency, content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please also see the previous discussion on Masking), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). For more detail on these concepts, see Barber *et al.,* 2009; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

The term ''listening area'' refers to the region of ocean over which sources of sound can be detected by an animal at the center of the space. Loss of communication space concerns the area over which a specific animal signal, used to communicate with conspecifics in biologically important contexts (*e.g.,* foraging, mating), can be heard, in noisier relative to quieter conditions (Clark *et al.,* 2009). Lost listening area concerns the more generalized contraction of the range over which animals would be able to detect a variety of signals of biological importance, including eavesdropping on predators and prey (Barber *et al.,* 2009). Such metrics do not, in and of themselves, document fitness consequences for the marine animals that live in chronically noisy environments. Long-term population-level consequences mediated through changes in the ultimate survival and reproductive success of individuals are difficult to study, and particularly so underwater. However, it is increasingly well documented that aquatic species rely on qualities of natural acoustic habitats, with researchers quantifying reduced detection of important ecological cues (*e.g.,* Francis and Barber, 2013; Slabbekoorn *et al.,* 2010) as well as survivorship consequences in several species (*e.g.,* Simpson *et al.,* 2014; Nedelec *et al.,* 2014).

Sound produced from construction activities in the Project Area would be temporary and transitory. The sounds produced during construction activities may be widely dispersed or concentrated in small areas for varying periods. Any anthropogenic noise attributed to construction activities in the Project Area would be temporary and the affected area would be expected to immediately return to the original state when these activities cease.

Although this proposed rulemaking primarily covers the noise produced from construction activities relevant to this offshore wind facility, operational noise was a consideration in NMFS' analysis of the project, as all turbines would become operational within the effective dates of the rule (if issued). It is expected that all turbines would be operational by 2029. Once operational, offshore wind turbines are known to produce continuous, non-impulsive underwater noise, primarily below 1 kHz (Tougaard *et al.,* 2020; Stöber and Thomsen, 2021).

In both newer, quieter, direct-drive systems (such as what has been proposed for use in the project) and older generation, geared turbine designs, recent scientific studies indicate that operational noise from turbines is on the order of 110 to 125 dB re 1 μPa root-mean-square sound pressure level ($SPL_{rms}$) at an approximate distance of 50 m (Tougaard *et al.,* 2020). Recent measurements of operational sound generated from wind turbines (direct drive, 6 MW, jacket piles) at Block Island Wind Farm (BIWF) indicate average broadband levels of 119 dB at 50 m from the turbine, with levels varying with wind speed (HDR, Inc., 2019). Interestingly, measurements from BIWF turbines showed operational sound had less tonal components compared to European measurements of turbines with gear boxes.

Tougaard *et al.* (2020) further stated that the operational noise produced by WTGs is static in nature and lower than noise produced by passing ships. This is a noise source in this region to which marine mammals are likely already habituated. Furthermore, operational noise levels are likely lower than those ambient levels already present in active shipping lanes, such that operational noise would likely only be detected in very close proximity to the WTG (Thomsen *et al.,* 2006; Tougaard *et al.,* 2020). Similarly, recent measurements from a wind farm (3 MW turbines) in China found at above 300 Hz, turbines produced sound that was similar to background levels (Zhang *et al.,* 2021). Other studies by Jansen and de Jong (2016) and Tougaard *et al.* (2009) determined that, while marine mammals would be able to detect operational noise from offshore wind farms (again, based on older 2 MW models) for several kilometers, they expected no significant impacts on individual survival, population viability, marine mammal distribution, or the behavior of the animals considered in their study (harbor porpoises and harbor seals).

More recently, Stöber and Thomsen (2021) used monitoring data and modeling to estimate noise generated by more recently developed, larger (10

MW) direct-drive WTGs. Their findings, similar to Tougaard *et al.* (2020), demonstrate that there is a trend that operational noise increases with turbine size. Their study predicts broadband source levels could exceed 170 dB $SPL_{rms}$ for a 10 MW WTG. However, those noise levels were generated based on geared turbines; newer turbines operate with direct drive technology. The shift from using gear boxes to direct drive technology is expected to reduce the levels by 10 dB. The findings in the Stöber and Thomsen (2021) study have not been experimentally validated, though the modeling (using largely geared turbines) performed by Tougaard *et al.* (2020) yields similar results for a hypothetical 10 MW WTG. Overall, noise from operating turbines would raise ambient noise levels in the immediate vicinity of the turbines. However, the spatial extent of increased noise levels would be limited. NMFS proposes to require Atlantic Shores to measure operational noise levels.

In addition, Madsen *et al.* (2006b) found the intensity of noise generated by operational wind turbines to be much less than the noises present during construction, although this observation was based on a single turbine with a maximum power of 2 MW. Other studies by Jansen and de Jong (2016) and Tougaard *et al.* (2009) determined that, while marine mammals would be able to detect operational noise from offshore wind farms (again, based on older 2 MW models) for several thousand kilometer, they expected no significant impacts on individual survival, population viability, marine mammal distribution, or the behavior of the animals considered in their study (harbor porpoises and harbor seals).

More recently, Stöber and Thomsen (2021) used monitoring data and modeling to estimate noise generated by more recently developed, larger (10 MW) direct-drive WTGs. Their findings, similar to Tougaard *et al.* (2020), demonstrate that there is a trend that operational noise increases with turbine size. Their study found noise levels could exceed 170 (to 177 dB re 1 μPa $SPL_{rms}$ for a 10 MW WTG). However, those noise levels were generated by geared turbines, but newer turbines operate with direct drive technology. The shift from using gear boxes to direct drive technology is expected to reduce the sound level by 10 dB. The findings in the Stöber and Thomsen (2021) study have not been validated. As Atlantic Shores did not request, and NMFS is not proposing to authorize, take incidental to operational noise from WTGs, the topic is not discussed or analyzed further herein.

**Estimated Take**

This section provides an estimate of the number of incidental takes proposed for authorization under the regulations, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

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 has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment) or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise from pile driving and HRG surveys could result in behavioral disturbance of marine mammals that qualifies as take. Impacts such as masking and TTS can contribute to the disruption of behavioral patterns and are accounted for within those requested takes. There is also some potential for auditory injury (Level A harassment) of 9 species of marine mammals (including 9 stocks), not including the North Atlantic right whale. However, the amount of Level A harassment that Atlantic Shores requested, and NMFS proposes to authorize, is low. While NMFS is proposing to authorize Level A harassment and Level B harassment, the proposed mitigation and monitoring measures are expected to minimize the amount and severity of such taking to the extent practicable (see Proposed Mitigation and Proposed Monitoring and Reporting).

As described previously, no serious injury or mortality is anticipated or proposed to be authorized incidental to the specified activities. Even without mitigation, both pile driving activities and HRG surveys would not have the potential to directly cause marine mammal mortality or serious injury. While, in general, mortality and serious injury of marine mammals could occur from vessel strikes, the mitigation and monitoring measures contained within this proposed rule are expected to lower the risk of vessel strike such that the risk is discountable (see Proposed Mitigation section). Atlantic Shores has not requested, and NMFS is not authorizing, take by vessel strike. No other activities have the potential to result in mortality or serious injury.

For acoustic impacts, we estimate take by considering: (1) acoustic thresholds above which the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

As described below, there are three primary methods (*i.e.,* density-based, PSO-based, or mean group size) available to predict the amount of harassment that may occur incidental to the proposed project. Alternatively, for each species and activity, the largest value resulting from the three take estimation methods described below was carried forward as the amount of requested take, by Level B harassment. The amount of requested take, by Level A harassment, reflects the density-based exposure estimates and, for some species and activities, consideration of other data such as mean group size.

Below, we describe NMFS' acoustic thresholds, acoustic and exposure modeling methodologies, marine mammal density calculation methodology, occurrence information, and the modeling and methodologies applied to estimate take for each specified activity. NMFS has carefully considered all information and analysis presented by Atlantic Shores, as well as all other applicable information and, based on the best available science, concurs that Atlantic Shores' proposed take estimates of the types and amounts of take for each species and stock are reasonable, with some minor adjustments, and is proposing to authorize the adjusted amount requested. NMFS notes the take estimates described herein for foundation installation are substantially conservative as the estimates do not reflect the implementation of clearance and shutdown zones for any marine mammal species or stock. In addition, our estimates for Project 2 assume pin pile buildouts where requested; however, Atlantic Shores may use monopiles instead in certain instances,

which will result in generally lesser take.

*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 (Level B harassment) or to incur PTS of some degree (Level A harassment). A summary of all NMFS' thresholds can be found at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Level B Harassment

Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source, ambient noise, and the receiving animal's hearing, motivation, experience, demography, behavior at time of exposure, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment.

NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above the received sound pressure levels ($SPL_{RMS}$) of 120 dB for continuous sources (*e.g.,* vibratory pile-driving, drilling) and above the received $SPL_{RMS}$ 160 dB for non-explosive impulsive or intermittent sources (*e.g.,* impact pile driving, scientific sonar). Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavioral patterns that would not otherwise occur.

The proposed project's construction activities include the use of continuous (*e.g.,* vibratory pile driving) and impulsive or intermittent sources (*e.g.,* impact pile driving, some HRG acoustic sources); therefore, the 120 and 160 dB re 1 μPa (rms) thresholds are applicable to our analysis.

Level A Harassment

NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0; Technical Guidance) (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). As described above, the proposed activities include the use of both impulsive and non-impulsive sources. NMFS' thresholds identifying the onset of PTS are provided in Table 6. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 6—PERMANENT THRESHOLD SHIFT (PTS) ONSET THRESHOLDS *

[NMFS, 2018]

| Hearing group | PTS onset thresholds * (received level) | |
|---|---|---|
| | Impulsive | Non-impulsive |
| Low-Frequency (LF) Cetaceans | *Cell 1:* $L_{p,0\text{-}pk,flat}$: 219 dB; $L_{E,p,LF,24h}$: 183 dB | *Cell 2:* $L_{E,p,LF,24h}$: 199 dB. |
| Mid-Frequency (MF) Cetaceans | *Cell 3:* $L_{p,0\text{-}pk,flat}$: 230 dB; $L_{E,p,MF,24h}$: 185 dB | *Cell 4:* $L_{E,p,MF,24h}$: 198 dB. |
| High-Frequency (HF) Cetaceans | *Cell 5:* $L_{p,0\text{-}pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB | *Cell 6:* $L_{E,p,HF,24h}$: 173 dB. |
| Phocid Pinnipeds (PW) (Underwater) | *Cell 7:* $L_{p,0\text{-}pk.flat}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB | *Cell 8:* $L_{E,p,PW,24h}$: 201 dB. |

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

**Note:** Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa²s. In this table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Below we describe the assumptions and methodologies used to estimate take, in consideration of acoustic thresholds and appropriate marine mammals density and occurrence information, for WTG, OSS, and Met Tower foundation installation, temporary cofferdam installation, and HRG surveys. Resulting distances to thresholds, densities used, activity-specific exposure estimates (as relevant to the analysis), and activity-specific take estimates can be found in each activity subsection below. At the end of this section, we present the amount of annual and 5-year take that Atlantic Shores requested, and NMFS proposes to authorize, from all activities combined.

*Acoustic and Exposure Modeling*

The predominant underwater noise associated with the construction of the project results from impact and vibratory pile driving. Atlantic Shores employed JASCO Applied Sciences (USA) Inc. (JASCO) to conduct acoustic modeling to better understand sound fields produced during these activities (Weirathmueller *et al.,* 2022). The basic

modeling approach is to characterize the sounds produced by the source, and determine how the sounds propagate within the surrounding water column. For impact pile driving, JASCO conducted sophisticated source and propagation modeling (as described below). For vibratory pile driving activities, JASCO applied *in situ* data to estimate source levels and applied more simple propagation modeling. To assess the potential for take from impact pile driving, JASCO also conducted animal movement modeling to estimate exposures; JASCO estimated species-specific exposure probability by considering the range- and depth-dependent sound fields in relation to animal movement in simulated representative construction scenarios. To assess the potential for take from vibratory pile driving, exposure modeling was not conducted; instead, a density-based estimation approach was used. More details on these acoustic source modeling, propagation modeling, and exposure modeling methods are described below.

JASCO's Pile Driving Source Model (PDSM), a physical model of pile vibration and near-field sound radiation (MacGillivray, 2014), was used in conjunction with the GRL, Inc Wave Equation Analysis of Pile Driving (GRLWEAP) 2010 wave equation model (Pile Dynamics, 2010) to predict representative source levels associated with impact pile driving activities (WTG, OSS, and Met Tower foundation installation). The PDSM physical model computes the underwater vibration and sound radiation of a pile by solving the theoretical equations of motion for axial and radial vibrations of a cylindrical shell. This model is used to estimate the energy distribution per frequency (source spectrum) at a close distance from the source (10 m). Piles are modeled as a vertical installation using a finite-difference structural model of pile vibration based on thin-shell theory. To model the sound emissions from the piles, the force of the pile driving hammers also had to be modeled. The force at the top of each monopile and jacket foundation pile was computed using the GRLWEAP 2010 wave equation model, which includes a large database of simulated hammers. The forcing functions from GRLWEAP were used as inputs to the finite difference model to compute the resulting pile vibrations (see Figures 8–10 in Appendix B of Atlantic Shores' ITA application for the computed forcing functions). The sound radiating from the pile itself was simulated using a vertical array of discrete point sources. These models account for several parameters that describe the operation—pile type, material, size, and length—the pile driving equipment, and approximate pile penetration depth. The model assumed direct contact between the representative hammers, helmets, and piles (*i.e.,* no cushioning material). For both jacket and monopile foundation models, the piles are assumed to be vertical and driven to a penetration depth of 70 m (230 ft) and 60 m (197 ft), respectively.

Atlantic Shores is required to employ noise abatement systems (NAS), also known as noise attenuation systems, during all foundation installation (*i.e.,* impact pile driving) activities to reduce the sound pressure levels that are transmitted through the water in an effort to reduce ranges to acoustic thresholds and minimize any acoustic impacts resulting from the activities. Atlantic Shores is required to use whatever technology is necessary to ensure that measured sound levels do not exceed the levels modeled for a 10-dB sound level reduction for foundation installation, which is likely to include a double big bubble curtain combined with another NAS (*e.g.,* hydro-sound damper, or an AdBm Helmholtz resonator), as well as the adjustment of operational protocols to minimize noise levels. Other systems that could be implemented include an evacuated sleeve system (*e.g.,* IHC-Noise Mitigation System (NMS)), or encapsulated bubble systems (*e.g.,* HydroSound Dampers (HSD)) to reduce sound levels. Hence, hypothetical broadband attenuation levels of 0 dB, 6 dB, 10 dB, and 15 dB were incorporated into the foundation source models to gauge effects on the ranges to thresholds given these levels of attenuation (Appendix B of the ITA application). Although four attenuation levels were evaluated, Atlantic Shores and NMFS anticipate that the noise attenuation system ultimately chosen will be capable of reliably reducing source levels by 10 dB; therefore, this assumption was carried forward in this analysis for monopile and jacket foundation pile driving installation. See the Proposed Mitigation section for more information regarding the justification for the 10-dB assumption.

In addition to considering noise abatement, the amount of sound generated during pile driving varies with the energy required to drive piles to a desired depth and depends on the sediment resistance encountered. Sediment types with greater resistance require hammers that deliver higher energy strikes and/or an increased number of strikes relative to installations in softer sediment. Maximum sound levels usually occur during the last stage of impact pile driving where the greatest resistance is encountered (Betke, 2008). Key modeling assumptions for the monopiles and pin piles are listed in Table 7 (additional modeling details and input parameters can be found in Table B–1 in Appendix B of Atlantic Shores' ITA application). Hammer energy schedules for monopiles (12-m and 15-m) and pin piles (5-m) are provided in Table 8, respectively. Decidecade spectral source levels for each pile type, hammer energy, and modeled location for summer sound speed profiles can be found in Appendix B of Atlantic Shores' ITA application (see Figures 11 to 13 in the application).

TABLE 7—KEY PILING ASSUMPTIONS USED IN THE SOURCE MODELING

| Foundation type | Maximum impact hammer energy (kJ) | Wall thickness (mm) | Pile length (m) | Seabed penetration depth (m) | Number per day |
|---|---|---|---|---|---|
| 12-m Monopile Foundation | 4,400 | 130 | 101 | 60 | 2 |
| 15-m Monopile Foundation | 4,400 | 162 | 105 | 60 | 2 |
| 5-m Pin Pile for Jacket Foundation | 2,500 | 72 | 76 | 70 | 4 |

TABLE 8—HAMMER ENERGY SCHEDULES FOR MONOPILES AND PIN PILES USED IN SOURCE MODELING

| Modeled installation scenario | Hammer model | Energy level (kJ) | Strike count | Pile penetration range (m) | Strike rate (strikes/min) |
|---|---|---|---|---|---|
| 12-m Monopile Foundation | Menck MHU 4400S | 1,400 | 750 | 5 | 30 |
| | | 1,800 | 1,250 | 5 | |
| | | 2,000 | 4,650 | 15 | |
| | | 3,000 | 4,200 | 15 | |
| | | 4,400 | 1,500 | 5 | |
| | | Total | 12,350 | 45 | |
| 15-m Monopile Foundation | Menck MHU 4400S | 480 | 1,438 | 8 | 30 |
| | | 800 | 1,217 | 3 | |
| | | 1,600 | 1,472 | 4 | |
| | | 2,500 | 2,200 | 5 | |
| | | 3,000 | 4,200 | 10 | |
| | | 4,000 | 2,880 | 9 | |
| | | 4,400 | 1,980 | 6 | |
| | | Total | 15,387 | 45 | |
| 5-m Pin Piles for Jacket Foundation | IHC S–2500 | 1,200 | 700 | 10 | 30 |
| | | 1,400 | 2,200 | 20 | |
| | | 1,800 | 2,100 | 15 | |
| | | 2,500 | 1,750 | 10 | |
| | | Total | 6,750 | 55 | |

Within these assumptions, jacket foundations were assumed to be pre- and post-piled. Pre-piled means that the jacket structure is set on pre-installed piles while post-piling means that that jacket structure is placed on the seafloor and the piles are subsequently driven through guides located at the base of each jacket leg. Due to these installation approaches, the jacket structure itself radiates sound, which needs to be accounted for in the modeling. Because of this, JASCO estimated a larger broadband sound level for the piles (+2 dB) for the post-piling scenario.

After calculating source levels, Atlantic Shores used propagation models to estimate distances to NMFS' harassment thresholds. The propagation of sound through the environment can be modeled by predicting the acoustic propagation loss—a measure, in decibels, of the decrease in sound level between a source and a receiver some distance away. Geometric spreading of acoustic waves is the predominant way by which propagation loss occurs. Propagation loss also happens when the sound is absorbed and scattered by the seawater, and absorbed, scattered, and reflected at the water surface and within the seabed. Propagation loss depends on the acoustic properties of the ocean and seabed and its value changes with frequency. Acoustic propagation modeling for impact pile driving applied JASCO's Marine Operations Noise Model (MONM) and Full Wave Range Dependent Acoustic Model (FWRAM) that combine the outputs of the source model with the spatial and temporal environmental context (*e.g.,* location, oceanographic conditions, and seabed type) to estimate sound fields. The lower frequency bands were modeled using MONM–RAM, which is based on the parabolic equation method of acoustic propagation modeling. For higher frequencies, additional losses resulting from absorption were added to the transmission loss model. See Appendix B and D in Atlantic Shores' application (and supplemental memos) for more detailed descriptions of JASCO's propagation models.

Sounds produced by installation of the proposed monopiles and pin piles were modeled at two sites (L01 and L02) for the 12-m and 15-m diameter monopile foundations and for the 5-m pin piles for jacket foundations—L01 in the southern section of the Lease Area in 36.1 m (118.4 ft) of water depth and L02 in the northeastern section of the Lease Area in 28.1 m (92.2 ft) of water depth. Modeling locations are shown in Figure 2 of Appendix B in the ITA application. For temporary cofferdams, simpler propagation modeling using *in-situ* data was performed using information from Illingworth & Rodkin (2017), which measured the sound exposure level at 10 m (32.8 ft) distance from the pile for sheet piles using a vibratory hammer. JASCO used the source spectrum produced from this study (see Figure 2 in Appendix D, the revised cofferdam memo) to define the expected source characteristics during Atlantic Shores' cofferdam installation and removal activities. JASCO's model, MONM, was again used to predict the SEL and SPL fields at representative locations near the proposed cofferdam locations, considering the influences of bathymetry, seabed properties, water sound speed, and water attenuation. Sheet piles were represented as a point source at a depth of 2 m (6.56 ft).

Due to seasonal changes in the water column, sound propagation is likely to differ at different times of the year. The speed of sound in seawater depends on the temperature $T$ (degree Celsius), salinity $S$ (parts per thousand (ppt)), and depth $D$ (m) and can be described using sound speed profiles. Oftentimes, a homogeneous or mixed layer of constant velocity is present in the first few meters. It corresponds to the mixing of surface water through surface agitation. There can also be other features, such as a surface channel, which corresponds to sound velocity increasing from the surface down. This channel is often due to a shallow isothermal layer appearing in winter conditions, but can also be caused by water that is very cold at the surface. In a negative sound gradient, the sound speed decreases with depth, which results in sound refracting downwards which may result in increased bottom losses with distance from the source. In a positive sound

gradient, as is predominantly present in the winter season, sound speed increases with depth and the sound is, therefore, refracted upwards, which can aid in long distance sound propagation. Within the Project Area from July through September, the average temperature of the upper 10 m to 15 m of the water column is higher, resulting in an increased surface layer sound speed.

Acoustic propagation modeling for impact pile driving foundations was conducted using an average sound speed profile for a summer period given this would be when Atlantic Shores would conduct the majority, if not all of its foundation installation work. Vibratory pile driving for cofferdams used a mean summer (June–August) and mean winter (December–February), given the specifics described in the construction schedule. FWRAM computes pressure waveforms via Fourier synthesis of the modeled acoustic transfer function in closely spaced frequency bands. Examples of decidecade spectral levels for each foundation pile type, hammer energy, and modeled location, using average summer sound speed profile are provided in Weirathmueller *et al.* (2022). Resulting distances to NMFS' harassment thresholds for impact driving and vibratory driving cofferdams can be found in the *WTG, OSS, and Met Tower Foundation Installation* and *Cable Landfall Activities* subsections, respectively, below.

To estimate the probability of exposure of animals to sound above NMFS' harassment thresholds during impact pile driving for foundation installation, JASCO's Animal Simulation Model Including Noise Exposure (JASMINE) was used to integrate the sound fields generated from the source and propagation models described above with species-typical behavioral parameters (*e.g.,* dive patterns). Sound exposure models such as JASMINE use simulated animals (animats) to sample the predicted 3–D sound fields with movement rules derived from animal observations. Animats that exceed NMFS' acoustic thresholds are identified and the range for the exceedances determined. The output of the simulation is the exposure history for each animat within the simulation. An individual animat's sound exposure levels are summed over a specific duration (24 hours), to determine its total received acoustic energy (sound exposure level (SEL)) and maximum received PK and SPL. These received levels are then compared to the threshold criteria within each analysis period.

JASCO ran JASMINE simulations for 7 days, assuming piling every day. Separate simulations were run for each scenario (*e.g.,* pile diameter/number of piles per day/season combination). The combined history of all animats gives a probability density function of exposure during the project. The number of animals expected to exceed the regulatory thresholds per day is determined by scaling the number of predicted animat exposures by the species-specific density of animals in the area. The average number of exposures per day for the scenario in question was then multiplied by the number of days of pile driving planned for that scenario. In general, the number of days of pile driving is more influential in determining total exposures for Level B harassment than Level A harassment. However, the use of other conservative parameters (*e.g.,* assuming most pile driving occurs in highest density months) in the calculation ensure that, regardless, the estimated take numbers appropriately represent the maximum number of instances marine mammals are reasonably likely to be harassed by the activities.

By programming animats to behave like marine species that may be present near the Project Area, the sound fields are sampled in a manner similar to that expected for real animals. The parameters used for forecasting realistic behaviors (*e.g.,* diving, foraging, and surface times) were determined and interpreted from marine species studies (*e.g.,* tagging studies) where available, or reasonably extrapolated from related species (Weirathmueller *et al.,* 2022).

For modeled animals that have received enough acoustic energy to exceed a given harassment threshold, the exposure range for each animal is defined as the closest point of approach (CPA) to the source made by that animal while it moved throughout the modeled sound field, accumulating received acoustic energy. The CPA for each of the species-specific animats during a simulation is recorded and then the CPA distance that accounts for 95 percent of the animats that exceed an acoustic impact threshold is determined. The $ER_{95\%}$ (95 percent exposure radial distance) is the horizontal distance that includes 95 percent of the CPAs of animats exceeding a given impact threshold. The $ER_{95\%}$ ranges are species-specific rather than categorized only by any functional hearing group, which allows for the incorporation of more species-specific biological parameters (*e.g.,* dive durations, swim speeds, *etc.*) for assessing the potential for PTS from impact pile driving.

Atlantic Shores also calculated acoustic ranges which represent the distance to harassment thresholds based on sound propagation through the environment independent of any receiver. As described above, applying animal movement and behavior within the modeled noise fields allows for a more realistic indication of the distances at which PTS acoustic thresholds are reached that considers the accumulation of sound over different durations. The use of acoustic ranges ($R_{95\%}$) to the Level A harassment $SEL_{cum}$ metric thresholds to assess the potential for PTS is considered overly conservative as it does not account for animal movement and behavior and, therefore, assumes that animals are essentially stationary at that distance for the entire duration of the pile installation, a scenario that does not reflect realistic animal behavior. The acoustic ranges to the $SEL_{cum}$ Level A harassment thresholds for impact pile driving can be found in Atlantic Shores' ITA application but will not be discussed further in this analysis. However, because NMFS' Level A harassment (PTS $dB_{peak}$) and Level B harassment (SPL) thresholds refer to instantaneous exposures, acoustic ranges are more relevant to the analysis. Also, because animat modeling was not conducted for vibratory pile driving, acoustic range is used to assess Level A harassment (dB SEL). Acoustic ranges to the Level A harassment ($dB_{peak}$), Level A harassment (dB SEL; vibratory pile driving only), and Level B harassment threshold for each activity are provided in the *WTG, OSS, and Met Tower Foundation Installation* subsection below. The differences between exposure ranges and acoustic ranges for Level B harassment are minimal given it is an instantaneous method.

*Density and Occurrence*

In this section we provide the information about marine mammal density, presence, and group dynamics that informed the take calculations for all activities. For foundation installation and temporary cofferdam installation and removal, JASCO performed the analysis, while Environmental Design & Research, Landscape Architecture, Engineering & Environmental Services, D.P.C. (EDR) assessed HRG surveys, on behalf of Atlantic Shores. In either case, the 2022 Duke University Marine Geospatial Ecology Laboratory Habitat-based Marine Mammal Density Models for the U.S. Atlantic (*i.e.,* the Duke University density models; Roberts *et*

*al.,* 2016; Roberts *et al.,* 2023) were applied to estimate take from foundation installation, temporary cofferdam installation and removal, and HRG surveys (please see each activity subsection below for the resulting densities). The models estimate absolute density (individuals/100 km²) by statistically correlating sightings reported on shipboard and aerial surveys with oceanographic conditions. For most marine mammal species, densities are provided on a monthly basis. Where monthly densities are not available (*e.g.,* pilot whales), annual densities are provided. Moreover, some species are represented as guilds (*e.g.,* seals (representing *Phocidae spp.* comprising harbor and gray seals) and pilot whales (representing short-finned and long-finned pilot whales)).

The Duke University density models delineate species' density into 5 x 5 km (3.1 x 3.1 mi) grid cells. Atlantic Shores calculated mean monthly densities for each species using grid cells within the Lease Area and a predetermined buffer around the Lease Area that represented the expected ensonified area to NMFS' harassment thresholds for each sound-producing activity. All 5 x 5 km grid cells in the models that fell partially or fully within the analysis polygon were considered in the calculations. Cells that fell entirely on land were not included, but cells that overlapped only partially with land were included.

For impact pile driving, the buffer from the edge of the Lease Area was chosen as it was based on the largest 10 dB-attenuated (from the bubble curtain/NAS) exposure range calculated based on installation of a 15-m monopile using a 4,400 kJ hammer (3.9 km (2.4); Table 9). For vibratory pile driving associated with temporary cofferdam installation and removal, Atlantic Shores applied the applicable buffer sizes at each of the landfall locations (7.546 km (4.7 mi) at the Atlantic site and 11.286 km (7 mi) at the Monmouth site) based on the $R_{95\%}$ value for the largest acoustic range to threshold (Table 10). For HRG surveys, Atlantic Shores mapped the density data within the boundary of each survey area using geographic information systems (GIS). No buffer was applied given the small distance to Level B harassment (<200 m) during surveys compared to the grid cell size in the Duke University density models (5 x 5 km; Table 11).

TABLE 9—MEAN MONTHLY AND ANNUAL MARINE MAMMAL DENSITY ESTIMATES (ANIMALS/100 km²) FOR IMPACT PILE DRIVING CONSIDERING A 3.9-km BUFFER AROUND THE LEASE AREA [a]

| Marine mammal species | Jan | Feb | Mar | Apr | May | Jun | July | Aug | Sep | Oct | Nov | Dec | Annual mean | May–Dec mean |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| North Atlantic right whale * | 0.069 | 0.074 | 0.062 | 0.046 | 0.010 | 0.003 | 0.001 | 0.001 | 0.002 | 0.004 | 0.010 | 0.042 | 0.027 | 0.009 |
| Fin whale * | 0.178 | 0.123 | 0.098 | 0.099 | 0.088 | 0.075 | 0.047 | 0.028 | 0.029 | 0.031 | 0.038 | 0.141 | 0.081 | 0.060 |
| Humpback whale | 0.093 | 0.065 | 0.084 | 0.101 | 0.091 | 0.058 | 0.011 | 0.006 | 0.020 | 0.065 | 0.086 | 0.121 | 0.067 | 0.057 |
| Minke whale | 0.051 | 0.049 | 0.049 | 0.737 | 0.810 | 0.202 | 0.054 | 0.026 | 0.015 | 0.066 | 0.016 | 0.042 | 0.176 | 0.154 |
| Sei whale * | 0.026 | 0.016 | 0.034 | 0.074 | 0.027 | 0.006 | 0.001 | 0.001 | 0.002 | 0.008 | 0.026 | 0.042 | 0.022 | 0.014 |
| Sperm whale * | 0.004 | 0.002 | 0.001 | 0.007 | 0.010 | 0.005 | 0.003 | 0.000 | 0.000 | 0.000 | 0.003 | 0.004 | 0.003 | 0.003 |
| Atlantic spotted dolphin | 0.001 | 0.000 | 0.001 | 0.003 | 0.006 | 0.012 | 0.028 | 0.133 | 0.109 | 0.147 | 0.113 | 0.008 | 0.047 | 0.070 |
| Atlantic white-sided dolphin | 0.355 | 0.225 | 0.221 | 0.673 | 0.755 | 0.605 | 0.018 | 0.004 | 0.059 | 0.556 | 0.591 | 0.601 | 0.389 | 0.399 |
| Bottlenose dolphin, offshore [d] | 1.409 | 0.489 | 0.732 | 2.460 | 6.311 | 8.449 | 9.350 | 9.485 | 8.613 | 8.335 | 9.468 | 5.944 | 5.920 | 8.244 |
| Bottlenose dolphin, coastal [d] | 2.917 | 1.024 | 2.053 | 8.290 | 20.869 | 27.429 | 29.272 | 31.415 | 32.096 | 29.744 | 30.414 | 16.667 | 19.349 | 27.238 |
| Common dolphin | 2.754 | 1.139 | 1.347 | 2.751 | 3.431 | 1.695 | 0.939 | 0.507 | 0.085 | 1.006 | 5.315 | 5.876 | 2.237 | 2.357 |
| Long-finned pilot whale [b] | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 0.016 | ..... |
| Short-finned pilot whale [b] | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 0.012 | ..... |
| Risso's dolphin | 0.015 | 0.002 | 0.003 | 0.031 | 0.029 | 0.008 | 0.006 | 0.006 | 0.006 | 0.013 | 0.074 | 0.115 | 0.026 | 0.032 |
| Harbor porpoise | 3.968 | 3.756 | 3.091 | 4.161 | 1.025 | 0.033 | 0.023 | 0.016 | 0.003 | 0.007 | 0.029 | 2.891 | 1.584 | 0.503 |
| Gray seal [c] | 4.881 | 3.521 | 2.352 | 2.866 | 4.508 | 0.492 | 0.080 | 0.054 | 0.120 | 0.639 | 1.731 | 4.588 | 2.153 | 1.527 |
| Harbor seal [c] | 10.967 | 7.911 | 5.285 | 6.439 | 10.127 | 1.106 | 0.180 | 0.122 | 0.271 | 1.437 | 3.889 | 10.308 | 4.837 | 3.430 |

**Note:** * denotes species listed under the Endangered Species Act.

[a] Density estimates are calculated from the 2022 Duke Habitat-Based Marine Mammal Density Models (Roberts et al., 2016; Roberts et al., 2023).

[b] Long- and short-finned pilot whale densities are the annual pilot whale guild density scaled by their relative abundances.

[c] Gray and harbor seal densities are the seals guild density scaled by their relative abundances.

[d] Bottlenose dolphin stocks were split based on the 3.9 km buffer at the 20-m isobath where the coastal stock was allocated to areas <20 m and the offshore stock for areas >20 m.

TABLE 10—MAXIMUM MONTHLY DENSITIES [a] (NO/100 km²) FOR SEPTEMBER THROUGH MAY USED TO ANALYZE COFFERDAM ACTIVITIES [b]

| Marine mammal species | Monmouth site | Atlantic site |
|---|---|---|
| North Atlantic right whale * | 0.035 | 0.092 |
| Fin whale * | 0.117 | 0.052 |
| Humpback whale | 0.132 | 0.114 |
| Minke whale | 0.526 | 0.136 |
| Sei whale * | 0.046 | 0.018 |
| Sperm whale * | 0.008 | 0.002 |
| Atlantic spotted dolphin | 0.033 | 0.014 |
| Atlantic white-sided dolphin | 0.206 | 0.051 |
| Common dolphin | 2.058 | 0.524 |
| Bottlenose dolphin (offshore stock) [c] | 22.53 | 0 |
| Bottlenose dolphin (coastal stock) [c] | 27.795 | 146.614 |
| Long-finned pilot whale [d] | 0 | 0 |
| Short-finned pilot whale [d] | 0 | 0 |
| Risso's dolphin | 0.02 | 0.002 |
| Harbor porpoise | 2.768 | 0.821 |
| Gray seal [e] | 4.477 | 9.029 |
| Harbor seal [e] | 10.059 | 20.287 |

**Note:** * denotes species listed under the Endangered Species Act.
[a] Density estimates are calculated from the 2022 Duke Habitat-Based Marine Mammal Density Models (Roberts et al., 2016; Roberts et al., 2023).
[b] Density estimates are based on habitat-based density modeling of the entire Atlantic Exclusive Economic zone (EEZ).
[c] For both bottlenose dolphin stocks, the impact area was split at the 20-m isobath where the coastal stock was assumed to be in <20 m in depth and the offshore stock were allocated to waters >20 m in depth.
[d] For long- and short-finned pilot whale densities, annual pilot whale guild densities were scaled by the relative abundance of each species.
[e] For gray and harbor seal densities, the Roberts et al. (2023) seal guild was scaled by the relative abundance of each species.

TABLE 11—MAXIMUM SEASONAL DENSITIES USED TO ANALYZE THE ANNUAL HRG SURVEYS FOR THE PROJECT AREA [a]

| Marine mammal species | Stock | Maximum seasonal density (No./100 km²) [b] |
|---|---|---|
| North Atlantic right whale * | Western Atlantic | 0.056 |
| Fin whale * | Western North Atlantic | 0.114 |
| Humpback whale | Gulf of Maine | 0.090 |
| Minke whale | Canadian Eastern Coastal | 0.401 |
| Sei whale * | Nova Scotia | 0.031 |
| Sperm whale * | Western North Atlantic | 0.005 |
| Atlantic spotted dolphin | Western North Atlantic | 0.033 |
| Atlantic white-sided dolphin | Western North Atlantic | 0.278 |
| Bottlenose dolphin [c] | Northern Migratory Coastal | 36.269 |
| | Western North Atlantic—Offshore | |
| Common dolphin | Western North Atlantic | 1.473 |
| Long-finned pilot whale [d] | Western North Atlantic | 0.004 |
| Short-finned pilot whale [d] | Western North Atlantic | 0.003 |
| Risso's dolphin | Western North Atlantic | 0.017 |
| Harbor porpoise | Gulf of Maine/Bay of Fundy | 2.506 |
| Gray seal [e] | Western North Atlantic | 4.319 |
| Harbor seal [e] | Western North Atlantic | 9.704 |

**Note:** * denotes species listed under the Endangered Species Act.
[a] The survey area accounts for waters within and around the Lease Area and the ECRs.
[b] Density estimates are calculated from the 2022 Duke Habitat-Based Marine Mammal Density Models (Roberts et al., 2016; Roberts et al., 2023).
[c] The bottlenose dolphin density is for the species collectively, and was not delineated by stock.
[d] Pilot whales are reported as a single "pilot whale" guild within the Duke University dataset Roberts et al., 2023 and are not species-specific. To partition take between each of the long-finned and short-finned pilot whale species, the total density was scaled based on the abundance estimates provided in the NOAA Fisheries SARs (Hayes et al., 2023).
[e] Pinnipeds are reported as a single "seals" guild within the Duke University dataset (Roberts et al., 2023) and are not species-specific. To partition take between each of the harbor and gray seal species, the total density was scaled based on the abundance estimates provided in the NOAA Fisheries SARs (Hayes et al., 2023).

Densities were computed based on when the proposed activities were expected. For foundation installation, densities were accrued monthly, annually, and specifically for the May-December period that coincided with the proposed pile driving activities. For temporary cofferdams, maximum monthly densities were calculated based on the planned September to May construction period. For HRG surveys, the maximum average seasonal density value for each marine mammal species was calculated.

Here we note some exceptions, based on the availability of data. For the pilot whale guild (*i.e.,* long-finned and short-finned), monthly densities are unavailable so annual mean densities were used instead. Additionally, the models provide density for pilot whales as a guild that includes both species. To obtain density estimates for long-finned and short-finned pilot whales, the guild

density was scaled by the relative stock sizes based on the best available abundance estimate from NOAA Fisheries SARs (NOAA Fisheries, 2021b). Similarly, gray and harbor seal densities were scaled by each of their relative abundances, as found in the NOAA Fisheries SARs (NOAA Fisheries, 2021b). These scaled and surrogate densities were carried forward to the exposure and take estimates. Please see the activity-specific subsections below for resulting densities.

The equation below, using pilot whales as an example, shows how abundance scaling is applied to compute densities for the pilot whale and seal guilds.

$$Dshort\text{-}finned = Dboth \times (Nshort\text{-}finned / (Nshort\text{-}finned + Nlong\text{-}finned))$$

Where $D$ represents density and $N$ represents abundance.

For some species and activities, Atlantic Marine Assessment Program for Protected Species (AMAPPS) data from 2010–2019 shipboard distance sampling surveys (Palka *et al.,* 2021) and observational data collected during previous site assessment surveys in the Project Area indicate that the density-based exposure estimates may be insufficient to account for the number of individuals of a species that may be encountered during the planned activities. This is particularly true for uncommon or rare species with very low densities in the models. Hence, consideration of other data is required to ensure the potential for take is adequately assessed.

Here we note the existence of two different stocks of bottlenose dolphins, the coastal and offshore stocks, near the Project Area. However, the best available science consists of only a combined, single bottlenose dolphin density model found in Roberts *et al.* (2023). To appropriately account for which stock may be taken during foundation installation, the 3.9 km buffer was split at the 20-m isobath. Any bottlenose dolphins found within the 20-m isobath to shore were allocated to the coastal stock. Any that were outside of the 20-m isobath more seaward were allocated to the offshore stock. Animat simulations were run for each stock separately with the same behavioral characteristics. Because of this, the exposure ranges are very similar between the two stocks as the only difference would be due to the different random seeding that was incorporated into the analysis. During cofferdam installation and removal, it was assumed that all dolphins near the Atlantic landfall site would consist of the coastal stock, which allowed for a density value of zero for the offshore stock. However, given the Atlantic landfall site did not exceed the 20-m isobath but the Monmouth site did, the area used to calculate the densities for bottlenose dolphins was split at the 20-m isobath. Because of this, any area <20 m deep and >20 m deep were used to calculate the exposures and takes for the coastal and offshore stocks, respectively. For HRG surveys, given that the northern migratory stock has more often been found in waters shallower than 20 m, the survey area was divided along the 20-m isobath break. Atlantic Shores estimated that 33 percent of the survey area fell from the 20-m isobath landward; therefore, 33 percent of the estimated take calculated for bottlenose dolphins was allocated to the coastal stock and the remaining was applied to the offshore stock.

Mean group sizes were used in the take estimation and were derived from NMFS' data upload to the Ocean Biodiversity Information System (OBIS) repository (OBIS, 2022), which is informed by information from the AMAPPS 2010–2019 aerial and shipboard surveys, North Atlantic right whale aerial surveys, and other surveys. The dataset was downloaded from OBIS and then filtered to include only observations from the Northwestern Atlantic region (extending from the Gulf of Maine to Cape Hatteras and the relevant shelf edge) with the institution owner code of ''NMFS''. From there, the average group sizes were calculated as the mean value of the ''individualCount'' column for all sighting records for a species. Additional information was also incorporated based on Atlantic Shores' experience with site characterization surveys in this region through issued IHAs (87 FR 24103, April 22, 2022; 88 FR 38821, June 14, 2023). This yielded unique group sizes for long-finned pilot whales, Atlantic spotted dolphins, and Risso's dolphins that were used rather than the OBIS dataset.

Additional detail regarding the density and occurrence as well as the assumptions and methodology used to estimate take for specific activities is included in the activity-specific subsections below and in the February 2023 update memo. Average group sizes used in take estimates, where applicable, for all activities are provided in Table 12.

TABLE 12—AVERAGE MARINE MAMMAL GROUP SIZES USED IN TAKE ESTIMATE CALCULATIONS

| Marine mammal species | Mean group size |
|---|---|
| North Atlantic right whale * | [c] 3.8 |
| Fin whale * | [c] 1.3 |
| Humpback whale | [c] 1.8 |
| Minke whale | [c] 1.1 |
| Sei whale * | [c] 2.1 |
| Sperm whale * | [c] 1.8 |
| Atlantic spotted dolphin | [a] 100 |
| Atlantic white-sided dolphin | [c] 21.4 |
| Common dolphin | [b] 1.55 |
| Bottlenose dolphin, coastal | [c] 13.1 |
| Bottlenose dolphin, offshore | 30 |
| Long-finned pilot whale | [a] 20 |
| Short-finned pilot whale | [c] 6.0 |
| Risso's dolphin | [a] 20 |
| Harbor porpoise | [c] 1.3 |
| Gray seal | [c] 1.2 |
| Harbor seal | [c] 1.2 |

**Note:** * denotes species listed under the Endangered Species Act.

[a] These mean group sizes were used in the 2022 (87 FR 24103, April 22, 2022) and 2023 (88 FR 38821, June 14, 2023) IHAs for site characterization surveys and are informed by previous HRG surveys in the area.

[b] The mean group size for common dolphins was based on the daily sighting rate of that species during HRG surveys.

[c] These group sizes are from the OBIS data repository (OBIS, 2022).

*WTG, OSS, and Met Tower Foundation Installation*

Here we describe the results from the acoustic, exposure, and take estimate methodologies outlined above for WTG, OSS, and Met Tower foundation installation activity that have the potential to result in harassment of marine mammals (*i.e.,* impact pile driving). We present exposure ranges to Level A harassment (SEL) thresholds from impact driving, acoustic ranges to Level A harassment (peak) and Level B harassment thresholds, densities, exposure estimates, and the amount of take requested and proposed to be authorized incidental to foundation installation following the aforementioned assumptions (*e.g.,* construction and hammer schedules). As described above, this proposed rule analyzes a modified Schedule 2 which accommodates a full monopile WTG build-out of Project 1 and Met Tower and a full jacket buildout for the WTGs in Project 2. Schedule 2 assumes foundation installation activities would occur over a 2 year period (May through December, annually).

As previously described, JASCO integrated the results from acoustic source and propagation modeling into an animal movement model to calculate exposure ranges for 16 marine mammal species (17 stocks) considered common in the Project Area. The resulting ranges represent the distances at which marine mammals may incur Level A harassment (*i.e.,* PTS).

As described in the *Detailed Description of Specified Activities* section, Atlantic Shores' preference is to install 15-m monopiles but Atlantic Shores may alternatively install 12-m monopiles. Hence, we have provided the modeled exposure and ranges for 12-m and 15-m monopiles below. We note that because the 15-m monopiles produce larger sound fields in general, in order to ensure a conservative analysis, this proposed rule assumes all take is consistent with that expected for the 15-m monopiles.

Similarly, as described in the *Detailed Description of Specified Activities* section, Atlantic Shores may install pre- or post-piled pin piles to construct the jacket foundations. We note that because post-piled pin piles produce larger sound fields than pre-piled piles, this proposed rule carries forward take specific to the post-piled pin piles. To more appropriately account for the larger radiated area produced around the jacket foundations as pin piles are driven, the broadband sound level estimated for the jacket piles was increased by 2 dB in all post-piling scenarios.

Table 13 provides the exposure ranges for impact pile driving of a 12-m monopile, 15-m monopile, and 5-m pin pile and (pre- and post-piled) jacket foundations, assuming 10 dB of sound attenuation to the PTS (SEL) thresholds.

TABLE 13—EXPOSURE RANGES ($ER_{95\%}$) IN KILOMETERS TO MARINE MAMMAL PTS (SEL; LEVEL A HARASSMENT) THRESHOLDS DURING IMPACT PILE DRIVING 12-m AND 15-m MONOPILES, AND 5-m PIN PILES (PRE- AND POST-PILED) FOR JACKETS, ASSUMING 10 dB ATTENUATION

| Marine mammal hearing group and species | 12-m monopiles, 4,400 kJ hammer | | 15-m monopiles, 4,400 kJ hammer | | 5-m pin piles, 2,500 kJ hammer | |
|---|---|---|---|---|---|---|
| | One pile/day | Two piles/day [b] | One pile/day | Two piles/day [b] | Four pin piles/day (pre-piled) | Four pin piles/day (post-piled) |
| North Atlantic right whale (migrating) * | 0.56 | 0.67 | 0.72 | 0.72 | 0.73 | 1.06 |
| Fin whale (sei whale proxy) * [a] | 1.09 | 1.30 | 1.81 | 1.83 | 1.80 | 1.90 |
| Humpback whale | 1.08 | 1.01 | 1.25 | 1.29 | 1.07 | 1.56 |
| Minke whale | 0.33 | 0.38 | 0.35 | 0.41 | 0.40 | 0.69 |
| Sperm whale * | 0 | 0 | 0 | 0 | 0 | 0 |
| Atlantic spotted dolphin | 0 | 0 | 0 | 0 | 0 | 0 |
| Atlantic white-sided dolphin | 0 | 0 | 0 | 0 | 0 | 0.01 |
| Bottlenose dolphin (offshore) | 0 | 0 | 0 | 0 | 0 | 0 |
| Bottlenose dolphin (coastal) | 0 | 0 | 0 | 0 | 0 | 0 |
| Common dolphin | 0 | 0 | 0 | 0 | 0 | 0 |
| Long-finned pilot whale | 0 | 0 | 0 | 0 | 0 | 0 |
| Short-finned pilot whale | 0 | 0 | 0 | 0 | 0 | 0 |
| Risso's dolphin | 0 | 0 | 0 | 0 | <0.01 | <0.01 |
| Harbor porpoise | 0.39 | 0.32 | 0.26 | 0.28 | 1.11 | 1.48 |
| Gray seal | 0.01 | 0 | 0.02 | 0 | 0.15 | 0.24 |
| Harbor seal | <0.01 | <0.01 | <0.01 | <0.01 | 0.16 | 0.32 |

**Note:** * denotes species listed under the Endangered Species Act.
[a] Fin whales were used as a surrogate for sei whale behaviors.
[b] Given the revised construction schedule, Atlantic Shores has carried forward into their exposure and take estimates only constructing one pile per day for this proposed action.

We note here that between the two differently sized monopiles, all of the distances to the Level A harassment threshold are smaller for the 12-m, with exception for the harbor porpoise distances, which show minute differences between the 15-m (0.26 and 0.28) and the 12-m (0.39 and 0.32) for each of one or two piles installed per day, respectively (Table 13). This is because as the pile diameter increases from 12 to 15 meters, the frequency spectrum shifts. More of the energy increase occurs at the lower frequencies, which are largely filtered out by the high-frequency weighting function.

As described above, JASCO also calculated acoustic ranges which represent distances to NMFS' harassment isopleths independent of movement of a receiver. Presented below are the distances to the PTS (dB peak) threshold for impact pile driving and the Level B harassment (SPL) thresholds for all impact pile driving during WTG, OSS, and Met Tower foundation installation (Tables 14 and 15).

TABLE 14—ACOUSTIC RANGES ($R_{95\%}$), IN KILOMETERS, TO PTS ($L_{pk}$) THRESHOLDS DURING IMPACT PILE DRIVING, ASSUMING 10 dB ATTENUATION

| Pile type | Installation method | Modeled source location | Hammer energy (kJ) | Activity duration (minutes) | Low-frequency cetacean | Mid-frequency cetacean | High-frequency cetaceans | Phocids |
|---|---|---|---|---|---|---|---|---|
| | | | | | 219 $L_{p,\ pk}$ | 230 $L_{p,\ pk}$ | 202 $L_{p,\ pk}$ | 218 $L_{p,\ pk}$ |
| 12-m Monopile | Impact hammer | L01 | 4,400 | 540 | 0.08 | 0.01 | 0.72 | 0.09 |
| | | L02 | 4,400 | | 0.06 | 0.01 | 0.74 | 0.07 |
| 15-m Monopile | Impact hammer | L01 | 4,400 | 540 | 0.08 | 0.01 | 0.78 | 0.09 |
| | | L02 | 4,400 | | 0.07 | 0.01 | 0.78 | 0.08 |
| 5-m Pin Pile | Impact hammer | L01 | 2,500 | 180 | 0.02 | 0.00 | 0.28 | 0.03 |
| | | L02 | 2,500 | | 0.02 | 0.00 | 0.28 | 0.03 |
| 5-m Pin Pile (2 dB shift for post-piled). | Impact hammer | L01 | 2,500 | 180 | 0.01 | 0.00 | 0.23 | 0.03 |
| | | L02 | 2,500 | | 0.01 | 0.01 | 0.14 | 0.04 |

**Note:** $L_{p,pk}$ = peak sound pressure (dB re 1 μPa).

TABLE 15—ACOUSTIC RANGES ($R_{95\%}$), IN KILOMETERS, TO LEVEL B HARASSMENT (SPL, 160 $L_P$) THRESHOLDS DURING IMPACT PILE DRIVING, ASSUMING 10 dB ATTENUATION

| Pile type | Installation method | Hammer energy (kJ) | L01 | L02 |
|---|---|---|---|---|
| 12-m Monopile | Impact Hammer | 4,400 | 8.20 | 7.31 |
| 15-m Monopile | Impact Hammer | 4,400 | 8.30 | 7.44 |
| 5-m Pin Pile (pre-piled) | Impact Hammer | 2,500 | 4.76 | 1.98 |
| 5-m Pin Pile (post-piled) | Impact Hammer | 2,500 | 5.50 | 2.28 |

**Note:** $L_p$ = root-mean square sound pressure (dB re 1 μPa).

Next, the specific densities for each marine mammal species were incorporated. Initially, Atlantic Shores provided the densities used in the analysis in their ITA application. However, due to the June 2022 release of the updated Duke University density models, Atlantic Shores submitted a memo with the revised densities and the derived exposure and take estimates. These were the values NMFS carried forward into this proposed rule (refer back to Tables 9, 10, and 11).

To estimate take from foundation installation activities, Atlantic Shores assumed the buildout described for the modified Schedule 2 (see the PDE Refinement Memo), which entails that all WTGs and the Met Tower found within Project 1 would be built using 15-m monopiles and all WTGs in Project 2 would be built on jacket foundations using 5-m piles. All OSSs would be built on jacket foundations using 5-m pin piles. The full buildout of Atlantic Shores South (200 WTGs) assuming Schedule 2 is provided on Table 16. This represents the maximum amount of take that would occur incidentally to Atlantic Shores South as no more than 200 WTGs, 1 Met Tower, and 10 OSSs will be installed within the Lease Area. However, Atlantic Shores has requested NMFS issue two distinct LOAs for each of Project 1 and Project 2. Hence, there is a need to also estimate the maximum amount of annual take from each Project which, collectively, is greater given it is currently unknown exactly how many WTG and OSSs will be constructed in each Project. For this analysis, it was assumed that Project 1 may have a maximum of 105 WTGs (plus 6 WTG foundations installed as part of the Overlap Area for Project 1; n=111), 1 Met Tower, and 2 OSSs and Project 2 may have a maximum of 89 WTGs (plus 6 WTG foundations installed as part of the Overlap Area for Project 2; n=95) and 2 OSS. As described above, the number of days of pile driving per month is part of the exposure estimate calculation. Atlantic Shores assumes that 1 monopile could be installed per day and four pin piles could be installed per day.

TABLE 16—PROJECT 1 AND PROJECT 2's BUILDOUT SCHEDULE PRESENTED ANNUALLY AND OVER TWO-YEARS

| Construction month | Year 1 (2026) | | | | | | | Year 2 (2027) [a] | |
|---|---|---|---|---|---|---|---|---|---|
| | Project 1 | | Project 2 | | Total | | | Project 2 | |
| | Number of days (number of piles installed) | | Number of days (number of piles installed) | | | | | Number of days (number of piles installed) | |
| | WTG and met tower monopile 15-m (1 pile/day) | OSS jacket 5-m pin piles (4 piles/day) | WTG jacket 5-m pin piles (4 piles/day) | OSS jacket 5-m pin piles (4 piles/day) | WTG monopile 15-m (1 pile/day) | WTG jacket 5-m pin piles (4 piles/day) | OSS jacket 5-m pin piles (4 piles/day) | WTG jacket 5-m pin piles (4 piles/day) | OSS jacket 5-m pin piles (4 piles/day) |
| May | 8 (8) | 0 (0) | 0 (0) | 0 (0) | 8 (8) | 0 (0) | 0 (0) | 5 (20) | 0 (0) |
| June | 20 (20) | 6 (24) | 0 (0) | 0 (0) | 20 (20) | 0 (0) | 6 (24) | 15 (60) | 6 (2$) |
| July | 25 (25) | 0 (0) | 0 (0) | 0 (0) | 25 (25) | 0 (0) | 0 (0) | 20 (80) | 0 (0) |
| August | 19 (19) | 6 (24) | 0 (0) | 0 (0) | 19 (19) | 0 (0) | 6 (24) | 18 (72) | 6 (2$) |
| September | 18 (18) | 0 (0) | 0 (0) | 0 (0) | 18 (18) | 0 (0) | 0 (0) | 14 (56) | 0 (0) |
| October | 16 (16) | 0 (0) | 0 (0) | 0 (0) | 16 (16) | 0 (0) | 0 (0) | 13 (52) | 0 (0) |
| November | 5 (5) | 0 (0) | 5 (20) | 0 (0) | 5 (5) | 5 (20) | 0 (0) | 4 (16) | 0 (0) |
| December | 1 (1) | 0 (0) | 1 (4) | 0 (0) | 1 (1) | 1 (4) | 0 (0) | 0 (0) | 0 (0) |
| **Totals** | | | | | | | | | |
| Total Piling Days | 112 | 12 | 6 | | 112 | 18 | | 101 | |
| Total Piles | 112 | 48 | 24 | | 112 | 72 | | 404 | |
| Total Foundations [b] | 112 | 2 | 6 | | 112 | 8 | | 91 | |

[a] As 2027 only has foundation installation activities occurring from Project 2, there is no total column for this year.

[b] The total foundations included in this table sum up to more (n=207) than the planned number of WTG and Met Tower foundations (n=201) due to the possibility of 6 WTGs being installed either under Project 1 or Project 2 in the Overlap Area; these are therefore counted twice within this table.

Atlantic Shores assumes that construction would start in 2026 for foundation installation (Table 16). Modeling assumed that up to 106 monopile foundations (105 WTGs plus the Met Tower) would be installed during May through October in the area for Project 1 (2026) and up to 89 monopiles (WTGs) for Project 2 for May through December (in part of 2026 and in 2027). Additionally, up to 6 monopile foundations (WTGs) could be installed during November through December for either Project 1 or Project 2 (total of 112 WTG and Met Tower foundations for Project 1 or a total of 94 WTG foundations for Project 2). This also assumes the buildout of two large-sized OSSs each being installed on jacket foundations during June and August for each of Project 1 and for Project 2. Atlantic Shores expects that all foundation installation activities for Project 1 would occur during the first year of construction activities (2026) with parts of Project 2 starting in 2026 and completing in 2027.

Between these schedules, we note that Atlantic Shores has analyzed the construction of 205 permanent foundation structures, including up to 200 WTGs, one Met Tower, and 4 large-sized OSSs. The 6 WTGs in the overlap area are included in the maximum take calculation for each of Project 1 and Project 2. The Project 1 take calculations include the 6 WTGs in the overlap area during Year 1 to ensure sufficient take for Project 1 (if those positions are allocated to Project 1 during construction). If, however, those positions are allocated to Project 2, they are also included during Year 1 of foundation installation for Project 2 (to ensure sufficient take allocation to Project 2 during that year). However, the full buildout scenario, which describes the take for the Projects combined, only includes the 6 WTGs in the entire project once (to avoid double counting of the 6 WTGs).

As described previously, to estimate the amount of take that may occur incidental to the foundation installation, Atlantic Shores conducted exposure modeling to estimate the number of exposures that may occur from impact pile driving in a 24-hour period. Exposure estimates were then scaled to reflect the appropriate density estimates as described above. These scaled 24-hour exposure estimates were then multiplied by the number of days to produce the estimated take numbers for each year. Exposure estimates can be found within the LOA Updates Memo on NMFS' website.

As described above, exposure estimates were subsequently adjusted based on appropriate group sizes and PSO data (refer back to Table 12) to yield the requested take in Atlantic Shores' LOA Updates Memo. The amount of take Atlantic Shores requested similarly equates to the amount of take NMFS proposes to authorize (Tables 17 and 18).

TABLE 17—ANNUAL TOTAL EXPOSURE ESTIMATES AND PROPOSED TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR FOUNDATION INSTALLATION ACTIVITIES FOR PROJECT 1, ASSUMING SCHEDULE 2 [a]

| Marine mammal species | Year 2 (2026) | | | | Year 3 (2027) [b] | | | |
|---|---|---|---|---|---|---|---|---|
| | Estimated exposures | | Proposed take | | Estimated exposures | | Proposed take | |
| | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment |
| North Atlantic right whale * | 0.14 | 1.24 | 0 | 4 | 0 | 0 | 0 | 0 |
| Fin whale * | 2.80 | 8.23 | 3 | 9 | 0 | 0 | 0 | 0 |
| Humpback whale | 2.20 | 8.33 | 3 | 9 | 0 | 0 | 0 | 0 |
| Minke whale | 10.07 | 135.38 | 11 | 136 | 0 | 0 | 0 | 0 |
| Sei whale * | 0.35 | 1.04 | 1 | 3 | 0 | 0 | 0 | 0 |
| Sperm whale * | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| Atlantic spotted dolphin | 0 | 0 | 0 | 100 | 0 | 0 | 0 | 0 |
| Atlantic white-sided dolphin | 0.01 | 159.94 | 1 | 160 | 0 | 0 | 0 | 0 |
| Bottlenose dolphin, offshore | 0 | 3,100.73 | 0 | 3,101 | 0 | 0 | 0 | 0 |
| Bottlenose dolphin, coastal | 0 | 50.32 | 0 | 51 | 0 | 0 | 0 | 0 |
| Common dolphin | 0 | 0 | 0 | 193 | 0 | 0 | 0 | 0 |
| Long-finned pilot whale | 0 | 0 | 0 | 20 | 0 | 0 | 0 | 0 |
| Short-finned pilot whale | 0 | 0 | 0 | 6 | 0 | 0 | 0 | 0 |
| Risso's dolphin | <0.01 | 5.58 | 1 | 30 | 0 | 0 | 0 | 0 |
| Harbor porpoise | 1.38 | 49.85 | 2 | 50 | 0 | 0 | 0 | 0 |
| Gray seal | 0.52 | 98.42 | 1 | 99 | 0 | 0 | 0 | 0 |
| Harbor seal | 1.29 | 235.51 | 2 | 236 | 0 | 0 | 0 | 0 |

**Note:** * denotes species listed under the Endangered Species Act.

[a] While the foundation installation counted the 6 WTGs in the Overlap Area for both Project 1 and Project 2, the exposure estimates and take requested is based on those 6 WTGs only being installed once under the full buildout scenario; no double counting of take occurred.

[b] All of Project 1's activities would be completed within a single year (2026), which means that no take would occur during the second construction year (2027).

TABLE 18—ANNUAL EXPOSURE ESTIMATES AND PROPOSED TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR FOUNDATION INSTALLATION ACTIVITIES FOR PROJECT 2, ASSUMING SCHEDULE 2 [a]

| Marine mammal species | ITA request year 2 (2026) | | | | ITA request year 3 (2027) | | | |
|---|---|---|---|---|---|---|---|---|
| | Estimated exposures | | Proposed take | | Estimated exposures | | Proposed take | |
| | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment |
| North Atlantic right whale * | 0.08 | 0.43 | 0 | 4 | 0.24 | 1.31 | 0 | 4 |
| Fin whale * | 0.24 | 0.65 | 1 | 2 | 3.46 | 9.20 | 4 | 10 |
| Humpback whale | 0.46 | 1.53 | 1 | 2 | 3.02 | 9.82 | 4 | 10 |
| Minke whale | 0.16 | 1.55 | 1 | 2 | 16.27 | 141.72 | 17 | 142 |
| Sei whale * | 0.13 | 0.34 | 1 | 3 | 0.41 | 1.09 | 1 | 3 |
| Sperm whale * | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 2 |
| Atlantic spotted dolphin | 0 | 0 | 0 | 100 | 0 | 0 | 0 | 100 |
| Atlantic white-sided dolphin | 0 | 21.98 | 0 | 22 | 0.01 | 171.37 | 1 | 172 |

TABLE 18—ANNUAL EXPOSURE ESTIMATES AND PROPOSED TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR FOUNDATION INSTALLATION ACTIVITIES FOR PROJECT 2, ASSUMING SCHEDULE 2 [a]—Continued

| Marine mammal species | ITA request year 2 (2026) | | | | ITA request year 3 (2027) | | | |
|---|---|---|---|---|---|---|---|---|
| | Estimated exposures | | Proposed take | | Estimated exposures | | Proposed take | |
| | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment |
| Bottlenose dolphin, offshore | 0 | 201.39 | 0 | 202 | 0 | 3,416.59 | 0 | 3,417 |
| Bottlenose dolphin, coastal | 0 | 0 | 0 | 14 | 0 | 0 | 0 | 14 |
| Common dolphin | 0 | 0 | 0 | 10 | 0 | 0 | 0 | 157 |
| Long-finned pilot whale | 0 | 0 | 0 | 20 | 0 | 0 | 0 | 20 |
| Short-finned pilot whale | 0 | 0 | 0 | 6 | 0 | 0 | 0 | 6 |
| Risso's dolphin | <0.01 | 2.61 | 1 | 30 | <0.01 | 6.03 | 1 | 30 |
| Harbor porpoise | 5.40 | 17.14 | 6 | 18 | 12.52 | 39.23 | 13 | 40 |
| Gray seal | 0.45 | 23.56 | 1 | 24 | 2.00 | 94.34 | 2 | 95 |
| Harbor seal | 1.66 | 53.29 | 2 | 54 | 7.03 | 213.40 | 8 | 214 |

**Note:** * denotes species listed under the Endangered Species Act.
[a] Includes the 6 WTGs in the Overlap Area.

Based on Tables 17 and 18 above, NMFS proposes to authorize the following numbers for the harassment of marine mammals incidental to foundation installation activities of WTGs, OSSs, and the Met Tower by Level A harassment and Level B harassment in Table 19. We note that Atlantic Shores did not request, nor is NMFS proposing to authorize, serious injury and/or mortality of marine mammals. Furthermore, no Level A harassment of North Atlantic right whales has been proposed for authorization due to enhanced mitigation measures that Atlantic Shores would be required to implement for this species.

TABLE 19—MAXIMUM ANNUAL EXPOSURE ESTIMATES AND PROPOSED TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR ALL FOUNDATION INSTALLATION ACTIVITIES IN BOTH PROJECT 1 AND PROJECT 2 (FULL BUILDOUT), ASSUMING SCHEDULE 2 [a]

| Marine mammal species | ITA request year 2 (2026) | | | | ITA request year 3 (2027) | | | |
|---|---|---|---|---|---|---|---|---|
| | Estimated exposures | | Proposed take | | Estimated exposures | | Proposed take | |
| | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment |
| North Atlantic right whale * | 0.14 | 1.24 | 0 | 4 | 0.24 | 1.31 | 0 | 4 |
| Fin whale * | 2.80 | 8.23 | 3 | 9 | 3.46 | 9.20 | 4 | 10 |
| Humpback whale | 2.20 | 6.15 | 3 | 9 | 3.02 | 9.82 | 4 | 10 |
| Minke whale | 10.07 | 135.38 | 11 | 136 | 16.27 | 141.72 | 17 | 142 |
| Sei whale * | 0.35 | 1.04 | 1 | 3 | 0.41 | 1.09 | 1 | 3 |
| Sperm whale * | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 2 |
| Atlantic spotted dolphin | 0 | 0 | 0 | 100 | 0 | 0 | 0 | 100 |
| Atlantic white-sided dolphin | 0.01 | 159.94 | 1 | 160 | 0.01 | 171.37 | 1 | 172 |
| Bottlenose dolphin, offshore | 0 | 3,100.73 | 0 | 3,101 | 0 | 3,416.59 | 0 | 3,417 |
| Bottlenose dolphin, coastal | 0 | 50.32 | 0 | 51 | 0 | 0 | 0 | 14 |
| Common dolphin | 0 | 0 | 0 | 193 | 0 | 0 | 0 | 157 |
| Long-finned pilot whale | 0 | 0 | 0 | 20 | 0 | 0 | 0 | 20 |
| Short-finned pilot whale | 0 | 0 | 0 | 6 | 0 | 0 | 0 | 6 |
| Risso's dolphin | <0.01 | 5.58 | 1 | 30 | <0.01 | 6.03 | 1 | 30 |
| Harbor porpoise | 1.38 | 49.85 | 2 | 50 | 12.52 | 39.23 | 13 | 40 |
| Gray seal | 0.52 | 98.42 | 1 | 99 | 2.00 | 94.34 | 2 | 95 |
| Harbor seal | 1.29 | 235.51 | 2 | 236 | 7.03 | 213.40 | 8 | 214 |

**Note:** * denotes species listed under the Endangered Species Act.
[a] While the foundation installation counted the 6 WTGs in the Overlap Area for both Project 1 and Project 2, the exposure estimates and take requested is based on those 6 WTGs only being installed once under the full buildout scenario; no double counting of take occurred. In total, this table accounts for exposure and take estimates of 200 WTGs, 1 Met Tower, and 4 OSSs.

*Cable Landfall Activities*

We previously described the acoustic modeling and static methodologies to estimate the take of marine mammals and have already identified that Atlantic Shores estimated take using propagation modeling which then used a static density-based approach. This information will not be reiterated here. Here, we present the results of acoustic modeling and take estimation processes, as previously described. More information can also be found in the ITA application and subsequent supplementary memos provided by the applicant.

Atlantic Shores proposes to install and remove up to four temporary cofferdams per Atlantic and Monmouth cable landfall location (eight cofferdams total) using a vibratory hammer. To calculate the acoustic ranges to PTS thresholds, it was assumed that up to 8 hours of vibratory pile driving would occur within any 24-hour period. The furthest ranges were noted where the sound propagated offshore from the New Jersey coastline into the continental shelf (see Figure 3 in the supplemental memo for Appendix D). Variation in acoustic ranges between the two sites is due to differing propagation loss properties. See Table 20 below for the ranges to the thresholds for both Level A harassment and Level B harassment.

TABLE 20—ACOUSTIC RANGES ($R_{95\%}$) IN METERS TO THE LEVEL A HARASSMENT (PTS) AND LEVEL B HARASSMENT THRESHOLDS FROM VIBRATORY PILE DRIVING DURING TEMPORARY COFFERDAM INSTALLATION AND REMOVAL

| Marine mammal hearing group | Atlantic landfall site | | | | Monmouth landfall site | | | |
|---|---|---|---|---|---|---|---|---|
| | Level A harassment $SEL_{cum}$ thresholds (dB re 1 μPa2·s) | | Level B harassment $SPL_{rms}$ threshold (120 dB re 1 μPa) | | Level A harassment $SEL_{cum}$ thresholds (dB re 1 μPa2·s) | | Level B harassment $SPL_{rms}$ threshold (120 dB re 1 μPa) | |
| | Summer | Winter | Summer | Winter | Summer | Winter | Summer | Winter |
| Low-frequency cetaceans | 65 | 65 | 5,076 | 7,546 | 45 | 60 | 5,412 | 11,268 |
| Mid-frequency cetaceans | 0 | 0 | | | 0 | 0 | | |
| High-frequency cetaceans | 490 | 540 | 0 | 0 | 425 | 450 | | |
| Phocids | 30 | 30 | | | 20 | 20 | | |

Given the very small distances to the Level A harassment thresholds (0–540 m), which accounts for 8 hours of pile driving, installation and removal of temporary cofferdams is not expected to result in any Level A harassment of marine mammals. Atlantic Shores did not request, nor is NMFS proposing to authorize, any Level A harassment incidental to vibratory pile driving activities.

Using the acoustic ranges to the Level B harassment threshold, the ensonified area around each cable landfall construction site was determined for each of the two seasons (*i.e.,* summer and winter) using the following formula:

*Ensonified Area = pi x r,*$^2$

where *r* is the linear acoustic range distance from the source to the isopleth to the Level B harassment thresholds. Given the acoustic source is stationary, this formula assumes the distance to threshold would be the radius with the source in the center.

For vibratory pile driving associated with the sheet pile installation and removal necessary for cofferdams, it was assumed that the daily ensonified area was 104.33 km$^2$ (25,780.12 acres) at the Atlantic landfall site and 221.77 km$^2$ (54,799.57 acres) at the Monmouth landfall site. To estimate marine mammal densities around the nearshore landfall sites, the largest 95th percentile acoustic range to threshold ($R_{95\%}$; 7.546 km at the Atlantic site and 11.268 km at the Monmouth site) were used as density buffers. The maximum annual densities were calculated for each landfall location based on the average of the Duke University density model grid cells for each species and the period of time for when cofferdam activities may occur (September to May). Any grids that overlapped partially or completed were included. Grid cells that fell entirely on land were not included in the analysis, but due to the nearshore proximity of the cofferdams, grid cells that overlapped partially with land and water were included in the analysis. For two species guilds (*i.e.,* pinnipeds and pilot whale *spp.*), minor adjustments were necessary as the Roberts *et al.* (2023) data did not separate these by species. In these two cases, the densities were scaled by the relative abundance of each species, as described in the final 2022 SARs (Hayes *et al.,* 2023).

Annual maximum marine mammal exposures were calculated assuming that cofferdam activities would only occur during the activity window of September through May. The density value for each species represented the highest density month for each specific species within this window, so as to not underestimate any potential take when the activity would occur. The exposures were calculated using the following static formula:

*Exposures = area ensonified × (days) × density,*

Where the *area ensonified* is equal to $\pi \times r^2$, wherein *r* is equal to the Level B harassment isopleth distance, *days* constituted the total number of days needed for cofferdam activities (n=28), and *density* were incorporated as species-specific during the activity window.

The exposure estimates were calculated assuming 6 days of installation and 6 days of removal at the Atlantic City landfall location (n=12), and 8 days of installation and 8 days of removal at the Monmouth landfall location (n=28), equating to 28 days in total. In their adequate and complete ITA application, Atlantic Shores initially proposed 16 days total for the Atlantic City landfall location (8 days of installation and 8 days of removal). However, given the shallower waters at this location, they believe that it would be possible to install and remove the temporary cofferdams more quickly than initially modeled, thus reducing the total number of days at this location (n=12). Where applicable, calculated exposure estimates were then adjusted up for average group sizes, per Table 12, to yield the proposed take numbers. The estimated take and maximum amount of take proposed for authorization during temporary cofferdam installation and removal during the proposed Project is in Table 21. No take by Level A harassment is expected, nor has it been requested by Atlantic Shores or proposed for authorization by NMFS.

TABLE 21—THE MAXIMUM PREDICTED LEVEL B HARASSMENT EXPOSURES, AND TOTAL TAKES BY LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION FOR COFFERDAM ACTIVITIES WITH GROUP SIZE ADJUSTMENT [a b]

| Marine mammal species | Atlantic City landfall site exposures | Monmouth landfall site exposures | Atlantic City total takes by Level B harassment | Monmouth total takes by Level B harassment |
|---|---|---|---|---|
| North Atlantic right whale * | 1.15 | 1.23 | 4 | 4 |
| Fin whale * | 0.65 | 4.14 | 2 | 5 |
| Humpback whale | 1.43 | 4.70 | 2 | 5 |
| Minke whale | 1.70 | 18.66 | 2 | 19 |
| Sei whale | 0.23 | 1.62 | 3 | 3 |
| Sperm whale | 0.03 | 0.28 | 2 | 2 |
| Atlantic spotted dolphin | 0.18 | 1.16 | 100 | 100 |
| Atlantic white-sided dolphin | 0.64 | 7.31 | 22 | 22 |
| Common dolphin | 6.56 | 73.01 | 7 | 74 |
| Bottlenose dolphin (offshore stock) | 0 | 307.29 | 0 | 308 |
| Bottlenose dolphin (coastal stock) | 1,835.55 | 607.29 | 1,836 | 608 |
| Long-finned pilot whale [c] | 0 | 0.01 | 6 | 6 |
| Short-finned pilot whale [c] | 0 | 0.01 | 2 | 2 |
| Risso's dolphin | 0.03 | 0.70 | 20 | 20 |
| Harbor porpoise | 10.28 | 98.23 | 11 | 99 |
| Gray seal | 113.04 | 158.86 | 114 | 159 |
| Harbor seal | 253.99 | 356.92 | 254 | 357 |

*Note:* * denotes species listed under the Endangered Species Act.
[a] Group size for adjustments can be found in Table 12.
[b] The Atlantic City landfall site installation and removal is in Year 1; Monmouth landfall site installation and removal is in Year 2.
[c] Atlantic Shores has requested a single group size for these species.

*HRG Surveys*

Atlantic Shores' proposed HRG survey activities include the use of impulsive (*i.e.,* sparkers) and non-impulsive sources (*i.e.,* CHIRPs) that have the potential to harass marine mammals. The list of all equipment proposed is in Table 2 (see *Detailed Description of Specified Activities*).

Authorized takes would be by Level B harassment only in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Specific to HRG surveys, in order to better consider the narrower and directional beams of the sources, NMFS has developed a calculation tool, available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance,* for determining the distances at which sound pressure level ($SPL_{rms}$) generated from HRG surveys reach the 160 dB threshold. The equations in the tool consider water depth, frequency-dependent absorption and some directionality to refine estimated ensonified zones. Atlantic Shores used NMFS' methodology with additional modifications to incorporate a seawater absorption formula and account for energy emitted outside of the primary beam of the source. For sources operating with different beamwidths, the beamwidth associated with operational characteristics reported in Crocker and Fratantonio (2016) were used.

The isopleth distances corresponding to the Level B harassment threshold for each type of HRG equipment with the potential to result in harassment of marine mammals were calculated per NOAA Fisheries' Interim Recommendation for Sound Source Level and Propagation Analysis for High Resolution Geophysical Sources. The distances to the Level B harassment isopleth are presented in Table 22. Please refer to Appendix C for a full description of the methodology and formulas used to calculate distances to the Level B harassment threshold.

TABLE 22—DISTANCES CORRESPONDING TO THE LEVEL B HARASSMENT THRESHOLD FOR HRG EQUIPMENT OPERATING BELOW 180 kHz

| HRG survey equipment type | Representative equipment type | Horizontal distance (m) to the Level B harassment threshold | Ensonified area ($km^2$) |
|---|---|---|---|
| Sparker | Applied Acoustics Dura-Spark 240 | 141 | 15.57 |
| CHIRP | GeoMarine Geo-Source | 56 | |
| | Edgetech 2000–DSS | 56 | |
| | Edgetech 216 | 9 | |
| | Edgetech 424 | 10 | |
| | Edgetech 512i | 9 | |
| | Pangeosubsea Sub-Bottom Imager™ | 32 | |

The survey activities that have the potential to result in Level B harassment (160 dB SPL) include the noise produced by sparkers and CHIRPS. Of these, the Applied Acoustics Dura-Spark 240 results in the greatest calculated distance to the Level B harassment criteria at 141 m (463 ft).

The total area ensonified was estimated by considering the distance of the daily vessel track line (determined using the estimated average speed of the

vessel and the 24-hour operational period within each of the corresponding survey segments) and the longest horizontal distance to the relevant acoustic threshold from an HRG sound source (full formula in Section 6 of the ITA application and in the Revised HRG Memo on NMFS' website). Using the larger distance of 141 m to the 160 $dB_{RMS90\neq}$ re 1 μPa Level B harassment isopleth (Table 22), the estimated daily vessel track of approximately 55 km (34.2 mi) per vessel for 24-hour operations, inclusive of an additional circular area to account for radial distance at the start and end of a 24-hour cycle, estimates of the total area ensonified to the Level B harassment threshold per day of HRG surveys were calculated (Table 22).

Exposure calculations assumed that there would be 60 days of HRG surveying per year over each of the 5 years. As described in the ITA application, density data were mapped within the boundary of the Project Area using geographic information systems. These data were updated based on the revised data from the Duke University density models. Because the exact dates of HRG surveys are unknown, the maximum average seasonal density values for each marine mammal species was used and carried forward in the take calculations (Table 23).

The calculated exposure estimates based on the exposure modeling methodology described above were compared with the best available information on marine mammal group sizes. Group sizes used for HRG take estimates were the same as those used for impact pile driving take estimation (refer back to Table 11). Atlantic Shores also used data collected by PSOs on survey vessels operating during HRG surveys in their 2020 season in the relevant Project Area. It was determined that the calculated number of potential takes by Level B harassment based on the exposure modeling methodology above may be underestimates for some species and therefore warranted adjustment using group size estimates and PSO data to ensure conservatism in the take numbers proposed for authorization. Despite the relatively small modeled Level B harassment zone (141 m) for HRG survey activities, it was determined that adjustments to the requested numbers of take by Level B harassment for some dolphin species was warranted (see below).

For certain species for which the density-based methodology described above may result in potential underestimates of take and Atlantic Shores' PSO sightings data were relatively low, adjustments to the exposure estimates were made based on the best available information on marine mammal group sizes to ensure conservatism. For species with densities too low in the region to provide meaningful modeled exposure estimates, the take request is based on the average group size (Table 12). Other adjustments were made based on information previously presented in previous IHAs issued to Atlantic Shores. These include an estimate of 1.55 individuals of common dolphins per day multiplied by the number of survey days annually (*i.e.,* 60 days), which is in alignment with what was done in 87 FR 24103 (April 22, 2022) based on previous daily observations of common dolphins. Additionally, requested take estimates for long-finned pilot whales, Atlantic spotted dolphins, and Risso's dolphins were also adjusted based on typical group sizes (*i.e.,* 20, 100, and 30 annual takes, respectively), based on take numbers from 2020, 2021, and 2022 IHAs issued to Atlantic Shores (see *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable#expired-authorizations*). Lastly, adjustments were made for short-finned pilot whales based on group size data reported by the OBIS data repository (OBIS, 2022). The average group size used was 6 individuals for short-finned pilot whales.

The maximum seasonal density used for the HRG survey analysis are shown in Table 11 in the *Density and Occurrence* section. The calculated take and the take proposed for authorization (via Level B harassment only) is found in Table 23 below.

TABLE 23—CALCULATED EXPOSURE AND PROPOSED TAKE BY LEVEL B HARASSMENT DURING ANNUAL HRG SURVEYS FOR THE ATLANTIC SHORES SOUTH SURVEY AREA [a]

| Marine mammal species | Stock | Exposure | Take proposed for authorization (Level B harassment only) |
|---|---|---|---|
| North Atlantic right whale * | Western Atlantic | 1 | 1 |
| Fin whale * | Western North Atlantic | 2 | 2 |
| Humpback whale | Gulf of Maine | 1 | 1 |
| Minke whale | Canadian Eastern Coastal | 4 | 4 |
| Sei whale * | Nova Scotia | 1 | [b] 2 |
| Sperm whale * | Western North Atlantic | 1 | 1 |
| Atlantic spotted dolphin | Western North Atlantic | 1 | 100 |
| Atlantic white-sided dolphin | Western North Atlantic | 3 | 3 |
| Bottlenose dolphin | Northern Migratory Coastal | 113 | 113 |
| | Western North Atlantic—Offshore | 225 | 225 |
| Common dolphin | Western North Atlantic | 14 | [d] 93 |
| Long-finned pilot whale | Western North Atlantic | 1 | [c] 20 |
| Short-finned pilot whale | Western North Atlantic | 1 | [c] 6 |
| Risso's dolphin | Western North Atlantic | 1 | [c] 30 |
| Harbor porpoise | Gulf of Maine/Bay of Fundy | 24 | 24 |
| Gray seal | Western North Atlantic | 41 | 41 |
| Harbor seal | Western North Atlantic | 91 | 91 |

**Note:** * denotes species listed under the Endangered Species Act.

[a] The survey area accounts for waters within and around the Lease Area and the ECRs.

[b] Atlantic Shores is requesting one additional take of sei whales, for a total of two, based on the average group size found in NOAA (2022a) and due to an encounter during their 2020 surveys where a single sei whale was observed.

[c] This adjustment was made in alignment with take that was previously authorized to Atlantic Shores in an issued IHA (88 FR 38821, June 14, 2023). As the survey area for this proposed rulemaking overlaps the survey area for that IHA the same group size assumptions were used in this analysis.

[d] This adjustment was made in alignment with the take that was previously authorized to Atlantic Shores in an issued IHA (88 FR 38821, June 14, 2023) where an average take of 1.5 individuals per day was multiplied by the total number of survey days (*i.e.,* 60 days).

*Total Take Across All Activities*

The amount of Level A harassment and Level B harassment NMFS proposes to authorize incidental to all project activities combined (*i.e.,* impact pile driving to install WTG, OSS, and Met tower foundations; vibratory pile driving to install and subsequently remove temporary cofferdams, and HRG surveys) are shown below. The annual amount of take that is expected to occur in each year based on Atlantic Shores' current schedules is provided in Table 24. The Year 1 take estimates include temporary cofferdam installation and HRG surveys. Year 2 includes foundation installation, temporary cofferdam installation, and HRG surveys. Year 3 includes take for foundation installation and HRG surveys. Year 4 and Year 5 each include HRG surveys. However, NMFS recognizes that schedules may shift due to a number of planning and logistical constraints such that take may be redistributed throughout the 5 years. However, the 5-year total amount of take for each species, shown in Table 25, and the maximum amount of take in any 1 year (Table 26) may not be exceeded.

The amount of take that Atlantic Shores requested, and NMFS proposes to authorize, is substantially conservative. For the species for which modeling was conducted, the take estimates are conservative for a number of reasons. The amount of take proposed to be authorized assumes the worst case scenario with respect to project design and schedules. As described in the *Detailed Description of Specified Activities* section and the applicant's PDE Refinement memo, Atlantic Shores may use suction-buckets or gravity-based structures to install the foundations for the Met Tower, and may use suction-buckets for each of the OSSs rather than monopiles or jacket foundations (depending on the size OSS used). Should Atlantic Shores decide to use these different foundations, take of marine mammals would not occur as noise levels would not be elevated to the degree there is a potential for take (*i.e.,* no pile driving is involved with installing suction buckets). All calculated take incorporated the maximum average densities for any given species in any given season. The amount of proposed Level A harassment does not fully account for the likelihood that marine mammals would avoid a stimulus when possible before the individual accumulates enough acoustic energy to potentially cause auditory injury, or the effectiveness of the proposed monitoring and mitigation measures (with the exception of North Atlantic right whales given the enhanced mitigation measures proposed for this species).

TABLE 24—PROPOSED LEVEL A HARASSMENT AND LEVEL B HARASSMENT TAKES FOR ALL ACTIVITIES PROPOSED TO BE CONDUCTED ANNUALLY FOR THE PROJECT OVER 5 YEARS

| Marine mammal species | Stock | NMFS stock abundance [a] | Year 1 (2025) | | Year 2 (2026) | | Year 3 (2027) | | Year 4 (2028) | | Year 5 (2029) | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment | Level A harassment | Level B harassment |
| North Atlantic right whale *[b d]. | Western Atlantic | 338 | 0 | 5 | 0 | 9 | 0 | 5 | 0 | 1 | 0 | 1 |
| Fin whale *[d] | Western North Atlantic | 6,802 | 0 | 4 | 3 | 16 | 4 | 12 | 0 | 2 | 0 | 2 |
| Humpback whale | Gulf of Maine | 1,396 | 0 | 3 | 3 | 15 | 4 | 11 | 0 | 1 | 0 | 1 |
| Minke whale | Canadian Eastern Coastal. | 21,968 | 0 | 6 | 11 | 159 | 17 | 146 | 0 | 4 | 0 | 4 |
| Sei whale *[b d] | Nova Scotia | 6,292 | 0 | 5 | 1 | 8 | 1 | 5 | 0 | 2 | 0 | 2 |
| Sperm whale *[b d] | Western North Atlantic | 4,349 | 0 | 3 | 0 | 5 | 0 | 3 | 0 | 1 | 0 | 1 |
| Atlantic spotted dolphin [b c d]. | Western North Atlantic | 39,921 | 0 | 200 | 0 | 300 | 0 | 200 | 0 | 100 | 0 | 100 |
| Atlantic white-sided dolphin [d]. | Western North Atlantic | 93,233 | 0 | 25 | 1 | 185 | 1 | 175 | 0 | 3 | 0 | 3 |
| Bottlenose dolphin | Western North Atlantic—Offshore. | 62,851 | 0 | 225 | 0 | 3,634 | 0 | 3,642 | 0 | 225 | 0 | 225 |
| | Northern Migratory Coastal [b]. | 6,639 | 0 | 1,949 | 0 | 772 | 0 | 127 | 0 | 113 | 0 | 113 |
| Common dolphin [e] | Western North Atlantic | 172,974 | 0 | 100 | 0 | 360 | 0 | 250 | 0 | 93 | 0 | 93 |
| Long-finned pilot whale [b c d]. | Western North Atlantic | 39,215 | 0 | 26 | 0 | 46 | 0 | 40 | 0 | 20 | 0 | 20 |
| Short-finned pilot whale [b c d]. | Western North Atlantic | 28,924 | 0 | 8 | 0 | 14 | 0 | 12 | 0 | 6 | 0 | 6 |
| Risso's dolphin [b c d] | Western North Atlantic | 35,215 | 0 | 50 | 1 | 80 | 1 | 60 | 0 | 30 | 0 | 30 |
| Harbor porpoise | Gulf of Maine/Bay of Fundy. | 95,543 | 0 | 35 | 2 | 173 | 13 | 64 | 0 | 24 | 0 | 24 |
| Gray seal | Western North Atlantic | 27,300 | 0 | 155 | 1 | 299 | 2 | 136 | 0 | 41 | 0 | 41 |
| Harbor seal | Western North Atlantic | 61,336 | 0 | 345 | 2 | 684 | 8 | 305 | 0 | 91 | 0 | 91 |

**Note:** * denotes species listed under the Endangered Species Act.

[a] NMFS 2022 final SARs (Hayes et al., 2023) were used for the stock abundances.

[b] The take estimate by Level B harassment for foundation installation via impact pile driving was rounded up to one average group size; impact pile driving is scheduled to occur during Year 2 and Year 3 of the proposed rulemaking. While the foundation installation (Tables 17 and 18) counted the six WTGs in the Overlap Area for both Project 1 and Project 2, the take by Level A harassment or Level B harassment requested (Table 19) is based on those six WTGs occurring under Project 2; no double counting of take occurred.

[c] The take estimate by Level B harassment for HRG surveys was rounded up to one group size; HRG surveys are planned to occur during the entire 5-year period of the proposed rulemaking.

[d] The take estimate by Level B harassment for temporary cofferdams via vibratory pile driving was rounded up to one group size; temporary cofferdam installation and removal is expected to occur during Year 1 and 2 of the proposed rulemaking.

[e] The take estimate by Level B harassment for common dolphins is derived by the daily sighting rate for previous HRG surveys multiplied by the number of HRG survey or pile driving days that would occur for each specific activity.

TABLE 25—TOTAL 5-YEAR PROPOSED TAKES OF MARINE MAMMALS (BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT) FOR ALL ACTIVITIES PROPOSED TO BE CONDUCTED DURING THE CONSTRUCTION OF THE PROJECT

| Marine mammal species | Stock | NMFS stock abundance | Proposed Level A harassment | Proposed Level B harassment | 5-year total (Level A harassment + Level B harassment) |
|---|---|---|---|---|---|
| North Atlantic right whale * | Western Atlantic | 338 | 0 | 21 | 21 |
| Fin whale * | Western North Atlantic | 6,802 | 7 | 36 | 43 |
| Humpback whale | Gulf of Maine | 1,396 | 7 | 31 | 38 |
| Minke whale | Canadian Eastern Coastal | 21,968 | 28 | 319 | 347 |
| Sei whale * | Nova Scotia | 6,292 | 2 | 22 | 24 |
| Sperm whale * | Western North Atlantic | 4,349 | 0 | 13 | 13 |
| Atlantic spotted dolphin | Western North Atlantic | 39,921 | 2 | 391 | 393 |
| Atlantic white-sided dolphin | Western North Atlantic | 93,233 | 0 | 900 | 900 |
| Bottlenose dolphin | Western North Atlantic—Offshore | 62,851 | 0 | 7,951 | 7,951 |
| | Northern Migratory Coastal | 6,639 | 0 | 3,074 | 3,074 |
| Common dolphin | Western North Atlantic | 172,974 | 0 | 896 | 896 |
| Long-finned pilot whale | Western North Atlantic | 39,215 | 0 | 152 | 152 |
| Short-finned pilot whale | Western North Atlantic | 28,924 | 0 | 46 | 46 |
| Risso's dolphin | Western North Atlantic | 35,215 | 2 | 250 | 252 |
| Harbor porpoise | Gulf of Maine/Bay of Fundy | 95,543 | 15 | 320 | 335 |
| Gray seal | Western North Atlantic | 27,300 | 3 | 672 | 675 |
| Harbor seal | Western North Atlantic | 61,336 | 10 | 1,516 | 1,526 |

**Note:** * denotes species listed under the Endangered Species Act.

To inform both the negligible impact analysis and the small numbers determination, NMFS assesses the maximum number of takes of marine mammals that could occur within any given year. In this calculation, the maximum estimated number of Level A harassment takes in any 1 year is summed with the maximum estimated number of Level B harassment takes in any 1 year for each species to yield the highest number of estimated take that could occur in any year (Table 26). Table 26 also depicts the number of takes proposed relative to the abundance of each stock. The takes enumerated here represent daily instances of take, not necessarily individual marine mammals taken. One take represents a day (24-hour period) in which an animal was exposed to noise above the associated harassment threshold at least once. Some takes represent a brief exposure above a threshold, while in some cases takes could represent a longer, or repeated, exposure of one individual animal above a threshold within a 24-hour period. Whether or not every take assigned to a species represents a different individual depends on the daily and seasonal movement patterns of the species in the area. For example, activity areas with continuous activities (all or nearly every day) overlapping known feeding areas (where animals are known to remain for days or weeks on end) or areas where species with small home ranges live (*e.g.,* some pinnipeds) are more likely to result in repeated takes to some individuals. Alternatively, activities far out in the deep ocean or takes to nomadic species where individuals move over the population's range without spatial or temporal consistency represent circumstances where repeat takes of the same individuals are less likely. In other words, for example, 100 takes could represent 100 individuals each taken on 1 day within the year, or it could represent 5 individuals each taken on 20 days within the year, or some other combination depending on the activity, whether there are biologically important areas in the Project Area, and the daily and seasonal movement patterns of the species of marine mammals exposed. Wherever there is information to better contextualize the enumerated takes for a given species is available, it is discussed in the Negligible Impact Analysis and Determination and/or Small Numbers sections, as appropriate.

TABLE 26—MAXIMUM NUMBER OF PROPOSED TAKES (LEVEL A HARASSMENT AND LEVEL B HARASSMENT) THAT COULD OCCUR IN ANY ONE YEAR OF THE PROJECT RELATIVE TO STOCK POPULATION SIZE

| Marine mammal species | Stock | NMFS stock abundance | Maximum annual Level A harassment | Maximum annual Level B harassment | Maximum annual take (maximum Level A harassment + maximum Level B harassment in any one year) | Total percent stock taken in any one year based on maximum annual take |
|---|---|---|---|---|---|---|
| North Atlantic right whale * | Western Atlantic | 338 | 0 | 9 | 9 | 2.66 |
| Fin whale * | Western North Atlantic | 6,802 | 4 | 16 | 20 | 0.29 |
| Humpback whale | Gulf of Maine | 1,396 | 4 | 15 | 19 | 1.36 |
| Minke whale | Canadian Eastern Coastal | 21,968 | 17 | 159 | 176 | 0.80 |
| Sei whale * | Nova Scotia | 6,292 | 1 | 8 | 9 | 0.14 |
| Sperm whale * | Western North Atlantic | 4,349 | 0 | 5 | 5 | 0.11 |
| Atlantic spotted dolphin | Western North Atlantic | 39,921 | 0 | 300 | 300 | 0.75 |
| Atlantic white-sided dolphin | Western North Atlantic | 93,233 | 1 | 185 | 186 | 0.20 |
| Bottlenose dolphin | Western North Atlantic—Offshore | 62,851 | 0 | 3,634 | 3,634 | 5.78 |
| | Northern Migratory Coastal | 6,639 | 0 | 1,949 | 1,949 | 29.36 |
| Common dolphin | Western North Atlantic | 172,974 | 0 | 360 | 360 | 0.21 |
| Long-finned pilot whale | Western North Atlantic | 39,215 | 0 | 46 | 46 | 0.12 |
| Short-finned pilot whale | Western North Atlantic | 28,924 | 0 | 14 | 14 | 0.05 |
| Risso's dolphin | Western North Atlantic | 35,215 | 1 | 80 | 81 | 0.23 |

TABLE 26—MAXIMUM NUMBER OF PROPOSED TAKES (LEVEL A HARASSMENT AND LEVEL B HARASSMENT) THAT COULD OCCUR IN ANY ONE YEAR OF THE PROJECT RELATIVE TO STOCK POPULATION SIZE—Continued

| Marine mammal species | Stock | NMFS stock abundance | Maximum annual Level A harassment | Maximum annual Level B harassment | Maximum annual take (maximum Level A harassment + maximum Level B harassment in any one year) | Total percent stock taken in any one year based on maximum annual take |
|---|---|---|---|---|---|---|
| Harbor porpoise | Gulf of Maine/Bay of Fundy | 95,543 | 13 | 173 | 186 | 0.19 |
| Gray seal | Western North Atlantic | 27,300 | 2 | 299 | 301 | 1.10 |
| Harbor seal | Western North Atlantic | 61,336 | 8 | 684 | 692 | 1.13 |

**Note:** * denotes species listed under the Endangered Species Act.

## Proposed Mitigation

In order to promulgate a rulemaking under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable adverse impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS' regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and,

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water construction activities (*e.g.,* soft-start, establishing shutdown zones). Additional measures have also been incorporated to account for the fact that the proposed construction activities would occur offshore. Modeling was performed to estimate harassment zones, which were used to inform mitigation measures for the Project's activities to minimize Level A harassment and Level B harassment to the extent practicable, while providing estimates of the areas within which Level B harassment might occur.

Generally speaking, the mitigation measures considered and proposed to be required here fall into three categories: temporal (seasonal and daily) work restrictions, real-time measures (shutdown, clearance, and vessel strike avoidance), and noise attenuation/reduction measures. Seasonal work restrictions are designed to avoid or minimize operations when marine mammals are concentrated or engaged in behaviors that make them more susceptible or make impacts more likely, in order to reduce both the number and severity of potential takes, and are effective in reducing both chronic (longer-term) and acute effects. Real-time measures, such as implementation of shutdown and clearance zones, as well as vessel strike avoidance measures, are intended to reduce the probability or severity of harassment by taking steps in real time once a higher-risk scenario is identified (*e.g.,* once animals are detected within an impact zone). Noise attenuation measures, such as bubble curtains, are intended to reduce the noise at the source, which reduces both acute impacts, as well as the contribution to aggregate and cumulative noise that may result in longer-term chronic impacts.

Below, we briefly describe the required training, coordination, and vessel strike avoidance measures that apply to all activity types, and then in the following subsections we describe the measures that apply specifically to foundation installation, nearshore installation and removal activities for cable laying, and HRG surveys. Details on specific requirements can be found in Part 217—Regulations Governing The Taking And Importing Of Marine Mammals at the end of this proposed rulemaking.

### Training and Coordination

NMFS requires all Atlantic Shores' employees and contractors conducting activities on the water, including, but not limited to, all vessel captains and crew, to be trained in marine mammal detection and identification, communication protocols, and all required measures to minimize impacts on marine mammals and support Atlantic Shores' compliance with the LOA, if issued. Additionally, all relevant personnel and the marine mammal species monitoring team(s) are required to participate in joint, onboard briefings prior to the beginning of project activities. The briefing must be repeated whenever new relevant personnel (*e.g.,* new PSOs, construction contractors, relevant crew) join the project before work commences. During this training, Atlantic Shores is required to instruct all project personnel regarding the authority of the marine mammal monitoring team(s). For example, the HRG acoustic equipment operator, pile driving personnel, *etc.,* are required to immediately comply with any call for a delay or shut down by the Lead PSO. Any disagreement between the Lead PSO and the project personnel must only be discussed after delay or shutdown has occurred. In particular, all captains and vessel crew must be trained in marine mammal detection and vessel strike avoidance

measures to ensure marine mammals are not struck by any project or project-related vessel.

Prior to the start of in-water construction activities, vessel operators and crews would receive training about marine mammals and other protected species known or with the potential to occur in the Project Area, making observations in all weather conditions, and vessel strike avoidance measures. In addition, training would include information and resources available regarding applicable Federal laws and regulations for protected species. Atlantic Shores will provide documentation of training to NMFS.

**North Atlantic Right Whale Awareness Monitoring**

Atlantic Shores would be required to use available sources of information on North Atlantic right whale presence, including daily monitoring of the Right Whale Sightings Advisory System, monitoring of U.S. Coast Guard very high frequency (VHF) Channel 16 throughout each day to receive notifications of any sightings, and information associated with any regulatory management actions (*e.g.,* establishment of a zone identifying the need to reduce vessel speeds). Maintaining daily awareness and coordination affords increased protection of North Atlantic right whales by understanding North Atlantic right whale presence in the area through ongoing visual and passive acoustic monitoring efforts and opportunities (outside of Atlantic Shores' efforts), and allows for planning of construction activities, when practicable, to minimize potential impacts on North Atlantic right whales.

**Vessel Strike Avoidance Measures**

This proposed rule contains numerous vessel strike avoidance measures that reduce the risk that a vessel and marine mammal could collide. While the likelihood of a vessel strike is generally low, they are one of the most common ways that marine mammals are seriously injured or killed by human activities. Therefore, enhanced mitigation and monitoring measures are required to avoid vessel strikes, to the extent practicable. While many of these measures are proactive, intending to avoid the heavy use of vessels during times when marine mammals of particular concern may be in the area, several are reactive and occur when a project personnel sights a marine mammal. The mitigation requirements we propose are described generally here and in detail in the regulation text at the end of this proposed rule (see 50 CFR 217.264(b)). Atlantic Shores would be required to comply with these measures except under circumstances when doing so would create an imminent and serious threat to a person or vessel or to the extent that a vessel is unable to maneuver and, because of the inability to maneuver, the vessel cannot comply.

While underway, Atlantic Shores' personnel would be required to monitor for and maintain a minimum separation distance from marine mammals and operate vessels in a manner that reduces the potential for vessel strike. Regardless of the vessel's size, all vessel operators, crews, and dedicated visual observers (*i.e.,* PSO or trained crew member) must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course (as appropriate) to avoid striking any marine mammal. The dedicated visual observer, equipped with suitable monitoring technology (*e.g.,* binoculars, night vision devices), must be located at an appropriate vantage point for ensuring vessels are maintaining required vessel separation distances from marine mammals (*e.g.,* 500 m from North Atlantic right whales).

All project vessels, regardless of size, must maintain the following minimum separation zones: 500 m from North Atlantic right whales; a 100 m zone from sperm whales and non-North Atlantic right whale baleen whales; and 50 m from all delphinid cetaceans and pinnipeds (an exception is made for those species that approach the vessel (*i.e.,* bow-riding dolphins)). If any of these species are sighted within their respective minimum separation zone, the underway vessel must shift its engine to neutral and the engines must not be engaged until the animal(s) have been observed to be outside of the vessel's path and beyond the respective minimum separation zone. If a North Atlantic right whale is observed at any distance by any project personnel or acoustically detected, project vessels must reduce speeds to 10 kn. Additionally, in the event that any project-related vessel, regardless of size, observes any large whale (other than a North Atlantic right whale) within 500 m of an underway vessel, the vessel is required to immediately reduce speeds to 10 kn or less. The 10 kn speed restriction will remain in effect as outlined in 50 CFR 217.264(b).

All of the project-related vessels would be required to comply with existing NMFS vessel speed restrictions for North Atlantic right whales and the measures within this rulemaking for operating vessels around North Atlantic right whales and other marine mammals. When NMFS vessel speed restrictions are not in effect and a vessel is traveling at greater than 10 kn, in addition to the required dedicated visual observer, Atlantic Shores would be required to monitor the crew transfer vessel transit corridor (the path crew transfer vessels take form port to any work area) in real-time with PAM prior to and during transits. To maintain awareness of North Atlantic right whale presence, vessel operators, crew members, and the marine mammal monitoring team will monitor U.S. Coast Guard VHF Channel 16, WhaleAlert, the Right Whale Sighting Advisory System (RWSAS), and the PAM system. Any marine mammal observed by project personnel must be immediately communicated to any on-duty PSOs, PAM operator(s), and all vessel captains. Any North Atlantic right whale or large whale observation or acoustic detection by PSOs or PAM operators must be conveyed to all vessel captains. All vessels would be equipped with an AIS and Atlantic Shores must report all Maritime Mobile Service Identify (MMSI) numbers to NMFS Office of Protected Resources prior to initiating in-water activities. Atlantic Shores will submit a NMFS-approved North Atlantic Right Whale Vessel Strike Avoidance Plan at least 90 days prior to commencement of vessel use.

Atlantic Shores' compliance with these proposed measures would reduce the likelihood of vessel strike to the extent practicable. These measures increase awareness of marine mammals in the vicinity of project vessels and require project vessels to reduce speed when marine mammals are detected (by PSOs, PAM, and/or through another source, *e.g.,* RWSAS) and maintain separation distances when marine mammals are encountered. While visual monitoring is useful, reducing vessel speed is one of the most effective, feasible options available to reduce the likelihood of and effects from a vessel strike. Numerous studies have indicated that slowing the speed of vessels reduces the risk of lethal vessel collisions, particularly in areas where right whales are abundant and vessel traffic is common and otherwise traveling at high speeds (Vanderlaan and Taggart, 2007; Conn and Silber, 2013; Van der Hoop *et al.,* 2014; Martin *et al.,* 2015; Crum *et al.,* 2019).

**Seasonal and Daily Restrictions**

Temporal restrictions in places where marine mammals are concentrated, engaged in biologically important behaviors, and/or present in sensitive life stages are effective measures for reducing the magnitude and severity of

human impacts. The temporal restrictions required here are built around North Atlantic right whale protection. Based upon the best scientific information available (Roberts *et al.,* 2023), the highest densities of North Atlantic right whales in the specified geographic region are expected during the months of January through April, with an increase in density starting in December. However, North Atlantic right whales may be present in the specified geographic region throughout the year.

NMFS is proposing to require seasonal work restrictions to minimize risk of noise exposure to the North Atlantic right whales incidental to certain specified activities to the extent practicable. These seasonal work restrictions are expected to greatly reduce the number of takes of North Atlantic right whales. These seasonal restrictions also afford protection to other marine mammals that are known to use the Project Area with greater frequency during winter months, including other baleen whales.

As described previously, no impact pile driving activities may occur January 1 through April 30. In addition, NMFS is proposing to require that Atlantic Shores install the foundations as quickly as possible and avoid pile driving in December to the maximum extent practicable; however, pile driving may occur in December if it is unavoidable upon approval from NMFS. Atlantic Shores has proposed to construct the cofferdams in 2025 and 2026 of the effective period of the regulations and LOA. However, NMFS is not requiring any seasonal restrictions due to the relatively short duration of work and low impacts to marine mammals. Although North Atlantic right whales do migrate in coastal waters, they do not typically migrate very close to shore off of New Jersey and/or within New Jersey bays where work would be occurring. Given the distance to the Level B harassment isopleth is conservatively modeled at approximately 11 km (36,089.2 ft), we expect that exposure to vibratory pile driving during cofferdam installation would be unlikely, and that if exposures occur, they will occur at levels consistent with only the Level B harassment threshold, and for only short durations given that large whales, if present, would likely be moving through the area in migration. NMFS is not proposing any seasonal restrictions to HRG surveys; however, Atlantic Shores would only perform a specific amount of 24-hour survey days within the proposed effective period of these regulations.

NMFS is also requiring temporal restrictions for some activities. Within any 24-hour period, Atlantic Shores would be limited to installing up to 2 monopile foundations or 4 pin piles. Atlantic Shores has requested to initiate pile driving during nighttime when detection of marine mammals is visually challenging. To date, Atlantic Shores has not submitted a plan containing the information necessary, including evidence, that their proposed systems are capable of detecting marine mammals, particularly large whales, at distances necessary to ensure mitigation measures are effective and, in general, the scientific literature on these technologies demonstrate there is a high degree of uncertainty in reliably detecting marine mammals at distances necessary for this project. Therefore, NMFS is not proposing, at this time, to allow Atlantic Shores to initiate pile driving later than 1.5 hours after civil sunset or 1 hour before civil sunrise. We are, however, proposing to encourage and allow Atlantic Shores the opportunity to further investigate and test advanced technology detection systems to support their request. NMFS is proposing to condition the LOA such that nighttime pile driving would only be allowed if Atlantic Shores submits an Alternative Monitoring Plan to NMFS for approval that proves the efficacy of their night vision devices (*e.g.,* mounted thermal/infrared (IR) camera systems, hand-held or wearable night vision devices (NVDs), IR spotlights) in detecting protected marine mammals. If the plan does not include a full description of the proposed technology, monitoring methodology, and data supporting that marine mammals can reliably and effectively be detected within the clearance and shutdown zones for monopiles and pin piles before and during impact pile driving, nighttime pile driving (unless a pile was initiated 1.5 hours prior to civil sunset) will not be allowed. The Plan should identify the efficacy of the technology at detecting marine mammals in the clearance and shutdowns under all the various conditions anticipated during construction, including varying weather conditions, sea states, and in consideration of the use of artificial lighting. Any and all vibratory pile driving associated with cofferdams installation and removal would only be able to occur during daylight hours. Lastly, given the very small Level B harassment zone associated with HRG survey activities and no anticipated or authorized Level A harassment, NMFS is not proposing any daily restrictions for HRG surveys.

More information on activity-specific seasonal and daily restrictions can be found in the regulatory text at the end of this proposed rulemaking.

**Noise Abatement Systems**

Atlantic Shores would be required to employ noise abatement systems (NAS), also known as noise attenuation systems, during all foundation installation (*i.e.,* impact pile driving) activities to reduce the sound pressure levels that are transmitted through the water in an effort to reduce acoustic ranges to the Level A harassment and Level B harassment acoustic thresholds and minimize, to the extent practicable, any acoustic impacts resulting from these activities. Atlantic Shores would be required to use at least two NAS to ensure that measured sound levels do not exceed the levels modeled for a 10-dB sound level reduction for foundation installation, which is likely to include a double big bubble curtain combined with another NAS (other available NAS technologies are the hydro-sound damper, or an AdBm Helmholz resonator), as well as the adjustment of operational protocols to minimize noise levels. A single bubble curtain, alone or in combination with another NAS device, may not be used for pile driving as received SFV data reveals this approach is unlikely to attenuate sound sufficiently to be consistent with the modeling underlying our take analysis here, which incorporates expected ranges to the Level A and Level B harassment isopleths assuming 10-dB of attenuation and appropriate NAS use. Should the research and development phase of newer systems demonstrate effectiveness, as part of adaptive management, Atlantic Shores may submit data on the effectiveness of these systems and request approval from NMFS to use them during foundation installation activities.

Two categories of NAS exist: primary and secondary. A primary NAS would be used to reduce the level of noise produced by foundation installation activities at the source, typically through adjustments on to the equipment (*e.g.,* hammer strike parameters). Primary NAS are still evolving and will be considered for use during mitigation efforts when the NAS has been demonstrated as effective in commercial projects. However, as primary NAS are not fully effective at eliminating noise, a secondary NAS would be employed. The secondary NAS is a device or group of devices that would reduce noise as it was transmitted through the water away from the pile, typically through a physical barrier that would reflect or

absorb sound waves and, therefore, reduce the distance the higher energy sound propagates through the water column. Together, these systems must reduce noise levels to those not exceeding modeled ranges to Level A harassment and Level B harassment isopleths corresponding to those modeled assuming 10-dB sound attenuation, pending results of SFV (see *Sound Field Verification* section below and Part 217—Regulations Governing The Taking And Importing Of Marine Mammals).

Noise abatement systems, such as bubble curtains, are used to decrease the sound levels radiated from a source. Bubbles create a local impedance change that acts as a barrier to sound transmission. The size of the bubbles determines their effective frequency band, with larger bubbles needed for lower frequencies. There are a variety of bubble curtain systems, confined or unconfined bubbles, and some with encapsulated bubbles or panels. Attenuation levels also vary by type of system, frequency band, and location. Small bubble curtains have been measured to reduce sound levels but effective attenuation is highly dependent on depth of water, current, and configuration and operation of the curtain (Austin *et al.,* 2016; Koschinski and Lüdemann, 2013). Bubble curtains vary in terms of the sizes of the bubbles and those with larger bubbles tend to perform a bit better and more reliably, particularly when deployed with two separate rings (Bellmann, 2014; Koschinski and Lüdemann, 2013; Nehls *et al.,* 2016). Encapsulated bubble systems (*i.e.,* Hydro Sound Dampers (HSDs)), can be effective within their targeted frequency ranges (*e.g.,* 100–800 Hz), and when used in conjunction with a bubble curtain appear to create the greatest attenuation. The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices.

The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design as well as differences in site conditions, installation, and operation. For example, Dähne *et al.* (2017) found that single bubble curtains that reduce sound levels by 7 to 10 dB reduced the overall sound level by approximately 12 dB when combined as a double bubble curtain for 6-m steel monopiles in the North Sea. During installation of monopiles (consisting of approximately 8-m in diameter) for more than 150 WTGs in comparable water depths (>25 m) and conditions in Europe indicate that attenuation of 10 dB is readily achieved (Bellmann, 2019; Bellmann *et al.,* 2020) using single big bubble curtains (BBCs) for noise attenuation. When a double big bubble curtain is used (noting a single bubble curtain is not allowed), Atlantic Shores would be required to maintain numerous operational performance standards. These standards are defined in the regulatory text at the end of this proposed rulemaking and include, but are not limited to: construction contractors must train personnel in the proposed balancing of airflow to the bubble ring and Atlantic Shores would be required to submit a performance test and maintenance report to NMFS within 72 hours following the performance test. Corrections to the attenuation device to meet regulatory requirements must occur prior to use during foundation installation activities. In addition, a full maintenance check (*e.g.,* manually clearing holes) must occur prior to each pile being installed. If Atlantic Shores uses a noise mitigation device in addition to a double big bubble curtain, similar quality control measures are required.

Atlantic Shores would be required to submit an SFV plan to NMFS for approval at least 180 days prior to installing foundations. They would also be required to submit interim and final SFV data results to NMFS and make corrections to the noise attenuation systems in the case that any SFV measurements demonstrate noise levels are above those modeled assuming 10 dB. These frequent and immediate reports would allow NMFS to better understand the sound fields to which marine mammals are being exposed and require immediate corrective action should they be misaligned with anticipated noise levels within our analysis.

Noise abatement devices are not required during HRG surveys and cofferdam (sheet pile) installation/removal. Regarding cofferdam sheet pile installation and removal, NAS is not practicable to implement due to the physical nature of linear sheet piles, and is of low risk for impacts to marine mammals due to the short work duration and lower noise levels produced during the activities. Regarding HRG surveys, NAS cannot practicably be employed around a moving survey ship, but Atlantic Shores would be required to make efforts to minimize source levels by using the lowest energy settings on equipment that has the potential to result in harassment of marine mammals (*e.g.,* sparkers, boomers) and turn off equipment when not actively surveying. Overall, minimizing the amount and duration of noise in the ocean from any of the project's activities through use of all means necessary (*e.g.,* noise abatement, turning off power) will effect the least practicable adverse impact on marine mammals.

**Clearance and Shutdown Zones**

NMFS is proposing to require the establishment of both clearance and shutdown zones during project activities that have the potential to result in harassment of marine mammals. The purpose of ''clearance'' of a particular zone is to minimize potential instances of auditory injury and more severe behavioral disturbances by delaying the commencement of an activity if marine mammals are near the activity. The purpose of a shutdown is to prevent a specific acute impact, such as auditory injury or severe behavioral disturbance of sensitive species, by halting the activity.

All relevant clearance and shutdown zones during project activities would be monitored by NMFS-approved PSOs and/or PAM operators (as described in the regulatory text at the end of this proposed rulemaking). At least one PAM operator must review data from at least 24 hours prior to foundation installation and actively monitor hydrophones for 60 minutes prior to commencement of these activities. Any sighting or acoustic detection of a North Atlantic right whale triggers a delay to commencing pile driving and shutdown.

Prior to the start of certain specified activities mammals (foundation installation, cofferdam install and removal, and HRG surveys), Atlantic Shores would be required to ensure designated areas (*i.e.,* clearance zones, Tables 27, 28, and 29) are clear of marine mammals prior to commencing activities to minimize the potential for and degree of harassment. For foundation installation, PSOs must visually monitor clearance zones for marine mammals for a minimum of 60 minutes, where the zone must be confirmed free of marine mammals at least 30 minutes directly prior to commencing these activities. Clearance zones represent the largest Level A harassment zone for each species group, plus 20 percent of a minimum of 100 m (whichever is greater). For foundation installation, the minimum visibility zone would extend 1,900 m (6,233.6 ft) from the pile (Table 27). This value corresponds to the modeled maximum

$ER_{95\%}$ distances to the Level A harassment threshold for low-frequency cetaceans, assuming 10 dB of attenuation.

For cofferdam vibratory pile driving and HRG surveys, monitoring must be conducted for 30 minutes prior to initiating activities and the clearance zones (Tables 28 and 29) must be free of marine mammals during that time.

For any other in-water construction heavy machinery activities (*e.g.,* trenching, cable laying, *etc.*), if a marine mammal is on a path towards or comes within 10 m (32.8 ft) of equipment, Atlantic Shores would be required to cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment.

Once an activity begins, any marine mammal entering their respective shutdown zone would trigger the activity to cease. In the case of pile driving, the shutdown requirement may be waived if is not practicable due to imminent risk of injury or loss of life to an individual or risk of damage to a vessel that creates risk of injury or loss of life for individuals or the lead engineer determines there is pile refusal or pile instability.

In situations when shutdown is called for but Atlantic Shores determines shutdown is not practicable due to aforementioned emergency reasons, reduced hammer energy must be implemented when the lead engineer determines it is practicable. Specifically, pile refusal or pile instability could result in not being able to shut down pile driving immediately. Pile refusal occurs when the pile driving sensors indicate the pile is approaching refusal, and a shut-down would lead to a stuck pile which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Pile instability occurs when the pile is unstable and unable to stay standing if the piling vessel were to ''let go.'' During these periods of instability, the lead engineer may determine a shut-down is not feasible because the shut-down combined with impending weather conditions may require the piling vessel to ''let go'' which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Atlantic Shores must document and report to NMFS all cases where the emergency exemption is taken.

After shutdown, impact pile driving may be reinitiated once all clearance zones are clear of marine mammals for the minimum species-specific periods, or, if required to maintain pile stability, impact pile driving may be reinitiated but must be used to maintain stability. If pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving must not restart until the North Atlantic right whale has neither been visually or acoustically detected for30 minutes. Upon re-starting pile driving, soft-start protocols must be followed if pile driving has ceased for 30 minutes or longer.

The clearance and shutdown zone sizes vary by species and are shown in Table 27, Table 28, and Table 29. Atlantic Shores would be allowed to request modification to these zone sizes pending results of sound field verification (see regulatory text at the end of this proposed rulemaking). Any changes to zone size would be part of adaptive management and would require NMFS' approval.

TABLE 27—MINIMUM VISIBILITY, CLEARANCE, SHUTDOWN, AND LEVEL B HARASSMENT ZONES DURING IMPACT PILE DRIVING

| Monitoring zone | North Atlantic right whales | Other large whales | Delphinids and pilot whales | Harbor porpoises | Seals |
|---|---|---|---|---|---|
| Minimum Visibility Zone [a] | 1,900 m. | | | | |
| Clearance Zone [c] | Any distance | 2,300 m | 100 m [b] | 1,800 m | 400 m. |
| Shutdown Zone [c] | Any distance | 1,900 | 100 m [d] | 1,500 m | 350. |
| PAM Monitoring Zone | 10,000 m. | | | | |
| Level B Harassment (Acoustic Range, $R_{95\%}$) | Monopiles: 8,300 m; Pin Piles: 5,500 m. | | | | |

[a] The minimum visibility zone is equal to the modeled maximum $ER_{95\%}$ distances to the Level A harassment threshold for low-frequency cetaceans, assuming 10 dB of attenuation.

[b] The clearance zone is equal to the maximum Level A harassment distance for each species group (assuming 10 dB of attenuation) plus 20 percent or a minimum of 100 m (whichever is greater).

[c] This zone applies to both visual and PAM.

[d] The exposure ranges ($ER_{95\%}$) presented for delphinid species and pilot whale spp. were either all zero or near-zero. However, to ensure a protective zone, NMFS is requiring a 100 m (328 ft) clearance zone.

TABLE 28—TEMPORARY COFFERDAM VIBRATORY INSTALLATION AND REMOVAL CLEARANCE AND SHUTDOWN ZONES

| Marine mammal species | Clearance and shutdown zones (m) |
|---|---|
| North Atlantic right whale—visual detection | 100 |
| All other large marine mammals | 100 |
| Delphinids and Pilot whales | 50 |
| Harbor porpoise | [a] 540 |
| Seals | 60 |

[a] Harbor porpoise is unlikely to be near the nearshore environment.

TABLE 29—HRG SURVEY CLEARANCE, SHUTDOWN, AND VESSEL SEPARATION ZONES

| Marine mammal species | Clearance zone (m) [2] | Shutdown zone (m) | Vessel separation zone (m) |
|---|---|---|---|
| North Atlantic right whale | 500 | 500 | 500 |
| Other ESA-listed species (*i.e.,* fin, sei, sperm whale) | 500 | 100 | 100 |
| Other marine mammals [1] | 100 | 100 | 50 |

[1] With the exception of seals and delphinid(s) from the genera Delphinus, Lagenorhynchus, Stenella or Tursiops, as described below.
[2] For HRG surveys, Atlantic Shores did not propose clearance zones, although they are referenced in the ITA application and in their Protected Species Management and Equipment Specifications Plan (PSMESP). Because of this, NMFS instead proposes Clearance Zones of 500 m (1,640 ft; for NARW), 500 m (1,640 ft; for all other ESA-listed species); and 100 m (328 ft; for all other marine mammals, with exceptions noted for specific bow-riding delphinids). These zones are considered for protection for protected species, given the extensive vessel presence in and around the Project Area.

**Soft-Start/Ramp-Up**

The use of a soft-start or ramp-up procedure is believed to provide additional protection to marine mammals by warning them, or providing them with a chance to leave the area prior to the hammer or HRG equipment operating at full capacity. Soft-start typically involves initiating hammer operation at a reduced energy level (relative to full operating capacity) followed by a waiting period. Atlantic Shores would be required to utilize a soft-start protocol for impact pile driving of monopiles and pin piles by performing four to six strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes. NMFS notes that it is difficult to specify a reduction in energy for any given hammer because of variation across drivers and installation conditions. Atlantic Shores will reduce energy based on consideration of site-specific soil properties and other relevant operational considerations. A soft-start during vibratory pile driving of sheet piles would be accomplished by varying hammer frequency and/or amplitude. The final methodology will be developed by Atlantic Shores considering final design details including site specific soil properties and other considerations. HRG survey operators would be required to ramp-up sources when the acoustic sources are used unless the equipment operates on a binary on/off switch. The ramp up would involve starting from the smallest setting to the operating level over a period of approximately 30 minutes.

Soft-start and ramp-up would be required at the beginning of each day's activity and at any time following a cessation of activity of 30 minutes or longer. Prior to soft-start or ramp-up beginning, the operator must receive confirmation from the PSO that the clearance zone is clear of any marine mammals.

**Fishery Monitoring Surveys**

While the likelihood of Atlantic Shores' fishery monitoring surveys impacting marine mammals is minimal, NMFS proposed to require Atlantic Shores to adhere to gear and vessel mitigation measures to reduce potential impacts to the extent practicable. In addition, all crew undertaking the fishery monitoring survey activities would be required to receive protected species identification training prior to activities occurring and attend the aforementioned onboarding training. The specific requirements that NMFS would set for the fishery monitoring surveys can be found in the regulatory text at the end of this proposed rulemaking.

Based on our evaluation of the mitigation measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that these proposed measures would provide the means of affecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Proposed Monitoring and Reporting**

In order to promulgate a rulemaking for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

- Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:
- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and/or
- Mitigation and monitoring effectiveness.

Separately, monitoring is also regularly used to support mitigation implementation, which is referred to as mitigation monitoring, and monitoring plans typically include measures that both support mitigation implementation and increase our understanding of the impacts of the activity on marine mammals.

During the planned activities, visual monitoring by NMFS-approved PSOs would be conducted before, during, and after all impact pile driving, vibratory pile driving, and HRG surveys. PAM would be also conducted during impact

pile driving. Visual observations and acoustic detections would be used to support the activity-specific mitigation measures (*e.g.,* clearance zones). To increase understanding of the impacts of the activity on marine mammals, PSOs must would record all incidents of marine mammal occurrence at any distance from the piling locations, near the HRG acoustic sources. PSOs would document all behaviors and behavioral changes, in concert with distance from an acoustic source. The required monitoring is described below, beginning with PSO measures that are applicable to all the aforementioned activities, followed by activity-specific monitoring requirements.

**Protected Species Observer and PAM Operator Requirements**

Atlantic Shores would be required to employ NMFS-approved PSOs and PAM operators. PSOs are trained professionals who are tasked with visually monitoring for marine mammals during pile driving and HRG surveys. The primary purpose of a PSO is to carry out the monitoring, collect data, and, when appropriate, call for the implementation of mitigation measures. In addition to visual observations, NMFS would require Atlantic Shores to conduct PAM using PAM operators during impact pile driving and vessel transit.

The inclusion of PAM, which would be conducted by NMFS-approved PAM operators, following a standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind alongside visual data collection is valuable to provide the most accurate record of species presence as possible, together, and these two monitoring methods are well understood to provide best results when combined together (*e.g.,* Barlow and Taylor, 2005; Clark *et al.,* 2010; Gerrodette *et al.,* 2011; Van Parijs *et al.,* 2021). Acoustic monitoring (in addition to visual monitoring) increases the likelihood of detecting marine mammals within the shutdown and clearance zones of project activities, which when applied in combination with required shutdowns helps to further reduce the risk of marine mammals being exposed to sound levels that could otherwise result in acoustic injury or more intense behavioral harassment.

The exact configuration and number of PAM systems depends on the size of the zone(s) being monitored, the amount of noise expected in the area, and the characteristics of the signals being monitored. More closely spaced hydrophones would allow for more directionality, and perhaps, range to the vocalizing marine mammals; although, this approach would add additional costs and greater levels of complexity to the project. Larger baleen cetacean species (*i.e.,* mysticetes), which produce loud and lower-frequency vocalizations, may be able to be heard with fewer hydrophones spaced at greater distances. However, smaller cetaceans (such as mid-frequency delphinids; odontocetes) may necessitate more hydrophones and to be spaced closer together given the shorter range of the shorter, mid-frequency acoustic signals (*e.g.,* whistles and echolocation clicks). As there are no ''perfect fit'' single-optimal-array configurations, NMFS will consider and approve these set-ups, as appropriate, on a case-by-case basis. Specifically, Atlantic Shores will be required to provide a plan that describes an optimal configuration for collecting the required marine mammal data, based on the real world circumstances in the project area, recognizing that we will continue to learn more as monitoring results from other wind projects are submitted.

NMFS does not formally administer any PSO or PAM operator training program or endorse specific providers but will approve PSOs and PAM operators that have successfully completed courses that meet the curriculum and trainer requirements referenced below and further specified in the regulatory text at the end of this proposed rulemaking.

NMFS will provide PSO and PAM operator approvals in the context of the need to ensure that PSOs and PAM operators have the necessary training and/or experience to carry out their duties competently. In order for PSOs and PAM operators to be approved, NMFS must review and approve PSO and PAM operator resumes indicating successful completion of an acceptable training course. PSOs and PAM operators must have previous experience observing marine mammals and must have the ability to work with all required and relevant software and equipment. NMFS may approve PSOs and PAM operators as conditional or unconditional. A conditional approval may be given to one who is trained but has not yet attained the requisite experience. An unconditional approval is given to one who is trained and has attained the necessary experience. The specific requirements for conditional and unconditional approval can be found in the regulatory text at the end of this proposed rulemaking.

Conditionally-approved PSOs and PAM operators would be paired with an unconditionally-approved PSO (or PAM operator, as appropriate) to ensure that the quality of marine mammal observations and data recording is kept consistent. Additionally, activities requiring PSO and/or PAM operator monitoring must have a lead on duty. The visual PSO field team, in conjunction with the PAM team (*i.e.,* marine mammal monitoring team) would have a lead member (designated as the ''Lead PSO'' or ''Lead PAM operator'') who would be required to meet the unconditional approval standard.

Although PSOs and PAM operators must be approved by NMFS, third-party observer providers and/or companies seeking PSO and PAM operator staffing should expect that those having satisfactorily completed acceptable training and with the requisite experience (if required) will be quickly approved. Atlantic Shores is required to request PSO and PAM operator approvals 60 days prior to those personnel commencing work. An initial list of previously approved PSO and PAM operators must be submitted by Atlantic Shores at least 30 days prior to the start of the project. Should Atlantic Shores require additional PSOs or PAM operators throughout the project, Atlantic Shores must submit a subsequent list of pre-approved PSOs and PAM operators to NMFS at least 15 days prior to planned use of that PSO or PAM operator. A PSO may be trained and/or experienced as both a PSO and PAM operator and may perform either duty, pursuant to scheduling requirements (and vice versa).

A minimum number of PSOs would be required to actively observe for the presence of marine mammals during certain project activities with more PSOs required as the mitigation zone sizes increase. A minimum number of PAM operators would be required to actively monitor for the presence of marine mammals during foundation installation. The types of equipment required (*e.g.,* Big Eye binoculars on the pile driving vessel) are also designed to increase marine mammal detection capabilities. Specifics on these types of requirements can be found in the regulations at the end of this proposed rulemaking. In summary, at least three PSOs and one PAM operator per acoustic data stream (equivalent to the number of acoustic buoys) must be on-duty and actively monitoring per platform during foundation installation; at least two PSOs must be on duty during cable landfall construction vibratory pile installation and removal; at least one PSO must be on-duty during HRG surveys conducted during daylight hours; and at least two PSOs must be

on-duty during HRG surveys conducted during nighttime.

In addition to monitoring duties, PSOs and PAM operators are responsible for data collection. The data collected by PSO and PAM operators and subsequent analysis provide the necessary information to inform an estimate of the amount of take that occurred during the project, better understand the impacts of the project on marine mammals, address the effectiveness of monitoring and mitigation measures, and to adaptively manage activities and mitigation in the future. Data reported includes information on marine mammal sightings, activity occurring at time of sighting, monitoring conditions, and if mitigative actions were taken. Specific data collection requirements are contained within the regulations at the end of this proposed rulemaking.

Atlantic Shores would be required to submit a Pile Driving Marine Mammal Monitoring Plan and a PAM Plan to NMFS 180 days in advance of foundation installation activities. The Plan must include details regarding PSO and PAM monitoring protocols and equipment proposed for use. More specifically, the PAM Plan must include a description of all proposed PAM equipment, address how the proposed passive acoustic monitoring must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind as described in *NOAA and BOEM Minimum Recommendations for Use of Passive Acoustic Listening Systems in Offshore Wind Energy Development Monitoring and Mitigation Programs* (Van Parijs *et al.,* 2021). NMFS must approve the plan prior to foundation installation activities commencing. Specific details on NMFS' PSO or PAM operator qualifications and requirements can be found in Part 217—Regulations Governing The Taking And Importing Of Marine Mammals at the end of this proposed rulemaking. Additional information can be found in Atlantic Shores' Protected Species Management and Equipment Specifications Plan (PSMESP; Appendix E) found in their ITA application on NMFS' website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-construction-atlantic-shores.*

**Sound Field Verification**

Atlantic Shores would be required to conduct SFV measurements during all impact pile-driving activities associated with the installation of, at minimum, the first three monopile foundations. SFV measurements must continue until at least three consecutive monopiles and three entire jacket foundations demonstrate noise levels are at or below those modeled, assuming 10-decibels (dB) of attenuation. Subsequent SFV measurements would also be required should larger piles be installed or if additional piles are driven that are anticipated to produce louder sound fields than those previously measured (*e.g.,* higher hammer energy, greater number of strikes, *etc.*). The measurements and reporting associated with SFV can be found in the regulatory text at the end of this proposed rulemaking. The proposed requirements are extensive to ensure monitoring is conducted appropriately and the reporting frequency is such that Atlantic Shores would be required to make adjustments quickly (*e.g.,* add additional sound attenuation) to ensure marine mammals are not experiencing noise levels above those considered in this analysis. For recommended SFV protocols for impact pile driving, please consult ISO 18406 *Underwater acoustics—Measurement of radiated underwater sound from percussive pile driving* (2017).

**Reporting**

Prior to any construction activities occurring, Atlantic Shores would provide a report to NMFS Office of Protected Resources that demonstrates that all required training for Atlantic Shores personnel, which includes the vessel crews, vessel captains, PSOs, and PAM operators have completed all required trainings.

NMFS would require standardized and frequent reporting from Atlantic Shores during the life of the regulations and LOA. All data collected relating to the Project would be recorded using industry-standard software (*e.g.,* Mysticetus or a similar software) installed on field laptops and/or tablets. Atlantic Shores would be required to submit weekly, monthly, annual, and situational reports. The specifics of what we require to be reported can be found in the regulatory text at the end of this proposed rulemaking.

*Weekly Report*—During foundation installation activities, Atlantic Shores would be required to compile and submit weekly marine mammal monitoring reports for foundation installation pile driving to NMFS Office of Protected Resources that document the daily start and stop of all pile-driving activities, the start and stop of associated observation periods by PSOs, details on the deployment of PSOs, a record of all detections of marine mammals (acoustic and visual), any mitigation actions (or if mitigation actions could not be taken, provide reasons why), and details on the noise abatement system(s) (*e.g.,* system type, distance deployed from the pile, bubble rate, *etc.*). Weekly reports will be due on Wednesday for the previous week (Sunday to Saturday). The weekly reports are also required to identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is complete, weekly reports would no longer be required.

*Monthly Report*—Atlantic Shores would be required to compile and submit monthly reports to NMFS Office of Protected Resources that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, and route), number of piles installed, all detections of marine mammals, and any mitigative actions taken. Monthly reports would be due on the 15th of the month for the previous month. The monthly report would also identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is complete, monthly reports would no longer be required.

*Annual Reporting*—Atlantic Shores would be required to submit an annual marine mammal monitoring (both PSO and PAM) report to NMFS Office of Protected Resources no later than 90 days following the end of a given calendar year describing, in detail, all of the information required in the monitoring section above. A final annual report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report.

*Final 5-Year Reporting*—Atlantic Shores would be required to submit its draft 5-year report(s) to NMFS Office of Protected Resources on all visual and acoustic monitoring conducted under the LOA within 90 calendar days of the completion of activities occurring under the LOA. A final 5-year report must be prepared and submitted within 60 calendar days following receipt of any NMFS comments on the draft report. Information contained within this report is described at the beginning of this section.

*Situational Reporting*—Specific situations encountered during the development of the Project would require immediate reporting. For instance, if a North Atlantic right whale is observed at any time by PSOs or project personnel, the sighting must be immediately (if not feasible, as soon as possible and no longer than 24 hours

after the sighting) reported to NMFS. If a North Atlantic right whale is acoustically detected at any time via a project-related PAM system, the detection must be reported as soon as possible and no longer than 24 hours after the detection to NMFS via the 24-hour North Atlantic right whale Detection Template (*https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates*). Calling the hotline is not necessary when reporting PAM detections via the template.

If a sighting of a stranded, entangled, injured, or dead marine mammal occurs, the sighting would be reported to NMFS Office of Protected Resources, the NMFS Greater Atlantic Stranding Coordinator for the New England/Mid-Atlantic area (866–755–6622), and the U.S. Coast Guard within 24 hours. If the injury or death was caused by a project activity, Atlantic Shores would be required to immediately cease all activities until NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance consistent with the adaptive management provisions described below and codified at § 217.307. Atlantic shores could not resume their activities until notified by NMFS Office of Protected Resources.

In the event of a vessel strike of a marine mammal by any vessel associated with the Project. Atlantic Shores must immediately report the strike incident. If the strike occurs in the Greater Atlantic Region (Maine to Virginia), Atlantic Shores must call the NMFS Office of Protected Resources and GARFO. Atlantic Shores would be required to immediately cease all on-water activities until NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Atlantic Shores may, consistent with the adaptive management provisions described below and codified at § 217.307, not resume their activities until notified by NMFS.

In the event of any lost gear associated with the fishery surveys, Atlantic Shores must report to the GARFO as soon as possible or within 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear.

The specifics of what NMFS Office of Protected Resources requires to be reported is listed at the end of this proposed rulemaking in the regulatory text.

*Sound Field Verification*—Atlantic Shores would be required to submit interim SFV reports after each foundation installation is completed as soon as possible but within 48 hours. A final SFV report for all monopile and jacket foundation installation monitoring would be required within 90 days following completion of acoustic monitoring.

**Adaptive Management**

The regulations governing the take of marine mammals incidental to Atlantic Shores' construction activities contain an adaptive management component. Our understanding of the effects of offshore wind construction activities (*e.g.,* acoustic stressors) on marine mammals continues to evolve, which makes the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations.

The monitoring and reporting requirements in this final rule provide NMFS with information that helps us to better understand the impacts of the project's activities on marine mammals and informs our consideration of whether any changes to mitigation and monitoring are appropriate. The use of adaptive management allows NMFS to consider new information and modify mitigation, monitoring, or reporting requirements, as appropriate, with input from Atlantic Shores regarding practicability, if such modifications will have a reasonable likelihood of more effectively accomplishing the goal of the measures.

The following are some of the possible sources of new information to be considered through the adaptive management process: (1) results from monitoring reports, including the weekly, monthly, situational, and annual reports required; (2) results from marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA. During the course of the rule, Atlantic Shores (and other LOA Holders conducting offshore wind development activities) are required to participate in one or more adaptive management meetings convened by NMFS and/or BOEM, in which the above information will be summarized and discussed in the context of potential changes to the mitigation or monitoring measures.

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' by mortality, serious injury, Level A harassment and Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

In the Estimated Take section, we estimated the maximum number of takes by Level A harassment and Level B harassment that could occur from Atlantic Shores' specified activities based on the methods described. The impact that any given take would have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (*e.g.,* the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, *etc.*). In this proposed rule, we evaluate the likely impacts of the enumerated harassment takes that are authorized in the context of the specific circumstances

surrounding these predicted takes. We also collectively evaluate this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific discussions that support our negligible impact conclusions for each stock. As described above, no serious injury or mortality is expected or proposed to be authorized for any species or stock.

The Description of the Specified Activities section describes Atlantic Shores' specified activities proposed for the project that may result in take of marine mammals and an estimated schedule for conducting those activities. Atlantic Shores South has provided a realistic construction schedule although we recognize schedules may shift for a variety of reasons (*e.g.,* weather or supply delays). However, the total amount of take would not exceed the 5-year totals and maximum annual total in any given year indicated in Tables 25 and 26, respectively.

We base our analysis and preliminary negligible impact determination on the maximum number of takes that could occur and are proposed to be authorized annually and across the effective period of these regulations, and extensive qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals and the number and context of the individuals affected. As stated before, the number of takes, both maximum annual and 5-year total, alone are only a part of the analysis.

To avoid repetition, we provide some general analysis in this Negligible Impact Analysis and Determination section that applies to all the species listed in Table 4 given that some of the anticipated effects of Atlantic Shores' construction activities on marine mammals are expected to be relatively similar in nature. Then, we subdivide into more detailed discussions for mysticetes, odontocetes, and pinnipeds which have broad life history traits that support an overarching discussion of some factors considered within the analysis for those groups (*e.g.,* habitat-use patterns, high-level differences in feeding strategies).

Last, we provide a negligible impact determination for each species or stock, providing species or stock-specific information or analysis, where appropriate, for example, for North Atlantic right whales given the population status. Organizing our analysis by grouping species or stocks that share common traits or that would respond similarly to effects of Atlantic Shores' activities, and then providing species- or stock-specific information allows us to avoid duplication while ensuring that we have analyzed the effects of the specified activities on each affected species or stock. It is important to note that in the group or species sections, we base our negligible impact analysis on the maximum annual take that is predicted under the 5-year rule; however, the majority of the impacts are associated with WTG, Met Tower, and OSS foundation installation, which would occur largely within the first 2 to 3 years (2025 through 2026 or 2027). The estimated take in the other years is expected to be notably less, which is reflected in the total take that would be allowable under the rule (see Tables 24, 25, and 26).

As described previously, no serious injury or mortality is anticipated or authorized in this rule. Any Level A harassment authorized would be in the form of auditory injury (*i.e.,* PTS) and not non-auditory injury (*e.g.,* lung injury or gastrointestinal injury from detonations). The amount of harassment Atlantic Shores has requested, and NMFS proposes to authorize, is based on exposure models that consider the outputs of acoustic source and propagation models and other data such as frequency of occurrence or group sizes. Several conservative parameters and assumptions are ingrained into these models, such as assuming forcing functions that consider direct contact with piles (*i.e.,* no cushion allowances) and application of the average summer sound speed profile to all months within a given season. The exposure model results do not reflect any mitigation measures (other than 10-dB sound attenuation) or avoidance response. The amount of take requested and proposed to be authorized also reflects careful consideration of other data (*e.g.,* group size data) and, for Level A harassment potential of some large whales, the consideration of mitigation measures. For all species, the amount of take proposed to be authorized represents the maximum amount of Level A harassment and Level B harassment that could occur.

**Behavioral Disturbance**

In general, NMFS anticipates that impacts on an individual that has been harassed are likely to be more intense when exposed to higher received levels and for a longer duration (though this is in no way a strictly linear relationship for behavioral effects across species, individuals, or circumstances) and less severe impacts result when exposed to lower received levels and for a brief duration. However, there is also growing evidence of the importance of contextual factors such as distance from a source in predicting marine mammal behavioral response to sound—*i.e.,* sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (DeRuiter and Doukara, 2012; Falcone *et al.,* 2017). As described in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, the intensity and duration of any impact resulting from exposure to Atlantic Shores' activities is dependent upon a number of contextual factors including, but not limited to, sound source frequencies, whether the sound source is moving towards the animal, hearing ranges of marine mammals, behavioral state at time of exposure, status of individual exposed (*e.g.,* reproductive status, age class, health) and an individual's experience with similar sound sources. Southall *et al.* (2021), Ellison *et al.* (2012) and Moore and Barlow (2013), among others, emphasize the importance of context (*e.g.,* behavioral state of the animals, distance from the sound source) in evaluating behavioral responses of marine mammals to acoustic sources. Harassment of marine mammals may result in behavioral modifications (*e.g.,* avoidance, temporary cessation of foraging or communicating, changes in respiration or group dynamics, masking) or may result in auditory impacts such as hearing loss. In addition, some of the lower level physiological stress responses (*e.g.,* change in respiration, change in heart rate) discussed previously would likely co-occur with the behavioral modifications, although these physiological responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. Takes by Level B harassment, then, may have a stress-related physiological component as well. However, we would not expect Atlantic Shores' activities to produce conditions of long-term and continuous exposure to noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

In the range of behavioral effects that might be expected to be part of a response that qualifies as an instance of Level B harassment by behavioral disturbance (which by nature of the way it is modeled/counted, occurs within 1 day), the less severe end might include exposure to comparatively lower levels of a sound, at a greater distance from the animal, for a few or several minutes. A less severe exposure of this nature could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through

or feed in for some amount of time, or breaking off one or a few feeding bouts. More severe effects could occur if an animal gets close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day. However, such severe behavioral effects are expected to occur infrequently.

Many species perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure, when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat, are more likely to be significant if they last more than 1 day or recur on subsequent days (Southall *et al.,* 2007) due to diel and lunar patterns in diving and foraging behaviors observed in many cetaceans (Baird *et al.,* 2008; Barlow *et al.,* 2020; Henderson *et al.,* 2016; Schorr *et al.,* 2014). It is important to note the water depth in the Project Area is shallow (ranging up to 30 m in the ECRs, and 19 to 37 m in the Lease Area) and deep diving species, such as sperm whales, are not expected to be engaging in deep foraging dives when exposed to noise above NMFS harassment thresholds during the specified activities. Therefore, we do not anticipate impacts to deep foraging behavior to be impacted by the specified activities.

It is also important to identify that the estimated number of takes does not necessarily equate to the number of individual animals Atlantic Shores expects to harass (which is lower), but rather to the instances of take (*i.e.,* exposures above the Level B harassment thresholds) that may occur. These instances may represent either seconds to minutes for HRG surveys, or, in some cases, longer durations of exposure within a day (*e.g.,* pile driving). Some individuals of a species may experience recurring instances of take over multiple days throughout the year while some members of a species or stock may experience one exposure as they move through an area, which means that the number of individuals taken is smaller than the total estimated takes. In short, for species that are more likely to be migrating through the area and/or for which only a comparatively smaller number of takes are predicted (*e.g.,* some of the mysticetes), it is more likely that each take represents a different individual. Whereas for non-migrating species with larger amounts of predicted take, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be taken across multiple days.

For Atlantic Shores, impact pile driving of foundation piles is most likely to result in a higher magnitude and severity of behavioral disturbance than other activities (*i.e.,* vibratory pile driving and HRG surveys). Impact pile driving has higher source levels and longer durations (on an annual basis) than vibratory pile driving and HRG surveys. HRG survey equipment also produces much higher frequencies than pile driving, resulting in minimal sound propagation. While impact pile driving for foundation installation is anticipated to be most impactful for these reasons, impacts are minimized through implementation of mitigation measures, including use of a sound attenuation system, soft-starts, the implementation of clearance zones that would facilitate a delay to pile-driving commencement, and implementation of shutdown zones. All these measures are designed to avoid or minimize harassment. For example, given sufficient notice through the use of soft-start, marine mammals are expected to move away from a sound source that is disturbing prior to becoming exposed to very loud noise levels. The requirement to couple visual monitoring and PAM before and during all foundation installation will increase the overall capability to detect marine mammals compared to one method alone.

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more severe response, if they are not expected to be repeated over numerous or sequential days, impacts to individual fitness are not anticipated. Also, the effect of disturbance is strongly influenced by whether it overlaps with biologically important habitats when individuals are present—avoiding biologically important habitats will provide opportunities to compensate for reduced or lost foraging (Keen *et al.,* 2021). Nearly all studies and experts agree that infrequent exposures of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.,* 2018; Harris *et al.,* 2017; King *et al.,* 2015; National Academy of Science, 2017; New *et al.,* 2014; Southall *et al.,* 2007; Villegas-Amtmann *et al.,* 2015).

**Temporary Threshold Shift (TTS)**

TTS is one form of Level B harassment that marine mammals may incur through exposure to Atlantic Shores' activities and, as described earlier, the proposed takes by Level B harassment may represent takes in the form of behavioral disturbance, TTS, or both. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, in general, TTS can last from a few minutes to days, be of varying degree, and occur across different frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Impact and vibratory pile driving are broadband noise sources but generate sounds in the lower frequency ranges (with most of the energy below 1–2 kHz, but with a small amount energy ranging up to 20 kHz). Therefore, in general and all else being equal, we would anticipate the potential for TTS is higher in low-frequency cetaceans (*i.e.,* mysticetes) than other marine mammal hearing groups and would be more likely to occur in frequency bands in which they communicate. However, we would not expect the TTS to span the entire communication or hearing range of any species given that the frequencies produced by these activities do not span entire hearing ranges for any particular species. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalizations, the frequency range of TTS from Atlantic Shores' pile driving activities would not typically span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues for any given species. However, the proposed mitigation measures further reduce the potential for TTS in mysticetes.

Generally, both the degree of TTS and the duration of TTS would be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously (refer back to Estimated Take). However, source level alone is not a predictor of TTS. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the proposed mitigation and the nominal speed of the receiving animal relative to the stationary sources such as impact pile

driving. The recovery time of TTS is also of importance when considering the potential impacts from TTS. In TTS laboratory studies (as discussed in Potential Effects of Specified Activities on Marine Mammals and Their Habitat), some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes), and we note that while the pile-driving activities last for hours a day, it is unlikely that most marine mammals would stay in the close vicinity of the source long enough to incur more severe TTS. Overall, given the small number of time that any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the unlikely scenario that any TTS overlapped the entirety of a critical hearing range, it is unlikely that TTS (of the nature expected to result from the project's activities) would result in behavioral changes or other impacts that would impact any individual's (of any hearing sensitivity) reproduction or survival.

**Permanent Threshold Shift (PTS)**

NMFS proposes to authorize, a very small amount of take by PTS to some marine mammal individuals. The numbers of proposed annual takes by Level A harassment are relatively low for all marine mammal stocks and species (Table 25). The only activities incidental to which we anticipate PTS may occur is from exposure to impact pile driving, which produces sounds that are both impulsive and primarily concentrated in the lower frequency ranges (below 1 kHz) (David, 2006; Krumpel *et al.,* 2021).

There are no PTS data on cetaceans and only one instance of PTS being induced in older harbor seals (Reichmuth *et al.,* 2019). However, available TTS data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds (Southall *et al.,* 2007; NMFS, 2018; Southall *et al.,* 2019)) suggest that most threshold shifts occur in the frequency range of the source up to one octave higher than the source. We would anticipate a similar result for PTS. Further, no more than a small degree of PTS is expected to be associated with any of the incurred Level A harassment, given it is unlikely that animals would stay in the close vicinity of a source for a duration long enough to produce more than a small degree of PTS.

PTS would consist of minor degradation of hearing capabilities occurring predominantly at frequencies one-half to one octave above the frequency of the energy produced by pile driving (*i.e.,* the low-frequency region below 2 kHz) (Cody and Johnstone, 1981; McFadden, 1986; Finneran, 2015), not severe hearing impairment. If hearing impairment occurs from impact pile driving, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. In addition, during impact pile driving, given sufficient notice through use of soft-start prior to implementation of full hammer energy during impact pile driving, marine mammals are expected to move away from a sound source that is disturbing prior to it resulting in severe PTS.

**Auditory Masking or Communication Impairment**

The ultimate potential impacts of masking on an individual are similar to those discussed for TTS (*e.g.,* decreased ability to communicate, forage effectively, or detect predators), but an important difference is that masking only occurs during the time of the signal, versus TTS, which continues beyond the duration of the signal. Also, though masking can result from the sum of exposure to multiple signals, none of which might individually cause TTS. Fundamentally, masking is referred to as a chronic effect because one of the key potential harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency).

As our analysis has indicated, for this project we expect that impact pile driving foundations have the greatest potential to mask marine mammal signals, and this pile driving may occur for several, albeit intermittent, hours per day, for multiple days per year. Masking is fundamentally more of a concern at lower frequencies (which are pile-driving dominant frequencies), because low frequency signals propagate significantly further than higher frequencies and because they are more likely to overlap both the narrower low frequency calls of mysticetes, as well as many non-communication cues related to fish and invertebrate prey, and geologic sounds that inform navigation. However, the area in which masking would occur for all marine mammal species and stocks (*e.g.,* predominantly in the vicinity of the foundation pile being driven) is small relative to the extent of habitat used by each species and stock. In summary, the nature of Atlantic Shores' activities, paired with habitat use patterns by marine mammals, does not support the likelihood that the level of masking that could occur would have the potential to affect reproductive success or survival. Therefore, we are not predicting take due to masking effects, and are not proposing to authorize such take.

**Impacts on Habitat and Prey**

Construction activities may result in fish and invertebrate mortality or injury very close to the source, and all of Atlantic Shores' activities may cause some fish to leave the area of disturbance. It is anticipated that any mortality or injury would be limited to a very small subset of available prey and the implementation of mitigation measures such as the use of a noise attenuation system during impact pile driving would further limit the degree of impact. Behavioral changes in prey in response to construction activities could temporarily impact marine mammals' foraging opportunities in a limited portion of the foraging range but, because of the relatively small area of the habitat that may be affected at any given time (*e.g.,* around a pile being driven), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Cable presence is not anticipated to impact marine mammal habitat as these would be buried, and any electromagnetic fields emanating from the cables are not anticipated to result in consequences that would impact marine mammals' prey to the extent they would be unavailable for consumption.

The presence of wind turbines within the Lease Area could have longer-term impacts on marine mammal habitat, as the project would result in the persistence of the structures within marine mammal habitat for more than 30 years. The presence of structures such as wind turbines is, in general, likely to result in certain oceanographic effects in the marine environment, and may alter aggregations and distribution of marine mammal zooplankton prey through changing the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Schultze *et al.,* 2020; Chen *et al.,* 2021; Johnson *et al.,* 2021; Christiansen *et al.,* 2022; Dorrell *et al.,* 2022).

As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, the project would consist of no more than 211 foundations (200 WTGs, 10 OSS, 1 Met Tower) in the Lease Area, which will gradually become operational following construction completion. While there are likely to be oceanographic impacts from the presence of operating turbines, meaningful oceanographic impacts relative to stratification and mixing that would significantly affect marine mammal habitat and prey over large areas in key foraging habitats are not anticipated from the Atlantic Shores activities covered under these proposed regulations. For these reasons, if oceanographic features are affected by the project during the effective period of the proposed regulations, the impact on marine mammal habitat and their prey is likely to be comparatively minor; therefore, we are not predicting take due to habitat and prey impacts, and are not proposing to authorize such take.

**Mitigation To Reduce Impacts on All Species**

This proposed rulemaking includes a variety of mitigation measures designed to minimize impacts on all marine mammals, with a focus on North Atlantic right whales (the latter is described in more detail below). For impact pile driving of foundation piles, nine overarching mitigation measures are proposed, which are intended to reduce both the number and intensity of marine mammal takes: (1) seasonal/time of day work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection within specifically designated zones triggering a delay or shutdown); (3) use of PAM to acoustically detect marine mammals, with a focus on detecting baleen whales (with any detection within designated zones triggering delay or shutdown); (4) implementation of clearance zones; (5) implementation of shutdown zones; (6) use of soft-start; (7) use of noise attenuation technology; (8) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Atlantic Shores' personnel must be reported to PSOs; (9) sound field verification monitoring; and (10) Vessel Strike Avoidance measures to reduce the risk of a collision with a marine mammal and vessel. For cofferdam installation and removal, we are requiring five overarching mitigation measures: (1) seasonal/time of day work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection with specifically designated zones that would trigger a delay or shutdown); (3) implementation of clearance zones; (4) implementation of shutdown zones); and (5) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Atlantic Shores' personnel must be reported to PSOs. Lastly, for HRG surveys, we are requiring six measures: (1) measures specifically for Vessel Strike Avoidance; (2) specific requirements during daytime and nighttime HRG surveys (3) implementation of clearance zones (4) implementation of shutdown zones; (5) use of ramp-up of acoustic sources; and (6) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Atlantic Shores' personnel must be reported to PSOs.

NMFS prescribes mitigation measures based on the following rationale. For activities with large harassment isopleths, Atlantic Shores would be required to reducing the noise levels generated to the lowest levels practicable and would be required to ensure that they do not exceed a noise footprint above that which was modeled, assuming a 10-dB attenuation. Use of a soft-start during impact pile driving will allow animals to move away from (*i.e.,* avoid) the sound source prior to applying higher hammer energy levels needed to install the pile (Atlantic Shores would not use a hammer energy greater than necessary to install piles). Similarly, ramp-up during HRG surveys would allow animals to move away and avoid the acoustic sources before they reach their maximum energy level. For all activities, clearance zone and shutdown zone implementation, which are required when marine mammals are within given distances associated with certain impact thresholds for all activities, would reduce the magnitude and severity of marine mammal take. Additionally, the use of multiple PSOs (WTG, OSS, and Met Tower foundation installation; temporary cofferdam installation and removal; HRG surveys), PAM (for impact foundation installation), and maintaining awareness of marine mammal sightings reported in the region (WTG, OSS, and Met Tower foundation installation; temporary cofferdam installation and removal; HRG surveys) would aid in detecting marine mammals that would trigger the implementation of the mitigation measures. The reporting requirements, including SFV reporting (for foundation installation and foundation operation), will assist NMFS in identifying if impacts beyond those analyzed in this proposed rule are occurring, potentially leading to the need to enact adaptive management measures in addition to or in the place of the proposed mitigation measures.

**Mysticetes**

Five mysticete species (comprising five stocks) of cetaceans (North Atlantic right whale, humpback whale, fin whale, sei whale, and minke whale) may be taken by harassment. These species, to varying extents, utilize the specified geographic region, including the Project Area, for the purposes of migration, foraging, and socializing. Mysticetes are in the low-frequency hearing group.

Behavioral data on mysticete reactions to pile-driving noise are scant. Kraus *et al.* (2019) predicted that the three main impacts of offshore wind farms on marine mammals would consist of displacement, behavioral disruptions, and stress. Broadly, we can look to studies that have focused on other noise sources such as seismic surveys and military training exercises, which suggest that exposure to loud signals can result in avoidance of the sound source (or displacement if the activity continues for a longer duration in a place where individuals would otherwise have been staying, which is less likely for mysticetes in this area), disruption of foraging activities (if they are occurring in the area), local masking around the source, associated stress responses, and impacts to prey, as well as TTS or PTS in some cases.

Mysticetes encountered in the Project Area are expected to primarily be migrating and, to a lesser degree, may be engaged in foraging behavior. The extent to which an animal engages in these behaviors in the area is species-specific and varies seasonally. Many mysticetes are expected to predominantly be migrating through the Project Area towards or from feeding grounds located further north (*e.g.,* southern New England region, Gulf of Maine, Canada). While we acknowledged above that mortality, hearing impairment, or displacement of mysticete prey species may result locally from impact pile driving, given the very short duration of and broad availability of prey species in the area and the availability of alternative suitable foraging habitat for the mysticete species most likely to be affected, any impacts on mysticete foraging is expected to be minor. Whales temporarily displaced from the Project Area are expected to have sufficient remaining feeding habitat available to them, and would not be prevented from feeding in other areas within the

biologically important feeding habitats found further north. In addition, any displacement of whales or interruption of foraging bouts would be expected to be relatively temporary in nature.

The potential for repeated exposures is dependent upon the residency time of whales, with migratory animals unlikely to be exposed on repeated occasions and animals remaining in the area to be more likely exposed repeatedly. For mysticetes, where relatively low amounts of species-specific take by Level B harassment are predicted (compared to the abundance of each mysticete species or stock, such as is indicated in Table 25) and movement patterns suggest that individuals would not necessarily linger in a particular area for multiple days, each predicted take likely represents an exposure of a different individual; the behavioral impacts would, therefore, be expected to occur within a single day within a year—an amount that would clearly not be expected to impact reproduction or survival. Species with longer residence time in the Project Area may be subject to repeated exposures across multiple days.

In general, for this project, the duration of exposures would not be continuous throughout any given day, and pile driving would not occur on all consecutive days within a given year due to weather delays or any number of logistical constraints Atlantic Shores has identified. Species-specific analysis regarding potential for repeated exposures and impacts is provided below.

Fin, humpback, minke, and sei whales are the only mysticete species for which PTS is anticipated and proposed to be authorized. As described previously, PTS for mysticetes from some project activities may overlap frequencies used for communication, navigation, or detecting prey. However, given the nature and duration of the activity, the mitigation measures, and likely avoidance behavior, any PTS is expected to be of a small degree, would be limited to frequencies where pile-driving noise is concentrated (*i.e.,* only a small subset of their expected hearing range) and would not be expected to impact reproductive success or survival.

*North Atlantic Right Whale*

North Atlantic right whales are listed as endangered under the ESA and as both depleted and strategic stocks under the MMPA. As described in the Potential Effects of the Specified Activities on Marine Mammals and Their Habitat section, North Atlantic right whales are threatened by a low population abundance, higher than average mortality rates, and lower than average reproductive rates. Recent studies have reported individuals showing high stress levels (*e.g.,* Corkeron *et al.,* 2017) and poor health, which has further implications on reproductive success and calf survival (Christiansen *et al.,* 2020; Stewart *et al.,* 2021; Stewart *et al.,* 2022). As described below, a UME has been designated for North Atlantic right whales. Given this, the status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis and consideration. No injury or mortality is anticipated or proposed for authorization for this species.

For North Atlantic right whales, this proposed rule would allow for the authorization of up to 21 takes, by Level B harassment only, over the 5-year period, with a maximum annual allowable take by Level B harassment, would be 9 (equating to approximately 2.66 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.,* years where only HRG surveys would be occurring) The Project Area is known as a migratory corridor for North Atlantic right whales and given the nature of migratory behavior (*e.g.,* continuous path), as well as the low number of total takes, we anticipate that few, if any, of the instances of take would represent repeat takes of any individual, though it could occur if whales are engaged in opportunistic foraging behavior. Whitt *et al.* (2013) observed two juveniles potentially skim-feeding off the coast of Barnegat Bay, New Jersey in January. While opportunistic foraging may occur in the Project area, the habitat does not support prime foraging habitat.

The highest density of North Atlantic right whales in the Project Area occurs in the winter (Table 9). The Mid-Atlantic, including the Project Area, may be a stopover site for migrating North Atlantic right whales moving to or from southeastern calving grounds. Migrating North Atlantic right whales have been acoustically detected north of the Project Area in the New York Bight from February to May and August through December (Biedron *et al.,* 2009). Similarly, the waters off the coast of New Jersey, including those surrounding the Project Area in the New Jersey Wind Energy Area (NJ WEA), have documented North Atlantic right whale presence as the area is an important migratory route for the species to the northern feeding areas near the Gulf of Maine and Georges Banks and to their southern breeding and calving grounds off the southeastern U.S. (CETAP, 1982; Knowlton and Kraus, 2001; Knowlton *et al.,* 2022; Biedron *et al.,* 2009; DoC, 2016b). However, comparatively, the Project Area is not known as an important area for feeding, breeding, or calving.

North Atlantic right whales range outside the Project Area for their main feeding, breeding, and calving activities (Geo-Marine, 2010). Additional qualitative observations include animals feeding and socializing in New England waters, north of the NJ WEA (Quintana-Rizzo *et al.,* 2021). The North Atlantic right whales observed during the study period, north of the NJ WEA, were primarily concentrated in the northeastern and southeastern sections of the Massachusetts WEA (MA WEA) during the summer (June–August) and winter (December–February). North Atlantic right whale distribution did shift to the west into the Rhode Island/Massachusetts (RI/MA WEA) in the spring (March–May). Quintana-Rizzo et al. (2021) found that approximately 23 percent of the right whale population is present from December through May, and the mean residence time has tripled to an average of 13 days during these months. The NJ WEA is not in or near these areas important to feeding, breeding, and calving activities.

In general, North Atlantic right whales in the Project Area are expected to be engaging in migratory behavior. Given the species' migratory behavior in the Project Area, we anticipate individual whales would be typically migrating through the area during most months when foundation installation would occur (given the seasonal restrictions on foundation installation, rather than lingering for extended periods of time). Other work that involves either much smaller harassment zones (*e.g.,* HRG surveys) or is limited in amount (*e.g.,* cable landfall construction) may also occur during periods when North Atlantic right whales are using the habitat for migration. It is important to note the activities occurring from December through May that may impact North Atlantic right whale would be primarily HRG surveys and the nearshore cofferdam installation and removal, which would not result in very high received levels. Across all years, if an individual were to be exposed during a subsequent year, the impact of that exposure is likely independent of the previous exposure given the duration between exposures.

As described in the Description of Marine Mammals in the Geographic Area of Specified Activities, North Atlantic right whales are presently

experiencing an ongoing UME (beginning in June 2017). Preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales. Given the current status of the North Atlantic right whale, the loss of even one individual could significantly impact the population. No mortality, serious injury, or injury of North Atlantic right whales as a result of the project is expected or proposed to be authorized. Any disturbance to North Atlantic right whales due to Atlantic Shores' activities is expected to result in temporary avoidance of the immediate area of construction. As no injury, serious injury, or mortality is expected or authorized, and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of mitigation measures, the authorized number of takes of North Atlantic right whales would not exacerbate or compound the effects of the ongoing UME.

As described in the general *Mysticetes* section above, foundation installation is likely to result in the highest amount of annual take and is of greatest concern given loud source levels. This activity would likely be limited to up to 225 days (201 for WTG/Met Tower monopile/jacket foundations and 24 for OSS jacket foundations) over a maximum of 2 years, during times when, based on the best available scientific data, North Atlantic right whales are less frequently encountered due to their migratory behavior. The potential types, severity, and magnitude of impacts are also anticipated to mirror that described in the general *Mysticetes* section above, including avoidance (the most likely outcome), changes in foraging or vocalization behavior, masking, a small amount of TTS, and temporary physiological impacts (*e.g.,* change in respiration, change in heart rate). Importantly, the effects of the proposed activities are expected to be sufficiently low-level and localized to specific areas as to not meaningfully impact important behaviors, such as migratory behavior of North Atlantic right whales. These takes are expected to result in temporary behavioral reactions, such as slight displacement (but not abandonment) of migratory habitat or temporary cessation of feeding. Further, given these exposures are generally expected to occur to different individual right whales migrating through (*i.e.,* many individuals would not be impacted on more than 1 day in a year), with some subset potentially being exposed on no more than a few days within the year, they are unlikely to result in energetic consequences that could affect reproduction or survival of any individuals.

Overall, NMFS expects that any behavioral harassment of North Atlantic right whales incidental to the specified activities would not result in changes to their migration patterns or foraging success, as only temporary avoidance of an area during construction is expected to occur. As described previously, North Atlantic right whales migrating through the Project Area are not expected to remain in this habitat for extensive durations, and any temporarily displaced animals would be able to return to or continue to travel through and forage in these areas once activities have ceased.

Although acoustic masking may occur in the vicinity of the foundation installation activities, based on the acoustic characteristics of noise associated with pile driving (*e.g.,* frequency spectra, short duration of exposure) and construction surveys (*e.g.,* intermittent signals), NMFS expects masking effects to be minimal (*e.g.,* impact pile driving) to none (*e.g.,* HRG surveys). In addition, masking would likely only occur during the period of time that a North Atlantic right whale is in the relatively close vicinity of pile driving, which is expected to be intermittent within a day, and confined to the months in which North Atlantic right whales are at lower densities and primarily moving through the area, anticipated mitigation effectiveness, and likely avoidance behaviors. TTS is another potential form of Level B harassment that could result in brief periods of slightly reduced hearing sensitivity affecting behavioral patterns by making it more difficult to hear or interpret acoustic cues within the frequency range (and slightly above) of sound produced during impact pile driving. However, any TTS would likely be of low amount, limited duration, and limited to frequencies where most construction noise is centered (below 2 kHz). NMFS expects that right whale hearing sensitivity would return to pre-exposure levels shortly after migrating through the area or moving away from the sound source.

As described in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, the distance of the receiver to the source influences the severity of response with greater distances typically eliciting less severe responses. NMFS recognizes North Atlantic right whales migrating could be pregnant females (in the fall) and cows with older calves (in spring) and that these animals may slightly alter their migration course in response to any foundation pile-driving; however, as described in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, we anticipate that course diversion would be of small magnitude. Hence, while some avoidance of the pile driving activities may occur, we anticipate any avoidance behavior of migratory North Atlantic right whales would be similar to that of gray whales (Tyack *et al.,* 1983), on the order of hundreds of meters up to 1 to 2 km. This diversion from a migratory path otherwise uninterrupted by the proposed activities is not expected to result in meaningful energetic costs that would impact annual rates of recruitment of survival. NMFS expects that North Atlantic right whales would be able to avoid areas during periods of active noise production while not being forced out of this portion of their habitat.

North Atlantic right whale presence in the Project Area is year-round. However, abundance during summer months is lower compared to the winter months with spring and fall serving as ''shoulder seasons'' wherein abundance waxes (fall) or wanes (spring). Given this year-round habitat usage, in recognition that where and when whales may actually occur during project activities is unknown as it depends on the annual migratory behaviors, Atlantic Shores has proposed and NMFS is proposing to require a suite of mitigation measures designed to reduce impacts to North Atlantic right whales to the maximum extent practicable. These mitigation measures (*e.g.,* seasonal/daily work restrictions, vessel separation distances, reduced vessel speed) would not only avoid the likelihood of vessel strikes but also would minimize the severity of behavioral disruptions by minimizing impacts (*e.g.,* through sound reduction using attenuation systems and reduced temporal overlap of project activities and North Atlantic right whales). This would further ensure that the number of takes by Level B harassment that are estimated to occur are not expected to affect reproductive success or survivorship by detrimental impacts to energy intake or cow/calf interactions during migratory transit. However, even in consideration of recent habitat-use and distribution shifts, Atlantic Shores would still be installing foundations when the presence of North Atlantic right whales is expected to be lower.

As described in the Description of Marine Mammals in the Geographic Area of Specified Activities section,

Atlantic Shores would be constructed within the North Atlantic right whale migratory corridor BIA, which represent areas and months within which a substantial portion of a species or population is known to migrate. The Lease Area is extremely small compared with the migratory BIA area (approximately 413 km² for OCS–A 0499 versus the size of the full North Atlantic right whale migratory BIA, 269,448 km²). Because of this, the overall North Atlantic right whale migration is not expected to be impacted by the proposed activities. There are no known North Atlantic right whale feeding, breeding, or calving areas within the Project Area. Prey species are mobile (*e.g.,* calanoid copepods can initiate rapid and directed escape responses) and are broadly distributed throughout the Project Area (noting again that North Atlantic right whale prey is not particularly concentrated in the Project Area relative to nearby habitats). Therefore, any impacts to prey that may occur are also unlikely to impact marine mammals.

The most significant measure to minimize impacts to individual North Atlantic right whales is the seasonal moratorium on all foundation installation activities from January 1 through April 30, and the limitation on these activities occurring in December (*e.g.,* only work with approval from NMFS), when North Atlantic right whale abundance in the Project Area is expected to be highest. NMFS also expects this measure to greatly reduce the potential for mother-calf pairs to be exposed to impact pile driving noise above the Level B harassment threshold during their annual spring migration through the Project Area from calving grounds to primary foraging grounds (*e.g.,* Cape Cod Bay). NMFS expects that exposures to North Atlantic right whales would be reduced due to the additional proposed mitigation measures that would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed.

Pile driving may only begin in the absence of North Atlantic right whales (based on visual and passive acoustic monitoring). If pile driving has commenced, NMFS anticipates North Atlantic right whales would avoid the area, utilizing nearby waters to carry on pre-exposure behaviors. However, foundation installation activities must be shut down if a North Atlantic right whale is sighted at any distance unless a shutdown is not feasible due to risk of injury or loss of life. Shutdown may occur anywhere if North Atlantic right whales are seen within or beyond the Level B harassment zone, further minimizing the duration and intensity of exposure. NMFS anticipates that if North Atlantic right whales go undetected and they are exposed to foundation installation noise, it is unlikely a North Atlantic right whale would approach the sound source locations to the degree that they would purposely expose themselves to very high noise levels. This is because typical observed whale behavior demonstrates likely avoidance of harassing levels of sound where possible (Richardson *et al.,* 1985). These measures are designed to avoid PTS and also reduce the severity of Level B harassment, including the potential for TTS. While some TTS could occur, given the proposed mitigation measures (*e.g.,* delay pile driving upon a sighting or acoustic detection and shutting down upon a sighting or acoustic detection), the potential for TTS to occur is low.

The proposed clearance and shutdown measures are most effective when detection efficiency is maximized, as the measures are triggered by a sighting or acoustic detection. To maximize detection efficiency, Atlantic Shores proposed, and NMFS is proposing to require, the combination of PAM and visual observers. NMFS is proposing to require communication protocols with other project vessels, and other heightened awareness efforts (*e.g.,* daily monitoring of North Atlantic right whale sighting databases) such that as a North Atlantic right whale approaches the source (and thereby could be exposed to higher noise energy levels), PSO detection efficacy would increase, the whale would be detected, and a delay to commencing foundation installation or shutdown (if feasible) would occur. In addition, the implementation of a soft-start for impact pile driving would provide an opportunity for whales to move away from the source if they are undetected, reducing received levels.

For HRG surveys, the maximum distance to the Level B harassment threshold is 141 m. The estimated take, by Level B harassment only, associated with HRG surveys is to account for any North Atlantic right whale sightings PSOs may miss when HRG acoustic sources are active. However, because of the short maximum distance to the Level B harassment threshold, the requirement that vessels maintain a distance of 500 m from any North Atlantic right whales, the fact that whales are unlikely to remain in close proximity to an HRG survey vessel for any length of time, and that the acoustic source would be shut down if a North Atlantic right whale is observed within 500 m of the source, any exposure to noise levels above the harassment threshold (if any) would be very brief. To further minimize exposures, ramp-up of sub-bottom profilers must be delayed during the clearance period if PSOs detect a North Atlantic right whale (or any other ESA-listed species) within 500 m of the acoustic source. With implementation of the proposed mitigation requirements, take by Level A harassment is unlikely and, therefore, not proposed for authorization. Potential impacts associated with Level B harassment would include low-level, temporary behavioral modifications, most likely in the form of avoidance behavior. Given the high level of precautions taken to minimize both the amount and intensity of Level B harassment on North Atlantic right whales, it is unlikely that the anticipated low-level exposures would lead to reduced reproductive success or survival.

As described above, no serious injury or mortality, or Level A harassment, of North Atlantic right whale is anticipated or proposed for authorization. Extensive North Atlantic right whale-specific mitigation measures (beyond the robust suite required for all species) are expected to further minimize the amount and severity of Level B harassment. Given the documented habitat use within the area, the majority of the individuals predicted to be taken (including no more than 21 instances of take, by Level B harassment only, over the course of the 5-year rule, with an annual maximum of no more than 9) would be impacted on only 1, or maybe 2, days in a year as North Atlantic right whales utilize this area for migration and would be transiting rather than residing in the area for extended periods of time; and, further, any impacts to North Atlantic right whales are expected to be in the form of lower-level behavioral disturbance.

Given the magnitude and severity of the impacts discussed above, and in consideration of the proposed mitigation and other information presented, Atlantic Shores' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have preliminarily determined that the take (by Level B harassment only) anticipated and proposed for authorization would have a negligible impact on the North Atlantic right whale.

*Fin Whale*

The fin whale is listed as Endangered under the ESA, and the western North

Atlantic stock is considered both Depleted and Strategic under the MMPA. No UME has been designated for this species or stock. No serious injury or mortality is anticipated or proposed for authorization for this species.

The proposed rule would allow for the authorization of up to 43 takes, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 4 and 16, respectively (combined, this annual take (n=20) equates to approximately 0.29 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.,* years when only HRG surveys would be occurring). The Project Area does not overlap any known areas of specific biological importance to fin whales. It is likely that some subset of the individual whales exposed could be taken several times annually.

Level B harassment is expected to be in the form of behavioral disturbance, primarily resulting in avoidance of the Project Area where foundation installation is occurring, and some low-level TTS and masking that may limit the detection of acoustic cues for relatively brief periods of time. Any potential PTS would be minor (limited to a few dB) and any TTS would be of short duration and concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of fin whales.

Fin whales are present in the waters off of New Jersey year round and are one of the most frequently observed large whales and cetaceans in continental shelf waters, principally from Cape Hatteras in the Mid-Atlantic northward to Nova Scotia, Canada (Sergeant, 1977; Sutcliffe and Brodie, 1977; CETAP, 1982; Hain *et al.,* 1992; Geo-Marine, 2010; BOEM 2012; Edwards *et al.,* 2015; Hayes *et al.,* 2022). Fin whales have high relative abundance in the Mid-Atlantic and Project Area, most observations occur in the winter and summer months (Geo-Marine, 2010; Hayes *et al.,* 2022) though detections do occur in spring and fall (Watkins *et al.,* 1987; Clark and Gagnon 2002; Geo-Marine, 2010; Morano *et al.,* 2012). However, fin whales typically feed in waters off of New England and within the Gulf of Maine, areas north of the Project Area, as New England and Gulf of St. Lawrence waters represent major feeding ground for fin whales (Hayes *et al.,* 2022). Hain *et al.* (1992), based on an analysis of neonate stranding data, suggested that calving takes place during October to January in latitudes of the U.S. mid-Atlantic region; however, it is unknown where calving, mating, and wintering occur for most of the population (Hayes *et al.,* 2022).

Given the documented habitat use within the area, some of the individuals taken would likely be exposed on multiple days. However, as described, the project area does not include areas where fin whales are known to concentrate for feeding or reproductive behaviors and the predicted takes are expected to be in the form of lower-level impacts. Given the magnitude and severity of the impacts discussed above (including no more than 43 takes, by Level A harassment and Level B harassment, over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 4 and 16, respectively), and in consideration of the proposed mitigation and other information presented, Atlantic Shores' proposed activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have preliminarily determined that the take (by Level A harassment and Level B harassment) anticipated and proposed to be authorized would have a negligible impact on the western North Atlantic stock of fin whales.

*Humpback Whale*

The West Indies DPS of humpback whales is not listed as threatened or endangered under the ESA, but the Gulf of Maine stock, which includes individuals from the West Indies DPS, is considered Strategic under the MMPA. However, as described in the Description of Marine Mammals in the Geographic Area of Specified Activities, humpback whales along the Atlantic Coast have been experiencing an active UME as elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately 40 percent had evidence of human interaction (vessel strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts and take from vessel strike and entanglement is not proposed to be authorized. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS of which the Gulf of Maine stock is a part) remains stable at approximately 12,000 individuals.

The proposed rule would allow for the authorization of up to 38 takes, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 4 and 15, respectively (combined, this maximum annual take (n=19) equates to approximately 1.36 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.,* years when only HRG surveys would be occurring). Given that humpback whales are known to forage off of New Jersey, it is likely that some subset of the individual whales exposed could be taken several times annually.

Among the activities analyzed, impact pile driving is likely to result in the highest amount of Level A harassment annual take of (n=4) humpback whales. The maximum amount of annual take proposed to be authorized (n=15), by Level B harassment, is highest for impact pile driving.

As described in the Description of Marine Mammals in the Geographic Area of Specified Activities section, Humpback whales are known to occur regularly throughout the Mid-Atlantic Bight, including New Jersey waters, with strong seasonality where peak occurrences occur April to June (Barco *et al.,* 2002; Geo-Marine, 2010; Curtice *et al.,* 2019; Hayes *et al.,* 2022).

In the western North Atlantic, humpback whales feed during spring, summer, and fall over a geographic range encompassing the eastern coast of the U.S. Feeding is generally considered to be focused in areas north of the project area, including a feeding BIA in the Gulf of Maine/Stellwagen Bank/Great South Channel, but has been documented farther south and off the coast of New Jersey. When foraging, humpback whales tend to remain in the area for extended durations to capitalize on the food sources.

Assuming humpback whales who are feeding in waters within or surrounding the Project Area behave similarly, we expect that the predicted instances of disturbance could be comprised of some individuals that may be exposed on multiple days if they are utilizing the area as foraging habitat. Also similar to other baleen whales, if migrating, such that individuals would likely be exposed to noise levels from the project above the harassment thresholds only once during migration through the Project Area.

For all the reasons described in the *Mysticetes* section above, we anticipate any potential PTS and TTS would be

concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of baleen whales. If TTS is incurred, hearing sensitivity would likely return to pre-exposure levels relatively shortly after exposure ends. Any masking or physiological responses would also be of low magnitude and severity for reasons described above.

Given the magnitude and severity of the impacts discussed above (including no more than 38 takes over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 4 and 15, respectively), and in consideration of the proposed mitigation measures and other information presented, Atlantic Shores' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have preliminarily determined that the take by harassment anticipated and proposed to be authorized would have a negligible impact on the Gulf of Maine stock of humpback whales.

*Minke Whale*

Minke whales are not listed under the ESA, and the Canadian East Coast stock is neither considered Depleted nor strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the Project Area. As described in the Description of Marine Mammals in the Geographic Area of Specified Activities, a UME has been designated for this species but is pending closure. No serious injury or mortality is anticipated or proposed for authorization for this species.

The proposed rule would allow for the authorization of up to 347 takes, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 17 and 159, respectively (combined, this annual take (n=176) equates to approximately 0.80 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.,* years when only HRG surveys would be occurring). As described in the Description of Marine Mammals in the Geographic Area of Specified Activities section, minke whales are common offshore the U.S. Eastern Seaboard with a strong seasonal component in the continental shelf and in deeper, off-shelf waters (CETAP, 1982; Hayes *et al.,* 2022). In the project area, minke whales are predominantly migratory and their known feeding areas are north, including a feeding BIA in the southwestern Gulf of Maine and George's Bank. Therefore, they would be more likely to be moving through (with each take representing a separate individual), though it is possible that some subset of the individual whales exposed could be taken up to a few times annually.

As described in the Description of Marine Mammals in the Geographic Area of Specified Activities section, there is a UME for minke whales along the Atlantic Coast from Maine through South Carolina, with the highest number of deaths in Massachusetts, Maine, and New York, and preliminary findings in several of the whales have shown evidence of human interactions or infectious diseases. However, we note that the population abundance is greater than 21,000 and the take proposed for authorization through this action is not expected to exacerbate the UME in any way.

We anticipate the impacts of this harassment to follow those described in the general *Mysticetes* section above. Any potential PTS would be minor (limited to a few dB) and any TTS would be of short duration and concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of minke whales. Level B harassment would be temporary, with primary impacts being temporary displacement of the Project Area but not abandonment of any migratory or foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than 347 takes over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 17 and 159, respectively), and in consideration of the proposed mitigation measures and other information presented, Atlantic Shores' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have preliminarily determined that the take by harassment anticipated and proposed to be authorized would have a negligible impact on the Canadian Eastern Coastal stock of minke whales.

*Sei Whale*

Sei whales are listed as Endangered under the ESA, and the Nova Scotia stock is considered both Depleted and Strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the Project Area and no UME has been designated for this species or stock. No serious injury or mortality is anticipated or proposed for authorization for this species.

The proposed rule would allow for the authorization of up to 24 takes, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 1 and 8, respectively (combined, this annual take (n=9) equates to approximately 0.14 percent of the stock abundance, if each take were considered to be of a different individual). As described in the Description of Marine Mammals in the Geographic Area of Specified Activities section, most of the sei whale distribution is concentrated in Canadian waters and seasonally in northerly U.S. waters, though they are uncommonly observed in the waters off of New Jersey Because sei whales are migratory and their known feeding areas are east and north of the Project Area (*e.g.,* there is a feeding BIA in the Gulf of Maine), they would be more likely to be moving through and, considering this and the very low number of total takes, it is unlikely that any individual would be exposed more than once within a given year.

With respect to the severity of those individual takes by behavioral Level B harassment, we would anticipate impacts to be limited to low-level, temporary behavioral responses with avoidance and potential masking impacts in the vicinity of the turbine installation to be the most likely type of response. Any potential PTS and TTS would likely be concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of sei whales. Moreover, any TTS would be of a small degree. Any avoidance of the Project Area due to the Project's activities would be expected to be temporary.

Given the magnitude and severity of the impacts discussed above (including no more than 24 takes over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 1 and 8, respectively), and in consideration of the proposed mitigation measures and other information presented, Atlantic Shores' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival.

For these reasons, we have preliminarily determined that the take by harassment anticipated and proposed to be authorized would have a negligible impact on the Nova Scotia stock of sei whales.

**Odontocetes**

In this section, we include information here that applies to all of the odontocete species and stocks addressed below. Odontocetes include dolphins, porpoises, and all other whales possessing teeth, and we further divide them into the following subsections: sperm whales, small whales and dolphins, and harbor porpoise. These sub-sections include more specific information, as well as conclusions for each stock represented.

All of the takes of odontocetes proposed for authorization incidental to Atlantic Shores' specified activities are by pile driving and HRG surveys. No serious injury or mortality is anticipated or proposed. We anticipate that, given ranges of individuals (*i.e.,* that some individuals remain within a small area for some period of time), and non-migratory nature of some odontocetes in general (especially as compared to mysticetes), these takes are more likely to represent multiple exposures of a smaller number of individuals than is the case for mysticetes, though some takes may also represent one-time exposures to an individual. Foundation installation is likely to disturb odontocetes to the greatest extent, compared to HRG surveys. While we expect animals to avoid the area during foundation installation, their habitat range is extensive compared to the area ensonified during these activities.

As described earlier, Level B harassment may include direct disruptions in behavioral patterns (*e.g.,* avoidance, changes in vocalizations (from masking) or foraging), as well as those associated with stress responses or TTS. Odontocetes are highly mobile species and, similar to mysticetes, NMFS expects any avoidance behavior to be limited to the area near the sound source. While masking could occur during foundation installation, it would only occur in the vicinity of and during the duration of the activity, and would not generally occur in a frequency range that overlaps most odontocete communication or any echolocation signals. The mitigation measures (*e.g.,* use of sound attenuation systems, implementation of clearance and shutdown zones) would also minimize received levels such that the severity of any behavioral response would be expected to be less than exposure to unmitigated noise exposure.

Any masking or TTS effects are anticipated to be of low-severity. First, the frequency range of pile driving, the most impactful activity proposed to be conducted in terms of response severity, falls within a portion of the frequency range of most odontocete vocalizations. However, odontocete vocalizations span a much wider range than the low frequency construction activities proposed for the project. As described above, recent studies suggest odontocetes have a mechanism to self-mitigate (*i.e.,* reduce hearing sensitivity) the impacts of noise exposure, which could potentially reduce TTS impacts. Any masking or TTS is anticipated to be limited and would typically only interfere with communication within a portion of an odontocete's range and as discussed earlier, the effects would only be expected to be of a short duration and, for TTS, a relatively small degree.

Furthermore, odontocete echolocation occurs predominantly at frequencies significantly higher than low frequency construction activities. Therefore, there is little likelihood that threshold shift would interfere with feeding behaviors. For HRG surveys, the sources operate at higher frequencies than foundation installation activities. However, sounds from these sources attenuate very quickly in the water column, as described above. Therefore, any potential for PTS and TTS and masking is very limited. Further, odontocetes (*e.g.,* common dolphins, spotted dolphfins, bottlenose dolphins) have demonstrated an affinity to bow-ride actively surveying HRG surveys. Therefore, the severity of any harassment, if it does occur, is anticipated to be discountable based on the lack of avoidance previously demonstrated by these species.

The waters off the coast of New Jersey are used by several odontocete species. However, none except the sperm whale are listed under the ESA, and there are no known habitats of particular importance. In general, odontocete habitat ranges are far-reaching along the Atlantic coast of the U.S., and the waters off of New Jersey, including the Project Area, do not contain any particularly unique odontocete habitat features.

*Sperm Whales*

Sperm whales are listed as endangered under the ESA, and the North Atlantic stock is considered both Depleted and Strategic under the MMPA. The North Atlantic stock spans the East Coast out into oceanic waters well beyond the U.S. EEZ. Although listed as endangered, the primary threat faced by the sperm whale across its range (*i.e.,* commercial whaling) has been eliminated. Current potential threats to the species globally include vessel strikes, entanglement in fishing gear, anthropogenic noise, exposure to contaminants, climate change, and marine debris. There is no currently reported trend for the stock and, although the species is listed as endangered under the ESA, there are no specific issues with the status of the stock that cause particular concern (*e.g.,* no UMEs). There are no known areas of biological importance (*e.g.,* critical habitat or BIAs) in or near the Project Area. No mortality or serious injury is anticipated or proposed to be authorized for this species.

The proposed rule would allow for the authorization of up to 13 takes, by Level B harassment only, over the 5-year period. The maximum annual allowable take would be 5, which equates to approximately 0.11 percent of the stock abundance, if each take were considered to be of a different individual, and with far lower numbers than that expected in the years without foundation installation (*e.g.,* years when only HRG surveys would be occurring). Given sperm whale's preference for deeper waters, especially for feeding, it is unlikely that individuals would remain in the Project Area for multiple days, and therefore, the estimated takes likely represent exposures of different individuals on 1 day each, annually.

If sperm whales are present in the Project Area during any project activities, they would likely be only transient visitors and not engaging in any significant behaviors. Further, the potential for TTS is low for reasons described in the general *Odontocete* section, but, if it does occur, any hearing shift would be small and of a short duration. Because whales are not expected to be foraging in the Project Area, any TTS is not expected to interfere with foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than 13 takes, by Level B harassment only, over the course of the 5-year rule, and a maximum annual allowable take of 5), and in consideration of the proposed mitigation and other information presented, Atlantic Shores' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have preliminarily determined that the take by harassment anticipated and proposed to be authorized would have a negligible impact on the North Atlantic stock of sperm whales.

*Dolphins and Small Whales (Including Delphinids)*

The six species and seven stocks included in this group (which are indicated in Table 4 in the Delphinidae family) are not listed under the ESA; however, short-finned pilot whales are listed as Strategic under the MMPA. There are no known areas of specific biological importance in or around the Project Area for any of these species and no UMEs have been designated for any of these species. No serious injury or mortality is anticipated or proposed for authorization for these species.

The six delphinid species with take proposed for the project consist of: Atlantic spotted dolphin, Atlantic white-sided dolphin, common bottlenose dolphin, common dolphin, long-finned pilot whale, short-finned pilot whale, and Risso's dolphin. The proposed rule would allow for the authorization of up to between 46 and 7,951 takes (depending on species), by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take for these species by Level A harassment and Level B harassment, would range from 0 to 1 and 14 to 3,634, respectively (this annual take equates to approximately 0.05 to 29.36 percent of the stock abundance, depending on each species, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.,* years when only HRG surveys would be occurring).

For both stocks of bottlenose dolphins, given the higher number of takes relative to the stock abundance, primarily due to nearshore landfall activities (*i.e.,* temporary cofferdam installation and removal), while some of the takes likely represent exposures of different individuals on 1 day a year, it is likely that some subset of the individuals exposed could be taken several times annually. For Atlantic spotted dolphins, Atlantic white-sided dolphins, common dolphins, long- and short-finned pilot whales, and Risso's dolphins, given the number of takes, while many of the takes likely represent exposures of different individuals on 1 day a year, some subset of the individuals exposed could be taken up to a few times annually.

The number of takes, likely movement patterns of the affected species, and the intensity of any Level A or B harassments, combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would not impact the reproduction or survival of any individuals. While delphinids may be taken on several occasions, none of these species are known to have small home ranges within the Project Area or known to be particularly sensitive to anthropogenic noise. The potential for PTS in dolphins and small whales is very low and, if PTS does occur, would occur to a limited number of individuals, only affect a small portion of the individual's hearing range, and would be limited to the frequency ranges of the activity which does not span across most of their hearing range. Some TTS can also occur but, again, it would be limited to the frequency ranges of the activity and any loss of hearing sensitivity is anticipated to return to pre-exposure conditions shortly after the animals move away from the source or the source ceases.

Given the magnitude and severity of the impacts discussed above, and in consideration of the proposed mitigation and other information presented, Atlantic Shores' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have preliminarily determined that the take by harassment anticipated and proposed for authorization would have a negligible impact on all of the species and stocks addressed in this section.

*Harbor Porpoises*

Harbor porpoises are not listed as Threatened or Endangered under the ESA, and the Gulf of Maine/Bay of Fundy stock is neither considered depleted or strategic under the MMPA. The stock is found predominantly in northern U.S. coastal waters (less than 150 m depth) and up into Canada's Bay of Fundy (between New Brunswick and Nova Scotia). Although the population trend is not known, there are no UMEs or other factors that cause particular concern for this stock. No mortality or non-auditory injury are anticipated or proposed for authorization for this stock.

The proposed rule would allow for the authorization of up to 335 takes, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 13 and 173, respectively (combined, this annual take (n=186) equates to approximately 0.19 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.,* years when only HRG surveys would be occurring). Given the number of takes, while many of the takes likely represent exposures of different individuals on 1 day a year, some subset of the individuals exposed could be taken up to a few times annually.

Regarding the severity of takes by Level B harassment, because harbor porpoises are particularly sensitive to noise, it is likely that a fair number of the responses could be of a moderate nature, particularly to pile driving. In response to pile driving, harbor porpoises are likely to avoid the area during construction, as previously demonstrated in Tougaard *et al.* (2009) in Denmark, in Dahne *et al.* (2013) in Germany, and in Vallejo *et al.* (2017) in the United Kingdom, although a study by Graham *et al.* (2019) may indicate that the avoidance distance could decrease over time. Given that foundation installation is scheduled to occur off the coast of New Jersey and, given alternative foraging areas nearby, any avoidance of the area by individuals is not likely to impact the reproduction or survival of any individuals.

With respect to PTS and TTS, the effects on an individual are likely relatively low given the frequency bands of pile driving (most energy below 2 kHz) compared to harbor porpoise hearing (150 Hz to 160 kHz peaking around 40 kHz). Specifically, TTS is unlikely to impact hearing ability in their more sensitive hearing ranges, or the frequencies in which they communicate and echolocate. We expect any PTS that may occur to be within the very low end of their hearing range where harbor porpoises are not particularly sensitive and any PTS would affect a relatively small portion of the individual's hearing range. As such, any PTS would not interfere with key foraging or reproductive strategies necessary for reproduction or survival.

As discussed in Hayes *et al.* (2022), harbor porpoises are seasonally distributed. During fall (October through December) and spring (April through June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south. During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina, and lower densities are found in waters off New York to New Brunswick, Canada. In non-summer months they have been seen from the coastline to deep waters (>1,800 m; Westgate *et al.,* 1998), although the majority are found over the continental shelf. While harbor porpoises are likely to avoid the area during any of the project's construction activities, as demonstrated during

European wind farm construction, the time of year in which work would occur is when harbor porpoises are not in highest abundance, and any work that does occur would not result in the species' abandonment of the waters off of New Jersey.

Given the magnitude and severity of the impacts discussed above, and in consideration of the proposed mitigation and other information presented, Atlantic Shores' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have preliminarily determined that the take by harassment anticipated and proposed for authorization would have a negligible impact on the Gulf of Maine/Bay of Fundy stock of harbor porpoises.

**Phocids (Harbor Seals and Gray Seals)**

The harbor seal and gray seal are not listed under the ESA, and neither the western North Atlantic stock of gray seal nor the western North Atlantic stock of harbor seal are considered depleted or strategic under the MMPA. There are no known areas of specific biological importance in or around the Project Area. As described in the Description of Marine Mammals in the Geographic Area of Specified Activities section, a UME has been designated for harbor seals and gray seals and is described further below. No serious injury or mortality is anticipated or proposed for authorization for this species.

For the two seal species, the proposed rule would allow for the total authorization of up to 675 (gray seal) and 1,526 (harbor seal) takes for each species, by Level A harassment and Level B harassment, over the 5-year period. The maximum annual allowable take for these species, by Level A harassment and Level B harassment, would range from 2 to 8 and 299 to 684, respectively (combined, this annual take (n=301 to 692) equates to approximately 1.10 to 1.13 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.,* years when only HRG surveys would be occurring). Though gray seals and harbor seals are considered migratory and no specific feeding areas have been designated in the area, the higher number of takes relative to the stock abundance suggests that while some of the takes likely represent exposures of different individuals on 1 day a year, it is likely that some subset of the individuals exposed could be taken several times annually.

Harbor and gray seals occur in New Jersey waters most often from December through April, with harbor seal occurrences more common than gray seals (Reynolds, 2021). Seals are more likely to be close to shore (*e.g.,* closer to the edge of the area ensonified above NMFS' harassment threshold), such that exposure to foundation installation would be expected to be at comparatively lower levels. Known haul-outs for seals occur near the coastal cofferdam locations at the Atlantic landfall site and the Monmouth landfall site (*i.e.,* in Sandy Hook, Barnegat Bay, and Great Bay). However, based on the distances between the cofferdam locations and the known haul-out sites, neither Atlantic Shores, nor NMFS, expects that in-air sounds produced would cause the take of hauled out pinnipeds. As all documented pinniped haul-outs are located far from each of the cofferdam locations, NMFS does not expect any harassment to occur, nor have we proposed to authorize any take from in-air impacts on hauled out seals.

As described in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, construction of wind farms in Europe resulted in pinnipeds temporarily avoiding construction areas but returning within short time frames after construction was complete (Carroll *et al.,* 2010; Hamre *et al.,* 2011; Hastie *et al.,* 2015; Russell *et al.,* 2016; Brasseur *et al.,* 2010). Effects on pinnipeds that are taken by Level B harassment in the Project Area would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals would simply move away from the sound source and be temporarily displaced from those areas (Lucke *et al.,* 2006; Edren *et al.,* 2010; Skeate *et al.,* 2012; Russell *et al.,* 2016). Given the low anticipated magnitude of impacts from any given exposure (*e.g.,* temporary avoidance), even repeated Level B harassment across a few days of some small subset of individuals, which could occur, is unlikely to result in impacts on the reproduction or survival of any individuals. Moreover, pinnipeds would benefit from the mitigation measures described in 50 CFR part 217—Regulations Governing the Taking and Importing of Marine Mammals Incidental to Specified Activities.

As described above, noise from pile driving is mainly low frequency and, while any PTS and TTS that does occur would fall within the lower end of pinniped hearing ranges (50 Hz to 86 kHz), PTS and TTS would not occur at frequencies around 5 kHz, where pinniped hearing is most susceptible to noise-induced hearing loss (Kastelein *et al.,* 2018). In summary, any PTS and TTS would be of small degree and not occur across the entire, or even most sensitive, hearing range. Hence, any impacts from PTS and TTS are likely to be of low severity and not interfere with behaviors critical to reproduction or survival.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and occurred across Maine, New Hampshire, and Massachusetts until 2020. Based on tests conducted so far, the main pathogen found in the seals belonging to that UME was phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. Currently, the only active UME is occurring in Maine with some harbor and gray seals testing positive for highly pathogenic avian influenza (HPAI) H5N1. Although elevated strandings continue, neither UME (alone or in combination) provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 61,000 and annual mortality/serious injury (M/SI) (n=339) is well below PBR (1,729) (Hayes *et al.,* 2020). The population abundance for gray seals in the United States is over 27,000, with an estimated overall abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic, as well as in Canada (Hayes *et al.,* 2020).

Given the magnitude and severity of the impacts discussed above, and in consideration of the proposed mitigation and other information presented, Atlantic Shores' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have preliminarily determined that the take by harassment anticipated and proposed for authorization would have a negligible impact on harbor and gray seals.

**Preliminary Negligible Impact Determination**

No mortality or serious injury is anticipated to occur or proposed to be authorized. As described in the preliminary analysis above, the impacts resulting from the project's activities cannot be reasonably expected to, and are not reasonably likely to, adversely affect any of the species or stocks for which take is proposed for authorization through effects on annual rates of recruitment or survival. Based on the

analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that the marine mammal take from all of Atlantic Shores' specified activities combined will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals estimated to be taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take (by Level A harassment and/or Level B harassment) of 16 species of marine mammal (with 17 managed stocks). The maximum number of instances of takes by combined Level A harassment and Level B harassment possible within any 1 year and proposed for authorization relative to the best available population abundance is less than one-third for all species and stocks potentially impacted.

For 15 of these species (15 stocks), less than 3 percent of the annual stock abundance is proposed to be authorized for take by Level A and/or Level B harassment and for 2 stock (both bottlenose dolphin), less than 6 percent is proposed for one stock (offshore) and less than 23 percent is proposed for the other (coastal). Specific to the North Atlantic right whale, the maximum amount of take, which is by Level B harassment only, is 21, or 6.2 percent of the stock abundance, assuming that each instance of take represents a different individual. Please see Table 26 for information relating to this small numbers analysis.

As noted in the final rule for the Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico (86 FR 5322, January 19, 2023), NMFS has determined that the small numbers finding should be applied to the annual take authorized per individual LOA, rather than to the total annual taking for all activities potentially occurring under the incidental take regulations. As described previously, Atlantic Shores has asked for two separate LOAs through which to authorize the requested take. The take authorized through each LOA would be less than that analyzed in the rule and would, together, not exceed the take analyzed. While NMFS still attaches the ultimate small numbers conclusion to the individual LOAs as described in the above-referenced Gulf of Mexico rule, where the entirety of the take allowable under regulations would be considered small numbers, as is the case here, then it follows that any smaller subset of that take authorized through subordinate LOAs will also qualify as small numbers. NMFS may, therefore, elect to present the supporting information for the entire amount of take for purposes of the small numbers analysis, rather than distinguishing the take that will be included in each LOA.

Based on the analysis contained herein of the proposed activities (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Classification**

**Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the promulgation of rulemakings, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NOAA GARFO.

The NMFS Office of Protected Resources is proposing to authorize the take of four marine mammal species which are listed under the ESA: North Atlantic right, fin, sei, and sperm whales. The Permit and Conservation Division requested initiation of section 7 consultation on July 19, 2023, with GARFO for the promulgation of the rulemaking. NMFS will conclude the Endangered Species Act consultation prior to reaching a determination regarding the proposed issuance of the authorization. The proposed regulations and any subsequent LOA(s) would be conditioned such that, in addition to measures included in those documents, Atlantic Shores would also be required to abide by the reasonable and prudent measures and terms and conditions of the Biological Opinion and Incidental Take Statement, as issued by NMFS, pursuant to section 7 of the Endangered Species Act.

**Executive Order 12866**

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866, as amended by Executive Order 14094.

**Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Atlantic Shores is the sole entity that would be subject to the requirements in these proposed regulations, and Atlantic Shores is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Under the RFA, governmental jurisdictions are considered to be small if they are governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

**Paperwork Reduction Act**

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a

currently valid Office of Management and Budget (OMB) control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOA, and reports. Submit any comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES** section) and through the Regulatory Dashboard at *www.reginfo.gov.*

**Coastal Zone Management Act (CZMA)**

The Coastal Zone Management Act (CZMA) requires Federal actions within and outside the coastal zone that have reasonably foreseeable effects on any coastal use or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally-approved coastal management program (16 U.S.C. 1456(c)). NMFS has determined that Atlantic Shores' application for incidental take regulations is not an activity listed by the New Jersey Coastal Management Program pursuant to 15 CFR 930.53 and, thus, is not subject to Federal consistency requirements in the absence of the receipt and prior approval of an unlisted activity review request from the state by the Director of NOAA's Office for Coastal Management. Consistent with 15 CFR 930.54, NMFS published Notice of Receipt of Atlantic Shores' application for this incidental take regulation in the **Federal Register** on September 29, 2022 (87 FR 59061) and a 15-day extension on October 28, 2022 (87 FR 65193) and is now publishing the proposed rule. The state of New Jersey did not request approval from the Director of NOAA's Office for Coastal Management to review Atlantic Shores' application as an unlisted activity, and the time period for making such request has expired. Therefore, NMFS has determined the incidental take authorization is not subject to Federal consistency review.

**Proposed Promulgation**

As a result of these preliminary determinations, NMFS proposes to promulgate a LOA to Atlantic Shores authorizing take, by Level A harassment and Level B harassment, incidental to construction activities associated with Atlantic Shores South offshore of New Jersey for a 5-year period from January 1, 2025, through December 31, 2029, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

**Request for Additional Information and Public Comments**

NMFS requests interested persons to submit comments, information, and suggestions concerning Atlantic Shores' request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare the final rule and make final determinations on whether to issue the requested authorization. This proposed rule and referenced documents provide all environmental information relating to our proposed action for public review.

Recognizing, as a general matter, that this action is one of many current and future wind energy actions, we invite comment on the relative merits of the IHA, single-action rule/LOA, and programmatic multi-action rule/LOA approaches, including potential marine mammal take impacts resulting from this and other related wind energy actions and possible benefits resulting from regulatory certainty and efficiency.

**List of Subjects in 50 CFR Part 217**

Administrative practice and procedure, Endangered and threatened species, Fish, Fisheries, Marine mammals, Penalties, Reporting and recordkeeping requirements, Wildlife.

Dated: September 7, 2023.

**Samuel D. Rauch, III,**

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

For reasons set forth in the preamble, NMFS proposes to amend 50 CFR part 217 to read as follows:

## PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read:

**Authority:** 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Add subpart EE, consisting of §§ 217.300 through 217.309, to read as follows:

### Subpart EE—Taking Marine Mammals Incidental to the Atlantic Shores South Project Offshore of New Jersey

Sec.

217.300 Specified activity and specified geographical region.
217.301 Effective dates.
217.302 Permissible methods of taking.
217.303 Prohibitions.
217.304 Mitigation requirements.
217.305 Monitoring and reporting requirements
217.306 Letter of Authorization.
217.307 Modifications of Letter of Authorization.
217.308–217.309 [Reserved]

### Subpart EE—Taking Marine Mammals Incidental to the Atlantic Shores South Project Offshore of New Jersey

#### § 217.300 Specified activity and specified geographical region.

(a) Regulations in this subpart apply to activities associated with the Atlantic Shores South project (hereafter referred to as the ''Project'') by Atlantic Shores Offshore Wind, LLC (hereafter referred to as ''LOA Holder''), and those persons it authorizes or funds to conduct activities on its behalf in the specified geographical region outlined in paragraph (b) of this section. Requirements imposed on LOA Holder must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The specified geographical region is the Mid-Atlantic Bight, which includes, but is not limited to the Bureau of Ocean Energy Management (BOEM) Lease Area Outer Continental Shelf (OCS)–A 0499 Commercial Lease of Submerged Lands for Renewable Energy Development, along the relevant Export Cable Corridors (ECCs), and at the two sea-to-shore transition points located at the Atlantic City and the Monmouth landfall locations.

(c) The specified activities are impact pile driving of wind turbine generators (WTGs), offshore substations (OSSs), and a meteorological tower (Met Tower); vibratory pile driving (install and subsequently remove) of cofferdams; high-resolution geophysical (HRG) site characterization surveys; vessel transit within the specified geographical region to transport crew, supplies, and materials; WTG operation; fishery and ecological monitoring surveys; placement of scour protection; and trenching, laying, and burial activities associated with the installation of the ECCs from OSSs to shore-based converter stations and inter-array cables between turbines.

#### § 217.301 Effective dates.

The regulations in this subpart are effective from January 1, 2025, through December 31, 2029.

#### § 217.302 Permissible methods of taking.

Under the LOAs, issued pursuant to §§ 216.106 and 217.306, the LOA Holder, and those persons it authorizes or funds to conduct activities on its behalf, may incidentally, but not intentionally, take marine mammals within the vicinity of BOEM Lease Area OCS–A 0499 Commercial Lease of Submerged Lands for Renewable Energy

Development, along export cables routes, and at the two sea-to-shore transition points located in New Jersey at Atlantic City and Monmouth in the following ways, provided the LOA Holder is in complete compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOAs:

(a) By Level B harassment associated with the acoustic disturbance of marine mammals by impact pile driving (WTG, OSS, and Met Tower foundation installation), vibratory pile driving (cofferdam installation and removal), and HRG site characterization surveys; and

(b) By Level A harassment associated with the acoustic disturbance of marine mammals by impact pile driving of WTG, OSS, and Met Tower foundations.

(c) Take by mortality or serious injury of any marine mammal species is not authorized.

(d) The incidental take of marine mammals by the activities listed in paragraphs (a) and (b) of this section is limited to the following species:

TABLE 1 TO PARAGRAPH (d)

| Marine mammal species | Scientific name | Stock |
|---|---|---|
| North Atlantic right whale | *Eubalaena glacialis* | Western Atlantic. |
| Fin whale | *Balaenoptera physalus* | Western North Atlantic. |
| Humpback whale | *Megaptera novaeangliae* | Gulf of Maine. |
| Minke whale | *Balaenoptera acutorostrata* | Canadian Eastern Coastal. |
| Sei whale | *Balaenoptera borealis* | Nova Scotia. |
| Sperm whale | *Physeter macrocephalus* | North Atlantic. |
| Atlantic spotted dolphin | *Stenella frontalis* | Western North Atlantic. |
| Atlantic white-sided dolphin | *Lagenorhynchus acutus* | Western North Atlantic. |
| Bottlenose dolphin | *Tursiops truncatus* | Western North Atlantic—Offshore, Northern Migratory Coastal. |
| Common dolphin | *Delphinus delphis* | Western North Atlantic. |
| Long-finned pilot whale | *Globicephala melas* | Western North Atlantic. |
| Short-finned pilot whale | *Globicephala macrorhynchus* | Western North Atlantic. |
| Risso's dolphin | *Grampus griseus* | Western North Atlantic. |
| Harbor porpoise | *Phocoena phocoena* | Gulf of Maine/Bay of Fundy. |
| Gray seal | *Halichoerus grypus* | Western North Atlantic. |
| Harbor seal | *Phoca vitulina* | Western North Atlantic. |

**§ 217.303 Prohibitions.**

Except for the takings described in § 217.302 and authorized by the LOAs issued under § 217.306 or § 217.307, it is unlawful for any person to do any of the following in connection with the activities described in this subpart:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or the LOAs issued under §§ 217.306 and 217.307;

(b) Take any marine mammal not specified in § 217.302(d);

(c) Take any marine mammal specified in the LOAs in any manner other than as specified in the LOAs; or

(d) Take any marine mammal specified in § 217.302(d), after NMFS Office of Protected Resources determines such taking results in more than a negligible impact on the species or stocks of such marine mammals.

**§ 217.304 Mitigation requirements.**

When conducting the activities identified in §§ 217.300(c) within the specified geographical area described in § 217.300(b), LOA Holder must implement the mitigation measures contained in this section and any LOAs issued under §§ 217.306 and 217.307. These mitigation measures include, but are not limited to:

(a) *General conditions.* LOA Holder must comply with the following general measures:

(1) A copy of any issued LOAs must be in the possession of LOA Holder and its designees, all vessel operators, visual protected species observers (PSOs), passive acoustic monitoring (PAM) operators, pile driver operators, and any other relevant designees operating under the authority of the issued LOAs;

(2) LOA Holder must conduct training for construction, survey, and vessel personnel and the marine mammal monitoring team (PSO and PAM operators) prior to the start of all in-water construction activities in order to explain responsibilities, communication procedures, marine mammal detection and identification, mitigation, monitoring, and reporting requirements, safety and operational procedures, and authorities of the marine mammal monitoring team(s). This training must be repeated for new personnel who join the work during the project. A description of the training program must be provided to NMFS at least 60 days prior to the initial training before in-water activities begin. Confirmation of all required training must be documented on a training course log sheet and reported to NMFS Office of Protected Resources prior to initiating project activities;

(3) Prior to and when conducting any in-water activities and vessel operations, LOA Holder personnel and contractors (*e.g.,* vessel operators, PSOs) must use available sources of information on North Atlantic right whale presence in or near the Project Area including daily monitoring of the Right Whale Sightings Advisory System, and monitoring of U.S. Coast Guard VHF Channel 16 throughout the day to receive notification of any sightings and/or information associated with any Slow Zones (*i.e.,* Dynamic Management Areas (DMAs) and/or acoustically-triggered slow zones) to provide situational awareness for both vessel operators, PSO(s), and PAM operator(s); The marine mammal monitoring team must monitor these systems no less than every 4 hours.

(4) Any marine mammal observed by project personnel must be immediately communicated to any on-duty PSOs, PAM operator(s), and all vessel captains. Any large whale observation or acoustic detection by PSOs or PAM operators must be conveyed to all vessel captains;

(5) For North Atlantic right whales, any visual or acoustic detection must trigger a delay to the commencement of pile driving and HRG surveys.

(6) In the event that a large whale is sighted or acoustically detected that cannot be confirmed as a non-North Atlantic right whale, it must be treated as if it were a North Atlantic right whale for purposes of mitigation;

(7) If a delay to commencing an activity is called for by the Lead PSO or PAM operator, LOA Holder must take the required mitigative action. If a shutdown of an activity is called for by the Lead PSO or PAM operator, LOA Holder must take the required mitigative action unless shutdown would result in imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. Any disagreements between the Lead PSO, PAM operator, and the activity operator regarding delays or shutdowns would only be discussed after the mitigative action has occurred;

(8) If an individual from a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized take number has been met, is observed entering or within the relevant Level B harassment zone prior to beginning a specified activity, the activity must be delayed. If the activity is ongoing, it must be shut down immediately, unless shutdown would result in imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. The activity must not commence or resume until the animal(s) has been confirmed to have left and is on a path away from the Level B harassment zone or after 15 minutes for odontocetes (excluding sperm whales) and pinnipeds, and 30 minutes for all other species with no further sightings;

(9) For in-water construction heavy machinery activities listed in § 217.300(c), if a marine mammal is on a path towards or comes within 10 meters (m) (32.8 feet) of equipment, LOA Holder must cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment;

(10) All vessels must be equipped with a properly installed, operational Automatic Identification System (AIS) device and LOA Holder must report all Maritime Mobile Service Identify (MMSI) numbers to NMFS Office of Protected Resources;

(11) By accepting the issued LOAs, LOA Holder consents to on-site observation and inspections by Federal agency personnel (including NOAA personnel) during activities described in this subpart, for the purposes of evaluating the implementation and effectiveness of measures contained within the LOAs and this subpart; and

(12) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with a PSO, PAM Operator, or vessel crew member acting as an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment. Personnel may report any violations to the NMFS Office of Law Enforcement.

(b) *Vessel strike avoidance measures.* LOA Holder must comply with the following vessel strike avoidance measures, unless an emergency situation presents a threat to the health, safety, or life of a person or when a vessel, actively engaged in emergency rescue or response duties, including vessel-in-distress or environmental crisis response, requires speeds in excess of 10 kn to fulfill those responsibilities, while in the specified geographical region:

(1) Prior to the start of the Project's activities involving vessels, LOA Holder must receive a protected species training that covers, at a minimum, identification of marine mammals that have the potential to occur where vessels would be operating; detection observation methods in both good weather conditions (*i.e.,* clear visibility, low winds, low sea states) and bad weather conditions (*i.e.,* fog, high winds, high sea states, with glare); sighting communication protocols; all vessel speed and approach limit mitigation requirements (*e.g.,* vessel strike avoidance measures); and information and resources available to the project personnel regarding the applicability of Federal laws and regulations for protected species. This training must be repeated for any new vessel personnel who join the Project. Confirmation of the observers' training and understanding of the Incidental Take Authorization (ITA) requirements must be documented on a training course log sheet and reported to NMFS;

(2) LOA Holder, regardless of their vessel's size, must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course to avoid striking any marine mammal;

(3) LOA Holder's underway vessels (*e.g.,* transiting, surveying) operating at any speed must have a dedicated visual observer on duty at all times to monitor for marine mammals within a 180° direction of the forward path of the vessel (90° port to 90° starboard) located at an appropriate vantage point for ensuring vessels are maintaining appropriate separation distances. Visual observers must be equipped with alternative monitoring technology (*e.g.,* night vision devices, infrared cameras) for periods of low visibility (*e.g.,* darkness, rain, fog, *etc.*). The dedicated visual observer must receive prior training on protected species detection and identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements in this subpart. Visual observers may be third-party observers (*i.e.,* NMFS-approved PSOs) or trained crew members, as defined in § 217.305 (a)(1).

(4) LOA Holder must continuously monitor the U.S. Coast Guard VHF Channel 16 at the onset of transiting through the duration of transiting, over which North Atlantic right whale sightings are broadcasted. At the onset of transiting and at least once every 4 hours, vessel operators and/or trained crew member(s) must also monitor the LOA Holder's Project-wide Situational Awareness System, WhaleAlert, and relevant NOAA information systems such as the Right Whale Sighting Advisory System (RWSAS) for the presence of North Atlantic right whales;

(5) All LOA Holder's vessels must transit at 10 kn or less within any active North Atlantic right whale Slow Zone (*i.e.,* Dynamic Management Areas (DMAs) or acoustically-triggered slow zone);

(6) LOA Holder's vessels, regardless of size, must immediately reduce speed to 10 kn or less for at least 24 hours when a North Atlantic right whale is sighted at any distance by any project-related personnel or acoustically detected by any project-related PAM system. Each subsequent observation or acoustic detection in the Project area shall trigger an additional 24-hour period. If a North Atlantic right whale is reported via any of the monitoring systems (see (b)(4) of this section) within 10 kilometers (km; 6.2 miles (mi)) of a transiting vessel(s), that vessel must operate at 10 knots (kn; 11.5 miles per hour (mph)) or less for 24 hours following the reported detection;

(7) LOA Holder's vessels, regardless of size, must immediately reduce speed to 10 kn or less when any large whale (other than a North Atlantic right whale) is observed within 500 meters (m; 1,640 ft (ft)) of an underway vessel;

(8) If LOA Holder's vessel(s) are traveling at speeds greater than 10 kn (*i.e.,* no speed restrictions are enacted) in a transit corridor from a port to the Lease Area, in addition to the required dedicated visual observer, LOA Holder must monitor the transit corridor in real-time with PAM prior to and during transits. If a North Atlantic right whale is detected via visual observation or PAM within or approaching the transit corridor, all crew transfer vessels must travel at 10 kn or less for 24 hours following the detection. Each subsequent detection shall trigger a 24-hour reset. A slowdown in the transit corridor expires when there has been no

further visual or acoustic detection in the transit corridor in the past 24 hours;

(9) LOA Holder's vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If underway, all vessels must steer a course away from any sighted North Atlantic right whale at 10 kn or less such that the 500-m minimum separation distance requirement is not violated. If a North Atlantic right whale is sighted within 500 m of an underway vessel, that vessel must reduce speed and shift the engine to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 500 m. If a whale is observed but cannot be confirmed as a species other than a North Atlantic right whale, the vessel operator must assume that it is a North Atlantic right whale and take the vessel strike avoidance measures described in this paragraph (b)(9);

(10) LOA Holder's vessels must maintain a minimum separation distance of 100 m (328 ft) from sperm whales and non-North Atlantic right whale baleen whales. If one of these species is sighted within 100 m of a transiting vessel, LOA Holder's vessel must reduce speed and shift the engine to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 100 m;

(11) LOA Holder's vessels must maintain a minimum separation distance of 50 m (164 ft) from all delphinoid cetaceans and pinnipeds with an exception made for those that approach the vessel (*i.e.,* bow-riding dolphins). If a delphinid cetacean or pinniped is sighted within 50 m of a transiting vessel, LOA Holder's vessel must shift the engine to neutral, with an exception made for those that approach the vessel (*e.g.,* bow-riding dolphins). Engines must not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m;

(12) When a marine mammal(s) is sighted while LOA Holder's vessel(s) is transiting, the vessel must take action as necessary to avoid violating the relevant separation distances (*e.g.,* attempt to remain parallel to the animal's course, slow down, and avoid abrupt changes in direction until the animal has left the area). This measure does not apply to any vessel towing gear or any situation where respecting the relevant separation distance would be unsafe (*i.e.,* any situation where the vessel is navigationally constrained);

(13) LOA Holder's vessels underway must not divert or alter course to approach any marine mammal. If a separation distance is triggered, any vessel underway must avoid abrupt changes in course direction and transit at 10 kn or less until the animal is outside the relevant separation distance;

(14) LOA Holder is required to abide by other speed and approach regulations. Nothing in this subpart exempts vessels from any other applicable marine mammal speed and approach regulations;

(15) LOA Holder must check, daily, for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (*i.e.,* DMAs, SMAs, Slow Zones) and any information regarding North Atlantic right whale sighting locations;

(16) LOA Holder must submit a North Atlantic Right Whale Vessel Strike Avoidance Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to the planned start of vessel activity. The plan must provide details on the vessel-based observer and PAM protocols for transiting vessels. If a plan is not submitted or approved by NMFS prior to vessel operations, all project vessels transiting, year round, must travel at speeds of 10-kn or less. LOA Holder must comply with any approved North Atlantic Right Whale Vessel Strike Avoidance Plan; and

(17) Speed over ground will be used to measure all vessel speed restrictions.

(c) *WTG, OSS, Met Tower foundation installation.* The following requirements apply to impact pile driving activities associated with the installation of WTG, OSS, and Met Tower foundations:

(1) Impact pile driving must not occur January 1 through April 30. Impact pile driving must be avoided to the maximum extent practicable in December; however, it may occur if necessary to complete the project with prior approval by NMFS;

(2) Monopiles must be no larger than 15 m in diameter, representing the larger end of the monopile design. During all monopile installation, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Hammer energies must not exceed 4,400 kilojoules for monopile installation. No more than two monopiles may be installed per day. Pin piles must be no larger than 5 m in diameter. During all pin pile installation, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Hammer energies must not exceed 2,500 kJ for pin pile installation. No more than four pin piles may be installed per day;

(3) LOA Holder must not initiate pile driving earlier than 1 hour prior to civil sunrise or later than 1.5 hours prior to civil sunset, unless the LOA Holder submits, and NMFS approves, an Alternative Monitoring Plan as part of the Pile Driving and Marine Mammal Monitoring Plan that reliably demonstrates the efficacy of their night vision devices;

(4) LOA Holder must utilize a soft-start protocol for each impact pile driving event of all foundations by performing four to six strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes;

(5) Soft-start must occur at the beginning of impact driving and at any time following a cessation of impact pile driving of 30 minutes or longer;

(6) LOA Holder must establish clearance and shutdown zones, which must be measured using the radial distance around the pile being driven. If a marine mammal is detected within or about to enter the applicable clearance zones, prior to the beginning of soft-start procedures, impact pile driving must be delayed until the animal has been visually observed exiting the clearance zone or until a specific time period has elapsed with no further sightings. The specific time periods are 15 minutes for odontocetes (excluding sperm whales) and pinnipeds, and 30 minutes for all other species;

(7) For North Atlantic right whales, any visual observation or acoustic detection must trigger a delay to the commencement of pile driving. The clearance zone may only be declared clear if no North Atlantic right whale acoustic or visual detections have occurred within the clearance zone during the 60-minute monitoring period;

(8) LOA Holder must deploy at least two fully functional, uncompromised noise abatement systems that reduce noise levels to the modeled harassment isopleths, assuming 10-dB attenuation, during all impact pile driving:

(i) A single bubble curtain must not be used;

(ii) Any bubble curtain(s) must distribute air bubbles using an air flow rate of at least 0.5 $m^3$/(minute*m). The bubble curtain(s) must surround 100 percent of the piling perimeter throughout the full depth of the water column. In the unforeseen event of a single compressor malfunction, the offshore personnel operating the bubble curtain(s) must adjust the air supply and operating pressure such that the maximum possible sound attenuation performance of the bubble curtain(s) is achieved;

(iii) The lowest bubble ring must be in contact with the seafloor for the full circumference of the ring, and the weights attached to the bottom ring

must ensure 100-percent seafloor contact;

(iv) No parts of the ring or other objects may prevent full seafloor contact with a bubble curtain ring;

(v) Construction contractors must train personnel in the proper balancing of airflow to the bubble curtain ring. LOA Holder must provide NMFS Office of Protected Resources with a bubble curtain performance test and maintenance report to review within 72 hours after each pile using a bubble curtain is installed. Additionally, a full maintenance check (*e.g.,* manually clearing holes) must occur prior to each pile being installed;

(vi) Corrections to the bubble ring(s) to meet the performance standards in this paragraph (c)(8) must occur prior to impact pile driving of monopiles and pin piles. If LOA Holder uses a noise mitigation device in addition to the bubble curtain, LOA Holder must maintain similar quality control measures as described in this paragraph (c)(8).

(9) LOA Holder must utilize NMFS-approved PAM systems, as described in paragraph (c)(16) of this section. The PAM system components (*i.e.,* acoustic buoys) must not be placed closer than 1 km to the pile being driven so that the activities do not mask the PAM system. LOA Holder must provide an adequate demonstration of and justification for the detection range of the system they plan to deploy while considering potential masking from concurrent pile-driving and vessel noise. The PAM system must be able to detect a vocalization of North Atlantic right whales up to 10 km (6.2 mi).

(10) LOA Holder must utilize PSO(s) and PAM operator(s), as described in § 217.305(c). At least three on-duty PSOs must be on the pile driving platform. Additionally, two dedicated-PSO vessels must be used at least 60 minutes before, during, and 30 minutes after all pile driving, and each dedicated-PSO vessel must have at-least three PSOs on duty during these time periods. LOA Holder may request NMFS approval to use alternative technology (*e.g.,* drones) in lieu of one or two of the dedicated PSO vessels that provide similar marine mammal detection capabilities.

(11) If a marine mammal is detected (visually or acoustically) entering or within the respective shutdown zone after pile driving has begun, the PSO or PAM operator must call for a shutdown of pile driving and LOA Holder must stop pile driving immediately, unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual or risk of damage to a vessel that creates risk of injury or loss of life for individuals, or the lead engineer determines there is pile refusal or pile instability. If pile driving is not shut down in one of these situations, LOA Holder must reduce hammer energy to the lowest level practicable and the reason(s) for not shutting down must be documented and reported to NMFS Office of Protected Resources within the applicable monitoring reports (*e.g.,* weekly, monthly).

(12) Any visual observation at any distance or acoustic detection within the PAM monitoring zone of a North Atlantic right whale triggers shutdown requirements under paragraph (c)(11) of this subsection. If pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving may not restart until the North Atlantic right whale has neither been visually or acoustically detected for 30 minutes;

(13) If pile driving has been shut down due to the presence of a marine mammal other than a North Atlantic right whale, pile driving must not restart until either the marine mammal(s) has voluntarily left the specific shutdown zones and has been visually or acoustically confirmed beyond that shutdown zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred. The specific time periods are 15 minutes for odontocetes (excluding sperm whales) and pinnipeds, and 30 minutes for all other marine mammal species. In cases where these criteria are not met, pile driving may restart only if necessary to maintain pile stability at which time LOA Holder must use the lowest hammer energy practicable to maintain stability;

(14) LOA Holder must conduct sound field verification (SFV) measurements during pile driving activities associated with the installation of, at minimum, the first three monopile foundations and/or the first three full jacket foundations (inclusive of all pin piles for a specific jacket foundation). SFV measurements must continue until at least three consecutive monopiles and three entire jacket foundations demonstrate noise levels are at or below those modeled, assuming 10-decibels (dB) of attenuation. Subsequent SFV measurements are also required should larger piles be installed or if additional piles are driven that may produce louder sound fields than those previously measured (*e.g.,* higher hammer energy, greater number of strikes). SFV measurements must be conducted as follows:

(i) Measurements must be made at a minimum of four distances from the pile(s) being driven, along a single transect, in the direction of lowest transmission loss (*i.e.,* projected lowest transmission loss coefficient), including, but not limited to, 750 m (2,460 ft) and three additional ranges selected such that measurement of Level A harassment and Level B harassment isopleths are accurate, feasible, and avoids extrapolation. At least one additional measurement at an azimuth 90 degrees from the array at 750 m must be made. At each location, there must be a near bottom and mid-water column hydrophone (measurement systems);

(ii) The recordings must be continuous throughout the duration of all pile driving of each foundation;

(iii) The SFV measurement systems must have a sensitivity appropriate for the expected sound levels from pile driving received at the nominal ranges throughout the installation of the pile. The frequency range of SFV measurement systems must cover the range of at least 20 hertz (Hz) to 20 kilohertz (kHz). The SFV measurement systems must be designed to have omnidirectional sensitivity so that the broadband received level of all pile driving exceeds the system noise floor by at least 10 dB. The dynamic range of the SFV measurement system must be sufficient such that at each location, the signals avoid poor signal-to-noise ratios for low amplitude signals and avoid clipping, nonlinearity, and saturation for high amplitude signals;

(iv) All hydrophones used in SFV measurements systems are required to have undergone a full system, traceable laboratory calibration conforming to International Electrotechnical Commission (IEC) 60565, or an equivalent standard procedure, from a factory or accredited source to ensure the hydrophone receives accurate sound levels, at a date not to exceed 2 years before deployment. Additional *in-situ* calibration checks using a pistonphone are required to be performed before and after each hydrophone deployment. If the measurement system employs filters via hardware or software (*e.g.,* high-pass, low-pass, *etc.*), which is not already accounted for by the calibration, the filter performance (*i.e.,* the filter's frequency response) must be known, reported, and the data corrected before analysis.

(v) LOA Holder must be prepared with additional equipment (*e.g.,* hydrophones, recording devices, hydrophone calibrators, cables, batteries), which exceeds the amount of equipment necessary to perform the measurements, such that technical issues can be mitigated before measurement;

(vi) LOA Holder must submit 48-hour interim reports after each foundation is measured (see § 217.305(g) section for interim and final reporting requirements);

(vii) LOA Holder must not exceed modeled distances to NMFS marine mammal Level A harassment and Level B harassment thresholds assuming 10-dB attenuation, for foundation installation. If any of the interim SFV measurement reports submitted for the first three monopiles indicate the modeled distances to NMFS marine mammal Level A harassment and Level B harassment thresholds assuming 10-dB attenuation, then LOA Holder must implement additional sound attenuation measures on all subsequent foundations. LOA Holder must also increase clearance and shutdown zone sizes to those identified by NMFS until SFV measurements on at least three additional foundations demonstrate acoustic distances to harassment thresholds meet or are less than those modeled assuming 10-dB of attenuation. LOA Holder must operate fully functional sound attenuation systems (*e.g.,* ensure hose maintenance, pressure testing) to meet noise levels modeled, assuming 10-dB attenuation, within three piles or else foundation installation activities must cease until NMFS and LOA Holder can evaluate the situation and ensure future piles must not exceed noise levels modeled assuming 10-dB attenuation;

(viii) If, after additional measurements conducted pursuant to requirements of paragraph (c)(15)(vii), acoustic measurements indicate that ranges to isopleths corresponding to the Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10-dB attenuation), LOA Holder may request to NMFS Office of Protected Resources a modification of the clearance and shutdown zones. For NMFS Office of Protected Resources to consider a modification request for reduced zone sizes, LOA Holder must have conducted SFV measurements on an additional three foundations (for either/or monopile and jackets) and ensure that subsequent foundations would be installed under conditions that are predicted to produce smaller harassment zones than those modeled assuming 10-dB of attenuation;

(ix) LOA Holder must conduct SFV measurements upon commencement of turbine operations to estimate turbine operational source levels, in accordance with a NMFS-approved Foundation Installation Pile Driving SFV Plan. SFV must be conducted in the same manner as previously described in § 217.304(c)(14), with appropriate adjustments to measurement distances, number of hydrophones, and hydrophone sensitivities being made, as necessary; and

(x) LOA Holder must submit a SFV Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of foundation installation activities and abide by the Plan if approved. At minimum, the SFV Plan must describe how LOA Holder would ensure that the first three monopile foundation/entire jacket foundation (inclusive of all pin piles for a jacket foundation) installation sites selected for SFV measurements are representative of the rest of the monopile and/or jacket foundation installation sites such that future pile installation events are anticipated to produce similar sound levels to those piles measured. In the case that these sites/scenarios are not determined to be representative of all other pile installation sites, LOA Holder must include information in the SFV Plan on how additional sites/scenarios would be selected for SFV measurements. The SFV Plan must also include methodology for collecting, analyzing, and preparing SFV measurement data for submission to NMFS Office of Protected Resources and describe how the effectiveness of the sound attenuation methodology would be evaluated based on the results. SFV for pile driving may not occur until NMFS approves the SFV Plan for this activity.

(16) LOA Holder must submit a Foundation Installation Pile Driving Marine Mammal Monitoring Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of pile driving and abide by the Plan if approved. LOA Holder must obtain both NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division's concurrence with this Plan prior to the start of any pile driving. The Plan must include a description of all monitoring equipment and PAM and PSO protocols (including number and location of PSOs) for all pile driving. No foundation pile installation can occur without NMFS' approval of the Plan; and

(17) LOA Holder must submit a Passive Acoustic Monitoring Plan (PAM Plan) to NMFS Office of Protected Resources for review and approval at least 180 days prior to the planned start of foundation installation activities (impact pile driving) and abide by the Plan if approved. The PAM Plan must include a description of all proposed PAM equipment, address how the proposed passive acoustic monitoring must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind as described in *NOAA and BOEM Minimum Recommendations for Use of Passive Acoustic Listening Systems in Offshore Wind Energy Development Monitoring and Mitigation Programs* (2021). The Plan must describe all proposed PAM equipment, procedures, and protocols including proof that vocalizing North Atlantic right whales will be detected within the clearance and shutdown zones. No pile installation can occur if LOA Holder's PAM Plan does not receive approval from NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division.

(d) *Cofferdam installation and removal.* The following requirements apply to the installation and removal of cofferdams at the cable landfall construction sites:

(1) Installation and removal of cofferdams must not occur during nighttime hours (defined as the hours between 1.5 hours prior to civil sunset and 1 hour after civil sunrise);

(2) All installation and removal of sheet piles for cofferdams must only occur for up to 8 hours per day (within a single 24-hour period);

(3) LOA Holder must establish and implement clearance zones for the installation and removal of cofferdams using visual monitoring. These zones must be measured using the radial distance from the cofferdam being installed and/or removed;

(4) LOA Holder must utilize PSO(s), as described in § 217.305(d). At least two on-duty PSOs must monitor for marine mammals at least 30 minutes before, during, and 30 minutes after vibratory pile driving associated with cofferdam and casing pipe installation; and

(5) If a marine mammal is observed entering or within the respective shutdown zone after vibratory pile driving has begun, the PSO must call for a shutdown of vibratory pile driving. LOA Holder must stop vibratory pile driving immediately unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual or if there is a risk of damage to the vessel that would create a risk of injury or loss of life for individuals or if the lead engineer determines there is refusal or instability. In any of these situations, LOA Holder must document the reason(s) for not shutting down and report the information to NMFS Office of Protected Resources in the next available weekly report (as described in § 217.305(h)).

(e) *HRG surveys.* The following requirements apply to HRG surveys operating sub-bottom profilers (SBPs) (*i.e.,* boomers, sparkers, and Compressed High Intensity Radiated Pulse (CHIRPS)):

(1) LOA Holder must establish and implement clearance and shutdown zones for HRG surveys using visual monitoring, as described in § 217.305(f) of this section;

(2) LOA Holder must utilize PSO(s), as described in § 217.305(e);

(3) LOA Holder must abide by the relevant Project Design Criteria (PDCs 4, 5, and 7) of the programmatic consultation completed by NMFS' Greater Atlantic Regional Fisheries Office on June 29, 2021 (revised September 2021), pursuant to section 7 of the Endangered Species Act (ESA). To the extent that any relevant Best Management Practices (BMPs) described in these PDCs are more stringent than the requirements herein, those BMPs supersede these requirements;

(4) SBPs (hereinafter referred to as ''acoustic sources'') must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Acoustic sources must be used at the lowest practicable source level to meet the survey objective, when in use, and must be turned off when they are not necessary for the survey;

(5) LOA Holder is required to ramp-up acoustic sources prior to commencing full power, unless the equipment operates on a binary on/off switch, and ensure visual clearance zones are fully visible (*e.g.,* not obscured by darkness, rain, fog) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to the initiation of survey activities using acoustic sources specified in the LOA;

(6) Prior to a ramp-up procedure starting or activating acoustic sources, the acoustic source operator (operator) must notify a designated PSO of the planned start of ramp-up as agreed upon with the Lead PSO. The notification time should not be less than 60 minutes prior to the planned ramp-up or activation in order to allow the PSOs time to monitor the clearance zone(s) for 30 minutes prior to the initiation of ramp-up or activation (pre-start clearance). During this 30-minute pre-start clearance period, the entire applicable clearance zones must be visible, except as indicated in paragraph (e)(12) of this section;

(7) Ramp-ups must be scheduled so as to minimize the time spent with the source activated;

(8) A PSO conducting pre-start clearance observations must be notified again immediately prior to reinitiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;

(9) LOA Holder must implement a 30-minute clearance period of the clearance zones immediately prior to the commencing of the survey or when there is more than a 30-minute break in survey activities or PSO monitoring. A clearance period is a period when no marine mammals are detected in the relevant zone;

(10) If a marine mammal is observed within a clearance zone during the clearance period, ramp-up of acoustic sources may not begin until the animal(s) has been observed voluntarily exiting its respective clearance zone or until a specific time period has elapsed with no further sighting. The specific time period is 15 minutes for odontocetes (excluding sperm whales) and pinnipeds, and 30 minutes for all other species;

(11) In any case when the clearance process has begun in conditions with good visibility, including via the use of night vision equipment (infrared (IR)/thermal camera), and the Lead PSO has determined that the clearance zones are clear of marine mammals, survey operations are allowed to commence (*i.e.,* no delay is required) despite periods of inclement weather and/or loss of daylight. Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up;

(12) Once the survey has commenced, LOA Holder must shut down acoustic sources if a marine mammal enters a respective shutdown zone. In cases when the shutdown zones become obscured for brief periods due to inclement weather, survey operations are allowed to continue (*i.e.,* no shutdown is required) so long as no marine mammals have been detected. The shutdown requirement does not apply to small delphinids of the following genera: *Delphinus, Stenella, Lagenorhynchus,* and *Tursiops.* If there is uncertainty regarding the identification of a marine mammal species (*i.e.,* whether the observed marine mammal belongs to one of the delphinid genera for which shutdown is waived), the PSOs must use their best professional judgment in making the decision to call for a shutdown. Shutdown is required if a delphinid that belongs to a genus other than those specified in this paragraph (e)(12) of this section is detected in the shutdown zone;

(13) If an acoustic source has been shut down due to the presence of a marine mammal, the use of an acoustic source may not commence or resume until the animal(s) has been confirmed to have left the Level B harassment zone or until a full 15 minutes (for odontocetes (excluding sperm whales) and seals) or 30 minutes (for all other marine mammals) have elapsed with no further sighting;

(14) LOA Holder must immediately shut down any acoustic source if a marine mammal is sighted entering or within its respective shutdown zones. If there is uncertainty regarding the identification of a marine mammal species (*i.e.,* whether the observed marine mammal belongs to one of the delphinid genera for which shutdown is waived), the PSOs must use their best professional judgment in making the decision to call for a shutdown. Shutdown is required if a delphinid that belongs to a genus other than those specified in paragraph (e)(13) of this section is detected in the shutdown zone; and

(15) If an acoustic source is shut down for a period longer than 30 minutes, all clearance and ramp-up procedures must be initiated. If an acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, acoustic sources may be activated again without ramp-up only if PSOs have maintained constant observation and no additional detections of any marine mammal occurred within the respective shutdown zones.

(f) *Fisheries monitoring surveys.* The following measures apply to fishery monitoring surveys:

(1) Survey gear must be deployed as soon as possible once the vessel arrives on station. Gear must not be deployed if there is a risk of interaction with marine mammals. Gear may be deployed after 15 minutes of no marine mammal sightings within 1 nautical mile (nmi; 1,852 m) of the sampling station;

(2) LOA Holder and/or its cooperating institutions, contracted vessels, or commercially hired captains must implement the following ''move-on'' rule: if marine mammals are sighted within 1 nmi of the planned location and 15 minutes before gear deployment, then LOA Holder and/or its cooperating institutions, contracted vessels, or commercially hired captains, as appropriate, must move the vessel away from the marine mammal to a different section of the sampling area. If, after moving on, marine mammals are still visible from the vessel, LOA Holder and its cooperating institutions, contracted

vessels, or commercially hired captains must move again or skip the station;

(3) If a marine mammal is deemed to be at risk of interaction after the gear is deployed or set, all gear must be immediately removed from the water. If marine mammals are sighted before the gear is fully removed from the water, the vessel must slow its speed and maneuver the vessel away from the animals to minimize potential interactions with the observed animal;

(4) LOA Holder must maintain visual marine mammal monitoring effort during the entire period of time that gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval);

(5) All fisheries monitoring gear must be fully cleaned and repaired (if damaged) before each use/deployment;

(6) LOA Holder's fixed gear must comply with the Atlantic Large Whale Take Reduction Plan regulations at 50 CFR 229.32 during fisheries monitoring surveys;

(7) Trawl tows must be limited to a maximum of a 20-minute trawl time at 3.0 kn;

(8) All gear must be emptied as close to the deck/sorting area and as quickly as possible after retrieval;

(9) During trawl surveys, vessel crew must open the codend of the trawl net close to the deck in order to avoid injury to animals that may be caught in the gear;

(10) All fishery survey-related lines must include the breaking strength of all lines being less than 1,700 pounds (lbs; 771 kilograms (kg)). This may be accomplished by using whole buoy line that has a breaking strength of 1,700 lbs; or buoy line with weak inserts that result in line having an overall breaking strength of 1,700 lbs;

(11) During any survey that uses vertical lines, buoy lines must be weighted and must not float at the surface of the water and all groundlines must consist of sinking lines. All groundlines must be composed entirely of sinking lines. Buoy lines must utilize weak links. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited;

(12) All in-water survey gear, including buoys, must be properly labeled with the scientific permit number or identification as LOA Holder's research gear. All labels and markings on the gear, buoys, and buoy lines must also be compliant with the Atlantic Large Whale Take Reduction Plan regulations at 50 CFR 229.32, and all buoy markings must comply with instructions received by the NOAA Greater Atlantic Regional Fisheries Office Protected Resources Division;

(13) All survey gear must be removed from the water whenever not in active survey use (*i.e.,* no wet storage); and

(14) All reasonable efforts that do not compromise human safety must be undertaken to recover gear.

**§ 217.305 Monitoring and reporting requirements.**

(a) *Protected species observer (PSO) and passive acoustic monitoring (PAM) operator qualifications.* LOA Holder must implement the following measures applicable to PSOs and PAM operators:

(1) LOA Holder must use independent, NMFS-approved PSOs and PAM operators, meaning that the PSOs and PAM operators must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant crew with regard to the presence of protected species and mitigation requirements;

(2) All PSOs and PAM operators must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO or PAM operator has acquired the relevant skills through a suitable amount of alternate experience. Requests for such a waiver must be submitted to NMFS Office of Protected Resources and must include written justification containing alternative experience. Alternate experience that may be considered includes, but is not limited to: previous work experience conducting academic, commercial, or government-sponsored marine mammal visual and/or acoustic surveys; or previous work experience as a PSO/PAM operator;

(3) PSOs must have visual acuity in both eyes (with correction of vision being permissible) sufficient enough to discern moving targets on the water's surface with the ability to estimate the target size and distance (binocular use is allowable); ability to conduct field observations and collect data according to the assigned protocols; sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations; writing skills sufficient to document observations, including but not limited to, the number and species of marine mammals observed, the dates and times when in-water construction activities were conducted, the dates and time when in-water construction activities were suspended to avoid potential incidental take of marine mammals from construction noise within a defined shutdown zone, and marine mammal behavior; and the ability to communicate orally, by radio, or in-person, with project personnel to provide real-time information on marine mammals observed in the area;

(4) All PSOs must be trained in northwestern Atlantic Ocean marine mammal identification and behaviors and must be able to conduct field observations and collect data according to assigned protocols. Additionally, PSOs must have the ability to work with all required and relevant software and equipment necessary during observations (as described in § 217.305(b)(6) and § 217.305(b)(7));

(5) All PSOs and PAM operators must successfully complete a relevant training course within the last 5 years, including obtaining a certificate of course completion;

(6) PSOs and PAM operators are responsible for obtaining NMFS' approval. NMFS may approve PSOs and PAM operators as conditional or unconditional. A conditionally-approved PSO or PAM operator may be one who has completed training in the last 5 years but has not yet attained the requisite field experience. An unconditionally approved PSO or PAM operator is one who has completed training within the last 5 years and attained the necessary experience (*i.e.,* demonstrate experience with monitoring for marine mammals at clearance and shutdown zone sizes similar to those produced during the respective activity). Lead PSO or PAM operators must be unconditionally approved and have a minimum of 90 days in an northwestern Atlantic Ocean offshore environment performing the role (either visual or acoustic), with the conclusion of the most recent relevant experience not more than 18 months previous. A conditionally approved PSO or PAM operator must be paired with an unconditionally approved PSO or PAM operator;

(7) PSOs for cable landfall construction (*i.e.,* vibratory pile installation and removal) and HRG surveys may be unconditionally or conditionally approved. PSOs and PAM operators for foundation installation activities must be unconditionally approved;

(8) At least one on-duty PSO and PAM operator, where applicable, for each activity (*e.g.,* impact pile driving, vibratory pile driving, and HRG surveys)

must be designated as the Lead PSO or Lead PAM operator;

(9) LOA Holder must submit NMFS previously approved PSOs and PAM operators to NMFS Office of Protected Resources for review and confirmation of their approval for specific roles at least 30 days prior to commencement of the activities requiring PSOs/PAM operators or 15 days prior to when new PSOs/PAM operators are required after activities have commenced;

(10) For prospective PSOs and PAM operators not previously approved, or for PSOs and PAM operators whose approval is not current, LOA Holder must submit resumes for approval at least 60 days prior to PSO and PAM operator use. Resumes must include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO or PAM operator experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training;

(11) PAM operators are responsible for obtaining NMFS approval. To be approved as a PAM operator, the person must meet the following qualifications: The PAM operator must demonstrate that they have prior experience with real-time acoustic detection systems and/or have completed specialized training for operating PAM systems and detecting and identifying Atlantic Ocean marine mammals sounds, in particular: North Atlantic right whale sounds, humpback whale sounds, and how to deconflict them from similar North Atlantic right whale sounds, and other co-occurring species' sounds in the area including sperm whales; must be able to distinguish between whether a marine mammal or other species sound is detected, possibly detected, or not detected, and similar terminology must be used across companies/projects; Where localization of sounds or deriving bearings and distance are possible, the PAM operators need to have demonstrated experience in using this technique; PAM operators must be independent observers (*i.e.,* not construction personnel); PAM operators must demonstrate experience with relevant acoustic software and equipment; PAM operators must have the qualifications and relevant experience/training to safely deploy and retrieve equipment and program the software, as necessary; PAM operators must be able to test software and hardware functionality prior to operation; and PAM operators must have evaluated their acoustic detection software using the PAM Atlantic baleen whale annotated data set available at National Centers for Environmental Information (NCEI) and provide evaluation/performance metric;

(12) PAM operators must be able to review and classify acoustic detections in real-time (prioritizing North Atlantic right whales and noting detection of other cetaceans) during the real-time monitoring periods;

(13) PSOs may work as PAM operators and vice versa, pending NMFS-approval; however, they may only perform one role at any one time and must not exceed work time restrictions, which must be tallied cumulatively; and

(14) All PSOs and PAM operators must complete a Permits and Environmental Compliance Plan training and a 2-day refresher session that must be held with the PSO provider and Project compliance representative(s) prior to the start of in-water project activities (*e.g.,* HRG survey, foundation installation, cable landfall activities, *etc.*).

(b) *General PSO and PAM operator requirements.* The following measures apply to PSOs and PAM operators and must be implemented by LOA Holder:

(1) PSOs must monitor for marine mammals prior to, during, and following impact pile driving, vibratory pile driving, and HRG surveys that use sub-bottom profilers (with specific monitoring durations and needs described in paragraphs (c) through (f) of this section, respectively). Monitoring must be done while free from distractions and in a consistent, systematic, and diligent manner;

(2) For foundation installation, PSOs must visually clear (*i.e.,* confirm no observations of marine mammals) the entire minimum visibility zone for a full 30 minutes immediately prior to commencing activities. For cable landfall activities (*e.g.,* cofferdams) and HRG surveys, which do not have a minimum visibility zone, the entire clearance zone must be visually cleared and as much of the Level B harassment zone as possible;

(3) All PSOs must be located at the best vantage point(s) on any platform, as determined by the Lead PSO, in order to obtain 360-degree visual coverage of the entire clearance and shutdown zones around the activity area, and as much of the Level B harassment zone as possible. PAM operators may be located on a vessel or remotely on-shore, the PAM operator(s) must assist PSOs in ensuring full coverage of the clearance and shutdown zones. The PAM operator must monitor to and past the clearance zone for large whales;

(4) All on-duty PSOs must remain in real-time contact with the on-duty PAM operator(s), PAM operators must immediately communicate all acoustic detections of marine mammals to PSOs, including any determination regarding species identification, distance, and bearing (where relevant) relative to the pile being driven and the degree of confidence (*e.g.,* possible, probable detection) in the determination. All on-duty PSOs and PAM operator(s) must remain in contact with the on-duty construction personnel responsible for implementing mitigations (*e.g.,* delay to pile driving) to ensure communication on marine mammal observations can easily, quickly, and consistently occur between all on-duty PSOs, PAM operator(s), and on-water Project personnel;

(5) The PAM operator must inform the Lead PSO(s) on duty of animal detections approaching or within applicable ranges of interest to the activity occurring via the data collection software system (*i.e.,* Mysticetus or similar system) who must be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (*i.e.,* delay);

(6) PSOs must use high magnification (25x) binoculars, standard handheld (7x) binoculars, and the naked eye to search continuously for marine mammals. During foundation installation, at least two PSOs on the pile driving-dedicated PSO vessel must be equipped with functional Big Eye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control); these must be pedestal mounted on the deck at the best vantage point that provides for optimal sea surface observation and PSO safety. PAM operators must have the appropriate equipment (*i.e.,* a computer station equipped with a data collection software system available wherever they are stationed) and use a NMFS-approved PAM system to conduct monitoring. PAM systems are approved through the PAM Plan as described in § 217.304(c)(17);

(7) During periods of low visibility (*e.g.,* darkness, rain, fog, poor weather conditions, *etc.*), PSOs must use alternative technology (*i.e.,* infrared or thermal cameras) to monitor the clearance and shutdown zones as approved by NMFS; and

(8) PSOs and PAM operators must not exceed 4 consecutive watch hours on duty at any time, must have a 2-hour (minimum) break between watches, and must not exceed a combined watch schedule of more than 12 hours in a 24-hour period. If the schedule includes PSOs and PAM operators on-duty for 2-

hour shifts, a minimum 1-hour break between watches must be allowed.

(c) *PSO and PAM operator requirements during WTG, OSS, and Met Tower foundation installation.* The following measures apply to PSOs and PAM operators during WTG, OSS, and Met Tower foundation installation and must be implemented by LOA Holder:

(1) PSOs and PAM operator(s), using a NMFS-approved PAM system, must monitor for marine mammals 60 minutes prior to, during, and 30 minutes following all pile-driving activities. If PSOs cannot visually monitor the minimum visibility zone prior to impact pile driving at all times using the equipment described in paragraphs (b)(6) and (7) of this section, pile-driving operations must not commence or must shutdown if they are currently active;

(2) At least three on-duty PSOs must be stationed and observing from the activity platform during impact pile driving and at least three on-duty PSOs must be stationed on each dedicated PSO vessel. Concurrently, at least one PAM operator per acoustic data stream (equivalent to the number of acoustic buoys) must be actively monitoring for marine mammals 60 minutes before, during, and 30 minutes after impact pile driving in accordance with a NMFS-approved PAM Plan;

(3) LOA Holder must conduct PAM for at least 24 hours immediately prior to pile driving activities. The PAM operator must review all detections from the previous 24-hour period immediately prior to pile driving activities.

(d) *PSO requirements during cofferdam installation and removal.* The following measures apply to PSOs during cofferdam installation and removal and must be implemented by LOA Holder:

(1) At least two PSOs must be on active duty during all activities related to the installation and removal of cofferdams; and

(2) PSOs must monitor the clearance zone for the presence of marine mammals for 30 minutes before, throughout the installation of the sheet piles, and for 30 minutes after all vibratory pile driving activities have ceased. Sheet pile installation must only commence when visual clearance zones are fully visible (*e.g.,* not obscured by darkness, rain, fog, *etc.*) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to initiation of vibratory pile driving.

(e) *PSO requirements during HRG surveys.* The following measures apply to PSOs during HRG surveys using acoustic sources that have the potential to result in harassment and must be implemented by LOA Holder:

(1) Between four and six PSOs must be present on every 24-hour survey vessel and two to three PSOs must be present on every 12-hour survey vessel;

(2) At least one PSO must be on active duty monitoring during HRG surveys conducted during daylight (*i.e.,* from 30 minutes prior to civil sunrise through 30 minutes following civil sunset) and at least two PSOs must be on activity duty monitoring during HRG surveys conducted at night;

(3) PSOs on HRG vessels must begin monitoring 30 minutes prior to activating acoustic sources, during the use of these acoustic sources, and for 30 minutes after use of these acoustic sources has ceased;

(4) Any observations of marine mammals must be communicated to PSOs on all nearby survey vessels during concurrent HRG surveys; and

(5) During daylight hours when survey equipment is not operating, LOA Holder must ensure that visual PSOs conduct, as rotation schedules allow, observations for comparison of sighting rates and behavior with and without use of the specified acoustic sources. Off-effort PSO monitoring must be reflected in the monthly PSO monitoring reports.

(f) *Monitoring requirements during fisheries monitoring surveys.* The following measures apply during fisheries monitoring surveys and must be implemented by LOA Holder:

(1) All captains and crew conducting fishery surveys must be trained in marine mammal detection and identification; and

(2) Marine mammal monitoring must be conducted within 1 nmi from the planned survey location by the trained captain and/or a member of the scientific crew for 15 minutes prior to deploying gear, throughout gear deployment and use, and for 15 minutes after haul back.

(g) *Reporting.* LOA Holder must comply with the following reporting measures:

(1) Prior to initiation of any on-water project activities, LOA Holder must demonstrate in a report submitted to NMFS Office of Protected Resources that all required training for LOA Holder personnel (including the vessel crews, vessel captains, PSOs, and PAM operators) has been completed.

(2) LOA Holder must use a standardized reporting system during the effective period of the LOAs. All data collected related to the Project must be recorded using industry-standard software that is installed on field laptops and/or tablets. Unless stated otherwise, all reports must be submitted to NMFS Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*), dates must be in MM/DD/YYYY format, and location information must be provided in Decimal Degrees and with the coordinate system information (*e.g.,* NAD83, WGS84, *etc.*).

(3) For all visual monitoring efforts and marine mammal sightings, the following information must be collected and reported to NMFS Office of Protected Resources: the date and time that monitored activity begins or ends; the construction activities occurring during each observation period; the watch status (*i.e.,* sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform); the PSO who sighted the animal; the time of sighting; the weather parameters (*e.g.,* wind speed, percent cloud cover, visibility); the water conditions (*e.g.,* Beaufort sea state, tide state, water depth); all marine mammal sightings, regardless of distance from the construction activity; species (or lowest possible taxonomic level possible); the pace of the animal(s); the estimated number of animals (minimum/maximum/high/low/best); the estimated number of animals by cohort (*e.g.,* adults, yearlings, juveniles, calves, group composition, *etc.*); the description (*i.e.,* as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics); the description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling) and observed changes in behavior, including an assessment of behavioral responses thought to have resulted from the specific activity; the animal's closest distance and bearing from the pile being driven or specified HRG equipment and estimated time entered or spent within the Level A harassment and/or Level B harassment zone(s); the activity at time of sighting (*e.g.,* vibratory installation/removal, impact pile driving, construction survey), use of any noise attenuation device(s), and specific phase of activity (*e.g.,* ramp-up of HRG equipment, HRG acoustic source on/off, soft-start for pile driving, active pile driving, *etc.*); the marine mammal occurrence in Level A harassment or Level B harassment zones; the description of any mitigation-related action implemented, or mitigation-related actions called for but not implemented, in response to the sighting (*e.g.,* delay, shutdown, *etc.*) and time and location of the action; other human activity in the area, and; other

applicable information, as required in any LOAs issued under § 217.306.

(4) LOA Holder must compile and submit weekly reports during foundation installation to NMFS Office of Protected Resources that document the daily start and stop of all pile driving associated with the Project; the start and stop of associated observation periods by PSOs; details on the deployment of PSOs; a record of all detections of marine mammals (acoustic and visual); any mitigation actions (or if mitigation actions could not be taken, provide reasons why); and details on the noise attenuation system(s) used and its performance. Weekly reports are due on Wednesday for the previous week (Sunday to Saturday) and must include the information required under this section. The weekly report must also identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is completed, weekly reports are no longer required by LOA Holder.

(5) LOA Holder must compile and submit monthly reports to NMFS Office of Protected Resources during foundation installation that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, MMIS number, and route), number of piles installed, all detections of marine mammals, and any mitigative action taken. Monthly reports are due on the 15th of the month for the previous month. The monthly report must also identify which turbines become operational and when (a map must be provided). Full PAM detection data and metadata must also be submitted monthly on the 15th of every month for the previous month via the webform on the NMFS North Atlantic Right Whale Passive Acoustic Reporting System website at *https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates.*

(6) LOA Holder must submit a draft annual report to NMFS Office of Protected Resources no later than 90 days following the end of a given calendar year. LOA Holder must provide a final report within 30 days following resolution of NMFS' comments on the draft report. The draft and final reports must detail the following: the total number of marine mammals of each species/stock detected and how many were within the designated Level A harassment and Level B harassment zone(s) with comparison to authorized take of marine mammals for the associated activity type; marine mammal detections and behavioral observations before, during, and after each activity; what mitigation measures were implemented (*i.e.,* number of shutdowns or clearance zone delays, *etc.*) or, if no mitigative actions was taken, why not; operational details (*i.e.,* days and duration of impact and vibratory pile driving, days, and amount of HRG survey effort, *etc.*); any PAM systems used; the results, effectiveness, and which noise attenuation systems were used during relevant activities (*i.e.,* impact pile driving); summarized information related to situational reporting; and any other important information relevant to the Project, including additional information that may be identified through the adaptive management process.

(7) LOA Holder must submit its draft 5-year report to NMFS Office of Protected Resources on all visual and acoustic monitoring conducted within 90 calendar days of the completion of activities occurring under the LOAs. A 5-year report must be prepared and submitted within 60 calendar days following receipt of any NMFS Office of Protected Resources comments on the draft report. If no comments are received from NMFS Office of Protected Resources within 60 calendar days of NMFS Office of Protected Resources receipt of the draft report, the report shall be considered final.

(8) For those foundation piles requiring SFV measurements, LOA Holder must provide the initial results of the SFV measurements to NMFS Office of Protected Resources in an interim report after each foundation installation event as soon as they are available and prior to a subsequent foundation installation, but no later than 48 hours after each completed foundation installation event. The report must include, at minimum: hammer energies/schedule used during pile driving, including, the total number of strikes and the maximum hammer energy; the model-estimated acoustic ranges ($R_{95\%}$) to compare with the real-world sound field measurements; peak sound pressure level ($SPL_{pk}$), root-mean-square sound pressure level that contains 90 percent of the acoustic energy ($SPL_{rms}$), and sound exposure level (SEL, in single strike for pile driving, $SEL_{ss,}$), for each hydrophone, including at least the maximum, arithmetic mean, minimum, median (L50) and L5 (95 percent exceedance) statistics for each metric; estimated marine mammal Level A harassment and Level B harassment isopleths, calculated using the maximum-over-depth L5 (95 percent exceedance level, maximum of both hydrophones) of the associated sound metric; comparison of modeled results assuming 10-dB attenuation against the measured marine mammal Level A harassment and Level B harassment acoustic isopleths; estimated transmission loss coefficients; pile identifier name, location of the pile and each hydrophone array in latitude/longitude; depths of each hydrophone; one-third-octave band single strike SEL spectra; if filtering is applied, full filter characteristics must be reported; and hydrophone specifications including the type, model, and sensitivity. LOA Holder must also report any immediate observations which are suspected to have a significant impact on the results including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices. If any *in-situ* calibration checks for hydrophones reveal a calibration drift greater than 0.75 dB, pistonphone calibration checks are inconclusive, or calibration checks are otherwise not effectively performed, LOA Holder must indicate full details of the calibration procedure, results, and any associated issues in the 48-hour interim reports.

(9) The final results of SFV measurements from each foundation installation must be submitted as soon as possible, but no later than 90 days following completion of each event's SFV measurements. The final reports must include all details prescribed above for the interim report as well as, at minimum, the following: the peak sound pressure level ($SPL_{pk}$), the root-mean-square sound pressure level that contains 90 percent of the acoustic energy ($SPL_{rms}$), the single strike sound exposure level ($SEL_{ss}$), the integration time for $SPL_{rms}$, the spectrum, and the 24-hour cumulative SEL extrapolated from measurements at all hydrophones. The final report must also include at least the maximum, mean, minimum, median ($L_{50}$) and $L_5$ (95 percent exceedance) statistics for each metric; the SEL and SPL power spectral density and/or one-third octave band levels (usually calculated as decidecade band levels) at the receiver locations should be reported; the sound levels reported must be in median, arithmetic mean, and $L_5$ (95 percent exceedance) (*i.e.,* average in linear space), and in dB; range of TL coefficients; the local environmental conditions, such as wind speed, transmission loss data collected on-site (or the sound velocity profile); baseline pre- and post-activity ambient sound levels (broadband and/or within frequencies of concern); a description of depth and sediment type, as

documented in the Construction and Operation Plan (COP), at the recording and foundation installation locations; the extents of the measured Level A harassment and Level B harassment zone(s); hammer energies required for pile installation and the number of strikes per pile; the hydrophone equipment and methods (*i.e.,* recording device, bandwidth/sampling rate; distance from the pile where recordings were made; the depth of recording device(s)); a description of the SFV measurement hardware and software, including software version used, calibration data, bandwidth capability and sensitivity of hydrophone(s), any filters used in hardware or software, any limitations with the equipment, and other relevant information; the spatial configuration of the noise attenuation device(s) relative to the pile; a description of the noise abatement system and operational parameters (*e.g.,* bubble flow rate, distance deployed from the pile, *etc.*), and any action taken to adjust the noise abatement system. A discussion which includes any observations which are suspected to have a significant impact on the results including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices.

(10) If at any time during the project LOA Holder becomes aware of any issue or issues which may (to any reasonable subject-matter expert, including the persons performing the measurements and analysis) call into question the validity of any measured Level A harassment or Level B harassment isopleths to a significant degree, which were previously transmitted or communicated to NMFS Office of Protected Resources, LOA Holder must inform NMFS Office of Protected Resources within 1 business day of becoming aware of this issue or before the next pile is driven, whichever comes first.

(11) If a North Atlantic right whale is acoustic detected at any time by a project-related PAM system, LOA Holder must ensure the detection is reported as soon as possible to NMFS, but no longer than 24 hours after the detection via the *24-hour North Atlantic right whale Detection Template* (*https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates*). Calling the hotline is not necessary when reporting PAM detections via the template;

(12) Full detection data, metadata, and location of recorders (or GPS tracks, if applicable) from all real-time hydrophones used for monitoring during construction must be submitted within 90 calendar days after the conclusion of activities requiring PAM for mitigation. Reporting must use the webform templates on the NMFS Passive Acoustic Reporting System website at *https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates.* The full acoustic recordings from all real-time hydrophones must also be sent to the National Centers for Environmental Information (NCEI) for archiving within 90 calendar days after pile driving has ended and instruments have been pulled from the water.

(13) LOA Holder must submit situational reports if the following circumstances occur (including all instances wherein an exemption is taken must be reported to NMFS Office of Protected Resources within 24 hours):

(i) If a North Atlantic right whale is observed at any time by PSOs or project personnel, LOA Holder must ensure the sighting is immediately (if not feasible, as soon as possible and no longer than 24 hours after the sighting) reported to NMFS and the Right Whale Sightings Advisory System (RWSAS). If in the Northeast Region (Maine to Virginia/North Carolina border) call (866–755–6622). If in the Southeast Region (North Carolina to Florida) call (877–WHALE–HELP or 877–942–5343). If calling NMFS is not possible, reports can also be made to the U.S. Coast Guard via channel 16 or through the WhaleAlert app (*http://www.whalealert.org/*). The sighting report must include the time, date, and location of the sighting, number of whales, animal description/certainty of sighting (provide photos/video if taken), Lease Area/project name, PSO/personnel name, PSO provider company (if applicable), and reporter's contact information.

(ii) If a North Atlantic right whale is observed at any time by PSOs or project personnel, LOA Holder must submit a summary report to NMFS Greater Atlantic Regional Fisheries (GARFO; *nmfs.gar.incidental-take@noaa.gov*) and NMFS Office of Protected Resources, and NMFS Northeast Fisheries Science Center (NEFSC; *ne.rw.survey@noaa.gov*) within 24 hours with the above information and the vessel/platform from which the sighting was made, activity the vessel/platform was engaged in at time of sighting, project construction and/or survey activity at the time of the sighting (*e.g.,* pile driving, cable installation, HRG survey), distance from vessel/platform to sighting at time of detection, and any mitigation actions taken in response to the sighting.

(iii) If an observation of a large whale occurs during vessel transit, LOA Holder must report the time, date, and location of the sighting; the vessel's activity, heading, and speed (knots); Beaufort sea state, water depth (meters), and visibility conditions; marine mammal species identification to the best of the observer's ability and any distinguishing characteristics; initial distance and bearing to marine mammal from vessel and closest point of approach; and any avoidance measures taken in response to the marine mammal sighting.

(iv) In the event that personnel involved in the Project discover a stranded, entangled, injured, or dead marine mammal, LOA Holder must immediately report the observation to NMFS. If in the Greater Atlantic Region (Maine to Virginia) call the NMFS Greater Atlantic Stranding Hotline (866–755–6622); if in the Southeast Region (North Carolina to Florida), call the NMFS Southeast Stranding Hotline (877–942–5343). Separately, LOA Holder must report the incident to NMFS Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*) and, if in the Greater Atlantic region (Maine to Virginia), NMFS Greater Atlantic Regional Fisheries Office (GARFO; *nmfs.gar.incidental-take@noaa.gov, nmfs.gar.stranding@noaa.gov*) or, if in the Southeast region (North Carolina to Florida), NMFS Southeast Regional Office (SERO; *secmammalreports@noaa.gov*) as soon as feasible. The report (via phone or email) must include contact (name, phone number, *etc.*), the time, date, and location of the first discovery (and updated location information if known and applicable); species identification (if known) or description of the animal(s) involved; condition of the animal(s) (including carcass condition if the animal is dead); observed behaviors of the animal(s), if alive; if available, photographs or video footage of the animal(s); and general circumstances under which the animal was discovered.

(v) In the event of a vessel strike of a marine mammal by any vessel associated with the Project or if other project activities cause a non-auditory injury or death of a marine mammal, LOA Holder must immediately report the incident to NMFS. If in the Greater Atlantic Region (Maine to Virginia) call the NMFS Greater Atlantic Stranding Hotline (866–755–6622) and if in the Southeast Region (North Carolina to Florida) call the NMFS Southeast Stranding Hotline (877–942–5343). Separately, LOA Holder must immediately report the incident to NMFS Office of Protected Resources

(*PR.ITP.MonitoringReports@noaa.gov*) and, if in the Greater Atlantic region (Maine to Virginia), NMFS GARFO (*nmfs.gar.incidental-take@noaa.gov, nmfs.gar.stranding@noaa.gov*) or, if in the Southeast region (North Carolina to Florida), NMFS SERO (*secmammalreports@noaa.gov*). The report must include the time, date, and location of the incident; species identification (if known) or description of the animal(s) involved; vessel size and motor configuration (inboard, outboard, jet propulsion); vessel's speed leading up to and during the incident; vessel's course/heading and what operations were being conducted (if applicable); status of all sound sources in use; description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike; environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike; estimated size and length of animal that was struck; description of the behavior of the marine mammal immediately preceding and following the strike; if available, description of the presence and behavior of any other marine mammals immediately preceding the strike; estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and to the extent practicable, photographs or video footage of the animal(s). LOA Holder must immediately cease all on-water activities until the NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOAs. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. LOA Holder may not resume their activities until notified by NMFS Office of Protected Resources.

(14) LOA Holder must report any lost gear associated with the fishery surveys to the NOAA GARFO Protected Resources Division (*nmfs.gar.incidental-take@noaa.gov*) as soon as possible or within 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear.

**§ 217.306 Letter of Authorization.**

(a) To incidentally take marine mammals pursuant to this subpart, LOA Holder must apply for and obtain the LOAs.

(b) The LOAs, unless suspended or revoked, may be effective for a period of time not to exceed December 31, 2029, the expiration date of this subpart.

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by the LOAs, LOA Holder must apply for and obtain a modification of the LOAs as described in § 217.307.

(d) The LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOAs must be based on a determination that the level of taking must be consistent with the findings made for the total taking allowable under the regulations of this subpart.

(f) Notice of issuance or denial of the LOAs must be published in the **Federal Register** within 30 days of a determination.

**§ 217.307 Modifications of Letter of Authorization.**

(a) The LOAs issued under §§ 217.302 and 217.306 or this section for the activity identified in § 217.300(a) shall be modified upon request by LOA Holder, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS Office of Protected Resources determines that the mitigation, monitoring, and reporting measures required by the previous LOAs under this subpart were implemented.

(b) For a LOA modification request by the applicant that includes changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), the LO(s shall be modified, provided that:

(1) NMFS Office of Protected Resources determines that the changes to the activity or the mitigation, monitoring, or reporting do not change the findings made for the regulations in this subpart and do not result in more than a minor change in the total estimated number of takes (or distribution by species or years), and

(2) NMFS Office of Protected Resources may, if appropriate, publish a notice of proposed LOAs in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOAs.

(c) The LOAs issued under §§ 217.302 and 217.306 or this section for the activities identified in § 217.300(a) may be modified by NMFS Office of Protected Resources under the following circumstances:

(1) Through adaptive management, NMFS Office of Protected Resources may modify (including delete, modify, or add to) the existing mitigation, monitoring, or reporting measures (after consulting with the LOA Holder regarding the practicability of the modifications), if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in the LOAs include, but are not limited to:

(A) Results from LOA Holder's monitoring;

(B) Results from other marine mammals and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS Office of Protected Resources shall publish a notice of proposed LOAs in the **Federal Register** and solicit public comment.

(2) If NMFS Office of Protected Resources determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in the LOAs issued pursuant to §§ 217.302 and 217.306 or this section, the LOAs may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

**§ 217.308–217.309 [Reserved]**

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Part III

## Securities and Exchange Commission

17 CFR Parts 232, 239, 249, et al.

EDGAR Filer Access and Account Management; Proposed Rule

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 232, 239, 249, 269, and 274**

**[Release Nos. 33–11232; 34–98368; 39–2551; IC–34996; File No. S7–15–23]**

**RIN 3235–AM58**

## EDGAR Filer Access and Account Management

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is proposing rule and form amendments concerning access to and management of accounts on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') that are related to potential technical changes to EDGAR (collectively referred to as ''EDGAR Next''). We propose to require that electronic filers (''filers'') authorize and maintain designated individuals as account administrators and that filers, through their account administrators, take certain actions to manage their accounts on a dashboard on EDGAR. Further, we propose that filers may only authorize individuals as account administrators or in the other roles described herein if those individuals first obtain individual account credentials in the manner to be specified in the EDGAR Filer Manual. As part of the EDGAR Next changes, the Commission would offer filers optional Application Programming Interfaces (''APIs'') for machine-to-machine communication with EDGAR, including submission of filings and retrieval of related information. If the proposed rule and form amendments are adopted, the Commission would make corresponding changes to the EDGAR Filer Manual and implement the potential technical changes.

**DATES:** Comments should be received on or before November 21, 2023.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–15–23 on the subject line.

*Paper Comments*

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number S7–15–23. 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 of submission. The Commission will post all submitted comments on the Commission's website (*https://www.sec.gov/rules/proposed.shtml*). Comments are also 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. Operating conditions may limit access to the Commission's Public Reference Room. 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.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** Rosemary Filou, Deputy Director and Chief Counsel; Daniel K. Chang, Senior Special Counsel; E. Laurita Finch, Senior Special Counsel; Jane Patterson, Senior Special Counsel; Margaret Marrero, Senior Counsel; Lidian Pereira, Senior Special Counsel; EDGAR Business Office at 202–551–3900, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing amendments to 17 CFR 232.10 (''Rule 10'') and 17 CFR 232.11 (''Rule 11'') under 17 CFR 232.10 through 232.903 (''Regulation S–T''); and amendments to Form ID (referenced in 17 CFR 239.63, 17 CFR 249.446, 17 CFR 269.7, and 17 CFR 274.402).

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### I. Introduction

We are seeking comment on proposed rule and form amendments concerning EDGAR filer access and account

management. Separately, we welcome feedback on related EDGAR technical functionality.

The Commission is seeking to enhance the security of EDGAR, improve the ability of filers [1] to securely manage and maintain access to their EDGAR accounts, facilitate the responsible management of filer credentials, and simplify procedures for accessing EDGAR.[2] In furtherance of these goals, on September 30, 2021, the Commission issued a Request for Comment on Potential Technical Changes to EDGAR Filer Access and Filer Account Management Processes (''2021 Request for Comment'').[3] The Commission received comments from and engaged in a dialogue with interested parties, considered feedback from these parties, and gathered additional information about filers' interactions with EDGAR.[4] The rule and form amendments we are proposing in this release and the related technical changes seek to achieve the Commission's goals for secure EDGAR access and account management while addressing many of the comments and concerns expressed in response to the 2021 Request for Comment.

The obligations for filers contemplated by EDGAR Next would generally be codified in Rule 10 of Regulation S–T.[5] Form ID would be amended to implement those changes and require information about, among other things, the filer's account administrators,[6] and to improve the utility of the form for Commission staff. Moreover, Rule 11 of Regulation S–T would be amended to provide clarity regarding certain new terms related to the proposed rule and form amendments.[7]

Under proposed Rule 10(d)(1), only those individuals who obtained individual account credentials [8] could be authorized to act on the filer's behalf on a dashboard [9] on the EDGAR Filer Management website.[10]

Proposed Rule 10(d)(2) would require each filer to authorize and maintain individuals as its account administrators [11] to manage the filer's EDGAR account on the filer's behalf, in accord with the EDGAR account access and account management requirements set forth in this proposal and in the EDGAR Filer Manual. The filer could authorize someone who is not an employee of the filer [12] as the filer's account administrator, if the authorized individual for the filer [13] provided a relevant notarized power of attorney authorizing that individual to be the filer's account administrator.[14]

On the dashboard, account administrators would take actions on behalf of the filer to add and remove authorized users, account administrators, and technical administrators; and annually confirm the accuracy of the filer's information on the dashboard.

Additionally, on the dashboard, account administrators could delegate authority to file on behalf of the filer to any other EDGAR account, such as a filing agent, making that account a delegated entity of the filer, and could remove a delegated entity's authority to file on the filer's behalf. A delegated entity would have its own EDGAR account and dashboard to manage its account. Because it would itself be a filer, a delegated entity would be subject to the same requirements as other filers. Through its dashboard, a delegated entity could manage the delegated authority it received from filers. If a delegated entity accepted a delegation from a filer, the delegated entity's account administrators would become delegated administrators with respect to that filer. Each delegated administrator could thereafter manage which of the users of the delegated entity would become delegated users for particular filers. A delegated entity could not further delegate authority to file on behalf of that filer, nor could delegated administrators take action on the filer's dashboard. Similarly, the filer's account administrators could not view or take action on the delegated entity's dashboard.[15]

As proposed, Rule 10(d)(4) would require each filer, through its authorized account administrators, to confirm annually that all account administrators, users,[16] delegated entities,[17] and technical administrators [18] reflected on the dashboard for the filer's EDGAR account are authorized by the filer and that all information regarding the filer on the dashboard is accurate (generally including the filer's corporate and contact information).

Pursuant to proposed Rule 10(d)(5), each filer, through its authorized

[1] For purposes of this release, we use the term ''filer'' to mean ''electronic filer,'' as defined in Rule 11 of Regulation S–T: ''A person or an entity that submits filings electronically pursuant to Rules 100 or 101 of Regulation S–T.''

[2] Please refer to proposed Rule 11 of Regulation S–T, set forth in this release, for definitions of the terms used in this release, including ''account administrator,'' ''dashboard,'' ''user,'' ''delegated entity,'' ''APIs,'' and ''technical administrator.''

[3] In the 2021 Request for Comment, we referred to filer administrators. That term has been changed herein to refer to account administrators, which we believe is in keeping with industry nomenclature and is less confusing in context. *See Potential Technical Changes to EDGAR Filer Access and Filer Account Management Processes,* Release No. 33–10993 (Sept. 30, 2021) [86 FR 55029 (Oct. 5, 2021)].

[4] Comment letters related to the 2021 Request for Comment are available at *https://www.sec.gov/comments/s7-12-21/s71221.htm.*

[5] In addition to the changes discussed below, Rule 10 would also be amended to implement certain technical and conforming changes. *See* Section III.E.1.

[6] We are proposing amendments to Rule 11 under Regulation S–T to define an ''account administrator'' as an individual authorized by an electronic filer to manage the electronic filer's EDGAR account on EDGAR, and to make filings on EDGAR on the electronic filer's behalf. See the discussion of proposed amendments to Rule 11 in Section III.E.2.

[7] The amendments to Rule 11 would also update or delete outdated terminology and clarify the definition of the EDGAR Filer Manual.

[8] We are proposing amendments to Rule 11 under Regulation S–T to define ''individual account credentials'' as credentials issued to individuals for purposes of EDGAR access, as specified in the EDGAR Filer Manual. See the discussion of proposed amendments to Rule 11 in Section III.E.2. We currently anticipate that, if the proposal is adopted, the EDGAR Filer Manual would specify that individual account credentials must be obtained through *Login.gov,* a sign in service of the United States Government that employs multi-factor authentication.

[9] We are proposing amendments to Rule 11 under Regulation S–T to define the ''dashboard'' as an interactive function on EDGAR where electronic filers manage their EDGAR accounts and individuals that electronic filers authorize may take relevant actions for electronic filers' accounts. See the discussion of proposed amendments to Rule 11 in Section III.E.2.

[10] *See* EDGAR Filer Management website at *https://www.filermanagement.edgarfiling.sec.gov.*

[11] Applicants (individuals and companies) for EDGAR access would designate account administrators on Form ID. *See* proposed Form ID.

[12] For example, if a filer wished to authorize an individual employed by its filing agent to act as the filer's account administrator, the authorized individual for the filer would be required to upload a notarized power of attorney authorizing the individual to be the filer's account administrator. *See* proposed Form ID, Part 3.

[13] We are proposing amendments to Rule 11 under Regulation S–T to define ''authorized individual.'' See the discussion of proposed amendments to Rule 11 in Section III.E.2.

[14] Foreign filers who do not have access to a U.S. notary public could use the foreign local equivalent of a notary public (*e.g.,* apostille) or obtain notarization by a remote online notary recognized by the law of any State or territory in the U.S. or the District of Columbia. *See* EDGAR Filer Manual, Volume I, at Section 3.

[15] Please see the illustration in diagram 3 in Section III.C.

[16] We are proposing amendments to Rule 11 under Regulation S–T to define a ''user'' as an individual that the filer authorizes on the dashboard to make submissions on EDGAR on the filer's behalf. See the discussion of proposed amendments to Rule 11 in Section III.E.2.

[17] We are proposing amendments to Rule 11 under Regulation S–T to define a ''delegated entity'' as an electronic filer that another electronic filer authorizes, on the dashboard, to file on EDGAR on its behalf. See the discussion of proposed amendments to Rule 11 in Section III.E.2.

[18] We are proposing amendments to Rule 11 under Regulation S–T to define a ''technical administrator'' as an individual that the filer authorizes on the dashboard to manage the technical aspects of the filer's use of EDGAR Application Programming Interfaces on its behalf. See the discussion of proposed amendments to Rule 11 in Section III.E.2.

account administrators, would further be required to maintain accurate and current information about the filer on EDGAR, and, pursuant to proposed Rule 10(d)(6), to securely maintain information relevant to the ability to access the filer's EDGAR account.

As part of EDGAR Next, the Commission would offer filers optional APIs [19] to facilitate machine-to-machine communication with EDGAR, including submission of filings and retrieval of related information. Pursuant to proposed Rule 10(d)(3), if the filer decided to use an optional API, the filer would be required to authorize two individuals to be technical administrators to manage the API.[20] In addition, the filer would present security tokens to EDGAR, which would be reissued annually, and which the technical administrators would manage on the filer's dashboard. Individuals using the APIs would be required to sign in with their individual account credentials and complete multi-factor authentication on a monthly basis.

The Commission intends to make available to filers an EDGAR Next Proposing Beta environment [21] that reflects the proposed rule and form amendments and related technical changes. In addition to public comment on the proposed rule and form amendments, the Commission welcomes feedback from filers about the technical aspects of EDGAR Next.[22]

## II. Background

### *A. Current EDGAR Access and Account Management*

Presently, those seeking to file on EDGAR apply for access pursuant to Rule 10 of Regulation S–T by completing the Form ID application for access on the EDGAR Filer Management website and submitting a notarized copy of that application signed by an authorized individual of the filer.[23] Form ID is an online fillable form that requires the applicant to provide the applicant's name and contact information, the applicant's point of contact for EDGAR information, inquiries, and access codes (''EDGAR POC''), and its contact for SEC account information and billing invoices (''billing contact'').[24] Further, when the applicant entity or individual submits the Form ID, the applicant must create and retain a passphrase to be used to create access codes if the application is granted.

If Commission staff approves the Form ID application, an account in the filer's name is opened on EDGAR, denoted by a central index key number (''CIK'') unique to that filer, if needed.[25] The EDGAR POC may then generate access codes to allow the filer to make submissions on its EDGAR account. To do so, the EDGAR POC uses the CIK provided in an email from EDGAR and the passphrase the filer created on EDGAR when the filer submitted the Form ID to generate a password, central index key confirmation code (''CCC''), and password modification authorization code (''PMAC'').[26] Together with the CIK, the filer's password, passphrase, CCC, and PMAC constitute the EDGAR access codes.

Filers make submissions on EDGAR using their CIK, password, and CCC. Filings on EDGAR are therefore traceable to the filer's CIK. EDGAR does not presently issue identifying credentials to individuals making filings on EDGAR; an individual's authority to file on EDGAR is predicated on possession of the password and CCC. Thus, filings are not easily traceable to individuals, and the Commission currently does not provide a technical solution through which filers may manage individuals who make submissions on filers' behalf. As a result, Commission staff and affected filers often encounter delays in addressing potentially problematic filings.

Because filers are required to securely maintain their EDGAR access codes,[27] Commission staff understands that many filers have devised their own internal methods of tracking the individuals who possess the password and CCC. Other filers, however, may not have closely tracked the individuals who possess the password and CCC and/or otherwise maintained secure access to filers' EDGAR accounts. For example, Commission staff understands that some filers have shared EDGAR access codes with co-registrants, filing agents, and various employees through non-secure means and without tracking or recording the names and identities of the recipients.

EDGAR does not currently employ multi-factor authentication. As noted, if an individual has the password and CCC, then no other authentication is required to access EDGAR. Multi-factor authentication would increase the level of assurance that an individual is indeed the person authorized to access an account by requiring provision of an additional data point to gain access.

Filers routinely hire filing agents, which include law firms and third-party software providers, to assist with filing on EDGAR. Indeed, EDGAR data reveals that, at a minimum, more than 60% of filings on EDGAR are made by a filing agent on the filer's behalf,[28] and

[19] We are proposing amendments to Rule 11 under Regulation S–T to define an ''Application Programming Interface'' or ''API'' as a software interface that allows computers or applications to communicate with each other. See the discussion of proposed amendments to Rule 11 in Section III.E.2.

[20] *See* proposed Rule 10(d)(3).

[21] The Commission staff will make available an EDGAR Next Proposing Beta environment shortly after the issuance of this release, and it will remain open to filers for at least 6 months thereafter.

The EDGAR Next Proposing Beta will reflect the proposed rule and form changes as well as the technical changes to EDGAR set forth in this release. The EDGAR Next Proposing Beta environment will therefore contain functionality, including APIs, not included in the 2021 Request for Comment beta environment.

If the Commission later adopts the proposed rule and form changes set forth in this release, staff would make available to filers an EDGAR Next Adopting Beta environment that reflects the rule and form changes as adopted and the technical changes to EDGAR to be made in connection with adoption. The EDGAR Next Adopting Beta would allow filers to prepare for the transition to the rule and form changes as adopted and the final version of the technical changes to EDGAR.

[22] Technical feedback may be submitted to the public comment file.

[23] *See* EDGAR Filer Manual, Volume I, at Section 3. The EDGAR Filer Manual specifies the instructions filers must follow when making electronic filings on EDGAR and is incorporated by reference in the Code of Federal Regulations by 17 CFR 232.301 (Rule 301 of Regulation S–T). Rule 10 of Regulation S–T and the EDGAR Filer Manual permit manual, electronic, and remote online notarizations, authorized by the law of any State or territory of the United States or the District of Columbia. *See* 17 CFR 232.10 and EDGAR Filer Manual, Volume I, at Section 3. An ''authorized individual'' for purposes of the Form ID notarization process is an individual with the authority to legally bind the applicant, or an individual with a power of attorney from an individual with the authority to legally bind the applicant. *See* EDGAR Filer Manual, Volume I, at Section 3.

[24] 17 CFR 239.63, 249.446, 269.7, and 274.402.

[25] While most applicants that submit Form ID have not previously been assigned a CIK, a small number of other applicants have already been assigned a CIK but have not filed electronically on EDGAR. These applicants continue to use the same CIK when they receive access to EDGAR and are not assigned a new CIK.

[26] *See* EDGAR Filer Manual, Volume I, at Section 4. For a discussion of the functions of these access codes, please see the ''Understand and utilize EDGAR CIKs, passphrases, and access codes'' section of the ''EDGAR—How Do I'' FAQs, at *https://www.sec.gov/edgar/filer-information/how-do-i.*

[27] *See* EDGAR Filer Manual, Volume I, at 4 (''Filers must securely maintain all EDGAR access codes and limit the number of persons who possess the codes.'').

[28] In calendar year 2021, 63% of all EDGAR submissions were made by filers that identified themselves as ''filing agents.'' Because filing agents are not required to self-identify in EDGAR as such, however, and instead could simply identity themselves as a ''filer,'' the actual percentage of

commenters have indicated that 81–90% of EDGAR filings are not manually submitted to EDGAR.[29] While EDGAR does not require the use of filing agents, a filer may decide to hire a filing agent to assist with EDGAR filing.

Further, as noted in comments submitted in response to the 2021 Request for Comment, individual filers who are officers and/or directors with obligations to file on EDGAR pursuant to section 16 of the Securities Exchange Act of 1934 (''Exchange Act'')[30] routinely rely upon the companies for which they serve as officers and/or directors to make filings on their behalf on EDGAR.[31] Likewise, other filers may make filings on behalf of affiliated or related entities, such as asset-backed securities issuers on behalf of their serial companies.[32]

Filers make submissions on EDGAR through one of three web-based user interfaces, depending on the type of submission made.[33] Commission staff is aware that filers and filing agents have for years sought to automate submissions on EDGAR so as not to rely upon web-based interfaces, and many filers and filing agents have engineered their own automated processes to make submissions and otherwise interact with EDGAR. These filers and filing agents extract data and content from, or ''scrape,'' the EDGAR filing websites and use that data to create custom software that allows them to interact with the websites in a machine-to-machine fashion to accomplish tasks such as scheduling filings and making a large volume of submissions on numerous different CIK accounts.[34]

Filers and filing agents must modify their custom software periodically to accord with underlying changes to EDGAR code. Similarly, when Commission staff makes EDGAR software changes, staff has coordinated with filers and filing agents using custom software to prevent filing disruptions. As a result, efficient implementation of certain technical changes in EDGAR may be delayed while such coordination and software adjustments take place.

*B. The Commission's September 2021 Request for Comment*

The 2021 Request for Comment sought feedback from filers about potential technical changes to EDGAR access and account management, including the addition of individual account credentials with multi-factor authentication, a dashboard on EDGAR where a filer would manage its EDGAR account, administrators to manage the filer's account and annually confirm the filer's information, and the time period required to implement the potential technical changes. To assist filers in assessing the potential technical changes, the Commission provided filers access to a beta environment that reflected the majority of the potential technical changes.

The Commission received over forty comment letters in response to the 2021 Request for Comment.[35] Commenters were generally supportive of the Commission's objectives,[36] but were concerned about certain aspects of the potential technical changes.

With respect to requiring individual account credentials, many commenters expressed the view that the potential technical changes would prevent filers and filing agents from continuing to use their custom third-party software to make machine-to-machine submissions on EDGAR. Several commenters estimated that currently 81–90% of EDGAR filings are submitted to EDGAR directly through third-party filing systems rather than manually uploaded on an individual basis via EDGAR filing websites.[37] Commenters stated that the *Login.gov* multi-factor authentication process does not support automated machine-to-machine authentication and requested that the Commission consider machine-to-machine authentication to facilitate the ability to pre-schedule and perform bulk filings, reduce the potential for error due to manual processing, reduce the risk of missing deadlines, and decrease the cost of compliance.[38] One commenter conducted a survey of filers wherein 70% of respondents believed that the increased time required to submit filings due to the loss of direct submission capability from third-party filing systems would be ''very impactful'' or ''extremely impactful'' to their filing success.[39]

The Commission also requested comment on whether filers should authorize administrators to manage filers' EDGAR accounts. Certain commenters expressed concerns about the impact that the institution of administrators would have on individual officer and director filers pursuant to section 16 of the Exchange Act.[40] Commenters recommended that the Commission allow a company to create and manage a company-specific account for an individual non-employee director or section 16 officer.[41] These commenters further suggested that each company be required to obtain a notarized power of attorney from the individual so that the company could create and maintain the company-specific account on behalf of the individual.[42]

With respect to the Commission's request for comment on a requirement to annually confirm users and administrators, commenters generally did not support the requirement,[43]

EDGAR submissions made by filing agents may be significantly higher.

[29] *See* Workiva Comment Letter (Nov. 30, 2021) (''Workiva Comment Letter''); XBRL US Comment Letter (Dec. 1, 2021) (''XBRL Comment Letter'').

[30] 15 U.S.C. 78p.

[31] *See* Orrick, Herrington & Sutcliffe LLP Comment Letter (Feb. 23, 2022) (''Orrick Comment Letter''); McGuireWoods, LLP and Brownstein Hyatt Farber Schreck, LLP (Dec. 1, 2021) (''McGuireWoods Comment Letter''); Brandon Norman Egren, Associate General Counsel & Assistant Secretary, Verizon (Dec. 1, 2021) (''Verizon Comment Letter''); Toppan Merrill (Nov. 22, 2021) (''Toppan Comment Letter'').

[32] *See* Donnelly Financial Solutions Comment Letter (Dec. 1, 2021) (''DFIN Comment Letter''); XBRL Comment Letter.

[33] *See* EDGAR Filer Management website at *https://www.filermanagement.edgarfiling.sec.gov;* EDGAR Filing website at *https://www.edgarfiling.sec.gov/Welcome/EDGARLogin.htm;* and EDGAR Online Forms website at *https://www.edgarfiling.sec.gov/Welcome/EDGAROnlineFormsLogin.htm.*

[34] *See* CompSci Comment Letter (Nov. 19, 2021); Workiva Comment Letter (Nov. 30, 2021); CompSci Resources LLC Comment Letter (Nov. 19, 2021).

[35] Twenty of these letters were form letters that requested an extension of the deadline to provide comments, as opposed to providing substantive comments.

[36] *See, e.g.,* Verizon Comment Letter (Dec. 1, 2021); XBRL US Comment Letter; Workiva Comment Letter; Davis Polk Comment Letter (Dec. 1, 2021).

[37] *See* Workiva Comment Letter; XBRL US Comment Letter.

[38] *See, e.g.,* Workiva Comment Letter; XBRL US Comment Letter.

[39] *See* Workiva Comment Letter (the filer survey included 660 responses from Nov. 15–27, 2021).

[40] *See, e.g.,* Workiva Comment Letter; XBRL US Comment Letter.

[41] *See* McGuire Woods, LLP and Brownstein Hyatt Farber Schreck, LLP Comment Letter (Dec. 1, 2021) (''McGuire/Brownstein Comment Letter''); Orrick, Herrington & Sutcliffe LLP Comment Letter (Feb. 23, 2022) (''Orrick Commenter Letter'') (reiterating the concern that the new filer administrator position would create an administrative burden on section 16 filers and endorsing instead the company-specific account approach outlined in the McGuire/Brownstein Comment Letter).

[42] These commenters also recommended ''grandfathering'' issuers with existing powers of attorney for section 16 officers and directors. Alternatively, they recommended a ''negative consent'' construct, according to which a company would be deemed to have authority to create a new company-specific account unless an officer or director expressly objected during a set period of time. *See* McGuire/Brownstein Comment Letter; Orrick Comment Letter.

[43] *See, e.g.,* McGuire/Brownstein Comment Letter; XBRL US Comment Letter. A few commenters also requested enhancement of the beta environment to reflect ''a complete testing environment'' or the ''full life cycle of an SEC EDGAR filing which would enable full and appropriate analysis.'' *See, e.g.,* Toppan Comment Letter (Nov. 30, 2021); Donnelley Financial Solutions Comment Letter (Nov. 18, 2021).

noting that it would increase the number of required confirmations, would be duplicative, and would necessitate additional management effort for filers, thus increasing the administrative burden.[44] Certain commenters recommended limiting confirmation to administrators.[45] Others suggested that the Commission implement an active notification process to inform filers of impending expiration [46] and recommended a grace period after failure to make a confirmation.[47] Several commenters recommended that denying EDGAR access until the administrator has reconfirmed would be less burdensome than deactivating accounts.[48]

With respect to the time period required to effectuate the potential technical changes to EDGAR access and account management, one commenter indicated that 66% of its surveyed respondents expressed the view that an appropriate transition period would be 1–3 years,[49] one commenter suggested a transition period of 18–24 months, and another commenter recommended a transition period of at least one year.[50]

The staff engaged in additional dialogue with commenters and other interested parties regarding the 2021 Request for Comment and further approaches to EDGAR access improvements.[51] Among the topics discussed were APIs for submission and for checking accession numbers (numbers filers receive from EDGAR indicating receipt of a filing), filing status, and other information; annual confirmation of individuals authorized to make submissions on a filer's behalf; whether accession numbers should be traceable to the individuals making submissions or instead to the CIK numbers associated with the submissions; bulk submissions and user group functionality; delegation of authority to file; a potential transition process to implement the changes contemplated by the 2021 Request for Comment; and other technical topics.

Having considered the significant additional information provided by commenters in response to the 2021 Request for Comment and the subsequent dialogue with interested parties, we are contemplating a number of changes in connection with the EDGAR Next project, including proposed amendments to Rules 10 and 11 under Regulation S–T and to Form ID; changes to enhance dashboard functionality; and the addition of optional APIs to allow machine-to-machine submissions on EDGAR as an alternative to submission through the EDGAR filing websites.

## III. Discussion

We are proposing amendments to Rule 10 under Regulation S–T concerning EDGAR filer access and account management and related matters; Form ID, the application for EDGAR access; and Rule 11 under Regulation S–T, containing the definitions of terms in Regulation S–T. Proposed amendments to Rule 10 and Form ID would set forth requirements for each EDGAR filer to authorize and maintain individual account administrators to manage the filer's EDGAR account on a dashboard on EDGAR, and to authorize account administrators, users, and technical administrators only if those individuals obtained individual account credentials.[52] Each filer, through its account administrators, would be required to confirm annually that all account administrators, users, technical administrators, and delegated entities reflected on the filer's dashboard are authorized by the filer to act on its behalf, and that all information about the filer on the dashboard is accurate; maintain accurate and current information on EDGAR concerning the filer's account; and securely maintain information relevant to the ability to access the filer's EDGAR account.

On the dashboard, account administrators could add and remove authorized users, account administrators, and technical administrators; delegate and remove delegated authority to file to other EDGAR accounts; and annually confirm the accuracy of all information on the dashboard. The dashboard would contain the filer's corporate and contact information, generally corresponding to the company information currently maintained on EDGAR.[53] The dashboard would be available during EDGAR operating hours,[54] such that filers could manage their EDGAR accounts during the same time period that they would file on EDGAR.

The Commission would provide optional APIs for machine-to-machine communication with EDGAR, including to submit filings and to facilitate filers' retrieval of information regarding their submissions. To use APIs, filers would be required to authorize two technical administrators and present certain tokens to EDGAR that we plan to specify in the EDGAR Filer Manual. Filers who did not wish to use the APIs would not need to do so and therefore would not need to comply with the API-related requirements. Those filers could continue to make submissions through the web-based EDGAR filing websites.

### *A. Individual Account Credentials*

Under proposed Rule 10(d)(1), a filer could only authorize an individual to perform functions on the dashboard on the filer's behalf if the individual possessed individual account credentials, obtained in the manner specified in the EDGAR Filer Manual. This requirement would pertain to all existing filers and all individuals acting on behalf of those filers, as well as all applicants for access to EDGAR.

We anticipate requiring, through the EDGAR Filer Manual, that individual account credentials be obtained through *Login.gov*, a secure sign in service of the U.S. General Services Administration.[55] *Login.gov* is used by participating Federal agencies, as well as State, local, and territorial governments to provide a secure login process and to allow members of the public to use a single account that is protected by encryption, multi-factor authentication, and additional safeguards.[56]

On the *Login.gov* website, the individual would respond to prompts to provide an email address and select a multi-factor authentication option.[57]

[44] *See* XBRL US Comment Letter; Workiva Comment Letter; DFIN Comment Letter.

[45] *See* XBRL US Comment Letter; Workiva Comment Letter; DFIN Comment Letter.

[46] *See* DFIN Comment Letter; Workiva Comment Letter.

[47] *See* DFIN Comment Letter; Workiva Comment Letter; XBRL US Comment Letter.

[48] *See* Workiva Comment Letter; XBRL US Comment Letter.

[49] Workiva Comment Letter (referencing the same filer survey discussed above).

[50] *See* XBRL US Comment Letter; McGuire/Brownstein Comment Letter.

[51] Staff invited interested parties to participate in the dialogue through the Commission's EDGAR Next web page.

[52] We are proposing amendments to Rule 11 under Regulation S–T to define ''individual account credentials'' as credentials issued to individuals for purposes of EDGAR access. See the discussion of proposed amendments to Rule 11 in Section III.E.2.

[53] The information corresponds to information that filers presently amend through a ''Company Update'' or ''COUPDAT'' submission. Filers would continue to be able to edit their company information through COUPDATs under the EDGAR Next changes.

[54] Regulation S–T provides that filings ''may be submitted to the Commission each day, except Saturdays, Sundays, and Federal holidays, from 6 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.'' 17 CFR 232.12(c). The dashboard would be available from 6.a.m.–10 p.m. as described above, so that filers could manage their accounts during the period when EDGAR filings could be submitted.

[55] *https://www.login.gov/*.

[56] *See Login.gov*, ''About us,'' at *https://www.login.gov/about-us/*.

[57] As of the date of this proposal, *Login.gov* multi-factor authentication options include: (1) a security

The email address provided to *Login.gov* would be required to match the email address the filer provides to EDGAR, for example, on Form ID.[58] After the individual confirmed her email address and completed multi-factor authentication, *Login.gov* would issue individual account credentials to the individual to sign in to EDGAR.

In accord with proposed Rule 10(d), all account administrators, users, and technical administrators would be required to use their individual account credentials, and multi-factor authentication, to sign into all EDGAR filing websites. After entering the *Login.gov* username and password, each individual would be prompted to enter a one-time passcode received through the multi-factor authentication option the individual selected when obtaining individual account credentials at *Login.gov*.[59]

Individual account credentials would enhance EDGAR security and improve the ability of filers to securely maintain access to their EDGAR accounts. As noted, filers currently share access codes among multiple individuals, making it difficult to track with whom the codes are shared or to trace a filing to a specific individual. The use of individual account credentials would enable Commission staff and filers to easily determine the individuals making specific filings on EDGAR. Linking individuals to the filings they make would be particularly useful for filers and Commission staff when problematic filings are made on EDGAR and would enhance the security and integrity of the system.

The use of individual account credentials would provide additional assurance that only individuals who have been properly authorized by the filer or the filer's account administrator could take actions on the filer's behalf on EDGAR. Currently, the process of filing on EDGAR requires the filer to use certain EDGAR access codes. EDGAR Next would enhance security by requiring an individual seeking to make a filing on EDGAR to sign in with individual account credentials, complete multi-factor authentication, be authorized by the filer or the filer's account administrator, and enter the filer's CIK and CCC.

Multi-factor authentication for individual accounts would be required to access EDGAR. Multi-factor authentication is a widely accepted security tool that would improve the security of access to EDGAR by adding a layer of validation each time an individual signed into EDGAR. Consistent with general industry practice, and standard *Login.gov* processes, individuals could check a box labeled ''remember this browser'' during the *Login.gov* sign-in process to preserve their multi-factor authentication for 30 days if they used the same web browser for login.[60]

Under EDGAR Next, the EDGAR password, PMAC, and passphrase would no longer be used. The historic use of several codes with differing functions is not in accord with standard access processes. The use of individual account credentials aligns more closely with streamlined, modern access processes, including individual login using multi-factor authentication. The CCC would persist as the code required for filing, but, as noted, individuals seeking to file would also need to sign in with individual account credentials, complete multi-factor authentication, and be authorized by the filer or an account administrator for the filer. Because of these additional safeguards, the filer's CCC would be displayed on the dashboard for account administrators and users.

Requests for Comment

1. Should we require the use of individual account credentials, as proposed under Rule 10(d)(1), and multi-factor authentication for all existing filers, individuals acting on their behalf, and applicants for access to EDGAR?

2. Does the filing community have experience with obtaining account credentials from third-party service providers including or similar to *Login.gov* that the Commission should consider? If so, which third-party service party service providers, and what experience? Would the use of third-party service providers give rise to any security concerns for individual or entity filers?

3. Would the use of individual account credentials give rise to any concerns regarding costs, confusion, or complexity for individual or entity filers? Are there specific concerns for individual or entity filers that make filings with respect to more than one subject company (*e.g.,* an individual filer who is a board member for more than one company)? If so, what concerns? Please be specific.

*B. Individual Roles: Account Administrator, User, Technical Administrator*

Under proposed Rule 10(d)(2), each filer would be required as an initial matter to authorize and maintain at least two individuals with individual account credentials as account administrators to manage the filer's EDGAR account and to make submissions on EDGAR on behalf of the filer,[61] unless the filer were an individual or single-member company,[62] in which case it would be required to authorize and maintain at least one individual with individual account credentials as an account administrator.

Using the dashboard on EDGAR, account administrators, acting on behalf of the filer, would authorize individuals with individual account credentials to be users, additional account administrators, or technical administrators for the filer, as needed. This process is illustrated in diagram 1 below. Further, account administrators could de-authorize account administrators, users, and technical administrators for the filer.

key; (2) Government employee or military PIV or CAC cards; (3) authentication application; (4) text message/SMS or telephone call; and (5) backup codes, with (1), (2), and (3) being the most secure methods, and (5) being the least secure authentication option according to *Login.gov*. *See generally Login.gov,* Authentication Options at *https://www.login.gov/help/get-started/authentication-options/. See also generally Login.gov,* ''Privacy and security: Our security practices,'' at *https://login.gov/policy/our-security-practices/* for information on *Login.gov*'s security practices.

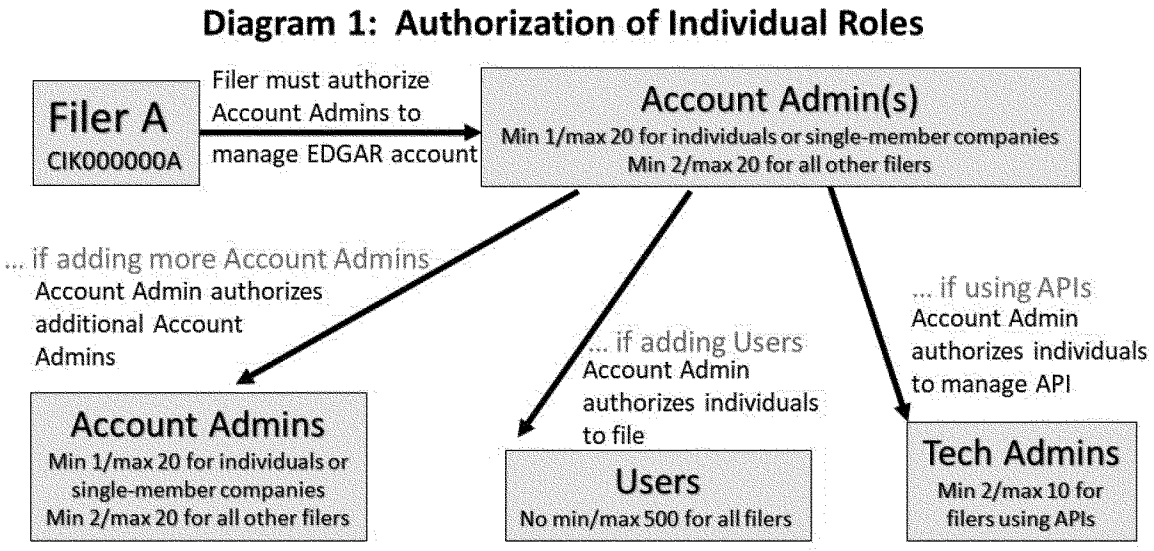
[58] While *Login.gov* permits multiple email addresses to be associated with a single *Login.gov* account, EDGAR would require a single email address related to the need to access EDGAR be associated with the individual account credentials. To change an email address (for example, because of a change of domain name), the individual would change the email in the dashboard and then change it on *Login.gov* to maintain access to EDGAR.

[59] If the individual lost or forgot her *Login.gov* password, the individual would reset the password through *Login.gov*, simplifying and automating the process of password retrieval.

[60] Consistent with current practice, an individual logged into EDGAR would be automatically logged out if the individual were idle for more than 60 minutes, as well as at the end of EDGAR's hours of operation (10:00 p.m. ET on business days). In each of those cases, the individual would need to complete multi-factor authentication in order to log back into EDGAR unless the individual had successfully signed into EDGAR and checked the ''remember this browser'' box within the last 30 days.

[61] *See* EDGAR Filer Manual, Volume I, at Section 4.

[62] As defined in proposed Rule 11 and proposed Form ID, a ''single-member company'' would be a company that has a single individual who acts as the sole equity holder, director, and officer (or, in the case of an entity without directors and officers, holds position(s) performing similar activities as a director and officer).




Individuals in each role would perform different functions for the filer, and an individual's dashboard would display functionality that corresponded to the respective individual's role, as explained more fully below.

An individual could be authorized to perform more than one role for a filer. For example, one individual could be both an account administrator and a technical administrator, or one individual could be both a technical administrator and a user. An account administrator could not be a user, however, given that account administrators are able to perform all the functions of a user, including the ability to file on EDGAR, themselves.

Analogous additional roles would exist at delegated entities—filers, including filing agents, to which another filer delegates authority to file on its behalf. Specifically, the delegated entity's account administrators would become delegated administrators for the filer, and delegated administrators would have the ability to authorize one or more of the delegated entity's users as delegated users who could make submissions on behalf of that filer.

The key functions that could be performed by each role are illustrated in diagram 2 below.

DIAGRAM 2—KEY FUNCTIONS FOR EACH ROLE

| Role | Submit filings, view CCC | Generate/ change CCC | Manage account administrators, users, technical administrators, and delegated entities | Delegate to/accept delegated entity status from another filer | Manage delegated users | Manage filer API token | Manage user API token |
|---|---|---|---|---|---|---|---|
| Account Administrator | X | X | X | X | | | X |
| User | X | | | | | | X |
| Technical Administrator | | | | | | X | |
| Delegated Administrator | X | | | | X | | X |
| Delegated User | X | | | | | | X |

1. Account Administrators

Proposed Rule 10 paragraphs (d)(4), (d)(5), and (d)(6) would require that the filer, through its account administrators, be responsible to maintain accurate and current information on EDGAR concerning the filer's account and to confirm that information annually, as well as to securely maintain information relevant to the ability to access the filer's EDGAR account, including but not limited to access through any APIs.

Under EDGAR Next, account administrators, on behalf of the filer, would be responsible for the security of the filer's EDGAR account and the accuracy of the filer's information on EDGAR. Account administrators would manage the filer's account on the dashboard, which would display relevant functionality for them to:

- Add and remove users, account administrators, and technical administrators (including removing themselves as account administrators);
- Create and edit groups of users;
- Delegate filing authority to other EDGAR accounts, such as a filing agent's account, and remove such delegations;
- Make the required annual confirmation of all of the filer's information on the dashboard;
- Generate a new CCC for the filer; and
- View and correct their own profile information (name, address, phone number, etc.).

Account administrators could also make submissions on behalf of the filer on EDGAR, allowing filers to make submissions on EDGAR through their account administrators without adding individuals as users on the account.

In addition, account administrators would serve as the points of contact for questions from Commission staff regarding the filer's account.[63]

Each account administrator would be co-equal, possessing the same authority and responsibility to manage the filer's EDGAR account. There would be no primary account administrator. All actions that would be required to be

[63] Technical administrators would serve as the Commission staff's points of contact regarding the filer's use of the APIs. *See infra* Section III.B.3.a.

performed by account administrators could be performed by any of them individually and would not require joint action by the filer's account administrators.

a. Filer Authorization of Account Administrators

Under the proposal, prospective EDGAR filers would designate on Form ID the individuals that the filer authorized as account administrators.[64] As noted above, pursuant to proposed Rule 10(d)(1), the filer could only authorize individuals as account administrators if those individuals had obtained individual account credentials in the manner specified in the EDGAR Filer Manual.

Prospective company filers could authorize as account administrators either (i) individuals employed at the filer or an affiliate of the filer or (ii) any other individual, provided the filer submitted a notarized power of attorney authorizing such other individual to be its account administrator. Prospective individual filers could authorize as account administrators either (i) themselves or (ii) any other individual, provided the filer submitted a notarized power of attorney authorizing such other individual to be the individual filer's account administrator.

A prospective account administrator would complete the prospective filer's Form ID and electronically submit it, and also upload a notarized copy of the prospective filer's Form ID signed by an authorized individual of the prospective filer, as currently required. The signature of the authorized individual would constitute the filer's authorization of the account administrators listed on Form ID.

If the prospective filer sought to authorize another individual as an account administrator, the prospective filer would additionally be required to provide Commission staff with a notarized power of attorney executed by an authorized individual of the prospective filer granting authority to that individual to be an account administrator. The power of attorney would be uploaded with the prospective filer's completed, notarized Form ID.[65]

If, after reviewing the Form ID application, Commission staff granted access to EDGAR to the filer, EDGAR would email the account administrators listed on Form ID the filer's CIK number and a link to the relevant EDGAR website, similar to the current process. The account administrators could then access the filer's dashboard by logging into EDGAR with their individual account credentials and completing multi-factor authentication.

On the dashboard, account administrators could generate a CCC for the newly issued CIK. The CCC would be securely saved in the dashboard and would be visible to all account administrators and users, delegated administrators, and delegated users for that CIK to facilitate their ability to make submissions on behalf of the filer.

Account administrators could authorize additional account administrators via the dashboard. Thus, if the initial account administrators are determined to be properly authorized to act for the filer on EDGAR, those initial account administrators would be authorized to add account administrators.

b. Number of Account Administrators

As proposed in Rule 10(d)(2), filers who are individuals or single-member companies would be required to authorize and maintain at least one account administrator; all other filers would be required to authorize and maintain at least two account administrators. On the dashboard, any account administrator could add account administrators to the filer's EDGAR account; the maximum number of account administrators would be twenty. After an account administrator invited the individual on the dashboard, EDGAR would send an email invitation to the individual at the email address used to create individual account credentials.

Requiring most filers to authorize at least two account administrators would increase the ability of filers to manage their EDGAR accounts without interruption. Thus, if an account administrator unexpectedly resigned or otherwise ceased to be available to manage the filer's account, the remaining account administrators would continue to manage the filer's account and could authorize additional account administrators. If the account administrator who sought to resign was one of the required two account administrators for an entity filer, then that account administrator could not be removed from the filer's EDGAR account unless the filer first added another account administrator through the dashboard to meet the required minimum of two account administrators. For individual filers and single-member companies, at least one account administrator would always be required because those filers typically consist of only one individual. A limit of twenty account administrators would likely be sufficient to allow for management of large accounts, while avoiding the confusion that a larger number of account administrators might cause.

If all the account administrators for a filer ceased to be available to manage the filer's account, the filer would be required to submit a new Form ID to authorize new account administrators.

c. Account Administrator Authorization and Removal of Users, Technical Administrators, and Other Account Administrators

An account administrator could add an individual as a user, account administrator, or technical administrator for an EDGAR account through the dashboard. The account administrator would enter on the dashboard the prospective individual's first and last name and email address, and EDGAR would send an email invitation to that address. The email address would be required to match the email address provided by the individual when they obtained individual account credentials. In addition, EDGAR would send a notification to the individual through the dashboard if the individual to be added had existing access to the dashboard for another role or filer. The individual's designation as user, account administrator, or technical administrator would be effective when the individual accepted the invitation. Individuals would have fourteen days within which to accept the invitation.[66] If the individual did not accept within that time period, the individual would not be added, and the invitation would become void. The account administrator could re-initiate the invitation thereafter, however, to afford the individual another opportunity to accept.

Account administrators could change roles of individuals who had already been authorized to act on behalf of the filer, by adding or removing roles as account administrator, user, and/or technical administrator. The relevant individuals would not be required to accept additional invitations or de-

[64] A unique process would be employed to transition existing filers, as discussed in the transition section below (see Section III.F).

[65] Currently, a person with a power of attorney from an individual filer may sign the Form ID application for the individual filer; in that case, the power of attorney document must accompany the notarized Form ID application. *See* EDGAR Filer Manual, Volume I, at Section 3. Existing Commission practice also permits the Form ID to be signed by an individual with a power of attorney from a filing entity, such as a corporation.

[66] If the deadline fell upon a day when the dashboard was not available (*e.g.,* a holiday or weekend), the deadline would be deferred until the following business day.

authorizations for their role to be changed. An account administrator could perform all the functions of a user, therefore, an account administrator could not also be a user since it would be redundant for an individual to hold both roles for the same filer. An individual could, however, be both an account administrator and a technical administrator for the same filer, or a user and a technical administrator for the same filer.

d. Account Administrator Performance of Annual Confirmation

As proposed under Rule 10(d)(4), each filer would be required to perform an annual confirmation on EDGAR of all of the filer's users, account administrators, technical administrators, and delegated entities, as well as any other information related to the filer appearing on the dashboard.[67] Account administrators would act for the filer to carry out this function.[68] Annual confirmation would assist the filer in tracking those authorized to file on EDGAR and would provide an opportunity for account administrators to confirm the accuracy of those individuals and delegated entities associated with the filer and to remove those no longer authorized.

To provide flexibility to filers, EDGAR would allow account administrators to select one of four quarterly dates as the filer's ongoing confirmation deadline: March 31, June 30, September 30, and December 31 (or the next business day, if the date fell upon a weekend or holiday when EDGAR was not operating). An account administrator need not wait until the deadline to confirm and could confirm at any earlier date. An account administrator could further change the quarter when confirmation was due by confirming the account at a date in a quarter earlier than the currently selected deadline quarter. Confirmation in an earlier quarter would result in a confirmation deadline one year after the end of the quarter in which the early confirmation occurred. For example, if a December 31 confirmation deadline was selected by the account administrator for the initial annual confirmation, but the account administrator submitted the confirmation for the following year in August, the filer's annual confirmation deadline for the next year would be September 30 (or the next business day, if the date fell upon a weekend or holiday when EDGAR was not operating).

EDGAR would provide several periodic notices to account administrators of the upcoming confirmation deadline, as well as notice of completion of confirmation or failure to timely confirm.[69] There would also be a two-week grace period following the confirmation deadline, during which account administrators would receive a final series of notices reminding them to complete annual confirmation.[70]

If no account administrator performed the annual confirmation by the end of the grace period, EDGAR would deactivate the filer's access and the filer would be required to submit a new Form ID application to request access to file on EDGAR.[71] If Commission staff approved the Form ID application, the filer would continue to have the same CIK previously assigned and its filing history would be maintained. The filer's account administrators listed on Form ID would be required, however, to invite through the dashboard, as if to a new account, any additional account administrators, technical administrators, and users. Although the need to reapply for access and, in particular, the need to invite account administrators, users, and technical administrators anew, would impose an additional burden on filers, failure to perform annual confirmation could signal that the filer was no longer managing or controlling the account. Removing individuals from the filer's account upon deactivation would safeguard information regarding individuals whose information was listed on the filer's dashboard. For example, if someone other than the original filer's account administrators submitted a Form ID application for access to the account, and the original account administrators did not respond to Commission staff's inquiries regarding the new Form ID, the process outlined above would prevent the new account holder from accessing the names, addresses, and contact information of the individuals formerly associated with the account.

e. User Groups

The dashboard would allow an account administrator to group subsets of the filer's users into user groups. User groups would:

- Be created by an account administrator;
- Consist only of users, not account administrators or technical administrators;
- Contain only users for the same EDGAR account;
- Contain up to 500 users (corresponding to the maximum number of users per filer that would be allowed); and
- Not be subject to any numerical limit (*i.e.,* there could be an unlimited number of user groups).

The user group function would primarily assist delegated entities to authorize certain delegated users to file on EDGAR for specific filers, as explained in the Delegated Entities section below. By employing user groups, the delegated administrator could add or remove the ability to file

[67] As discussed above, the dashboard would contain the filer's corporate and contact information. *See supra* text accompanying note 53. If the filer's information contained in the dashboard was not correct, that information could be updated via a COUPDAT submitted by the filer's account administrator or user. Proposed paragraph (d)(4) is analogous to the requirements currently set forth in the EDGAR Filer Manual, Volume I, to securely maintain EDGAR access and to maintain accurate company information on EDGAR. *See* EDGAR Filer Manual, Volume I, at Sections 4 and 5.

[68] As discussed above, in the 2021 Request for Comment, the Commission sought comment on requiring confirmations to be made by both account administrators and users. Several commenters objected to this requirement on the grounds that it would be duplicative and unduly burdensome for account administrators to confirm all users authorized to act on behalf of the filer, and for those users to separately have to confirm their own authorizations. *See supra* note 45. Other commenters recommended limiting confirmation to administrators. *See supra* note 45. To address these commenters' concerns, our proposal includes the latter group of commenters' recommendation, requiring only account administrators to confirm users, account administrators, technical administrators, delegations, and other information on the filer's dashboard. We believe that limiting the confirmation to account administrators should address the concerns from these commenters.

[69] As discussed above, in response to the 2021 Request for Comment, some commenters suggested that the Commission implement an active notification process to inform filers of impending expiration, and the proposed process would follow that approach. *See supra* note 46.

[70] These notices would be provided in the dashboard and also be sent via email to all account administrators' email addresses (*e.g.,* the confirmation deadline notices would be periodically provided in both email and via the dashboard multiple times leading up to the deadline to ensure that the account administrators were fully aware of the pending deadlines). *See infra* Section III.B.1.f (discussing notifications to account administrators).

[71] As discussed above, in response to the 2021 Request for Comment, several commenters urged the Commission to provide a grace period to filers that failed to perform annual confirmation timely (as opposed to immediately removing access) and separately requested that the Commission deny EDGAR access until the administrator performed annual confirmation (as opposed to inactivating the EDGAR account). *See supra* notes 47–48. As discussed below, as part of the EDGAR Next changes, we would provide multiple notices of the impending confirmation deadline to account administrators on the dashboard and by email and also provide a two-week grace period that would include a series of reminder notices. Collectively, we believe this would ensure that the filer's account administrators would receive adequate notice and opportunity to timely perform confirmation. Deactivating the account due to failure to provide confirmation therefore would immediately protect the filer because failure to perform the required confirmation could be a sign that the account may no longer be managed or controlled by the filer.

for a certain filer to all users in the group at once, leading to efficiencies of time in managing users.

If an account administrator added an individual to a user group, the individual would receive an invitation to join the user group. If the individual accepted, the individual would become a member of the user group.

2. Users

Under EDGAR Next, account administrators could authorize individuals with individual account credentials as users able to make submissions on EDGAR on behalf of the filer.

a. Authority of Users

Users would be able to make submissions on EDGAR on the filer's behalf. On the dashboard, account administrators and Commission staff could determine which users made which submissions; however, this information would not be made public on EDGAR. In addition, on the dashboard, users could:

- Remove themselves as a user for a filer;
- If using APIs, generate, view, and copy their user API tokens (as discussed further in Section III.D below); and
- View basic information about the filer's account, including the filer's name, CIK, CCC, and corporate information and contact information, as well as the contact information for the account administrators.

Users could not, however, add or remove individuals from the dashboard other than themselves. Further, users could not generate a new CCC.

Separately, users could submit COUPDATs to update filer information such as name, address, and state of incorporation, as filers currently do.

As part of the login and authentication process for the EDGAR filing websites, a user would be able to select the CIK of the filer for which submissions were being made, and that CIK would be reflected in the accession number [72] for each of the user's submissions (''login CIK''). Users could change their login CIK at any time to any other CIK for which they were authorized.

[72] An accession number is a unique identifier assigned automatically to EDGAR submissions for tracking and reference purposes. The first 10 digits comprise the CIK of the entity making the submission, which may be an entity with reporting obligations or a third party (such as a filing agent. The next two digits represent the year. The last series of digits comprise a sequential count of submitted filings from that CIK. The count is usually, but not always, reset to zero at the start of each calendar year.

b. Becoming Authorized as a User

Through the dashboard, an account administrator would invite an individual to be a user for the filer's account, and the prospective user would receive an email invitation from EDGAR at the email address associated with the prospective user's individual account credentials. In addition, if the prospective user had a role for any EDGAR account, the notification would also appear on the prospective user's dashboard. The individual would be required to accept the invitation to become a user. The individual could then sign in as a user to the filer's EDGAR account by entering her individual account credentials and completing multi-factor authentication.

c. Number of Users

There would be no minimum number of users because account administrators could make submissions on behalf of the filer. There would be a maximum of 500 users. We anticipate that 500 users would be sufficient to accommodate sophisticated filers making a large number of varied filings.

3. Technical Administrators

In connection with the EDGAR Next changes, filers would have an option to use a submission API and related informational APIs, and filers who opted to use the APIs would be required, through their account administrators, to authorize at least two technical administrators to manage API tokens and related technology. Technical administrators could:

- Issue and deactivate filer API tokens on the dashboard;
- Remove themselves as technical administrators for filers;
- View and correct their own profile information; and
- View basic information about each filer for which they are designated as a technical administrator, including the filer's corporate information and contact information.

a. Authority of Technical Administrators

A technical administrator would issue and deactivate filer API tokens required to use the APIs, as set forth more fully in the API discussion in Section III.D. Technical administrators would also serve as points of contact for questions from Commission staff regarding the filer's use of the APIs.

A technical administrator could not add or remove individuals on the dashboard, except to remove themselves as technical administrator. Nor could a technical administrator make submissions on EDGAR on the filer's behalf. Additionally, a technical administrator could not generate CCCs and could not change company information. A technical administrator could, however, view relevant filer information on the dashboard.

An account administrator could authorize technical administrators to be account administrators or users as well as technical administrators. To the extent that individuals designated as technical administrators also had the role of account administrator or user, they would additionally be able to perform the functions associated with that role.

b. Becoming a Technical Administrator

Identical to the process for users, an account administrator would invite the prospective technical administrator on the dashboard, and EDGAR would send the invitation to the email address associated with the prospective technical administrator's individual account credentials. In addition, if the prospective technical administrator already had a role for any EDGAR account, a notification of the invitation would appear on her dashboard. The prospective technical administrator would be required to accept the invitation to become a technical administrator.

c. Number of Technical Administrators

As proposed, if the filer chose to use an API, the filer, acting through its account administrator, would be required to designate at least two technical administrators. This minimum would parallel the minimum number of individuals required to be account administrators (in the case of filers other than individuals and single-member companies) and would reduce the chance that the filer's access to the APIs would be interrupted. There would be no exception to the two technical-administrator minimum for individuals and single-member companies, however, because we anticipate that filers that make a large volume of submissions—typically large filers and filers who use filing agents—would use the APIs, and those filers would have sufficient staff to designate two technical administrators.

Because a filer would be required to have at least two technical administrators to use the APIs, the dashboard would not allow a technical administrator to be removed from a filer's account when only two technical administrators were authorized on the account. An account administrator would be required to first add another technical administrator.

There would be a maximum of ten technical administrators per filer. This limit would streamline points of contact with the filer and avoid confusion at the filer regarding API tokens. For example, having more than ten possible technical administrators could heighten opportunities for miscommunication between Commission staff and the filer if issues arose regarding the use of APIs. Moreover, based on our understanding of filers' current practice, we do not anticipate that a filer would require more than ten technical administrators to carry out the functions of managing technical aspects of the APIs.

Requests for Comment

4. Should we add a required account administrator role to EDGAR, as set forth in proposed Rule 10(d)? If not, why not?

5. As stated in proposed Rule 10(d), at least two account administrators would be required for filing entities (other than single-member companies) and one account administrator for individual filers and single-member companies. Are these minimum numbers of account administrators appropriate? If not, what minimum numbers of account administrators would be appropriate? Should individual filers and single-member companies be required to have more than one account administrator? If so, why?

6. Should account administrators be permitted to add and/or remove other account administrators without the filer's consent? If so, why? If the filer's consent is not required, should the filer be notified when a new account administrator is added or removed?

7. Should a prospective filer's Form ID be required to be completed and submitted by an account administrator, as set forth in proposed Rule 10(b)? If not, what would be the advantages and disadvantages of allowing an individual who was not an account administrator to complete and submit a Form ID on behalf of an applicant? Please be specific.

8. In proposed Rule 10(d), each filer, through its account administrators, would be required to confirm annually the accuracy of the filer's information on the dashboard; maintain accurate and current information on EDGAR concerning the filer's account; and securely maintain information relevant to the ability to access the filer's EDGAR account, including but not limited to access through any EDGAR APIs. Should any changes or clarifications be made to the proposed responsibilities of filers to be carried out by account administrators in proposed Rule 10(d)? If so, how and why should such changes or clarifications be made? Should any guidance be provided with regards to any of these responsibilities and, if so, how and why?

9. Should any changes be made to the authorization process for account administrators? For example, in the case of company filers, should employees of the filer's affiliate be required to be authenticated via a notarized power of attorney? If so, why?

10. Should any changes be made to the scope of the proposed annual confirmation requirement set forth in proposed Rule 10(d)? Why? Should the confirmation be performed annually, more frequently, or less frequently? Why? As currently contemplated as part of EDGAR Next, in the case of a failure to satisfy the proposed annual confirmation requirement, should there be a grace period for the account administrators to satisfy the confirmation requirements before the account is deactivated? How long should this grace period be, if adopted? Regardless of whether a grace period is provided, should failure to satisfy the proposed annual confirmation requirement result in deactivation of the account with removal of the individuals authorized on the dashboard for the filer, as discussed above, or alternatively, would a temporary suspension of EDGAR access without removal of any of the individuals authorized on the dashboard for the filer be more appropriate, until any of the listed account administrators satisfied the confirmation requirement? Why? How long should the described temporary suspension be, if adopted? Separately, if failure to satisfy the proposed annual confirmation requirements should result in deactivation of the account with removal of the individuals authorized on the dashboard of the filer, as discussed above, should delegated entities and delegating filers also be removed from the dashboard? Why or why not?

11. Would the annual confirmation requirement create any additional burden for filers compared to the current annual EDGAR password update requirement? If so, are there any improvements to the proposed annual confirmation requirement that would reduce the burden for filers? Separately, are there any particular concerns for filers who may only engage in occasional filings, such as filers pursuant to section 16 of the Securities Exchange Act of 1934 who may make sporadic submissions of Forms 3, 4, and 5 less than once per year? If so, to what extent would those concerns be newly implicated by the proposal, given that currently filers must change their password annually or their access to EDGAR is deactivated?

12. Are there any considerations regarding the annual confirmation requirement that are specific to individual or entity filers that make filings with respect to more than one subject company (*e.g.,* an individual filer who is a board member for more than one company)? Should the confirmation requirement differ for such filers? If so, why?

13. Should we add a user role to EDGAR? If not, how would we address our policy concerns regarding the identification and authorization of individuals who make submissions on the filer's behalf? Is a limit of 500 authorized users per filer appropriate, or should that number be increased or decreased? Should account administrators be able to add users only for a specific filing or for a specific period of time, after which the user's authorization automatically expires? Should any changes or clarifications be made to the scope of authority of users as part of EDGAR Next? If so, how and why should the scope of authority of users be different, or how could the tasks within the scope of authority for users be clarified?

14. Should we add a technical administrator role to EDGAR, as set forth in proposed Rule 10(d)? If not, how would we address our policy concerns regarding the identification and authorization of the individuals who would manage the filer's APIs?

15. Would the requirement of at least two technical administrators to manage the filer's APIs, as set forth in proposed Rule 10(d), create an undue burden for filers? Should this requirement be revised to more fully parallel the limit for account administrators by requiring only one technical administrator for filers who are individuals and single-member companies? Why or why not? Is a maximum number of ten technical administrators appropriate? Why or why not? Should any changes or clarifications be made to the scope of authority for technical administrators as part of the EDGAR Next changes?

16. For what purposes, if any, would filers need to access the dashboard when EDGAR filing functionality was not available? If the dashboard were made available to filers for a period of time outside of EDGAR operating hours, in addition to during EDGAR operating hours, would filers be impacted by the unavailability of filer telephone and email support and EDGAR submission capabilities during that time period?

How would they be impacted? Please be specific.

*C. Delegated Entities*

Under EDGAR Next, a filer could delegate authority to file on its behalf to any other EDGAR filer, such as a filing agent, which would become a delegated entity for the filer.

1. Delegating Authority To File

An account administrator would delegate authority to file by entering the prospective delegated entity's CIK on the dashboard. EDGAR would then send an email invitation to all account administrators of the prospective delegated entity; in addition, the invitation would appear on the dashboard of the prospective delegated entity's account administrators.

One account administrator for the prospective delegated entity would be required to accept the invitation for the delegation to become effective. If no account administrator for the prospective delegated entity accepted within fourteen days of it being issued, the invitation would lapse; however, the filer could again follow the process outlined herein to issue another invitation.[73]

If the filer's account administrators wished to terminate the delegation, they could do so on the dashboard by removing the delegated entity's authority to file. Removal of delegation would not require acceptance by the delegated entity.

An account administrator could delegate authority to file to an unlimited number of EDGAR accounts, allowing filers to delegate to multiple filing agents, for example, should they so choose.

2. Separation of Authority of Filer and Delegated Entity

An account administrator could not add or remove individual delegated users at the delegated entity, nor could the account administrator access the delegated entity's dashboard or account.

Delegated administrators and delegated users could file on the filer's behalf, but they could not take any other actions on behalf of the filer. Nor could they access the filer's dashboard.[74] For example, a delegated administrator could not add, remove, or confirm account administrators, users, or technical administrators for the filer. Similarly, delegated administrators would not be able to generate or reset the filer's CCC, nor would delegated administrators or delegated users be able to make COUPDAT submissions for the filer.[75] Delegated administrators and delegated users would not count towards the limits of 20 account administrators and 500 users for the filer under EDGAR Next.[76]

Delegated entities could receive and provide multiple delegations, but they could not further delegate authority to file to other entities on behalf of filers who delegate authority to them. For example, Filer A could delegate authority to file on its behalf to Filer B. Separately, Filer B could delegate authority to file on its behalf to Filer C. In this scenario, however, Filer B could not delegate to Filer C the authority to file on behalf of Filer A, and Filer C could not file on behalf of Filer A.

3. Delegated Entities

As EDGAR filers, delegated entities would be required to comply with the same requirements applicable to all filers.

A delegated entity could be any EDGAR account, including but not limited to:

- Filing agents;[77]
- Issuers, broker-dealers, and others making submissions on behalf of individuals filing pursuant to section 16 of the Securities Exchange Act of 1934;and
- Parent companies of large groups of related filers.

A delegated entity would maintain its separate EDGAR account with its own account administrators, users, and technical administrators.

A delegated entity could receive delegated authority to file for an unlimited number of filers.

We contemplate that individuals with section 16 filing obligations could delegate authority to file to relevant company filers under the construct set forth herein, if they wished to do so. In response to the 2021 Request for Comment, several commenters suggested that the Commission permit the creation of company-specific accounts for each individual with filing obligations pursuant to section 16 of the Exchange Act.[78] Commenters stated that such accounts would allow individuals to delegate their EDGAR account administration responsibilities to the companies for which those individuals had section 16 filing obligations.[79] This framework would make it difficult for the Commission and others to track the filings made by a specific individual, however, since each filing would be made by a different company-specific account without linking individuals to the accounts or the filings made therein. The delegation process described herein would make it easier for individuals to obtain assistance with their filings, while allowing the Commission and others to determine filings made by a specific individual. We therefore do not plan to implement the commenters' suggestion.

If a filer authorized a delegated entity to file on its behalf, one of the delegated entity's account administrators would be required to accept the invitation; further, upon acceptance, all of the delegated entity's account administrators would automatically become delegated administrators for the filer. All delegated administrators for the filer would have co-equal authority with regard to that filer. If the delegated entity added or removed one of the account administrators for its own EDGAR account, then that individual would also be added or removed as a delegated administrator for the filer. These relationships are illustrated in diagram 3 below.

[73] If the deadline fell upon a day when the dashboard was not available (*e.g.,* a holiday or weekend), the deadline would be deferred until the following business day.

[74] As discussed further below in Section III.C, the dashboard would generally be used to manage a filer's EDGAR account, including management of individuals authorized to act as account administrators, users, and technical administrators; management of entities authorized to act as delegated entities; and management of filer and user API tokens. Delegated entities would not need to access the filer's dashboard in order to make filings on the filer's behalf, since filings would be made directly on the EDGAR filing websites, as opposed to through the filer's dashboard.

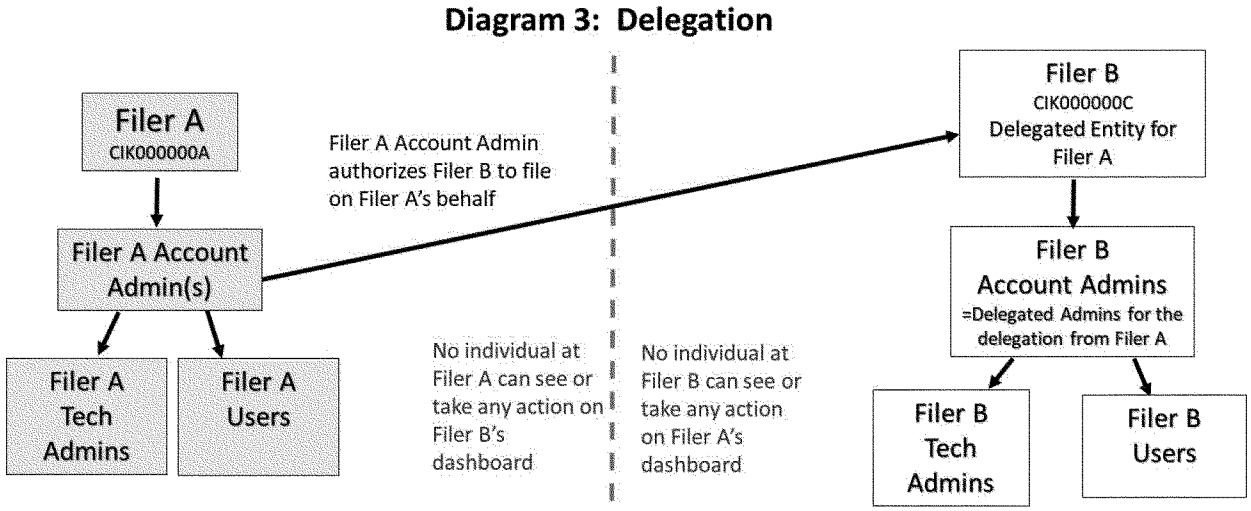
[75] As currently planned, delegated administrators and delegated users would not be able to make COUPDAT submissions for the filer. Delegated administrators and delegated users could, however, continue to submit series and company update submissions, or SCUPDATs, for registered investment company clients according to the present process.

[76] *See* Section III.B.1.b. and III.B.2.c (discussing limits of account administrators and users per filer).

[77] We are proposing amendments to Rule 11 under Regulation S–T to define a ''filing agent'' as any person or entity engaged in the business of making submissions on EDGAR on behalf of filers. This would include law firms, financial services companies, and other entities engaged in the business of submitting EDGAR filings on behalf of their clients. See the discussion of proposed amendments to Rule 11 in Section III.E.2.

[78] *See supra* notes 41–42.

[79] *See supra* notes 41–42.




4. Delegated Users

If a delegated entity accepted a delegation from a filer, the delegated administrators could authorize specific users at the delegated entity to become delegated users with respect to that filer. Delegated users would not count as part of the 500-user limit for the filer.[80]

Alternately, if delegated administrators wanted all of their users to become delegated users with respect to a filer, the delegated administrators could check a box to automatically designate all of the users at the delegated entity as delegated users for the filer.

Thus, delegated administrators would have the following options:

- Authorize a subset of the delegated entity's users as delegated users, through the user group function, as discussed above and further explained below;
- Authorize all of the delegated entity's users as delegated users for the filer; or
- Not authorize any delegated users (because the delegated administrators could file on behalf of the filer[81]).

Users at the delegated entity would receive notifications if a delegated administrator added or removed them as a delegated user for a particular filer, however, users would not need to accept the notification or take any further action to become a delegated user for a filer.

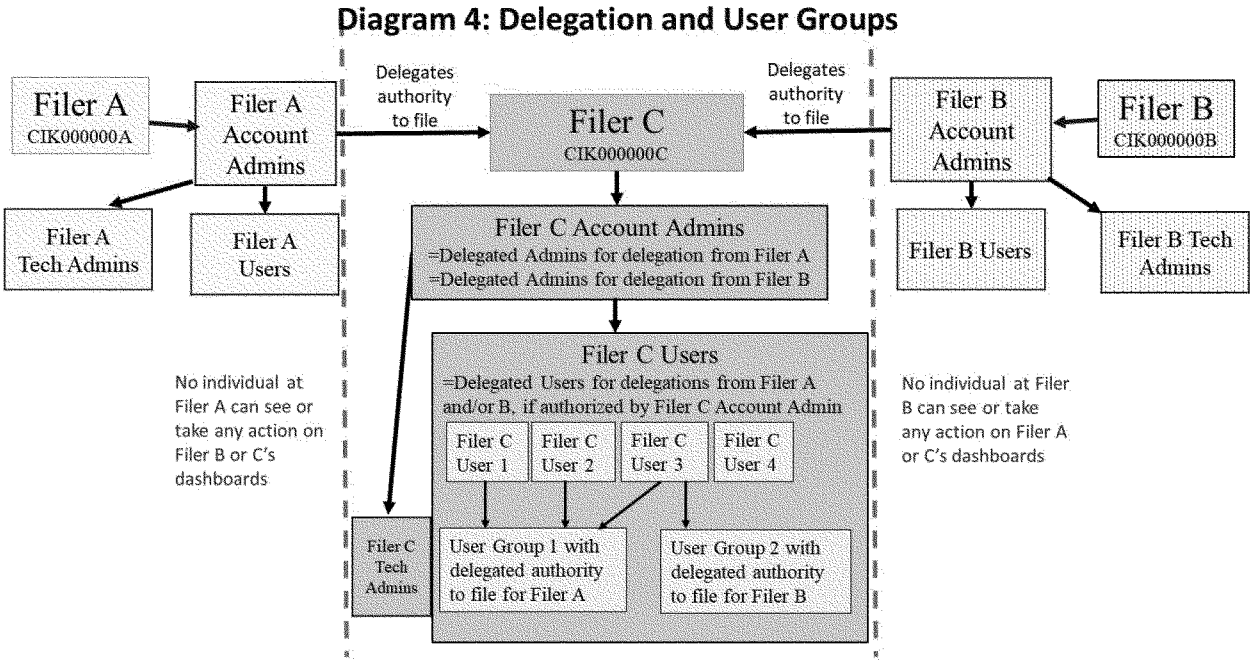
Delegated users could submit filings on behalf of the filer on the EDGAR filing websites or through the submission API (which would also require the user to generate and submit a user API token, as discussed further below).

5. User Groups at Delegated Entities

We believe that the user group function would provide an efficient method for delegated administrators to manage delegated users. Delegated entities, through their delegated administrators, could employ user groups to assign certain users to different filers for whom they possessed delegated authority to file. An example is provided in diagram 4 below.

[80] *See supra* Section III.B.2.c.

[81] For this reason, delegated administrators could not be designated as delegated users with regards to the delegating filer, because doing so would be redundant.




• In diagram 4, the account administrators for Filer A and Filer B delegated to Filer C. As a result, Filer C's account administrators became delegated administrators for Filers A and B. In this example, Filer C might be a filing agent to which Filer A or Filer B gave authority to make filings on its behalf, and Filer A and Filer B might be public companies or investment companies.

• A delegated administrator at Filer C created User Group 1 containing Filer C's Users 1, 2, and 3. The delegated administrator assigned authority to file for Filer A to User Group 1. Users 1, 2, and 3 are thus delegated users for Filer A because they are members of User Group 1. If additional users from Filer C were added to User Group 1, those additional users would also become delegated users for Filer A.

• The delegated administrator at Filer C also created User Group 2 containing Filer C's User 3. The delegated administrator assigned authority to file for Filer B to User Group 2. User 3 is a delegated user for Filer B.

• By employing the user group function, the delegated administrator at Filer C restricted delegated filing permissions for Filer A to Filer C Users 1, 2, and 3 only (via User Group 1) and delegated filing permissions for Filer B to Filer C User 3 only (via User Group 2). Filer C User 4 has not been authorized as a delegated user for any filers.

• In diagram 4, each user group has only been assigned authority to file for a single filer, but user groups could be assigned authority to file for multiple filers.

Delegated administrators could also designate a default user group of individuals who would be automatically assigned as delegated users for all future delegations. The ability to have a default user group would be an efficient way for delegated administrators to authorize groups of their users as delegated users for any delegating filer.

Users would receive notifications when added to or removed from a user group, and when the user group to which they belonged became authorized to make submissions for a filer, or when that authorization was removed. Users would not need to accept or otherwise take any action on these notifications.

6. Technical Administrators at Delegated Entities

If the delegated entity chose to use APIs, the delegated entity would be required to designate its own technical administrators. The delegated entity's technical administrators would be responsible for maintaining the API capabilities for filings by the delegated entity. They would manage the delegated entity's own filer API tokens, as discussed further in Section III.D.1, and the delegated entity would use the delegated entity's filer API tokens to make filings for any filers that delegated authority to it. Technical administrators at the delegated entity would not manage any APIs in use by the filer itself. Nor would the technical administrator need different tokens for different filers that delegated to the delegated entity.

Requests for Comment

17. Should we add individual roles to EDGAR for delegated administrators and delegated users? If not, how should we address our policy concerns regarding the identification and authorization of the delegated individuals who would submit filings on the filer's behalf?

18. Should account administrators be able to delegate filing authority to any EDGAR filer (and remove such delegation)? Do commenters have any concerns with the delegation function or any suggested modifications? For example, should delegation be limited to EDGAR filers that selected ''filing agent'' as the account type on Form ID when opening the account? Or should delegation be permitted to any EDGAR account, as proposed? Why?

19. Would the EDGAR Next delegation framework address concerns raised by commenters about the impact that the contemplated EDGAR Next changes would have on individual officer and director filers pursuant to section 16 of the Exchange Act, in light of the fact that individual officer and director filers could delegate authority to file on their behalf to any related companies, law firms, or filing agents? Why or why not?

20. Should any changes be made to the authority of delegated administrators and delegated users under EDGAR Next?

21. Are there any situations where the EDGAR Next delegation framework could be streamlined?

22. Would user group functionality facilitate the ability of account administrators and delegated

administrators to efficiently add and remove users and delegated users? Why or why not? Should any changes to user group functionality be made?

*D. Application Programming Interfaces*

As part of the EDGAR Next changes, the Commission would offer APIs to filers to allow machine-to-machine communication with EDGAR. The Commission plans initially to provide three APIs to allow filers to:

- Make both live and test submissions on EDGAR (''submission API'');
- Check the status of an EDGAR submission (''submission status API''); and
- Check EDGAR operational status (''EDGAR operational status API'').

Pursuant to proposed Rule 10(d)(3), to use the APIs, filers would be required to authorize at least two technical administrators.

Additionally, we plan to specify in the EDGAR Filer Manual that, to use the APIs, filers would be required to present filer API tokens and user API tokens to EDGAR that would be generated on the dashboard. The filer's technical administrators would be required to generate a filer API token to authenticate the filer. Further, the individual user or account administrator who submits the filing would be required to generate a user API token to authenticate herself as an authorized user or account administrator for the filer. We plan that filer and user API tokens would be confidential alphanumeric strings of text separately generated in the dashboard by a technical administrator and a user, respectively, and each would be valid for one year.[82] Employing these tokens would allow automated server-to-server authentication without the need for manual individual account credential multi-factor authentication, thus addressing a significant concern raised by commenters in the 2021 Request for Comment.[83]

In addition, as they would with other similar APIs, filers would need to create, license, or otherwise obtain software (a ''filing application'') to interface with the APIs. Additional information regarding the APIs is available in the Overview of EDGAR Application Programming Interfaces (''Overview of EDGAR APIs'') located on the EDGAR Next page on *SEC.gov.*

The use of APIs would be optional. Filers that seek to file on EDGAR, check the status of a submission, or check EDGAR operational status would continue to be able to do so without using an API, as they currently do.

1. Submission API

The submission API would provide filers a new option to submit test and live filer-constructed EDGAR submissions through a machine-to-machine connection.[84] Filers who do not wish to use the API to make filer-constructed submissions, and filers making other types of submissions, could file through the web-based EDGAR filing websites.[85]

To use the optional submission API, filers would be required to comply with certain requirements. For filer API tokens, we plan that:

- A filer API token would be needed to identify the filer or filing agent accessing the API.
- Only the filer's authorized technical administrator could create filer API tokens.
- Filers could have multiple, valid filer API tokens (for example, to identify different subsidiaries or divisions within the filer) in use at the same time.
- A technical administrator would need to log into the dashboard and be authenticated with individual account credentials to create a filer API token.
- A technical administrator could terminate a filer API token on the dashboard at any time.
- A filer API token would remain valid for up to one year.
- While valid, a filer API token could be used to submit an unlimited number of filings.

For user API tokens, we plan that:

- Only a user, delegated user, or account administrator for the filer associated with the filer API token could be authorized as a user for the API.
- A user API token would be needed to identify the user associated with each submission.
- Users would have only one valid user API token at a given time.
- A user would log into the dashboard and be authenticated with individual account credentials to create a user API token.
- A user API token would remain valid for up to one year provided that the user associated with the token logged into the dashboard or one of the EDGAR filing websites at least every 30 days. If the user did not log in at least every 30 days, the user API token would be deactivated.
- A user could terminate its user API token on the dashboard at any time.
- While valid, a user API token could be used to submit an unlimited number of filings.

The Overview of EDGAR APIs lists certain technical standards for the submission API, as well as the expected inputs and outputs.

2. Submission Status API

Currently, EDGAR receives significant network traffic inquiring as to the status of EDGAR submissions. Many filers check EDGAR submission status immediately upon making a filing and again regularly until the submission is accepted and ultimately disseminated, or alternately suspended. This may result in significant network traffic for EDGAR and represent a tedious manual process for filers. Providing a submission status API would allow filers to use their filing application to simultaneously check the status of multiple submissions in a batch process, instead of manually logging into EDGAR and individually checking the status of each submission.

The Overview of EDGAR APIs lists certain technical standards for the submission status API, as well as the expected inputs and outputs. Among other things, the submission status API would require a valid filer API token; it would not require a user API token. The submission status API would indicate to the filing application whether each submission was submitted and accepted, but not yet publicly disseminated;[86] submitted and accepted, and publicly disseminated; or submitted and suspended. In turn, the filing application would display this information to the filer.

3. EDGAR Operational Status API

Many filers check EDGAR operational status continuously throughout the filing day. This may result in significant network traffic for EDGAR and constitute a tedious manual process for

[82] As a security measure, we contemplate that the user API token would be deactivated if the user had not successfully logged into the EDGAR Filer Management dashboard or one of the EDGAR filing websites (EDGAR Filing or EDGAR Online Forms) within the last 30 days.

[83] *See supra* notes 38–39.

[84] Currently, EDGAR accepts approximately 525 submission types, of which approximately 500 (95%) permit filer construction.

[85] Whether submissions were made through the API or the EDGAR filing websites, filers would specify the CIK for which they would be making submissions. That CIK number would be reflected in the accession number associated with those submissions. Filers could change the login CIK reflected in the accession number at any time to any other CIK for which the filer was authorized to file on EDGAR. For example, a filing agent could choose to submit filings for a client filer using its own login CIK, or by using its client filer's login CIK.

[86] Generally, filings are first accepted and then subsequently disseminated. However, certain filings remain nonpublic and are never disseminated, so those filings will never progress from accepted to disseminated status.

filers. Providing an EDGAR operational status API would allow filers to use their filing application to check the operational status of EDGAR at any given time.

The Overview of EDGAR APIs lists certain technical standards for the EDGAR operational status API, as well as the expected inputs and outputs. Among other things, the EDGAR operational status API would require a valid filer API token to be submitted by the filing application; it would not require a user API token. The EDGAR operational status API would indicate to the filing application whether EDGAR was fully operational, unavailable (after business hours), or not fully operational in whatever regard at that point in time (for example, if EDGAR is not disseminating to *SEC.gov*). In turn, the filing application would display this information to the filer.

Requests for Comment

23. Should we add other EDGAR information that could be accessed through APIs, and, if so, why? Please rank in terms of priority any additional information that you would like to see added, and also estimate how much usage you believe that information API would receive (for example, in potential hits per day).

24. The Overview of EDGAR APIs lists certain technical standards for the planned APIs. Are there any considerations we should take into account when determining what technical standards should be used for the planned APIs?

*E. Proposed Amendments to Rules and Forms*

1. Rule 10 Under Regulation S–T

We propose to add new paragraph (d) to Rule 10 to implement the changes being contemplated as part of EDGAR Next. Proposed paragraphs (d)(1) through (4), are discussed in full above.[87]

We further propose to add new paragraph (d)(5) to require that the filer, through its authorized account administrators, maintain accurate and current information on EDGAR concerning the filer's account, including but not limited to accurate corporate information and contact information, such as mailing and business addresses, email addresses, and telephone numbers. This would constitute an ongoing obligation for the filer to update its information on EDGAR as necessary. Similar to proposed paragraph (d)(4), proposed paragraph (d)(5) is analogous to the requirements currently set forth in the EDGAR Filer Manual, Volume I to securely maintain EDGAR access[88] and to maintain accurate company information on EDGAR.[89] The proposed requirement in paragraph (d)(5) would allow Commission staff and the public to rely upon the accuracy of the filer's information contained in EDGAR.

Proposed paragraph (d)(6) would require the filer, through its authorized account administrators, to securely maintain information relevant to the ability to access the filer's EDGAR account, including access through any EDGAR API. This requirement is designed to ensure that information relevant to the ability to access the filer's account, such as individual account credentials and API tokens, is securely maintained and not publicly exposed or otherwise compromised. Similar to proposed paragraphs (d)(4) and (d)(5), proposed paragraph (d)(6) is analogous to the requirements currently set forth in the EDGAR Filer Manual, Volume I to securely maintain EDGAR access and to maintain accurate company information on EDGAR.

The Commission also proposes to amend Rule 10 to make certain technical and conforming changes. Rule 10(b) would be revised to refer to ''each electronic filer'' who would be required to submit Form ID before filing on EDGAR, instead of ''each registrant, third party filer, or filing agent.''[90] This change is not intended to alter the scope of who would be subject to Rule 10(b), but instead clarifies that all new electronic filers would be required to submit Form ID for review and approval by Commission staff before they may file on EDGAR.

In addition, we propose to amend Rule 10(b)(2), which currently states that an authenticating document for Form ID must be signed by the applicant, to also state that the authenticating document may be signed by an authorized individual of the prospective filer.[91] This change is intended to conform the language in Rule 10(b)(2) with the text of the EDGAR Filer Manual, which currently provides that the authenticating document shall be signed by an authorized individual, including a person with a power of attorney.[92]

Finally, we propose to revise the note to Rule 10 that currently ''strongly urges'' potential applicants for EDGAR access to state that the Commission staff carefully reviews each Form ID application and filers should not assume that the Commission staff will automatically approve the Form ID. Therefore, filers should submit Form ID ''well in advance'' of their first required filing.[93] We believe this makes clear that Commission staff requires time to review the Form ID. Due to the often high volume of Form ID applications for Commission staff review, potential applicants should allow sufficient time for the review process to be conducted in the event that staff is concurrently reviewing a high volume of applications.

Requests for Comment

25. Do the proposed amendments to Rule 10 described above appropriately implement the proposed technical and conforming changes? Should additional or fewer changes be made to Rule 10 and, if so, why? For example, should specific requirements be added to Rule 10 that place requirements directly upon users, delegated entities, and technical administrators, as opposed to placing requirements upon account administrators to manage users, delegated entities, and technical administrators? Why or why not? Are there any technical, conforming, or clarifying changes to Rule 10 that should be made, and if so, why?

2. Rule 11 Under Regulation S–T

We also propose to amend Rule 11 under Regulation S–T, ''Definitions of terms used in this part,'' to add and define new terms discussed in this proposing release and update the definitions of certain existing terms. The proposed amendments include terms and definitions specific to the proposed rule and form amendments that would change how individuals and entities access, file on, and manage EDGAR accounts.

Certain terms would define the new roles for individuals contemplated by EDGAR Next, as follows:

[87] *See supra* Section I, III.A, III.B, III.C, and III.D.

[88] EDGAR Filer Manual, Volume I, at Section 4.

[89] EDGAR Filer Manual, Volume I, at Section 5.

[90] *Compare* Rule 10(b) of Regulation S–T (''Each registrant, third party filer, or filing agent must, before filing on EDGAR . . .'' *with* proposed Rule 10(b) of Regulation S–T (''Each electronic filer must, before filing on EDGAR . . .'').

[91] *Compare* Rule 10(b)(2) of Regulation S–T (''File . . . a notarized document, signed by the applicant . . .'' *with* proposed Rule 10(b)(2) of Regulation S–T (''File . . . a notarized document, signed by the electronic filer or its authorized individual . . .'').

[92] *See* EDGAR Filer Manual, Volume I, at Section 3(a).

[93] As proposed, the note states: ''The Commission staff carefully reviews each Form ID application, and electronic filers should not assume that the Commission staff will automatically approve the Form ID upon its submission. Therefore, any applicant seeking EDGAR access is encouraged to submit the Form ID for review well in advance of the first required filing to allow sufficient time for staff to review the application.''

''Account administrator'' would mean the individual that the filer authorizes to manage its EDGAR account and to make filings on EDGAR on the filer's behalf. The designation of an account administrator would help ensure that only authorized persons are able to file and take other actions on behalf of the filer.

''Authorized individual'' would mean an individual with the authority to legally bind the entity or individual applying for access to EDGAR on Form ID, or an individual with a power of attorney from an individual with the authority to legally bind the applicant. The power of attorney document must clearly state that the individual receiving the power of attorney has general legal authority to bind the applicant or specific legal authority to bind the applicant for purposes of applying for access to EDGAR on Form ID.

''Delegated entity'' would mean a filer that another filer authorizes on the dashboard to file on its behalf. As itself a filer, a delegated entity would be subject to all applicable rules for filing on EDGAR. Delegated entities would not be permitted to further delegate authority to file for the delegating filer, nor would they be permitted to take action on the delegating filer's dashboard.

''Filing agent'' would mean any person or entity engaged in the business of making submissions on EDGAR on behalf of filers. As discussed above in Section III.C., to act as a delegated entity for a filer, a filing agent would be a filer with an EDGAR account.

''Single-member company'' would describe a company that only has a single individual who acts as the sole equity holder, director, and officer (or, in the case of an entity without directors and officers, holds position(s) performing similar activities as a director and officer).

''Technical administrator'' would mean an individual that the filer authorizes on the dashboard to manage the technical aspects of the filer's use of EDGAR APIs on the filer's behalf.

''User'' would mean an individual that the filer authorizes on the dashboard to make submissions on EDGAR on the filer's behalf.

Other terms would identify new applications and upgrades to access and maintain filers' accounts on EDGAR, including:

''Application Programming Interface'' (API) would be defined as a software interface that allows computers or applications to communicate with each other. As discussed in Section III. D., the relevant APIs would include those that give filers the option to automate submissions on EDGAR and to retrieve certain submission-related information.

''Dashboard'' would mean an interactive function on EDGAR where filers manage their EDGAR accounts and where individuals that filers authorize may take relevant actions for filers' accounts.

''Individual account credentials'' would mean credentials issued to individuals for purposes of EDGAR access, as specified in the EDGAR Filer Manual, and used by those individuals to access EDGAR. (As previously mentioned, we currently anticipate that the EDGAR Filer Manual would specify that individual account credentials must be obtained through *Login.gov*, a sign-in service of the United States Government that employs multi-factor authentication.)

Collectively, these terms would assist in implementing the proposed rule and form amendments by clarifying how the proposed requirements would apply.

The amendments would also update or delete outdated terminology from certain definitions in Rule 11, such as references to ''telephone sessions'' in the definition of ''direct transmission.'' [94] Although some filers may still use dial-up internet to access EDGAR, we expect that nearly all filers currently rely on broadband, cable, or other internet technologies.

Finally, we propose updating the definition of ''EDGAR Filer Manual'' to more clearly describe its contents. Rule 11 currently defines ''EDGAR Filer Manual'' as ''. . . setting out the technical format requirements for an electronic submission.'' The EDGAR Filer Manual has been updated over time, however, to include additional requirements for filers, including those pertaining to seeking EDGAR access, maintaining EDGAR company information, and submitting online filings. We therefore propose to update the EDGAR Filer Manual definition accordingly to indicate the inclusion of these procedural requirements. We believe that the amended definition, if adopted, would better inform filers of the scope of the EDGAR Filer Manual requirements.

Requests for Comment

26. Do the proposed amendments to Rule 11 appropriately define the necessary terms in EDGAR Next? If not, please explain. Are there any additional terms that should be defined and, if so, why?

27. As proposed, should we amend certain terms to update terminology or more clearly define existing definitions? Are there any proposed terms that are inconsistent with existing definitions or concepts or that otherwise should not be defined? Should any additional terms be revised to update outdated terminology or to clarify existing definitions? Please be specific.

3. Form ID

Form ID is an online fillable form that must be completed and submitted to the Commission by all individuals, companies, and other organizations who seek access to file electronically on EDGAR.[95] Among other things, Form ID seeks information about the identity and contact information of the applicant. The proposed amendments to Form ID include proposed changes to information required to be reported on the form as well as technical changes.

As outlined above, the proposed amendments to Form ID would require an applicant for EDGAR access to undertake certain additional disclosure obligations, including most significantly:

(1) Designating on Form ID specific individuals the applicant authorizes to act as its account administrators to manage its EDGAR account on a dedicated dashboard on EDGAR. Applicants would generally be required to authorize two account administrators, although individuals and single-member companies would only be required to authorize one account administrator. If a prospective account administrator was not (1) the applicant (in the case of an individual applicant) or (2) an employee of the applicant or its affiliate (in the case of a company applicant), the applicant would also be required to disclose the prospective account administrator's employer and CIK, if any, and provide a notarized power of attorney to authorize the individual to manage the applicant's EDGAR account as an account administrator.

(2) The applicant's Legal Entity Identifier (''LEI'') number if any.

- The LEI is a unique identifier associated with a single corporate entity and is intended to provide a uniform international standard for identifying counterparties to a transaction.
- Although there are certain modest costs to obtain and maintain an LEI, fees

[94] Compare the definition of ''direct transmission'' in Rule 11 of Regulation S–T (''the transmission of one or more electronic submissions via a telephonic communication session'') with the definition of ''direct transmission'' in proposed Rule 11 of Regulation S–T (''the transmission of one or more electronic submissions'').

[95] *Compare* Rule 10(b) (providing that each registrant, third party filer, or agent seeking EDGAR access must submit Form ID) *with* proposed Rule 10(b) (providing that each electronic filer seeking EDGAR access must submit Form ID).

are not imposed on data users for usage of or access to LEIs, and all of the associated reference data needed to understand, process, and utilize the LEIs are widely and freely available and not subject to any usage restrictions.[96]

• Applicants that have not yet obtained an LEI would not be required to obtain one.

• The inclusion of LEI information would facilitate the ability of Commission staff to link the identity of the applicant with information reported on other filings or sources that are currently or will be reported elsewhere, if LEIs become more widely used by regulators and the financial industry.

(3) Providing more specific contact information about the filer, and the filer's account administrator(s), authorized individual (the individual authorized to submit Form ID on the filer's behalf, as defined in the EDGAR Filer Manual), and billing contact (including mailing, business, and billing information, as applicable).

• More specific contact information would allow Commission staff to reach account administrators, authorized individuals, and billing contacts associated with the filer when necessary.

(4) Specifying whether the applicant, its authorized individual, person signing a power of attorney (if applicable), account administrator, or billing contact has been criminally convicted as a result of a Federal or State securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity, as a result of a Federal or State securities law violation.

• Information about whether the applicant or certain individuals named on Form ID may be subject to relevant bars and prohibitions (including but not limited to officer and director bars, prohibitions from associating with brokers, dealers, investment advisers, and/or other securities entities, and bars from participation in certain industries) would allow Commission staff to determine whether such bars or prohibitions are relevant to the application for EDGAR access.

• Individuals disclosing the existence of a criminal conviction, or civil or administrative injunction, bar, suspension, or ban may be contacted by SEC staff to determine the applicant's eligibility for EDGAR access.

(5) Indicating whether the applicant, if a company, is in good standing with its state or country of incorporation.

• Good standing generally means a company is legally authorized to do business in the relevant state or country and has filed all required reports and paid all related fees to the relevant jurisdiction.

• Although the lack of good standing would not prevent a company from obtaining EDGAR access, this information could be relevant in determining whether it may be appropriate for the staff to review additional documentation as part of its assessment of the application.

(6) Requiring submission of a new Form ID if the applicant claims to have (i) lost electronic access to its existing CIK account or (ii) assumed legal control of a filer listed on an existing CIK account but did not receive EDGAR access from that filer.

• Currently, applicants seeking to obtain control of an existing EDGAR account are required to submit certain summary information but are not required to submit a full application on Form ID. To assist Commission staff in determining whether applicants seeking to obtain control of existing EDGAR accounts are legitimate, we propose to require such applicants to submit a new Form ID. To facilitate the application process, certain publicly available corporate and contact information (such as the filer's name, ''doing business as'' name, foreign name, mailing and business addresses, state/country of incorporation, and fiscal year end) would be automatically prepopulated from EDGAR so that applicants would not need to resubmit that information, although applicants could update that information on Form ID as necessary.[97]

(7) Requiring those seeking access to an existing EDGAR account to upload to EDGAR the documents that establish the applicant's authority over the company or individual listed in EDGAR on the existing account.[98]

In addition, we would make certain conforming, formatting, and ancillary changes to modernize Form ID without significantly altering current disclosure obligations. For example, a checkbox would be added to each address field for identification of non-U.S. locations, which would improve data analytics. As another example, company applicants would be required to provide their primary website address, if any, to provide staff additional contact and other information regarding the filer. Further, certain disclosure warnings that are currently listed in the EDGAR Filer Manual and the landing page of the EDGAR Filing website would be incorporated into Form ID to more clearly provide notice of those matters to filers.[99]

Collectively, the proposed amendments would enhance the security of EDGAR by allowing Commission staff to obtain more information about the applicant and its contacts for staff to confirm the identity of the applicant and the individuals associated with the applicant, assess whether the application is properly authorized, and determine whether there are any other issues relevant to the application for EDGAR access for staff's consideration.

Requests for Comment

28. Should any of the proposed amendments to Form ID be revised or removed and, if so, why or why not? For example, should any limits or qualifiers be placed on the proposed disclosure requirement regarding whether the applicant, its authorized individual, person signing a power of attorney (if applicable), account administrator, or billing contact has been criminally convicted as a result of a Federal or State securities law violation, or civilly or administratively enjoined, barred, suspended, or banned as a result of a Federal or State securities law violation? If so, why? Should this requirement apply to each of the applicant, its authorized individual, person signing a power of attorney (if applicable), account administrator, and billing contact, or only to certain categories of the aforementioned groups? Please explain your answer. Likewise, should the proposed requirement regarding whether the applicant is in good standing be revised or removed and, if

[96] The cost of obtaining and maintaining an LEI is approximately $50 to $65 per year. *See* LEI Price List, LEI Register, available at *https://www.lei-identifier.com/lei-price-list/#:~:text=LEI%20application%20and%20registration%20price,%2D%20%24250(%24%2050%20%2F%20year).*

[97] The filer would nevertheless need to submit a COUPDAT to update its existing corporate and contact information on EDGAR (other than the filer's account administrator information) if the Form ID were granted. As they presently do, broker-dealers would submit a Form BD amendment to FINRA to update their corporate and contact information.

[98] The EDGAR Filer Manual currently provides guidance regarding what documents would be sufficient to establish the applicant's authority. *See* EDGAR Filer Manual, Volume I, at Section 4(b).

[99] Proposed Form ID would include a section titled ''Important information'' that would include the following disclosure warning: ''Misstatements or omissions of fact in connection with an application for EDGAR access and/or in a submission on EDGAR may constitute a criminal violation under 18 U.S.C. 1001 and 1030 and/or a violation of other criminal and civil laws. If the SEC has reason to believe that an application for EDGAR access and/or a submission on EDGAR is misleading, manipulative, and/or unauthorized, the SEC may prevent acceptance or dissemination of the application/submission and/or prevent future submissions or otherwise remove a filer's access to EDGAR pursuant to Rule 15 of Regulation S–T, 17 CFR 232.15.''

so, why? For example, if applicable, should we also require an explanation of why the applicant is not in good standing? Why or why not?

29. Would the proposed amendments to Form ID appropriately support the EDGAR Next changes to filer access and account management? Why or why not? Should Form ID require any additional information, or should any of the information proposed to be required be revised or deleted? Please explain.

30. Should Form ID be revised to require or allow applicants to provide the reason they are applying for access? For example, if applicants have an urgent upcoming filing deadline, should applicants be required or permitted to provide that information?

*F. Transition Process*

We believe that, if the proposed rule and form amendments are adopted and the technical changes are implemented, it would be efficient for the Commission and for the approximately 220,000 active EDGAR filers—those who made a submission on EDGAR in the last two years—to accomplish the transition to EDGAR Next over a period of several months, as set forth below.[100] We anticipate that mandatory enrollment would begin one month after adoption and remain open for six months thereafter (the ''Enrollment Period'').

During the Enrollment Period, existing filers would continue to file on EDGAR using the EDGAR filing websites, as they presently do, by logging on with the relevant CIK and password. The individual account credentials would not yet be used, nor would use of the dashboard to manage the account be required.

Applicants that seek EDGAR access subsequent to the compliance date would be immediately subject to the EDGAR Next requirements, if adopted.

1. Individual Account Credentials

If the Commission adopts the proposed amendments, individuals could seek individual account credentials in the manner to be specified in the EDGAR Filer Manual in advance of the required Enrollment Period. As a result, when the Enrollment Period begins, filers could immediately enroll the individuals with individual account credentials. Further, if the Commission adopts the proposed amendments and implements the EDGAR Next changes, and requires *Login.gov* as the individual account credential provider, we anticipate that individuals with existing *Login.gov* accounts would be able to use those accounts as their individual account credentials for purposes of EDGAR access.

2. Enrollment

Existing filers would enroll on an enrollment page on the EDGAR Filer Management website without submitting a Form ID. We intend to provide two options: (a) manual enrollment of single EDGAR accounts on an account-by-account basis; and (b) enrollment of multiple accounts simultaneously.

a. Manual Enrollment for a Single EDGAR Account

As a preliminary matter, each existing filer would be required to authorize two individuals to manage the filer's EDGAR account as account administrators, with the exception of individuals and single-member companies, which would be required to authorize one account administrator. On behalf of each existing filer, one account administrator would enter their individual account credentials to log in to an enrollment page on EDGAR. The account administrator would manually enter the filer's CIK, CCC, and EDGAR passphrase[101] to ensure that a properly authenticated individual is enrolling the filer. If EDGAR authenticated that data, the account administrator would enter account administrator names, business contact information, and the email addresses used to obtain individual account credentials. By entering that information, the filer would indicate its authorization of the listed individuals as the filer's account administrators, as well as the accuracy of the information provided.

Each EDGAR account would enroll once. If there was an attempt to enroll an EDGAR account that had already been enrolled, the subsequent attempted enrollment would be denied. An individual filer who makes filings with respect to multiple companies (*e.g.,* the CEO of one company who is also on the board of directors of other companies) may have more than one filing agent and/or representatives at such companies who have access to her CIK, CCC, and EDGAR passphrase. Accordingly, it would be advisable for any such filer to designate one filing agent or company representative to enroll her EDGAR account and to then communicate such enrollment to the other filing agent(s) and/or company representatives. Such other filing agent(s) and/or company representatives may then be added as an account administrator, user, or delegated entity through the dashboard.

After enrolling the filer, an account administrator could access the filer's dashboard. There, the account administrator, on behalf of the filer, would be able to add account administrators, users, and technical administrators, and delegate authority to file to other filers. Any individuals to be authorized on the filer's account would be required to possess individual account credentials.

b. Bulk Enrollment of Multiple EDGAR Accounts

We plan to permit the simultaneous bulk enrollment of multiple EDGAR accounts, together with those filers' account administrators. We expect that filing agents, as well as individuals and entities that control multiple EDGAR accounts, would find this an efficient and time-saving function.

An individual authorized to enroll the relevant filer accounts would log in to an enrollment page on EDGAR with their individual account credentials. There, the individual would complete and upload a spreadsheet in a format to be specified that could accommodate multiple rows of data. Each row would pertain to a single existing filer. The individual would enter data for each filer on each row, including CIK, CCC, and EDGAR passphrase to ensure that enrollment is being performed by a properly authenticated individual. In addition, the individual would enter on each row information regarding the filer's prospective account administrators, including names, business contact information, and email addresses associated with the individual account credentials of the account administrators, to indicate that the filer authorizes those account administrators to manage its EDGAR account. Under the bulk enrollment method, two account administrators would be required for each filer (including individuals and single-member companies), in part due to logistical difficulties associated with simultaneously validating the minimum number of account administrators for multiple filers, and in part because we

[100] Of these 220,000 EDGAR accounts, approximately 149,000 represent entity filers and approximately 71,000 represent individual filers. In total, regardless of account activity, there are approximately 1,000,000 filer accounts in EDGAR. We believe that the vast majority of the approximately 800,000 EDGAR filer accounts for which no filings have been made in the last two years are defunct and therefore would not transition to EDGAR Next.

[101] Filers that have forgotten or lost their CCC could change or regenerate it using their PMAC or passphrase. Filers that have lost or forgotten their passphrase could reset it by sending a security token to the email associated with the account. Filers that have lost or forgotten their passphrase and that no longer have access to the email associated with the account would have to reapply for EDGAR access on Form ID.

expect that bulk enrollment would be used by larger filers and filers using filing agents likely to have at least two account administrators. We intend to set a limit of 100 existing filers (100 rows) per bulk enrollment.

As discussed above, enrollment would only occur once per EDGAR account. Any additional changes that are needed to be made (*e.g.,* adding additional account administrators) would have to be performed by the account administrators who had been added during the enrollment process. After the filer was enrolled, the account administrators could access the dashboard to add additional account administrators, users, technical administrators, and delegated entities.

3. Compliance

We anticipate that the compliance period would start six months after the beginning of the Enrollment Period. In response to our 2021 Request for Comment, commenters requested a transition period ranging from 12 months to three years.[102] We considered those comments, and we believe that the transition process we are contemplating should provide sufficient opportunity for existing filers to transition to EDGAR Next. The transition process would include an initial, separate period during which individual account credentials could be established, as well as a six-month Enrollment Period during which filers would access the dashboard, authorize individuals in relevant roles, and make any needed delegations. We further contemplate providing a bulk enrollment option to allow enrollment of multiple filers simultaneously.

If the rule and form changes are adopted, and the related technical changes are to be implemented, we plan to provide an EDGAR Next Adopting Beta environment to allow commenters to evaluate and test the EDGAR Next changes, to prepare necessary software, and to assist filers in preparing for the changes.

Existing EDGAR filers that fail to enroll by the compliance date would lose EDGAR access and would be required to reapply for EDGAR access on Form ID.

If the Commission adopts the proposed rule and form changes, we expect that staff would provide additional support for filers transitioning to EDGAR Next, such as by posting practical information and guidance on the EDGAR—Information for Filers [103] and EDGAR—How Do I [104] pages on *SEC.gov,* as well as providing a devoted help desk to assist filers.

Requests for Comment

31. Does the planned transition process adequately address the needs of filers and filing agents with regard to implementation of EDGAR Next? If not, what changes should be made to the transition process, and why?

32. How long would it take existing filers to transition to EDGAR Next? As planned, the Enrollment Period would begin one month after adoption of the proposed rule and form changes. Is this a sufficient amount of time for filers to prepare for enrollment and, if not, why? Is an Enrollment Period of six months sufficient for filers to enroll their EDGAR accounts via manual or bulk enrollment and, if not, why? Should existing filers transition their EDGAR accounts on a specific schedule during the Enrollment Period (*e.g.,* large filers must transition by date X, medium filers by date Y, etc.) or, as contemplated, should we allow filers to decide when to transition to EDGAR Next so long as they do so prior to the compliance date?

33. We plan to require CIK, CCC, and EDGAR passphrase in order for both individual and bulk enrollments to be accepted by EDGAR. Would alternate credentials be more appropriate and, if so, what credentials should be used? In particular, are passphrases typically maintained by filing agents and, if not, how burdensome would it be for filing agents to obtain and maintain their clients' passphrases? In situations where filers no longer know their passphrases or those passphrases are no longer recognized in EDGAR, how burdensome would it be for filers to obtain new passphrases?

34. Following enrollment, what notification, if any, should be provided to the existing EDGAR POC for the filer? Although filers are currently required to list a contact address, telephone number, and email address as part of their EDGAR contact information, we understand that many EDGAR filer accounts that were created before email addresses became mandatory never added an email address. Should we require acknowledgment or confirmation from the existing EDGAR POC to complete enrollment of an EDGAR filer account, or should completion of enrollment be delayed until a certain period of time has passed without objection from the existing EDGAR POC? If so, what should be the waiting period before enrollment could be completed, keeping in mind the interest of filers seeking to quickly transition to EDGAR Next?

35. Should we permit the bulk enrollment of multiple EDGAR accounts, as planned? Are there particular steps the Commission should take to minimize risks associated with enrollment? For example, should the CCCs of enrolled filers be automatically reset as a security precaution after enrollment is accepted? If the CCC is automatically reset, what notification, if any, should be provided to the existing EDGAR contact for the filer?

36. To what extent would bulk enrollment present logistical or other burdens for filers with multiple filing agents or unaffiliated third-party account administrators? For example, if the filer's CCC were automatically reset after bulk enrollment, to what extent could this cause confusion if the filer had multiple filing agents and some of them were inadvertently not included as account administrators in the bulk enrollment? Instead of the CCC being reset after enrollment, should the CCC be reset at the compliance date for each enrolled CIK?

37. Are there any extenuating circumstances that would justify filers being exempted from having to enroll by the compliance date, or that would allow non-complying existing filers to maintain their EDGAR access following the compliance date? If so, please explain.

*G. General Request for Comment and EDGAR Next Proposing Beta*

In conjunction with this proposing release, the Commission will make available an EDGAR Next Proposing Beta environment where filers may preview and test the planned EDGAR Next changes. The EDGAR Next Proposing Beta generally should allow filers to view how the proposed changes would be reflected in EDGAR. We currently anticipate that the EDGAR Next Proposing Beta will be available on or about September 18, 2023, and will remain available for at least six months thereafter. Any filer may sign up to access the EDGAR Next Beta. The Commission will provide more information regarding the EDGAR Next

[102] *See, e.g.,* McGuire Woods Comment Letter (recommending at least 12 months for individual filers, on the grounds that filers would need that time to create individual account credentials, enable multifactor authentication, and designate a filer administrator); DFIN Comment Letter (asserting that it could take 12–18 months for filers to migrate, and recommending a 18–24 month transition period with longer lead times for smaller filers); Workiva Comment Letter (recommending a transition period of one year, and separately citing its own survey results indicating more than 66% of respondents indicated a transition period of one to three years would be appropriate).

[103] *See* ''EDGAR—Information for Filers'' web page at *https://www.sec.gov/edgar/filer-information.*

[104] *See* ''EDGAR—How Do I'' FAQs at *https://www.sec.gov/edgar/filer-information/how-do-i.*

Proposing Beta through an information page on *SEC.gov.*

We request and encourage any interested person to submit comments on any aspect of EDGAR Next, other matters that might have an impact on EDGAR Next, and suggestions for additional changes. Comments are of particular assistance if accompanied by analysis of the issues addressed in those comments and any data that may support the analysis. We urge commenters to be as specific as possible.

In particular, we request comment on the following issues.

38. Would the proposed rule and form changes facilitate the responsible management of EDGAR filer credentials? Are there additional changes that would encourage such responsible management? Would the changes create any undue burdens for filers? If so, how could the proposed rule and form changes be modified to ease such burdens? Are there any other concerns that the Commission should be aware of with implementation of EDGAR Next? Are there any conforming or parallel changes that the Commission should make to effectively implement EDGAR Next?

39. Are there alternatives to the dashboard that we should consider? For example, are there alternative methods that would enable filers to take the same actions as they would using the dashboard that would be easier to implement or more user friendly? If so, what are those alternatives? Please be specific.

40. In connection with the EDGAR Next changes, we intend to provide APIs as described above to make EDGAR submissions and to check EDGAR submission status and operational status. Are there alternatives that would better accomplish the objectives of secure, efficient, and automated machine-to-machine communication with EDGAR? If so, please describe.

41. Are there any issues specific to certain types of filers that should be considered with regard to the EDGAR Next changes? For example, asset-backed securities (''ABS'') issuers, usually the depositor in an ABS transaction, often create one or more serial companies each year, each of which is a separate legal entity with its own CIK, even though each generally has the same contact information as the ABS issuer. Should new serial companies have their account administrator information automatically copied from the ABS issuer's account administrator information, so those account administrators could access the dashboards for those serial companies? Likewise, should other information be automatically inherited by new serial companies from the ABS issuer, such as the ABS issuer's contact information, users, and technical administrators (if any)? If so, in order to ensure that the ABS issuer has account administrator information and other information that could be copied to the new serial company, would there be any issues associated with requiring ABS issuers to have transitioned to individual account credentials before the ABS issuer can create new serial companies? To what extent are these concerns already addressed by the delegation function, given that delegation would allow filers to delegate the authority to file to another EDGAR account?

42. Separately, should we allow the annual confirmations of administrators and users for an ABS issuer to also apply to the serial companies associated with that ABS issuer, if the same administrators, users, delegations, and corporate and contact information are associated with each serial company? Why or why not? If so, should we allow this more generally with regards to any situation where the same administrators, users, delegations, and corporate and contact information are associated with multiple CIKs? If some but not all of that information is identical for multiple CIKs (*e.g.,* each CIK has a different P.O. box or email address listed for its business address), should we allow a single confirmation to apply to each of those CIKs and, if so, what validation if any should we apply to ensure that an account administrator has properly reviewed the CIK's administrators, users, delegations, and corporate and contact information?

43. While ABS issuers have been able to create new CIKs, non-ABS related filers have attempted to use the process to create new CIKs without submitting a Form ID. Would ABS issuers be significantly impacted if the process were limited only to existing CIKs that have an EDGAR filing history that includes ABS-related filings (including but not limited to the following submission types and forms—ABS–EE, 10–K, ABS–15G, 10–D, SF–1, SF–3 and 424H)?

44. Recent filing experience has shown that ABS issuers have not been using the ability to create new ABS serial companies ''on the fly'' when filing a 424H submission.[105] If, as a result of EDGAR Next, the EDGAR system no longer supported creating ABS ''on the fly'' via filing either a 424H or 424B submission, would that cause any problems for ABS issuers? ABS issuers would continue to be able to create new CIKs for serial companies via the ''Request Asset-Backed Securities (ABS) Issuing Entities Creation'' option in the EDGAR Filing website (known in EDGAR as an ''ABSCOMP'' submission).[106]

45. Currently, EDGAR permits certain filings to be submitted on behalf of multiple filers, who are treated as co-registrants for purposes of the filing. Would filers face difficulties in delegating to co-registrants or authorizing individuals to act as users or account administrators for both the filer and the co-registrant(s)? To what extent, if any, should the EDGAR Next changes provide special consideration or treatment for EDGAR submissions by co-registrants? For example, should the dashboard allow filers to designate other filers as ''co-registrants'' similar to how filers would delegate other filers as delegated entities, except that filing authority would only exist with regards to co-registrant submissions (*e.g.,* the co-registrant could not submit a filing solely on behalf of the filer)? If so, to what extent should co-registrants be treated differently from delegated entities (*e.g.,* with regards to user groups, delegated admins, etc.)? Alternately, should a user or account administrator for a filer be able to submit a co-registrant filing jointly on behalf of the co-registrant by using the co-registrant's CIK and CCC (as is currently the case), without being a user or account administrator of the co-registrant? Why or why not? Please note that for purposes of EDGAR Next Proposing Beta, a filer will be able to submit a co-registrant filing by inputting the CCC and CIK of the co-registrant(s), as is currently the case.

46. Should the Commission consider other changes to EDGAR filer access and account management processes in the future? Why? Please be specific.

## IV. Economic Analysis

The Commission is sensitive to the economic effects, including the costs and benefits, of its rules. The discussion below addresses the potential economic effects that may result from the rule and form amendments we are proposing in this release, and certain related technical changes, including the

[105] *See generally* ''EDGAR—How Do I'' FAQs at the section titled ''Create and obtain EDGAR access for asset-backed securities (ABS) issuing entities,'' available at *https://www.sec.gov/page/edgar-how-do-i-create-and-obtain-edgar-access-asset-backed-securities-abs-issuing-entities#section3* (discussing the ''on the fly'' process).

[106] *Id.* (discussing the creation of ABS issuing entities).

benefits and costs to investors and other market participants as well as the broader implications of the EDGAR Next project for efficiency, competition, and capital formation.[107]

*A. Introduction*

Individuals and entities submit filings electronically with the Commission through EDGAR in order to comply with various provisions of the Federal securities laws. Filings on EDGAR are not currently linked to a specific individual authorized by the filer. EDGAR access codes represent a complex combination of several codes with differing functions.[108] This access method is not aligned with standard access processes and is hard to monitor and manage. The Commission is also aware that some filers may have failed to maintain secure access to their EDGAR accounts.[109]

The changes contemplated by EDGAR Next would modernize the mechanism by which filers and designated individuals acting on filers' behalf obtain access to EDGAR, streamline the management of filers' accounts, and offer three optional APIs that would allow filers to interface with the EDGAR system. EDGAR Next would benefit both the Commission and filers by enabling the Commission to identify specific individuals making filings on behalf of filers and by simplifying procedures for accessing EDGAR in a way that allows filers to leverage the Commission's web function to reduce cost. Enhancing the security of EDGAR would better protect against unauthorized access to the EDGAR system thereby decreasing the likelihood of unauthorized filings impacting the market and potentially imposing economic and reputational costs on the public, the filer, and the Commission.

As discussed in greater detail in Section III above, EDGAR Next would:

- Offer a dashboard where filers would manage their EDGAR accounts and where individuals that filers authorize could take relevant actions for filers' accounts.
- Require each filer to authorize and maintain individuals as its account administrators to act on behalf of the filer to manage the filer's EDGAR account in accordance with the EDGAR account access and account management requirements set forth in this proposal and the EDGAR Filer Manual. Only those individuals who obtained individual account credentials could be authorized to act on the filer's behalf to manage its EDGAR account.
- Require each filer, through its authorized account administrators, to confirm annually that all account administrators, users, delegated entities, and technical administrators reflected on the dashboard for the filer's EDGAR account are authorized by the filer and that all information regarding the filer is accurate (generally including the filer's corporate and contact information).
- Require each filer, through its authorized account administrator(s), to maintain accurate and current information on EDGAR concerning the filer's account, and securely maintain information relevant to the ability to access the filer's EDGAR account.
- Allow individuals designated as account administrators to file on EDGAR on the filer's behalf and authorize other individuals as users to file.
- Allow filers to authorize delegated entities to file on their behalf. Delegated entities would be subject to the same requirements applicable to all filers.
- Offer optional APIs for machine-to-machine submissions and retrieval of related filing information. Require filers who opt to use the APIs to, through their account administrator(s), authorize at least two technical administrators to manage the technical aspects of the APIs.
- Amend Rules 10 and 11 under Regulation S–T and Form ID to codify the above requirements for filers, to add and define new terms as part of this proposal, and to capture additional information during the application for EDGAR access, respectively.

The discussion below addresses the potential economic effects of the EDGAR Next changes, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation. At the outset, we note that, where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the contemplated changes. In many cases, however, the Commission is unable to quantify certain economic effects because it lacks the information necessary to provide estimates or ranges. In those circumstances in which we do not have the requisite data to assess the impact of the EDGAR Next changes, we have analyzed their economic impact qualitatively.

*B. Baseline*

The current set of requirements to obtain access to and file on the Commission's EDGAR system, as well as the account management practices as they exist today, serve as the baseline from which we analyze the economic effects of the EDGAR Next changes. Filers are comprised of any individuals and entities that make a submission electronically through EDGAR. For example, directors and executives of many public companies have reporting obligations under section 16 of the Securities Exchange Act of 1934.[110] Entities consist of public operating companies, investment companies, broker-dealers, transfer-agents, and other institutions who have filing obligations with the Commission. The parties directly affected by EDGAR Next are current and prospective filers as well as relevant individuals or entities acting on filers' behalf. In 2022, the Commission received approximately 79,457 Form ID submissions.[111] From 2018 to 2022, an average of approximately 62,061 Form IDs were submitted per year to the Commission.[112]

Individuals and entities who seek to file on EDGAR apply for access in accordance with Rule 10 of Regulation S–T by completing Form ID, the uniform application for access codes to file on EDGAR.[113] Form ID currently

[107] Section 2(b) of the Securities Act (15 U.S.C. 77b(b)), section 3(f) of the Exchange Act (17 U.S.C. 78c(f)) and section 2(c) of the Investment Company Act (15 U.S.C. 80a–2(c)) require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, section 23(a)(2) of the Exchange Act (17 U.S.C. 78w(a)(2)) requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules will have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The technological changes contemplated by EDGAR Next would work together with the proposed rule and form amendments to enhance EDGAR access requirements. Because it is difficult to isolate the economic effects associated with the technological changes from those attributable solely to the proposed rule and form amendments, for purposes of this economic analysis, we have considered these effects collectively.

[108] *See supra* note 26.

[109] *See supra* note 27.

[110] *See* 15 U.S.C. 78p.

[111] This number includes 69,651 applications from prospective filers without CIKs, 9,390 applications from filers who had lost EDGAR access and were seeking to regain access to EDGAR (currently submitted as passphrase updates, but under the proposal would be submitted on Form ID), and 416 applications from filers with CIKs who had not yet filed electronically on EDGAR.

[112] Similarly, this number includes applications from prospective filers without CIKs, applications from filers who had lost EDGAR access and were seeking to regain access to EDGAR (currently submitted as passphrase updates, but under the proposal would be submitted on Form ID), and applications from filers with CIKs who had not yet filed electronically on EDGAR.

[113] *See supra* note 23.

collects the applicant's contact information, along with the applicant's EDGAR POC. Upon approval, the filer receives a unique CIK, and the EDGAR POC generates access codes (including a password), using their CIK and passphrase from the Filer Management website, which allows the filer to make submissions on its EDGAR account. EDGAR filers are required to renew their EDGAR password annually. Currently, EDGAR system access has not incorporated multi-factor authentication to validate individuals accessing EDGAR and simplify password retrieval. Additionally, the Commission has no systematic way to determine with whom the filer has shared EDGAR access codes, or when the filer has revoked authorization. Filers are responsible for safeguarding their access codes and monitoring the number of individuals authorized to receive the codes.[114] Certain filers and filing agents currently devise their own internal systems to track who possesses their EDGAR access codes. Because the Commission does not collect the personal information of the specific individual who makes the submission, nor does the Commission issue identifying credentials to individuals acting on behalf of filers when filings are submitted, the Commission is currently unable to match filings to specific individuals who made the filings. EDGAR receives a large volume of filings, typically more than 500,000 per calendar year, and has approximately 220,000 active filers, of which approximately 149,000 represent entities and approximately 71,000 represent individuals.[115]

The majority of Commission filings are made by filing agents on behalf of their client filers.[116] Certain filing agents and filers use proprietary custom software to interface with EDGAR to mimic a machine-to-machine submission process and eliminate the need for individual human web-based interaction with the EDGAR filing websites. To create this custom software, data are extracted from the EDGAR filing websites and the custom software is configured to mimic a web-based interaction. This model of interaction with EDGAR requires frequent maintenance, however, since whenever EDGAR filing websites change their content or structure, those changes impact the custom software. Although Commission staff does not provide technical or other support for custom software for interaction with EDGAR, staff seeks to minimize filing disruptions and strives to provide notice to filers prior to making website changes. As a result, however, technical changes (*e.g.,* maintenance, updates, etc.) to be implemented in EDGAR may be slowed by the fact that staff has to consider downstream custom software configurations.

*C. Consideration of Benefits and Costs as Well as the Effects on Efficiency, Competition, and Capital Formation*

1. Benefits

The EDGAR Next changes seek to enhance the security of EDGAR, improve filers' ability to securely manage and maintain access to their EDGAR accounts, facilitate the responsible management of filer credentials, and simplify procedures for accessing EDGAR. EDGAR Next aims to improve access by filers and enhance security by identifying individuals who submit filings on EDGAR. Improving access by filers and the security of EDGAR may increase the accuracy of submissions to the Commission and thereby the quality of the information available on EDGAR, thus also improving regulatory oversight. After an initial setup burden described below,[117] these changes could potentially reduce the burden for reporting entities because modernizing the EDGAR filing regime could improve the accuracy and efficiency of filing preparation. Additionally, the improved accuracy and efficiency of the filings submitted to the Commission could reduce the costs associated with receiving and processing such submissions, in part by reducing the time, processing, and search costs, and accordingly aid the Commission's examination and oversight functions. An increase in the accuracy and quality of submissions would boost the efficiency of the Commission's document review, processing, and quality assurance. Further, the public would generally benefit from the implied increase in informational efficiency resulting from EDGAR Next changes as they use EDGAR filings for investment decisions.

EDGAR Next would impose new requirements on existing filers, relevant individuals acting on their behalf, and applicants for EDGAR access. These requirements are designed to enhance the security of EDGAR, and prevent the unauthorized access to information and systems by: (1) identifying and authenticating individuals accessing EDGAR; (2) requiring filers to authorize account administrators to manage their accounts; (3) providing an account management dashboard to simplify the management of EDGAR accounts and facilitate account administrators in their compliance; (4) requiring filers, through their account administrators, to annually confirm the individuals with roles on the filer's dashboard, and to maintain accurate and current information on EDGAR concerning the filer's account while securely maintaining information relevant to access the filer's EDGAR account; and (5) providing a machine-to-machine solution for filers to interface with EDGAR.

a. Individual Account Credentials

The amendments to Rule 10 would provide that filers may only authorize individuals on the dashboard if those individuals have obtained individual account credentials in a manner to be specified in the EDGAR Filer Manual. The Commission also anticipates requiring multi-factor authentication (which we anticipate would be performed through *Login.gov*).[118] We believe that by imposing the requirement to require individual account credentials for the individuals accessing the dashboards for all existing and prospective EDGAR filers, EDGAR Next would generally improve the security of the EDGAR system in three different ways. First, this requirement would eliminate the need for filers to share their EDGAR access codes with various individuals acting on behalf of the filer, reducing the likelihood of an unauthorized individual gaining access to the filer's account. For example, a personnel change or management reorganization at the filer could create a situation where previously authorized filing agents or former employees of the filer lose their privileges, but still possess the EDGAR access codes. The risk of unauthorized access is heightened when there is no internal method of tracking possession of EDGAR access codes. Second, individual account credentials provide a means of associating any given filing with the particular individual who submitted such filing. The ability to associate the relevant individuals to the filings they submitted would benefit the Commission and the filer in resolving issues with problematic filings. Third, individual account credentials would provide an additional layer of validation with the anticipated requirement of multi-factor authentication that would

[114] *See supra* note 27.

[115] *See supra* note 100.

[116] *See supra* note 28.

[117] *See infra* Section IV.C.2.

[118] In connection with the proposed amendments, the Commission also proposes to amend Rule 11 under Regulation S–T, ''Definitions of terms used in this part,'' to add and define new terms as part of this rulemaking, and update the definitions of existing terms as needed.

require users to present a combination of two or more credentials for access verification, thereby strengthening identity verification and the security of access to EDGAR.[119]

b. Account Administrators

The proposed amendments to Rule 10 also would require filers to authorize account administrators to act on the filers' behalf to manage their accounts. Currently, anyone who possesses a filer's access codes can make a filing on that filer's EDGAR account. If the codes are shared or left unprotected by the people who have them, they may be obtained by someone who could use them to make an unauthorized filing, and neither the filer nor Commission staff would be able to easily trace the unauthorized filing through EDGAR to the individual who made it. Under EDGAR Next, account administrators would improve the security of EDGAR because account administrators would oversee and monitor the filer's account. Account administrators would have the ability to authorize, remove authority, and track all individuals acting on the filer's behalf, thereby reducing the risk of unauthorized access to the filer's account. The account administrator's monitoring of the filer's account would allow for prevention and timely detection of potential harms resulting from unauthorized access. It is difficult to quantify the potential benefits to filers of these aspects of the proposed changes because they would depend, in part, on the security risks faced by filers and the effectiveness of their existing systems to protect against unauthorized use of EDGAR access codes.

Individual filers and filers who are single-member companies would be required, under proposed Rule 10(d)(2), to authorize and maintain at least one account administrator. The designation of account administrators would also help facilitate communication between filers and the Commission, thus reducing the risk of possible interruptions in filer EDGAR activities. Currently, filers designate a point of contact on their Form ID to enable communication with the Commission. Correspondence between the Commission and the EDGAR POC regarding the filers' account activities may be delayed in the event that the EDGAR POC is no longer associated with the filer, because the filer may not update their EDGAR POC information with the Commission. All filers who are not individuals or single-member companies would be required to authorize and maintain at least two account administrators. The minimum requirement of two account administrators would lower the likelihood of the previously mentioned scenario. In addition, though the current EDGAR POC receives the access codes on behalf of the filer, he is not necessarily authorized to act on behalf of the filer. Under EDGAR Next, the account administrator, on behalf of the filer, would oversee all other designated roles and would be responsible for the management of the filer's account.

c. Dashboard

Commission staff is also aware that certain filers and filing agents currently have internal systems that track which individuals possess their EDGAR access codes. The cost to these filers in transitioning to the dashboard would be the same as if they did not have an internal system. We can infer that the cost to these filers would be less on an ongoing basis if they use the dashboard instead of their current system due to the elimination of ongoing maintenance costs for their system. Moreover, the dashboard would offer the advantage of being a uniform system for all filers that additionally allows Commission staff visibility into individuals authorized to act for the filer. This additional qualitative benefit is not present for current filer internal tracking systems. Furthermore, filers without a system for tracking individuals in possession of EDGAR codes currently would be afforded a tool to do so through EDGAR, thereby facilitating compliance with their existing and proposed obligation to securely maintain access to their accounts.

As proposed, Rule 10(d)(6) essentially codifies the current requirement for a filer to securely maintain its EDGAR access codes. Under the proposal, filers, through their account administrators, would be required to securely maintain information relevant to the ability to access their EDGAR accounts. Access to the dashboard would require individual account credentials, completion of the anticipated requirement of multi-factor authentication steps, and authorization from account administrators. Because of these security features, individuals in designated roles on the dashboard could safely access the CCC code to file on behalf of the filers.[120] This added security feature would eliminate the need to share the CCC codes with various individuals thus minimizing the risk of unauthorized access.

Additionally, the dashboard functionality of EDGAR Next would provide time and labor efficiencies in managing filers' EDGAR accounts, while facilitating compliance with the proposed rule requirements:

First, the dashboard would have a flexible user interface that would provide time and labor efficiencies to account administrators by facilitating the management of filers' EDGAR accounts, and compliance with the proposed changes. Through the dashboard's interface, an account administrator would have access to readily available information that would facilitate compliance with proposed Rule 10(d)(4), assist in tracking those authorized to file on EDGAR, and provide an opportunity for account administrators to confirm the accuracy of all information contained on the dashboard. Furthermore, through the dashboard's interface, account administrators could add an individual as a user, account administrator, or technical administrator for an EDGAR account on the dashboard. Additionally, using API tokens as a method of authentication would eliminate the need for manual individual account credential multi-factor authentication. This would decrease the time required to submit filings, facilitate the ability to pre-schedule and perform bulk filings, and reduce the potential for error due to manual processing and the risk of missing deadlines. Moreover, through the dashboard's interface, account administrators could generate a CCC for newly issued CIKs. The CCC would be securely saved in the dashboard visible to all authorized account administrators and users. The CCC would remain as the code required for filing in the account.

Second, the dashboard would provide additional time and labor efficiencies through the user groups feature. This functionality would particularly benefit delegated entities in managing multiple users and multiple filers' delegations of authority. EDGAR Next would allow up to 500 users per filer, and delegated users would be able to make submissions on behalf of the delegating filer. Assigning multiple users on an individual basis to a given filer would be time consuming and labor intensive, which would be detrimental to filers when they may need to make time-sensitive filings. The user group feature would streamline that process and allow delegated entities to assign multiple users to a specific filer at once. The dashboard would harness the benefits of technology and modernize the EDGAR access and management functions while providing filers the flexibility to adapt to changes rapidly, which is significant particularly in scenarios that could negatively impact filing times.

[119] *See supra* text following note 59.

[120] *See supra* note 26.

The institution of the user role would particularly benefit large filers or filing agents submitting multiple forms, for multiple entities. Allowing up to 500 users per filer would increase the likelihood of filling success for large filers and filing agents by providing these entities flexibility in assigning multiple users to various user-groups. Users would be able to remove themselves as a user for a given filer, thereby facilitating the maintenance of updated dashboard information that would benefit all affected parties.

d. Proposed Rules 10(d)(4), (d)(5), and (d)(6)

The proposed Rules 10(d)(4), (d)(5), and (d)(6) would require the filer, through its authorized account administrators: to annually confirm that all individuals reflected on the dashboard for the filer's EDGAR account are authorized by the filer and that all information regarding the filer on the dashboard is accurate; to maintain accurate and current information about the filer on EDGAR; and to securely maintain information relevant to the ability to access the filer's EDGAR account. It would assist the filer in tracking and confirming those individuals and delegated entities authorized to act on behalf of the filer, and to remove those no longer authorized. Confirming the accuracy of individuals authorized to act on behalf of filers while ensuring the safeguard of account access related information would enhance the security of EDGAR by reducing the risk of unauthorized access therefore reducing the likelihood of unauthorized filings. The Commission preliminarily believes that to the extent that the risk of unauthorized access is reduced, taking measures that may prevent unauthorized filings is inherently more efficient than remediating the consequences of such events after it occurred.

Additionally, failure to perform the annual confirmation of the information on the dashboard would result in the deactivation of the filer's access and the removal of individuals from the filer's account upon deactivation. Failure to perform annual confirmation could signal that the account has been abandoned. Deactivation would further benefit filers and all individuals associated with the filer's account by protecting their information listed on the dashboard. Proposed Rule 10(d)(5) is analogous to the current requirements to securely maintain EDGAR access and to maintain accurate company information on EDGAR.[121] Ensuring the accuracy of filer's relevant information contained in EDGAR would increase the reliability of such available information and thus would enhance the Commission's oversight capabilities, which benefits both the Commissions and the public. Furthermore, accurate and reliable EDGAR information would benefit the filer by facilitating a timelier remediation of problematic filings.

e. Optional APIs

In connection with the EDGAR Next changes, the Commission would provide optional APIs that would permit filers to interface on a machine-to-machine basis with the EDGAR platform. These APIs would benefit filers and the Commission by automating filers' connection to EDGAR for submission and retrieval of certain filing-related data and by reducing network traffic to the Commission. The Commission would offer three APIs: a submission API, a submission status API, and an operational status API.

With respect to the process for submissions, the submission API would benefit filers by allowing for more secure submissions since prior to using the APIs, the filer's technical administrator would be required to generate a filer API token to authenticate the filer, and the user would be required to generate a user API token to authenticate the user. The API tokens would be confidential and generated through the dashboard. The above requirements would provide additional assurance that the user is indeed authorized to submit the relevant filing.

The APIs would further streamline the submission and retrieval process since the use of APIs and user tokens would allow automated server-to-server authentication without the need for manual login and multi-factor authentication. As mentioned before, many filing agents' software use web scraping to retrieve information from EDGAR for filing purposes and to make submissions. Though widely used, scraping depends on the underlying structure of the external web page being scraped. Thus, any minor changes to the underlying structure of the EDGAR websites could impact the filers' software. The APIs would provide a more reliable way for filers to interact with EDGAR since future changes to EDGAR would likely not impact filers' software.

Further, the submission status API would allow filers to assess information regarding submission status via machine-to-machine communication. The submission status API would allow filers and filing agents to use their filing application to simultaneously check the status of multiple EDGAR submissions in a batch process as opposed to individually checking the submission status of each submission after manually logging into EDGAR. The submission status API would increase the likelihood that the Commission receives submissions promptly by limiting the risk of a failed submission through early communication with the filers or their authorized representatives, benefiting the Commission, filers and filing agents. An increase in the certainty and timeliness of submission boosts the overall information quality of the EDGAR system.

By opting to use the APIs, filers would further benefit by using direct machine-to-machine connections that would be approved and maintained by the Commission (as opposed to current third-party custom applications). As described in Sections III.D.2 and 3, filers and filing agents, as well as those using third-party custom applications continuously interact with the EDGAR system inquiring as to the status of submissions, or the operating status of EDGAR. Such inquiries into EDGAR create significant network traffic. For example, this network traffic could be more severe in the case of a large filing agent checking the status of multiple submissions. Instead of manually logging into EDGAR and individually checking the status of each submission, the submission status and operational status APIs would benefit the Commission and filers by allowing filers to simultaneously check the status of multiple submissions in a batch process as opposed to checking the status of each submission individually, thereby reducing network traffic created when filers are repeatedly requesting the status of their submissions, or the operational status of EDGAR.

Additionally, a filer who opts to use APIs would be required to authorize at least two technical administrators, and would be allowed a maximum of ten technical administrators to facilitate communication with the Commission on API-related technical issues. This would reduce the chance that filers' API access would be interrupted for any unforeseen technical issues.

2. Costs

We believe that the costs associated with EDGAR Next would primarily result from compliance costs borne by filers as described in the Paperwork Reduction Act (''PRA'') analysis below, associated costs to comply with new

[121] *See supra* note 88.

Rule 10 requirements, and the one-time burden for filers to adjust their internal filing application software to interface with the APIs.[122] While filers are not currently subject to analogous specific requirements regarding access, they are nevertheless subject to the same general requirements regarding securely maintaining EDGAR access codes and limiting the number of persons who possess the codes.

The proposed additional disclosure requirements for Form ID would entail certain incremental compliance costs.[123] For example, filers are already subject to the disclosure requirements of Form ID and under EDGAR Next we estimate for purposes of the PRA that Form ID's burden hours would increase by 0.3 burden hours.[124] Collectively, we estimate the burden to all filers to comply with the proposed amendments to Form ID would be 47,674 hours per year.[125] Filers would also incur labor costs associated with authorizing account administrators, along with fees associated with authorized individuals granting powers of attorney to designated individuals and delegated entities if those individuals being designated as account administrators are not employees of the filer. However, such costs would be mitigated by the six-month enrollment period of EDGAR Next, which would allow existing and prospective filers to enroll their account administrators without submitting a Form ID. Other costs that could arise from the proposal would stem from a filer's failure to perform, through its authorized account administrator, the required annual confirmation pursuant to proposed Rule 10(d)(4). Failure to perform the annual confirmation of the information on the dashboard would result in the deactivation of the filer's access, and the removal of individuals associated with the filer's account upon deactivation.[126] Filers would incur an additional burden of submitting a new Form ID application to regain access to file on EDGAR, and re-issuing invitations to any technical administrators, users, and technical administrators associated with their account prior to deactivation. However, these costs would potentially be mitigated by EDGAR's multiple notices of the impending confirmation deadline to account administrators on the dashboard and by email.[127]

The Commission would further ease the transition for filers by allowing relevant individuals of the filer to submit bulk enrollment of up to 100 filers and their account administrators. This would particularly benefit large filing agents enrolling multiple accounts by saving time and labor costs. The dashboard would require filers to incur costs to set up their accounts, as set forth in the PRA, and would require some period of time to maintain accurate and current information on EDGAR, confirm annually on EDGAR that all users, account administrators, technical administrators, and/or delegated entities reflected on the dashboard for the filer's EDGAR account are authorized by the filer, and that the filer's information on the dashboard is accurate, and securely maintain relevant account access information, largely depending on the number of users the filer authorizes and the amount of turnover of relevant personnel.[128] We recognize that due to these factors, the burden incurred would vary across filers. Filers with a large number of users and significant turnover would likely spend a greater amount of time managing their dashboard accounts. And filers with few users and little turnover would likely have infrequent need to manage individuals on the dashboard. Similarly, larger filers managing multiple CIKs would spend more time performing their required annual confirmation, and thus would incur a higher associated compliance cost associated. For purposes of the PRA, we estimate that, on average, each filer would incur one burden hour per year managing their account in the dashboard.[129]

Collectively, we estimate the burden to all filers to comply with the proposed new dashboard requirements would be 220,000 hours per year.[130] However, such burden would be mitigated by active notifications and other efficiencies provided by the dashboard as an account management tool.

Filers or filing agents who choose to use the optional APIs would incur a one-time cost to adjust their internal software systems to the new EDGAR APIs. Given that the APIs are optional, filers would presumably incur this cost to the extent that the benefits of using the APIs are expected to exceed the cost of doing so. Further, for filers who substitute the optional APIs for custom filing software, the cost of adjusting internal software systems to use the new EDGAR APIs would be mitigated by the elimination of current ongoing maintenance costs associated with adjusting their custom software each time EDGAR undergoes changes. The costs of developing software to use the APIs would not apply to filers who do not generally utilize custom filing software, as these filers could continue using the EDGAR websites to submit their filings. We have observed that small filers typically do not utilize custom filing software and we expect they will generally not incur these costs. Furthermore, the Commission would make available an EDGAR Next Beta to facilitate a smooth transition process for all affected parties.

We further estimate the direct costs to filers or filing agents associated with the proposed optional API requirements, including time and personnel costs to build a filing application integrated with all functions to successfully connect to the EDGAR APIs. Depending on their existing software, complexity of their application and individual business models, among other factors, these expenses are likely to vary across filers. Based on Commission experience from developing EDGAR Next the total estimated cost per filer for filing applications to connect to an EDGAR API by an external programmer analyst would range from $31,104 [131] for filers with a preexisting filing application to $38,880 assuming the filers do not have a preexisting filing application.[132] The total estimated burden hours for filers developing their application internally

[122] *See infra* Section V.

[123] *See infra* Section V.

[124] *See infra* note 140.

[125] *See infra* note 141141.

[126] *See supra* note 71.

[127] *See supra* note 70.

[128] *See infra* Section V.B.

[129] *See infra* text preceding note 142.

[130] *See infra* note 143143.

[131] An outside Senior Programmer Analyst salary range (national averages) is available from *www.payscale.com*. Using data from the 75th percentile, adjusting for a 1,800 hour work year, and multiplying by the 5.35 factor which normally is used to include benefits but here is used as an approximation to offset the fact that New York salaries are typically higher than the rest of the country, the result is $324 per hour. The estimate of $31,104 is based on the following calculation: $5,184 to simply connect an existing filing application to the API (16 hours = 2 days × 8 hours per day for a Senior Programmer Analyst at a rate of $324/hour) + $25,920 (80 hours = 2 weeks × 5 days per week × 8 hours per day for a Senior Programmer Analyst at a rate of $324/hour to configure the filing application correctly to be able to use the API).

[132] An outside Senior Programmer Analyst salary range (national averages) is available from *www.payscale.com*. Using data from the 75th percentile, adjusting for a 1,800 hour work year, and multiplying by the 5.35 factor which normally is used to include benefits but here is used as an approximation to offset the fact that New York salaries are typically higher than the rest of the country, the result is $324 per hour. The estimate of $38,880 is based on the following calculation: $12,960 to create a new filing application and connect it to the API (40 hours = 5 days × 8 hours per day for a Senior Programmer Analyst at a rate of $324/hour) + $25,920 to configure the filing application correctly to be able to use the API (80 hours = 2 weeks × 5 days per week × 8 hours per day for a Senior Programmer Analyst at a rate of $324/hour).

would range between 96 burden hours[133] and 120 burden hours.[134]

Filers who choose to use the APIs would also incur the additional cost of authorizing two technical administrators to manage the technical aspects of the APIs. We do not expect that filers would need to hire new employees to fill the technical administrator role since the primary responsibilities for the technical administrator are to generate the filer API token on an annual basis and securely store it within a filer's application. For purposes of the PRA, we estimate that filers would incur a burden of one hour per year per CIK with respect to the technical administrators' responsibilities, depending on security standards imposed by the filer or filing agent.[135]

3. Effects on Efficiency, Competition, and Capital Formation

EDGAR Next would increase the efficiency of filings and filing preparation by improving the accuracy of submissions and improving regulatory oversight into filings. The Commission preliminarily believes that enhancements to EDGAR security from the proposed EDGAR Next changes may improve efficiency by minimizing the risk of unauthorized access thus reducing the likelihood of unauthorized filings. Facilitating access and improving the tracking mechanism of who files on EDGAR would increase public confidence in the large amount of information submitted through EDGAR. Moreover, an increase in the accuracy and timeliness of processing submissions would boost the efficiency of the Commission's document review, processing, and quality assurance.

Enhancing the security of EDGAR would better protect against unauthorized access to the EDGAR system, thereby reducing the possibility of unauthorized filings that could have a distorting impact on the market. Strengthening filing security could marginally increase investor confidence and promote effective and well-functioning capital markets. The public would generally benefit from the implied increase in informational efficiency resulting from the improved accuracy and timeliness of processing submissions, as they use EDGAR filings for investment decisions. Overall, however, we do not expect the EDGAR Next changes to have a significant effect on capital formation because the contemplated security enhancements would not necessarily change market price fundamentals.

As discussed above, because the EDGAR Next changes would potentially increase the compliance requirements for filers, they could result in an increased demand for delegated entities to the extent that delegated entities find it profitable. This might increase competition among delegated entities, resulting in lower fees for filers with delegated entities. We cannot assess the relative likelihood of the above competitive effects among delegated entities because we are unable to estimate how many filers would choose to use delegated entities as a result of the proposal.

*D. Reasonable Alternatives*

1. Require Personally Identifiable Information in Addition to Individual Account Credentials

The proposed amendments would require all filers and relevant individuals acting on filers' behalf to obtain their individual account credentials prior to being authorized for any EDGAR Next role. Alternatively, the Commission could require that U.S.-based individuals provide certain personally identifiable information (''PII'') in addition to individual account credentials. Compared to the proposed amendments, while requiring PII from U.S.-based individuals and companies may result in a higher identity assurance level for U.S.-based persons, it would not achieve the same benefit for foreign individuals. Foreign individuals use different forms of PII, including different identifying documents, which makes it inherently difficult for a single vendor (database) to reliably identify everyone in the world. Additionally, the costs to the Commission of acquiring and safeguarding PII would exceed the benefits of doing so. Thus, this alternative would represent an extra burden to U.S.-based filers and individuals acting on their behalf, as well as the Commission.

2. Requirements for Individual and Small Filers

EDGAR Next would apply to all prospective and existing filers regardless of size. As an alternative, the Commission could simplify compliance requirements designed to address resource constraints of small entities. For example, the Commission could consider exempting small filers from proposed Rule 10(d)(4) that would require filers, through their authorized account administrators, to confirm annually that all account administrators, users, and delegated entities, and technical administrators reflected on the dashboard for the filer's EDGAR account are authorized by the filer and that all information regarding the filer on the dashboard is accurate. Further, the Commission could exempt small filers from proposed Rule 10(d)(1), and instead allow small filers to independently develop practices and recordkeeping to track individuals acting on their behalf and safeguard their account access codes. To the extent that simplifying these requirements could reduce regulatory burden on small filers, while affording small filers greater discretion into how they manage their accounts and securely maintain their EDGAR access codes, exempting a particular group of users would hinder the Commission's effort of establishing uniform requirements for all filers and individuals acting on their behalf.

For instance, because EDGAR Next would eliminate the use of the several passcodes and eliminate the present requirement to change the EDGAR password annually, exempting small filers from proposed Rule 10(d)(4) would generally lessen the security of their filing regime. Moreover, the Commission believes that any costs savings associated with exempting small filers from parts of EDGAR Next would likely be minimal. Small filers would still incur a cost of implementing their own practices and recordkeeping which might be higher than the cost of complying with the EDGAR Next changes and would impose a burden on small filers due to their limited resources and less established history of implementing such practices and recordkeeping. The EDGAR Next changes are designed to enhance the EDGAR filing regime, including, among other things, strengthening access to filers' EDGAR accounts by establishing a uniform method for authorizing, identifying, and tracking all individuals authorized to act on each filer's behalf. Additionally, a benefit of EDGAR Next is the elimination of password sharing. Exempting small filers from obtaining individual account credentials would not achieve that objective and therefore

[133] The estimate is based on the following calculation: 16 hours to simply connect an existing filing application to the API by a Senior Programmer Analyst (16 hours = 2 days × 8 hours per day) + 80 hours (80 hours = 2 weeks × 5 days per week × 8 hours per day) for a Senior Programmer Analyst to configure the filing application correctly to be able to use the API.

[134] This estimate is based on the following calculation: 40 hours to create a new filing application and connect it to the API (40 hours = 5 days × 8 hours per day) + 80 hours to configure the filing application correctly to be able to use the API (80 hours = 2 weeks × 5 days per week × 8 hours per day).

[135] *See infra* note 143 and accompanying text 141.

would not generally improve the security of EDGAR.

3. Implementing Performance-Based Standards

The EDGAR Next proposal mandates the performance of certain prescribed requirements to enhance the security of EDGAR's filing regime. We could consider an alternative with a more performance-based approach that would not spell out the precise actions filers need to take in order to improve the security of their EDGAR accounts, but instead only state that filers should have in place practices and recordkeeping that would allow the Commission to more easily identify anyone who makes a submission on the filer's behalf, and ensure that only individuals authorized by the filer are privy to the filer's access codes. For example, filers might opt to authorize only one account administrator rather than authorize and maintain two such individuals, or filers might determine that they do not need the additional security provided by multi-factor authentication for designated individuals to be authorized to act on their behalf on the dashboard.

The benefits of such an approach would be that filers would have more flexibility in what their practices and recordkeeping cover. Such an approach would provide the benefit of reducing the regulatory burden for certain filers by permitting them to tailor their EDGAR access compliance requirements to fit their own particular circumstances, and would provide filers greater discretion into how they manage their EDGAR accounts and safeguard their account access codes. To the extent that this approach provides more flexibility to certain filers, this alternative could also increase compliance cost to the detriment of some filers who may incur higher cost to set up practices and recordkeeping arrangements to manage their account and safeguard their access codes. Furthermore, this approach would diminish the intended benefits of the EDGAR Next changes. Filers who bypass the individual account credential requirements would make it difficult for the Commission to match specific filings to the relevant individual who made the submissions, while authorizing only one account administrator would probably not reduce the likelihood of managing EDGAR accounts without interruptions.

Overall, a performance-based approach would create inconsistencies in improving the overall security of EDGAR, facilitating the responsible management of EDGAR filer credentials, and simplifying procedures for accessing EDGAR. In addition, any cost savings associated with a performance-based approach would likely be minimal because filers would still incur the cost of compliance. In sum, this alternative would limit the magnitude of the benefits for filers that would result from the contemplated EDGAR Next changes.

4. Institute Phased Compliance Dates by Filer Category or Form Type

The proposed amendments would have a single compliance date. As an alternative, we could employ phased compliance dates to either accelerate or postpone compliance for particular filers. Phased compliance would particularly benefit smaller filers by affording them a longer time period to come into compliance with EDGAR Next, while further facilitating compliance with other contemporaneous rules with similar or earlier compliance deadlines. To the extent that a phased compliance would provide filers with more time to comply with EDGAR Next changes, compared to the proposed compliance timeline, postponing compliance would delay the benefits provided by the proposed changes, while accelerating compliance might result in additional transition challenges for these filers.

*E. Requests for Comment*

55. The Commission requests comment on all aspects of the economic effects of the EDGAR Next changes, including any anticipated impacts that are not mentioned here. We are particularly interested in quantitative estimates of the benefits and costs, in general or for particular types of affected parties, including smaller entities. We also request comment on reasonable alternatives to the EDGAR Next changes and on any effect the changes may have on efficiency, competition, and capital formation.

56. Do you agree with the estimated benefits that EDGAR Next would provide to filers? If not, why?

57. Do you agree with the estimated costs associated with the EDGAR Next changes? If not, why? Please provide your views on the burden of complying with the EDGAR Next changes relative to our estimates. In particular, would filers and filing agents switch to using the optional APIs contemplated as part of EDGAR Next? If not, why?

58. Are there any filers for whom the compliance costs associated with EDGAR Next would not be justified by the benefits such that exempting those entities would be advisable? If so, which filers should the Commission exempt, and why?

59. Does the contemplated compliance timeline provide filers sufficient time to transition to EDGAR Next? If not, what would be the additional cost incurred in order to meet the contemplated compliance timeline?

60. Would EDGAR Next require any existing filers with delegated authority to file on behalf of a related person or entity to materially change the way they operate? If so, in what ways? What would be the cost associated with such change? For instance, many companies may file on behalf of their section 16 directors and officers, and some investment companies may also make filings on behalf of other funds within their fund family.

61. Prospective filers could designate as account administrators (i) individuals employed at the filer or an affiliate of the filer (in the case of company applicants) or themselves (in the case of individual applicants), as well as (ii) any other individual, provided the filer submitted a notarized power of attorney authorizing such other individual to be its account administrator. Are filers likely to designate individuals other than themselves or their employees or employees of their affiliates? What would be the costs associated with this determination?

The Commission also requests comment and supporting empirical data on the burden and cost estimates for the proposed rule, including the costs that filers and potential filers may incur.

## V. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[136] We are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[137] 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. Compliance with the information collection is mandatory. Responses to the information collection are not kept confidential, and there is no mandatory retention period for the information disclosed. The title for the existing collection of information that we are proposing to amend is ''Form ID—EDGAR Password'' (OMB Control No. 3235–0328). Our proposal also includes a new collection of information titled ''the dashboard.'' The amendments to Form ID and the

[136] 44 U.S.C. 3501 *et seq.*

[137] 44 U.S.C. 3507(d); 5 CFR 1320.11.

implementation of the dashboard are designed to harness the benefits of improved technology and to modernize the EDGAR access and management functions. A detailed description of the proposed amendments, including the amendments to Form ID and the implementation of the dashboard, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section III above, and a discussion of the expected economic impact of the proposed amendments can be found in Section IV above. We discuss below the collection of information burdens associated with each initiative.

*A. Form ID*

Form ID must be completed online and submitted to the Commission by all individuals, companies, and other organizations who seek access to file electronically on EDGAR.

As outlined above, the amendments to Form ID would require an applicant for EDGAR access to undertake certain additional disclosure obligations, including most significantly: (1) designating on Form ID specific individuals the applicant authorizes to act as its account administrator(s) to manage its EDGAR account on a dashboard on EDGAR; (2) indicating the applicant's LEI, if any; (3) providing more specific contact information about the filer, its account administrators, its authorized individual (individual authorized to submit Form ID on the filer's behalf), and its billing contact (including mailing, business, and billing information, as applicable); (4) specifying whether the applicant, its authorized individual, person signing a power of attorney (if applicable), account administrator, or billing contact has been criminally convicted as a result of a Federal or State securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity, as a result of a Federal or State securities law violation; (5) indicating whether the applicant, if a company, is in good standing with its state or country of incorporation; (6) requiring submission of a new Form ID if the applicant claims to have (i) lost electronic access to its existing CIK account or (ii) assumed legal control of a filer listed on an existing CIK account but did not receive EDGAR access from that filer; and (7) requiring those seeking access to an existing EDGAR account to upload to EDGAR the documents that establish the applicant's authority over the company or individual listed in EDGAR on the existing account. The proposed amendments would also simplify filer account management by eliminating the EDGAR password, PMAC, and passphrase.

For purposes of the Paperwork Reduction Act, the currently approved burden includes an estimate of 57,329 Form ID filings annually and further estimates approximately 0.30 hours per response to prepare and file Form ID, for a total of 17,199 annual burden hours. Those estimates include the number of Form ID filings for filers without CIKs (48,089 filings), filers with CIKs who are seeking to regain access to EDGAR (8,836 filings), and filers with CIKs who have not filed electronically on EDGAR (404 filings).[138] Filers are responsible for 100% of the total burden hours.

There were 79,457 Form ID filings in calendar year 2022. The estimate includes the number of filers without CIKs, filers with CIKs who have not filed electronically on EDGAR, and filers with CIKs who are seeking to regain access EDGAR.[139] If the proposed access changes and proposed Form ID amendments are implemented, for purposes of the Paperwork Reduction Act, we estimate that the number of Form ID filings would remain the same and that the number of hours to prepare Form ID would increase by 0.30 hours.[140]

Thus, for purposes of the Paperwork Reduction Act, the estimated total number of annual Form ID filings would increase from 57,329 filings to 79,457 filings. The estimate of 0.30 hours per response would increase to 0.60 hours per response. The estimated total annual burden would increase from 17,199 hours to 47,674 hours.[141] The estimate that the filers are responsible for 100% of the total burden hours would stay the same.

| Form ID | Annual number of filings | | | Annual time burden (hrs.) | | |
|---|---|---|---|---|---|---|
| | *Previously approved* | *Requested* | *Change* | *Previously approved* | *Requested* | *Change* |
| Form ID | 57,329 | 79,457 | 22,128 | 17,199 | 47,674 | 30,475 |

*B. The Dashboard*

To file on EDGAR, each filer must also comply with certain account access and management requirements by taking actions on the dashboard. As outlined above, each filer must authorize individuals to act on its behalf on the dashboard, and those individuals must have obtained individual account credentials for EDGAR in the manner specified in the EDGAR Filer Manual. Moreover, each filer, through their account administrators, is required to: (i) authorize and maintain at least two individuals as authorized account administrators to act on the filer's behalf to manage the filer's EDGAR account, except a filer who is an individual or single-member company must authorize and maintain at least one individual as an account administrator; (ii) confirm annually on EDGAR that all users, account administrators, technical administrators, and/or delegated entities reflected on the dashboard for the filer's EDGAR account are authorized by the filer, and that the filer's information on the dashboard is accurate; (iii) maintain accurate and current information on EDGAR concerning the filer's account, including but not limited to accurate corporate information and contact information (such as mailing and business addresses, email addresses, and telephone numbers); (iv) securely maintain information relevant to the ability to access the filer's EDGAR account, including but not limited to access through any EDGAR API; and (v)

[138] 48,089 filings for users without CIKs + 8,836 filings for filers who are seeking to regain access to EDGAR + 404 filings for filers with CIKs who have not yet filed electronically on EDGAR = 57,329 filings.

[139] 69,651 filings for users without CIKs + 9,390 filings for filers who are seeking to regain access to EDGAR + 416 filings for filers with CIKs who have not yet filed electronically on EDGAR = 79,457 filings.

[140] The increase in burden would vary by applicant depending on whether certain of their responses required additional information (*e.g.,* explaining the circumstances surrounding any of its operatives who are currently subject to Federal or State securities law investigations, proceedings, convictions, suspensions, or bars, and for applicants seeking access to an existing CIK account, providing the documents that establish the applicant's authority over the company or individual currently listed in EDGAR as corresponding to the existing CIK account).

[141] 79,457 filings × 0.60 hours/filing = 47,674 hours.

if the filer chooses to use an EDGAR API, authorize at least two technical administrators to act on the filer's behalf to manage technical matters related to the filer's use of an API.

Through the dashboard, account administrators could: (i) add and remove users, account administrators, and technical administrators (including removing themselves as an account administrator); (ii) create and edit groups of users; (iii) delegate filing authority to third parties with EDGAR accounts and remove such delegations; and (iv) generate a new CCC.

For purposes of the PRA, we estimate that each filer would spend approximately one hour setting up the dashboard, and approximately one hour per annum managing the filer's account on the dashboard. This burden would vary across filers depending on the size of the filer, the number of users, account administrators, technical administrators, and delegated entities authorized by the filer, as well as the amount of annual staff turnover for those individuals and entities, among other factors. For a small number of filers, the annual burden could significantly exceed our estimate (*e.g.,* filing agents who may have a large number of authorized individuals, as well as multiple accepted delegations and user groups for which delegated users would need to be maintained). On the other hand, for the vast majority of filers, the annual burden would presumably be less than our estimate because we expect most filers to have a small number of authorized individuals and experience little or no annual turnover with regard to those individuals.[142] Consequently, the anticipated total annual burden attributed to the dashboard would be approximately 220,000 burden hours.[143]

| Active filers | | | Burden hours | | Total annual burden hours |
|---|---|---|---|---|---|
| Entities | 149,000 | × | 1 | = | 149,000 |
| Individuals | 71,000 | × | 1 | = | 71,000 |
| | | | | | 220,000 |

*C. Request for Comment*

We request comment on whether our estimates for burden hours and any external costs as described above are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and (v) evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–15–23. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–15–23, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

## VI. Small Business Regulatory Enforcement Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[144] the Commission must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more (either in the form of an increase or decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether the proposed amendments would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect of the proposed amendments on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

## VII. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'')[145] requires an agency, when issuing a rulemaking proposal, to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (''IFRA'') that describes the impact of the proposed rule on small entities.[146] This IFRA has

[142] A filer survey conducted by a filing agent found that at least 64% of respondents planned to have three or fewer account administrators, and 96% of respondents planned to have fewer than 20 users. *See* Workiva Comment Letter. Moreover, since filers are not required to authorize users, technical administrators, or delegations, filers who did not choose to authorize such individuals or third parties would not have any associated burdens.

[143] 149,000 active entity filers on EDGAR × 1 hour = 149,000 burden hours. 71,000 active individual filers on EDGAR × 1 hour = 71,000 burden hours. 149,000 burden hours + 71,000 burden hours = 220,000 total annual burden hours.

[144] 5 U.S.C. 801 *et seq.*

[145] 5 U.S.C. 601 *et seq.*

[146] *Id.*

been prepared in accordance with the RFA and relates to the proposed amendments to Rules 10 and 11 of Regulation S–T and Form ID described in Section III.E above.

*A. Reasons for, and Objectives of, the Proposed Action*

The purpose of the proposed amendments is to enhance the security of EDGAR accounts, improve the ability of filers to securely maintain access to their EDGAR accounts, facilitate the responsible management of EDGAR filer credentials, and simplify procedures for accessing EDGAR. Among other things, the proposed amendments would require each filer to:

- Authorize individuals to act on its behalf on the dashboard only if those individuals have obtained individual account credentials in the manner to be specified in the EDGAR Filer Manual;
- Authorize and maintain individuals as account administrators to manage their EDGAR accounts;
- Confirm annually on EDGAR, through their account administrators, that all account administrators, users, technical administrators and delegated entities reflected on the dashboard for the filer's EDGAR account are authorized by the filer to act on its behalf, and that all information about the filer on the dashboard is accurate;
- Maintain accurate and current information on EDGAR concerning the filer's account; and
- Securely maintain information relevant to the ability to access the filer's EDGAR account.

Filers who chose to use the optional EDGAR APIs that the Commission would offer for machine-to-machine submissions on EDGAR and to facilitate filers' retrieval of related information, would, among other things, be required through their account administrators to authorize two technical administrators to manage tokens and other technical aspects of the EDGAR APIs.

*B. Legal Basis*

We are proposing the amendments contained in this release under the authority set forth in sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933 (''Securities Act''),[147] sections 3, 4A, 4B, 12, 13, 14, 15, 15B, 23, and 35A of the Exchange Act,[148] section 319 of the Trust Indenture Act of 1939,[149] and sections 8, 30, 31, and 38 of the Investment Company Act of 1940 (''Investment Company Act'').[150]

*C. Small Entities Subject to the Proposed Rule and Form Amendments*

The proposed amendments would affect individuals and entities that have EDGAR accounts or that seek to open EDGAR accounts. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[151] For purposes of the RFA, under our rules, an issuer, other than an investment company, is a small entity if it had total assets of $5 million or less on the last day of its most recent fiscal year.[152] We estimate there are 908 issuers that file with the Commission—other than investment companies—that would be considered small entities for purposes of this analysis.[153]

With respect to investment companies and investment advisers, an investment company, including a business development company, is considered to be a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[154] We estimate that there are 82 registered investment companies (including business development companies and unit-investment trusts) that would be considered small entities.[155] An investment adviser is generally considered a small entity if it: (1) has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[156] We estimate that there are 594 investment advisers that would be considered small entities.[157]

A transfer agent is considered to be a small entity if it: (1) received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed ''small businesses'' or ''small organizations'' as defined in 17 CFR 240.0–10; (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (4) is not affiliated with any person (other than a natural person) that is not a small business or small organization under 17 CFR 240.0–10.[158] We estimate that there are 126 transfer agents that would be considered small entities.[159]

With respect to municipal securities dealers and broker-dealers, a municipal securities dealer that is a bank (including any separately identifiable department or division of a bank) is a small entity if it: (1) had, or is a department of a bank that had, total assets of less than $10 million at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); (2) had an average monthly volume of municipal securities transactions in the preceding fiscal year (or in the time it has been registered, if shorter) of less than $100,000; and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in 17 CFR 240.0–10.[160] We estimate there are 171 municipal securities dealers that would be considered small entities.[161] A broker-dealer is a small entity if it: (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as

[147] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s (a).

[148] 15 U.S.C. 78c, 78d–1, 78d–2, 78*l,* 78m, 78n, 78*o,* 78*o*–4, 78w, and 78*ll.*

[149] 15 U.S.C. 77sss.

[150] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

[151] 5 U.S.C. 601(6).

[152] *See* 17 CFR 240.0–10(a)).

[153] This estimate is based on staff analysis of issuers potentially subject to the final amendments, excluding co-registrants, with EDGAR filings on Form 10–K, or amendments thereto, filed during the calendar year of Jan. 1, 2022 to Dec. 31, 2022. This analysis is based on data from XBRL filings, Compustat, Ives Group Audit Analytics, and manual review of filings submitted to the Commission.

[154] *See* 17 CFR 270.0–10.

[155] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data filed with the Commission (on Forms N–CSR, NPORT–P, 10–Q, and 10–K) for the last quarter of 2022.

[156] 17 CFR 275.0–7.

[157] We based this estimate on registered investment adviser responses to Items 5.F. and 12 of Form ADV.

[158] 17 CFR 240.0–10(h).

[159] We based this estimate on transfer agent responses to questions 4(a) and 5(a) on their latest filing on Form TA–2.

[160] 17 CFR 240.0–10(f).

[161] This estimate is based on MSRB data filed during the calendar year of Jan. 1, 2022 to Dec. 31, 2022.

defined in 17 CFR 240.0–10.[162] We estimate that there are 782 broker-dealers that would be considered small entities.[163]

A clearing agency is a small entity if it: (1) compared, cleared and settled less than $500 million in securities transactions during the preceding fiscal year (or in the time that it has been in business, if shorter); (2) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in 17 CFR 240.0–10.[164] We estimate there are zero clearing agencies that are small entities.

An exchange is a small entity if it: (1) has been exempted from the reporting requirements of § 242.601 of this chapter; and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in 17 CFR 240.0–10.[165] We estimate there are zero exchanges that are small entities. A securities information processor is a small entity if it: (1) had gross revenues of less than $10 million during the preceding fiscal year (or in the time it has been in business, if shorter); (2) provided service to fewer than 100 interrogation devices or moving tickers at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization under 17 CFR 240.0–10.[166] We estimate there are zero securities information processors that are small entities.

Collectively, we estimate that there are 2,663 small entities that would be potentially subject to the proposed amendments, based on our review of data reported as of December 31, 2022.

*D. Reporting, Recordkeeping, and Other Compliance Requirements*

As noted above, the purpose of the proposed amendments would be to update access and provide secure management of individual and entity filers' EDGAR accounts. If adopted, the proposed amendments are expected to apply to all applicants and current EDGAR accounts and would apply to small entities to the same extent as other entities, irrespective of size. Therefore, we generally expect the nature of any benefits and cost associated with the proposed amendments to be similar for large and small entities. We note, and as discussed above,[167] all existing and new EDGAR filers will be subject to certain fixed costs to update and maintain an EDGAR account under the proposed amendments, which may result in a proportionally larger burden on small filers.

We expect that the proposed amendments to the rules and form to update access and management of EDGAR accounts would have a small incremental effect on existing reporting, recordkeeping and other compliance burdens for all existing and new EDGAR filers, including small entities. The proposed amendments would simplify account management by providing an interactive dashboard on EDGAR, populated with EDGAR account information, as the central platform for account administrators and other delegated individuals to manage access to the account, update account information and send communications and notifications. Some of the proposed amendments, including requirements for all filers to confirm the accuracy of their account information, including authorizations for all account administrators, users, technical administrators, and/or delegated entities, would require the use of administrative and technical skills, and increase compliance costs for registrants, although we do not expect these additional costs would be significant.

*E. Duplicative, Overlapping, or Conflicting Federal Rules*

We believe that the proposed amendments would not duplicate, overlap, or conflict with other Federal rules.

*F. Significant Alternatives*

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

i. Establishing different compliance requirements for individual and entity EDGAR account managers that take into account the resources available to small entities;

ii. Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;

iii. Using performance rather than design standards;[168] and

iv. Exempting small entities from all or part of the requirements.

Regarding the first, third, and fourth alternatives,[169] we do not believe that establishing different compliance requirements, using performance rather than design standards, or exempting small entities from the requirements would permit us to obtain our desired objectives. We are concerned that each of these alternatives would frustrate our efforts to enhance the security of EDGAR, improve the ability of filers to securely manage and maintain access to their EDGAR accounts, facilitate the responsible management of EDGAR filer credentials, and simplify procedures for accessing EDGAR. The proposed amendments set forth uniform requirements for each filer to formally authorize individuals to act on the filer's behalf in EDGAR as account administrators, users, and technical administrators, which would allow EDGAR to determine whether authorized individuals were accessing and taking actions with regards to the filer's EDGAR account. As proposed, all individuals accessing EDGAR would be required to sign in with individual account credentials and multi-factor authentication, which would allow EDGAR to identify the individuals accessing EDGAR. As discussed above, we believe that by imposing these requirements on all existing and prospective EDGAR filers, the Commission's EDGAR Next proposal would generally improve the security of the EDGAR system by establishing a uniform method for authorizing, identifying, and tracking all individuals authorized to act on each filer's behalf. We anticipate that establishing different compliance requirements, using performance rather than design standards, or exempting small entities would result in a patchwork compliance regime that would frustrate the ability of filing agents and other service providers to efficiently manage filer credentials and manage and maintain access to filers' EDGAR accounts, and would likewise frustrate our efforts to simplify procedures for accessing EDGAR.[170]

As noted above,[171] the Commission considered using a performance-based approach rather than the design standards of the anticipated EDGAR

[162] 17 CFR 240.0–10(c).

[163] This estimate is based on FOCUS Report data filed during the calendar year of Jan. 1, 2022 to Dec. 31, 2022.

[164] 17 CFR 240.0–10(d).

[165] 17 CFR 240.0–10(e).

[166] 17 CFR 240.0–10(g).

[167] *See* Section IV.C.2.

[168] See the discussion of performance-based standards in Section IV.D.3.

[169] See the discussion of compliance requirements in Section IV.D.2.

[170] *See supra* notes 28–29 (indicating that 60–90% of EDGAR filings may be submitted by filing agents).

[171] *See* Section IV.D.3.

Next changes and the proposed rule. Revising the EDGAR Next changes to make them more performance-based would reduce the regulatory burden for certain filers by permitting them to tailor their EDGAR access compliance requirements to fit their own particular circumstances. For example, small filers could determine that they do not need the additional security provided by multi-factor authentication for designated individuals to be authorized to act on their behalf on the dashboard. Furthermore, larger filers might opt to authorize only one account administrator rather than authorize and maintain two such individuals. However, after consideration, we believe that permitting filers to tailor their EDGAR access compliance requirements to fit their own particular circumstances would diminish the intended benefits of the EDGAR Next changes. As discussed earlier,[172] bypassing the individual account credential requirements would make it difficult for the Commission to match specific filings to the relevant individual who made the submissions. Likewise, generally allowing filers to have only one account administrator would increase the likelihood that Commission staff could not reach an account administrator when it had time-sensitive questions about access to or activity on the account. Overall, a performance-based approach would create inconsistencies in improving the overall security of EDGAR, facilitating the responsible management of EDGAR filer credentials, and simplifying procedures for accessing EDGAR. In addition, any cost savings associated with a performance-based approach would likely be minimal because filers would still incur the cost of compliance. Further, this alternative would limit the magnitude of the benefits for filers that would result from the contemplated EDGAR Next changes.

In addition, establishing different compliance requirements, using performance rather than design standards, or exempting small entities could permit individuals to access EDGAR accounts for small filers without being authorized on the dashboard, without multi-factor authentication, and without their EDGAR permissions being individually verified by EDGAR. Furthermore, if these exemptions or alternatives for small entities were implemented so that individuals acting on behalf of small entities were not required to obtain individual account credentials, the Commission would not be able to associate individuals with the specific filings they submitted on behalf of small entities. Collectively, this would reduce the security of EDGAR accounts for small entities, hinder the ability of the Commission and filers to prevent and resolve problematic and unauthorized filings, and frustrate our efforts to require small entities to responsibly manage EDGAR filer credentials.

Regarding the second alternative, we believe the proposal is clear, and that clarifying, consolidating, or simplifying compliance requirements for EDGAR filers, including small entities, is not necessary. All EDGAR users currently follow the same process and rules to access and maintain their EDGAR accounts. The proposed changes to EDGAR account management that are intended in many ways to simplify procedures for accessing EDGAR purposes of EDGAR account management. Among other things, the proposed changes would eliminate the need for individuals to track and share EDGAR passwords, PMACs, and passphrase codes for each CIK. Instead, each individual would only be responsible for tracking a single set of individual account credentials, which we contemplate would be issued by *Login.gov*. Once the individual logged into EDGAR by using those credentials, the dashboard would automatically authenticate the individual and provide them with the appropriate access to each CIK for which they had been authorized to take action. The dashboard would also display any relevant individual codes or tokens (such as user API tokens or CCCs), instead of requiring the individual to personally track or record those codes or tokens. This should result in more streamlined, modern access processes that would benefit all filers, including individuals and small entities.

*G. Request for Comment*

We encourage the submission of comments with respect to any aspect of this RFA. In particular, we request comments regarding:

- How the proposed rule and form amendments can achieve their objective while lowering the burden on individuals and small entities;
- The number of individuals and small entities that may be affected by the proposed rule and form amendments;
- The existence or nature of the potential effects of the proposed amendments on individuals and small entities discussed in the analysis; and
- How to quantify the effects of the proposed amendments; and
- Whether there are any Federal rules that duplicate, overlap, or conflict with the proposed amendments.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of that effect. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules themselves.

**Statutory Authority**

We are proposing to amend Rules 10 and 11 of Regulation S–T and Form ID under the authority in sections 6, 7, 8, 10, and 19(a) of the Securities Act,[173] sections 3, 4A, 4B, 12, 13, 14, 15, 15B, 23, and 35A of the Exchange Act,[174] section 319 of the Trust Indenture Act of 1939,[175] and sections 8, 30, 31, and 38 of the Investment Company Act.[176]

**List of Subjects**

*17 CFR Part 232*

Administrative practice and procedure, Confidential business information, Electronic filing, Incorporation by reference, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 239*

Administrative practice and procedure, Confidential business information, Incorporation by reference, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 249*

Administrative practice and procedure, Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 269*

Reporting and recordkeeping requirements, Securities, Trusts and trustees.

*17 CFR Part 274*

Administrative practice and procedure, Electronic funds transfers, Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons discussed above, we propose to amend 17 CFR chapter II as follows:

[172] *Id.*

[173] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s (a).

[174] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78*o*–4, 78w, and 78*ll.*

[175] 15 U.S.C. 77sss.

[176] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

## PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 232.10 by:

■ a. Revising paragraph (b);

■ b. Adding paragraph (d); and

■ c. Revising Note to § 232.10.

The revisions and additions read as follows:

### § 232.10 Application of part 232.

* * * * *

(b) Each electronic filer must, before filing on EDGAR:

(1) File electronically the information required by Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), the application for EDGAR access, which must be completed by an individual authorized by the electronic filer as its account administrator, pursuant to paragraph (d)(2) of this section, and

(2) File, by uploading as a Portable Document Format (PDF) attachment to the Form ID filing, a notarized document, signed by the electronic filer or its authorized individual, that includes the information required to be included in the Form ID filing and confirms the authenticity of the Form ID filing.

* * * * *

(d) To file on EDGAR, each electronic filer must comply with the EDGAR account access and account management requirements set forth in this section and in the EDGAR Filer Manual.

(1) The electronic filer may only authorize individuals to act on its behalf on the dashboard if those individuals have obtained individual account credentials for EDGAR in the manner specified in the EDGAR Filer Manual;

(2) Each electronic filer must authorize and maintain at least two (2) individuals as account administrators to act on the electronic filer's behalf to manage its EDGAR account, except an electronic filer who is an individual or single-member company must authorize and maintain at least one (1) individual as an account administrator to manage its EDGAR account;

(3) If the electronic filer chooses to use an EDGAR Application Programming Interface, the electronic filer, through its authorized account administrator(s), must authorize at least two technical administrators to act on the electronic filer's behalf to manage technical matters related to the electronic filer's use of any EDGAR Application Programming Interfaces;

(4) The electronic filer, through its authorized account administrator(s), must confirm annually on EDGAR that all account administrator(s), users, technical administrators, and/or delegated entities reflected on the dashboard for its EDGAR account are authorized by the electronic filer to act on its behalf, and that all information about the filer on the dashboard is accurate;

(5) The electronic filer, through its authorized account administrator(s), must maintain accurate and current information on EDGAR concerning the electronic filer's account, including but not limited to accurate corporate information and contact information; and

(6) The electronic filer, through its authorized account administrator(s), must securely maintain information relevant to the ability to access the electronic filer's EDGAR account, including but not limited to access through any EDGAR Application Programming Interfaces.

**Note to § 232.10:** The Commission staff carefully reviews each Form ID, and electronic filers should not assume that the Commission staff will automatically approve the Form ID upon its submission. Therefore, any applicant seeking EDGAR access is encouraged to submit the Form ID for review well in advance of the first required filing to allow sufficient time for staff to review the application.

■ 3. Amend § 232.11 by:

■ a. Adding definitions for ''Account administrator'', ''Application Programming Interface'', ''Authorized individual'', ''Dashboard'', ''Delegated entity'' in alphabetical order;

■ b. Revising the definitions for ''Direct transmission'' and ''EDGAR Filer Manual''; and

■ c. Adding the definitions for ''Filing agent'', ''Individual account credentials'', Single-member company'', ''Technical administrator'', and ''User'' in alphabetical order.

The additions and revisions read as follows:

### § 232.11 Definitions of terms used in this part.

* * * * *

*Account administrator.* The term *account administrator* means an individual that the electronic filer authorizes to manage its EDGAR account and to make filings on EDGAR on the electronic filer's behalf.

* * * * *

*Application Programming Interface.* The term *Application Programming Interface,* or *API,* means a software interface that allows computers or applications to communicate with each other.

* * * * *

*Authorized individual.* The term *authorized individual* means an individual with the authority to legally bind the entity or individual applying for access to EDGAR on Form ID, or an individual with a power of attorney from an individual with the authority to legally bind the applicant. The power of attorney document must clearly state that the individual receiving the power of attorney has general legal authority to bind the applicant or specific legal authority to bind the applicant for purposes of applying for access to EDGAR on Form ID.

* * * * *

*Dashboard.* The term *dashboard* means an interactive function on EDGAR where electronic filers manage their EDGAR accounts and individuals that electronic filers authorize may take relevant actions for electronic filers' accounts.

*Delegated entity.* The term *delegated entity* means an electronic filer that another electronic filer authorizes, on the dashboard, to file on EDGAR on its behalf. Delegated entities must themselves be electronic filers and must follow all rules applicable to electronic filers. Delegated entities are not permitted to further delegate authority to file for a delegating electronic filer, nor are they permitted to take action on the delegating electronic filer's dashboard.

* * * * *

*Direct transmission.* The term *direct transmission* means the transmission to EDGAR of one or more electronic submissions.

* * * * *

*EDGAR Filer Manual.* The term *EDGAR Filer Manual* means the manual that sets forth the requirements for access to EDGAR and the procedural requirements to make electronic submissions on EDGAR. Note: *See* Rule 301 of Regulation S–T (§ 232.301).

* * * * *

*Filing agent.* The term *filing agent* means any person or entity engaged in the business of making submissions on EDGAR on behalf of electronic filers. To act as a delegated entity for an electronic filer, a filing agent must be an electronic filer with an EDGAR account.

* * * * *

*Individual account credentials.* The term *individual account credentials* means credentials issued to individuals for purposes of EDGAR access, as specified in the EDGAR Filer Manual, and used by those individuals to access EDGAR.

* * * * *

*Single-member company.* The term *single-member company* means a company that has a single individual who acts as the sole equity holder, director, and officer (or, in the case of an entity without directors and officers, holds position(s) performing similar activities as a director and officer).

* * * * *

*Technical administrator.* The term *technical administrator* means an individual that the electronic filer authorizes on the dashboard to manage the technical aspects of the electronic filer's use of EDGAR Application Programming Interfaces on the electronic filer's behalf.

* * * * *

*User.* The term *user* means an individual that the electronic filer authorizes on the dashboard to make submissions on EDGAR on the electronic filer's behalf.

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 4. The authority citation for part 239 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78*o*(d), 78*o*–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, and sec. 71003 and sec. 84001, Pub. L. 114–94, 129 Stat. 1321, unless otherwise noted.

* * * * *

Sections 239.63 and 239.64 are also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l,* 78m, 78n, 78*o*(d), 78w(a), 80a–8, 80a–24, 80a–29, and 80a–37.

■ 5. Revise § 239.63 to read as follows:

### § 239.63 Form ID, application for EDGAR access.

Form ID must be filed by electronic filers, or by their account administrators, to request EDGAR access and to authorize account administrators to manage the electronic filer's EDGAR account.

■ 6. Form ID (referenced in §§ 239.63, 249.446, 269.7, and 274.402) is revised:

**Note:** Form ID is attached as Appendix A at the end of this document. Form ID will not appear in the Code of Federal Regulations.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The general authority citation for part 249 continues to read as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

■ 8. Revise § 249.446 to read as follows:

### § 249.446 Form ID, application for EDGAR access.

Form ID must be filed by electronic filers, or by their account administrators, to request EDGAR access and to authorize account administrators to manage the electronic filer's EDGAR account.

## PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

■ 9. The authority citation for part 269 continues to read as follows:

**Authority:** 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, and 78ll(d), unless otherwise noted.

■ 10. Revise § 269.7 to read as follows:

### § 269.7 Form ID, application for EDGAR access.

Form ID must be filed by electronic filers, or by their account administrators, to request EDGAR access and to authorize account administrators to manage the electronic filer's EDGAR account.

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 11. The authority citation for part 274 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, and 80a–37, unless otherwise noted.

* * * * *

■ 12. Revise § 274.402 to read as follows:

### § 274.402 Form ID, application for EDGAR access.

Form ID must be filed by electronic filers, or by their account administrators, to request EDGAR access and to authorize account administrators to manage the electronic filer's EDGAR account.

By the Commission.

Dated: September 13, 2023.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

**Note:** Appendix A will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

## APPENDIX A

### FORM ID

### APPLICATION FOR EDGAR ACCESS

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a current valid OMB control number.

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Complete Form ID by reference to:

- Rules 10 and 11 of Regulation S-T, 17 CFR 232.10 and 232.11;
- The requirements set forth in of Volume I of the EDGAR Filer Manual; and
- The Form ID General Instructions on this interface.

Form ID must be completed by an individual authorized by the applicant to act as its account administrator and to manage its EDGAR account should the Form ID application be granted.

- The individual completing Form ID will be considered the applicant's authorized account administrator should the Form ID application be granted.
- Before completing Form ID, an account administrator must have individual account credentials, in the manner specified in the EDGAR Filer Manual.

The applicant must authorize two (2) individuals as account administrators; except an applicant who is an individual or single-member company must authorize one (1) individual as account administrator.

Information submitted on Form ID may become public.

- Please enter business contact information on Form ID; do not submit personal contact information.
- Including unsolicited sensitive personally identifiable information on Form ID may result in rejection of your Form ID application.

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Misstatements or omissions of fact in connection with an application for EDGAR access and/or in a submission on EDGAR may constitute a criminal violation under 18 U.S.C. 1001 and 1030 and/or a violation of other criminal and civil laws. If the SEC has reason to believe that an application for EDGAR access and/or a submission on EDGAR is misleading, manipulative, and/or unauthorized, the SEC may prevent acceptance or dissemination of the application/submission and/or prevent future submissions or otherwise remove a filer's access to EDGAR pursuant to Rule 15 of Regulation S-T, 17 CFR 232.15.

---

If your Form ID application is granted, please be aware that EDGAR filers must comply with the rules and regulations governing access to the EDGAR system set forth in Regulation S-T and the EDGAR Filer Manual, including but not limited to the following:

- Filers must only provide access to EDGAR to persons or entities authorized by the filer to make submissions to the SEC on behalf of the filer.

- Immediately upon determining that a person or entity is no longer authorized to make submissions to the SEC on the filer's behalf, filers must remove the EDGAR access of that person or entity.
- Filers must inform the SEC immediately upon receiving information of any unauthorized activity in the filer's EDGAR account.

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Privacy Act Statement

AUTHORITIES: The information is sought pursuant to 15 U.S.C. 77a et seq., 15 U.S.C. 77aaa et seq., 78a et seq., 80a-1 et seq., and 17 CFR 232.10.

PURPOSE: The information solicited on this form will be used to determine whether to allow applicants to make filings on EDGAR, and, where access is granted, to establish and maintain the filer's EDGAR account

ROUTINE USES: Uses for the information collected can be found in the System of Records Notice SEC-33: General Information Technology Records. See

https://www.sec.gov/about/privacy/sorn/sec-33_sec_general_information_technology_records.pdf.

DISCLOSURE: Providing this information is voluntary. Failure to provide the information requested on this form, however, may affect the determination whether to allow applicants to make filings on EDGAR.

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**PART 1 – APPLICATION FOR EDGAR ACCESS**

(To be completed by **all applicants**)

**Is this application for a new EDGAR account or for access to an existing EDGAR account**?

□ New EDGAR account (new EDGAR account number, known as a Central Index Key (CIK), will be issued)

□ Existing EDGAR account (applicant currently has an EDGAR account and Central Index Key (CIK))

Enter existing CIK account number

_____

Indicate the reason the applicant is seeking access to an existing EDGAR account.

□ Broker-dealer or "paper filer" seeks to file electronically on EDGAR

□ Filer lost electronic access to its existing CIK account

□ Applicant assumed legal control of the filer listed on the existing CIK account but did not receive EDGAR access from that filer

**Applicant information**

**Is the applicant a company or an individual**?

Only apply as an individual if you seek an EDGAR account for yourself as a natural person.

All others should apply as a company.

□ **Applicant is a company**

**Enter company's full legal name**: _____

Conformed name_____ (the name as will be disclosed in EDGAR)

□ **Applicant is an individual**

**Enter individual's full legal name, including middle name**:

First name_____
Middle name _____
□ No middle name
Last name _____
Suffix _____
Conformed name_____

**Applicant type**

**Select one (1) most relevant applicant type.**

**Select "Filer" if none of the other applicant types listed below apply.**

□ Filer
□ Filing Agent
The "filing agent" applicant type should be selected **ONLY** if the applicant is engaged in the business of making submissions to EDGAR on behalf of filers and does not intend to make live filings on its own behalf on EDGAR. A filing agent that wishes to make live submissions on its own behalf should select the "filer" applicant type.
□ Funding Portal
□ Institutional Investment Manager (Form 13F Filer)
□ Investment Company, Business Development Company or Insurance Company Separate Account
□ Large Trader
□ Municipal Advisor
□ Nationally Recognized Statistical Rating Organization
□ Non-Investment Company Applicant under the Investment Company Act of 1940
□ Security-Based Swap Data Repository
□ Security-Based Swap Dealer and Major Security-Based Swap Participant
□ Security-Based Swap Execution Facility
□ Transfer Agent
A "transfer agent" CIK may only be used for submitting transfer agent filings on EDGAR.
□ Training Agent
A "training agent" CIK may only be used for submitting test filings on EDGAR. This applicant type is typically selected by a filing agent or third-party EDGAR software provider that needs a dedicated EDGAR CIK for testing their script or software configuration interface with EDGAR.

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**ONLY FOR NON-PUBLIC DRAFT REGISTRATION/OFFERING STATEMENTS (DRS/DOS)**

If a company is applying for EDGAR access to submit non-public draft registration/offering statements on submission types DRS or DOS, select Yes.

□ Yes

*Selecting "Yes" will prevent the new CIK number and EDGAR contact information from being made publicly available on SEC.gov until a public filing is made.*

*This option is only available for companies who plan to submit submission types DRS or DOS.*

---

**Applicant's mailing address and preferred contact information**

The applicant may list its own information, or information for its registered agent, law firm, or filing agent (collectively, "third-party service provider") in this section.

If listing information for a third-party service provider, indicate the name of the third-party service provider in the "care of" field below.

□ Address is for a non-U.S. location (do not select if address is for U.S. territory)

Care of _____ (if applicable)
Street address (line 1) _____
Street address (line 2) (optional) _____
City_____
State/ U.S. Territory _____
Zip/Postal code _____
Province/Country _____
E-mail address _____
Telephone number _____
Secondary telephone number (optional) _____

**Violations of federal or state securities laws**

Has the applicant (company or individual) been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation?

□ Yes □ No

If you indicate "Yes," the SEC staff may contact you to determine your eligibility for EDGAR access.

---

**PART 2 – COMPANY APPLICANT INFORMATION**

(To be completed **only by applicants who are not natural persons**)

**Company business information**

Company's Tax or Federal Identification Number **(*do not enter Social Security Number*)**

_____
Legal Entity Identifier (LEI), if any _____
Legal name _____
Doing business as name, if different from legal name _____

U.S. state of incorporation _____

If foreign issuer, country of incorporation _____
If foreign issuer name is different than English name used in U.S., provide the foreign issuer name _____ (enter only English characters)

Is the company in good standing in its state or country of incorporation? Generally, this means a company is legally authorized to do business in that state or country and has filed all required reports and paid all related fees to the relevant jurisdiction.
□ Yes
□ No

Fiscal year end (mm/dd) _____
Company's primary website, if any _____

**Company's primary business information**

This must be the applicant company's primary business information, or that of the company's registered agent. Do not enter the address of the company's law firm or filing agent.

You must enter the actual physical address; P.O. boxes are not acceptable.

□ Primary business information is the same as the mailing address and preferred contact information in Part 1. If this box is checked, the relevant information will be added below.

□ Address is for a non-U.S. location (do not select if address is for U.S. territory)

Street address (line 1) _____
Street address (line 2) (optional) _____
City _____
State/U.S. Territory _____
Zip/Postal code _____
Province/Country _____
Telephone number _____
Secondary telephone number (optional) _____
E-mail address _____

Single-Member Company? You should select "Yes" if the company only has a single individual who acts as the sole equity holder, director, and officer (or, in the case of an entity without directors and officers, holds position(s) performing similar activities as a director and officer).
□ Yes

□ No

**PART 3 – PROSPECTIVE ACCOUNT ADMINISTRATOR INFORMATION**

(To be completed by **all applicants**)

**Account administrators are individuals authorized by the applicant to manage the applicant's EDGAR account on EDGAR should the Form ID application be granted.**

**Prospective Account Administrator 1**

The individual completing Form ID will be considered the applicant's authorized account administrator, should the Form ID application be granted.

The individual completing Form ID should enter their information below. Note that the individual's email address has already been automatically populated.

**Enter full legal name, including middle name**

First name _____
Middle name _____
□ No middle name
Last name _____
Suffix _____
Business title/position _____

Is Prospective Account Administrator 1 the applicant (for an individual applicant), or an employee of the applicant or its affiliate (for a company applicant)?

□ Yes

□ No

Provide the name of the employer and the employer's CIK, if any, of the individual being authorized as an account administrator. In addition, you must attach to your submission a notarized power of attorney in which the applicant authorizes the individual being authorized as an account administrator to manage the applicant's EDGAR account, as set forth more fully in Part 5 of this form.

Employer (full legal name) _____
CIK of employer (if any) _____

**Business address and contact information**

□ Contact information is the same as the mailing address and preferred contact information in Part 1. If this box is checked, the relevant information will be added below.

□ Contact information is the same as the primary business information in Part 2. If this box is checked, the relevant information will be added below.

□ New information added below

□ Address is for a non-U.S. location (do not select if address is for U.S. territory)

Street address (line 1) _____
Street address (line 2) (optional) _____
City _____
State/U.S. Territory _____
Zip/Postal code_____
Province/Country _____
Telephone number _____
Secondary telephone number (optional) _____
E-mail address_____

**Violations of federal or state securities laws**

Has the individual being authorized as Prospective Account Administrator 1 been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation?

□ Yes □ No

If you indicate "Yes," the SEC staff may contact you to determine your eligibility for EDGAR access.

_____

**Prospective Account Administrator 2**

**Enter full legal name, including middle name**

First name _____
Middle name _____
□ No middle name
Last name _____
Suffix _____
Business title/position _____
Is Prospective Account Administrator 2 the applicant (for an individual applicant), or an employee of the applicant or its affiliate (for a company applicant)?

□ Yes
□ No

Provide the name of the employer and the employer's CIK, if any, of the individual being authorized as an account administrator. In addition, you must attach to your submission a notarized power of attorney in which the applicant authorizes the individual account administrator to manage the applicant's EDGAR account, as set forth more fully in Part 5 of this form.
Employer _____
CIK of employer (if any) _____

**Business address and contact information**

□ Contact information is the same as the mailing address and preferred contact information in Part 1. If this box is checked, the relevant information will be added below.

□ Contact information is the same as the primary business information in Part 2. If this box is checked, the relevant information will be added below.

□ New information added below

□ Address is for a non-U.S. location (do not select if address is for U.S. territory)

Street address (line 1) _____
Street address (line 2) (optional) _____
City _____
State/U.S. Territory _____
Zip/Postal code _____
Province/Country _____
Telephone number _____

Secondary telephone number (optional) _____
Email address _____

**Violations of federal or state securities laws**

Has the individual being authorized as Prospective Account Administrator 2 been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation?

□ Yes □ No

If you indicate "Yes," the SEC staff may contact you to determine your eligibility for EDGAR access.

---

**PART 4 – BILLING INFORMATION**

(To be completed only by **company applicants and filing agents**)

**Billing contact for SEC fee account and billing**

**Enter full legal name, including middle name**

First name _____
Middle name _____
□ No middle name
Last name _____
Suffix _____
Business title/position _____
Employer _____

**Billing business address and contact information**

□ Contact information is the same as the mailing address and preferred contact information in Part 1. If this box is checked, the relevant information will be added below.

□ Contact information is the same as the primary business information in Part 2. If this box is checked, the relevant information will be added below.

□ New information added below

□ Address is for a non-U.S. location (do not select if address is for U.S. territory)

Street address (line 1) _____
Street address (line 2) (optional) _____
City _____
State/U.S. Territory_____
Zip/Postal code _____
Province/Country _____
Telephone number _____
Secondary telephone number (optional) _____
Email address _____

**Violations of federal or state securities laws**

Has the billing contact been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation?

□ Yes □ No

If you indicate "Yes," the SEC staff may contact you to determine your eligibility for EDGAR access.

---

**PART 5 – DOCUMENTS**

(To be completed by **all applicants**)

**All filers must upload a notarized Form ID authentication document to EDGAR.**

See the EDGAR Filer Manual, Volume I, for more information about the notarized authentication document.

**Other documents to be uploaded in certain circumstances:**

- **Prospective account administrator(s) not employed by the applicant, including filing agents and other third parties acting on behalf of the applicant:**
  - Must upload to EDGAR a notarized Power of Attorney clearly indicating that an authorized individual of the applicant, as defined in the EDGAR Filer Manual, Volume I, gives the individual(s) named as a prospective account administrator(s) the authority to act as the applicant's account administrator(s) and manage the applicant's EDGAR account.

- **Applicants for access to an existing CIK account:**
  - Must upload to EDGAR documents that clearly establish the applicant's authority over the company or individual whose name currently is listed in EDGAR on the existing CIK account.

---

**PART 6 – SIGNATURE**

(To be completed by **all applicants**)

**An authorized individual of the applicant must sign Form ID.**

**Refer to the EDGAR Filer Manual, Volume I for the definition of authorized individual and additional relevant information.**

**By signing Form ID, the authorized individual authorizes the prospective account administrator(s) listed on Form ID to manage the filer's EDGAR account on EDGAR on the filer's behalf.**

**Enter full legal name, including middle name**

First name _____

Middle name _____

□ No middle name
Last name _____
Suffix _____
Business title/position _____
Employer_____

**Business address and contact information**

□ Contact information is the same as the mailing address and preferred contact information in Part 1. If this box is checked, the relevant information will be added below.

□ Contact information is the same as the primary business information in Part 2 If this box is checked, the relevant information will be added below.

□ New information added below

□ Address is for a non-U.S. location (do not select if address is for U.S. territory)

Street address (line 1) _____
Street address (line 2) (optional) _____
City _____
State/U.S. Territory _____
Zip/Postal code _____
Province/Country_____
Telephone number _____
Secondary telephone number (optional) _____
Email address _____

**Violations of federal or state securities laws**

Has the authorized individual signing this application been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation?

□ Yes □ No

If you indicate "Yes," the SEC staff may contact you to determine your eligibility for EDGAR access.

**Authorized individual signature**_____

[Notary seal]

**Date**_____

Is Form ID being signed pursuant to a Power of Attorney?

□ Yes □ No

**Person signing Power of Attorney, if application is made pursuant to a Power of Attorney. Refer to the EDGAR Filer Manual, Volume I for more information.**

**Enter full legal name, including middle name**

First name _____
Middle name _____
□ No middle name
Last name _____
Suffix _____
Business title/position _____
Employer_____

**Person signing Power of Attorney business address and contact information**

□ Contact information is the same as the mailing address and preferred contact information in Part 1. If this box is checked, the relevant information will be added below.

□ Contact information is the same as the primary business information in Part 2. If this box is checked, the relevant information will be added below.

□ New information added below

□ Address is for a non-U.S. location (do not select if address is for U.S. territory)

Street address (line 1) _____
Street address (line 2) (optional) _____
City _____ _____
State/U.S. Territory _____
Zip/Postal code _____
Province/Country_____
Telephone number _____
Secondary telephone number (optional) _____
Email address _____

**Violations of federal or state securities laws**

Has the person who signed the Power of Attorney been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation?

□ Yes □ No

If you indicate "Yes," the SEC staff may contact you to determine your eligibility for EDGAR access.

**FORM ID**

**GENERAL INSTRUCTIONS**

All companies and individuals seeking access to file on EDGAR must refer to Rules 10 and 11 of Regulation S-T, Volume I of the EDGAR Filer Manual, and these instructions.

All applicants must:

(1) Complete and submit Form ID in electronic format on the EDGAR Filer Management website; and
(2) Create a copy of the completed, electronically submitted Form ID; have an authorized individual of the filer sign it in the "Form ID: Notarized Authentication" part in the presence of an official notary public; and upload that authenticating document to the EDGAR Filer Management website.

Before beginning: Form ID must be completed and submitted by an individual authorized by the applicant to act as its account administrator and to manage the applicant's EDGAR account should the application be granted.

- An account administrator is a person authorized by the filer to manage the filer's EDGAR account on EDGAR on behalf of the filer.
- Each applicant must identify one or more prospective account administrators that the applicant authorizes to complete and submit Form ID. If the Form ID application is granted, the prospective account administrator(s) listed on Form ID will become the initial account administrators of the applicant.
- Account administrators must create individual account credentials in the manner specified in the EDGAR Filer Manual.

The "EDGAR Filer Manual Volume I: General Information" contains additional requirements regarding how to file electronically, including how to obtain individual account credentials, designate account administrators, and use the CIK and CCC.

**Note that information submitted on Form ID may become public. Do not include personally identifiable information, such as personal addresses and contact information that the applicant does not wish to become public.**

**Misstatements or omissions of fact in connection with an application for EDGAR access and/or in a submission on EDGAR may constitute a criminal violation under 18 U.S.C. Sections 1001 and 1030 and/or a violation of other criminal and civil laws. If the SEC has reason to believe that an application for EDGAR access and/or a submission on EDGAR is misleading, manipulative, and/or unauthorized, the SEC may prevent acceptance or dissemination of the application/submission and/or prevent future submissions or otherwise remove a filer's access to EDGAR pursuant to Rule 15 of Regulation S-T, 17 CFR 232.15.**

**Complete all items that are relevant to the application. If an item does not apply to the application, leave that item blank.**

For assistance with procedural and technical questions about electronic filing or substantive questions, see the "EDGAR Filer Manual Volume II: Section 2.3.4 (Getting Help with EDGAR).

---

**PART 1 — APPLICATION FOR EDGAR ACCESS**
(To be completed by **all applicants**)

Indicate whether EDGAR access is being requested for a new CIK account or an existing CIK account. If access is being requested for an existing CIK account, indicate the basis for the request—whether the applicant is a broker-dealer or "paper filer" who wants to start filing electronically on EDGAR, lost access to their CIK account, or assumed control of an existing CIK account and did not receive account administrator access from the prior owner.

If the applicant is applying for access to an existing CIK account, some of the filer's currently publicly available corporate and contact information will be prepopulated into Form ID. That information can be updated on Form ID, but doing so will not update the filer's information in EDGAR (other than the filer's account administrator information). Changes to the filer's corporate and contact information must be made in EDGAR after the applicant's Form ID application is granted. However, filers who are broker-dealers that obtained EDGAR access by submitting a Form BD to FINRA would need to update their information with FINRA directly. Broker-dealers that have made a full withdrawal of their registration, by submitting a Form BDW that has been accepted, should apply for a new EDGAR account instead of applying for access to the existing EDGAR account associated with the withdrawn registration.

Applicants should identify themselves as individuals or companies.

Provide the applicant's full legal name in English. Note that the applicant's name will be automatically conformed following submission to meet EDGAR standards. Specifically:

1. Leading and trailing blank spaces will be removed. Any embedded sequences of two or more spaces will be replaced with a single space.

2. For companies, the following words will be removed if they are the first word of the name:

| |
|---|
| A |
| An |
| The |

3. For companies, the following text substitutions will be applied to all words except the first:

| Original Text | Conformed Text |
|---|---|
| Company | Co |
| Corporation | Corp |
| Incorporated | Inc |

| | |
|---|---|
| Incorporation | Inc |
| And | & |

4. For companies, the following substitution will be applied if the word is neither the first in the name, nor is immediately followed by the word "Partnership":

| Original Text | Conformed Text |
|---|---|
| Limited | Ltd |

5. For individuals, the name components ("Last," "First," "Middle," and "Suffix") will be combined left-to-right (separated by spaces) into a single field and truncated at 150 characters.

6. For individuals with a suffix, the following text substitutions will be applied:

| Original Text | Conformed Text |
|---|---|
| Junior | JR |
| Senior | SR |

Select one (1) applicant type to indicate whether the applicant will send electronic submissions as one of the listed filer types.

Indicate whether the filer is applying for EDGAR access to submit non-public draft registration or offering statements on submission types DRS or DOS. If so, the applicant's new CIK number and EDGAR contact information will not be listed on the public EDGAR company database until the applicant makes a public filing.

Provide the preferred mailing address and contact information for the applicant. A company applicant should provide information for the department, unit, or group most directly responsible for the filer's EDGAR submissions. This may be the applicant's registered agent, law firm, or filing agent. In that case, identify them as "care of" in the mailing address and contact information.

Indicate whether the applicant has been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation.

---

**PART 2 —COMPANY INFORMATION**
(To be completed only by **applicants who are not natural persons**)

Provide the applicant's tax or federal identification number, the number issued by the Internal Revenue Service. (This does **not** apply to individuals. Accordingly, do **not** enter a Social Security number.) If an investment company applicant is organized as a series company, the investment company may use the tax or federal identification number of any one of its constituent series. Applicants that have applied for but not yet received their tax

or federal identification number and foreign applicants that do not have a tax or federal identification number must include all zeroes.

Provide the applicant's legal entity identifier (LEI), if any.

Indicate whether applicant is in good standing in its state or country of incorporation. Generally, this means a company is legally authorized to do business in that state or country and has filed all required reports and paid all related fees to the relevant jurisdiction.

Provide the filer's state of incorporation and fiscal year end. Select "none" for state of incorporation and "N/A" for fiscal year end if the filer has not yet incorporated. Foreign filers should also include their country of organization. If the filer's fiscal year does not end on the same date each year (*e.g.,* falls on last Saturday in December), the filer must enter the date the current fiscal year will end.

Provide the company's primary website, if any.

Provide the applicant company's primary business information or that of the company's registered agent. Do **not** enter the address of the company's law firm or filing agent.

Indicate whether the filer is a single-member company. This refers to a company that only has a single individual who acts as the sole equity holder, director, and officer (or, in the case of an entity without directors and officers, holds position(s) performing similar activities as a director and officer).

**PART 3 — PROSPECTIVE ACCOUNT ADMINISTRATOR INFORMATION**#
(To be completed by all applicants)#
#
Identify the individuals being authorized as prospective account administrator(s) who will manage the filer's EDGAR account on the filer's behalf, should the Form ID application be granted, including the account administrator(s) business title(s)/position(s), address(es), and contact information. Before completing Form ID, each account administrator must obtain credentials in the manner specified in the EDGAR Filer Manual. Individual filers and single-member companies must authorize at least one prospective account administrator. All other filers must authorize two prospective account administrators. Additional account administrators may be added through the Filer Management Dashboard, should the Form ID application be granted.

For each individual being authorized as a prospective account administrator, indicate whether the individual has been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation.

If an individual being authorized as a prospective account administrator is not the applicant (in the case of an individual applicant), or an employee of the applicant or its affiliate (in the case

of a company applicant), disclose that fact and provide the name and CIK (if any) of the prospective account administrator's employer. In addition, a notarized power of attorney authorizing the prospective account administrator must be attached in Part V.

For more information on account administrators, see Rules 10 and 11 of Regulation S-T and Volume I of the EDGAR Filer Manual.

---

**PART 4 — BILLING INFORMATION** #
(To be completed only by company applicants and filing agents)#
#
Billing information is used if questions arise related to account and billing matters, such as:

1. Accounts activity statements
2. Account receivable letters
3. Refund questions

Identify the individual who should receive account information and/or billing invoices from the SEC, and include their e-mail address. Ensure the accuracy of the e-mail address and maintain an accurate, active e-mail address in the EDGAR Filing website. EDGAR will send communications to the e-mail address if there are questions pertaining to the account and billing information, and failure to maintain an accurate, active e-mail address could result in failure to receive EDGAR account statements.

Indicate whether the billing contact has been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation.

---

**PART 5 — DOCUMENTS**#
(To be completed by all applicants)#
#
Attach the mandatory notarized authenticating document in PDF format (Form ID authenticating document). The mandatory Form ID authenticating document must include the following information:

- Signature of Authorized Person
- Printed Name of Signature
- Title of Person Signing
- Notary Signature and Seal

Other documents to be provided with the Form ID may be attached in this part as well, including power of attorney documents. If an account administrator is not an employee of the applicant, or if the authorized individual signing Form ID is not a control person of the applicant, a notarized power of attorney must be attached. Do not upload documents containing potentially sensitive personally identifiable information, such as driver's licenses or passports. Applicants seeking access to an existing CIK must upload documents that clearly establish their authority over the company or individual whose name is currently listed in

EDGAR on the existing CIK account. For more information on documents that may need to be submitted with the Form ID application, see Volume I, Chapter 4(b), of the EDGAR Filer Manual.

**PART 6 — SIGNATURE#**
(To be completed by all applicants)#

If the applicant is not a natural person, indicate the capacity in which the representative individual signs the Form ID on behalf of the applicant (business title/position). The representative individual must be an individual with the authority to legally bind the applicant, or an individual with a power of attorney from an individual with the authority to legally bind the applicant.

If the applicant is an individual, the applicant must sign the Form ID and should list their business title/position as "applicant."

Indicate whether the authorized individual signing the Form ID has been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation.

Indicate whether Form ID is being signed pursuant to a power of attorney.

If another person signs on behalf of the applicant, confirm in writing the authority of that person to sign by attaching a power of attorney to the Form ID. For more information on the documentation needed to confirm the authority of a person signing the Form ID on behalf of the applicant, see Volume I of the EDGAR Filer Manual.

- If relevant, provide the name, address, and contact information for the person signing the power of attorney. Indicate whether the person signing the power of attorney has been criminally convicted as a result of a federal or state securities law violation, or civilly or administratively enjoined, barred, suspended, or banned in any capacity (*e.g.,* officer or director bar, prohibition from associating with brokers, dealers, investment advisers, and/or other securities entities, or bar from participation in certain industries), as a result of a federal or state securities law violation.
- For Form IDs signed in connection with a power of attorney document, the person signing the power of attorney should indicate in the business title/position field: "By POA from [(a) name of the authorized individual signing the power of attorney (if opening an account for a natural person); or (b) name and business title/position of the authorized individual signing the power of attorney (if opening an account for a company)]." For example, a filing agent signing Form ID pursuant to a power of attorney from Roger Smith, the Chief Executive Officer of the applicant, could provide in the business title/position field: "By POA from Roger Smith, CEO."

The applicant must upload a notarized copy of Form ID and any other required attachments to the electronic Form ID filing. The notarized document must be attached to the electronic Form ID filing in PDF format. PDF attachments cannot: (i) be blank; (ii) be image-only; or (iii) contain active contents (Actions, embedded JavaScript, etc.), external references (Destinations, Hyperlinks, etc.), passwords, or document security controls.

[FR Doc. 2023–20268 Filed 9–21–23; 8:45 am]
BILLING CODE 8011–01–C

# FEDERAL REGISTER

Vol. 88 Friday,

No. 183 September 22, 2023


Part IV

## The President

Proclamation 10627—National Voter Registration Day, 2023

Federal Register
Vol. 88, No. 183
Friday, September 22, 2023

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 10627 of September 18, 2023**

## National Voter Registration Day, 2023

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

**A Proclamation**

The right to vote and to have that vote counted is the threshold of democracy. Without it, nothing is possible, but with it, anything is. On National Voter Registration Day, we reaffirm our commitment to ensuring every American has equal opportunity to participate in our democracy, and we encourage all eligible Americans to register to vote.

Since the founding of our country, countless Americans have fought to secure the right to vote and to have that vote counted for all. Women did not secure the right to vote until 1920. Black Americans were denied full citizenship and voting rights up until 1965. Time and again, Americans have fought against great opposition—they have marched, protested, and even died for the right to vote. They have done the hard work of our democracy by registering voters and getting them to the polls.

Yet, even today, the voting rights of so many hang in the balance. The Supreme Court weakened the landmark Voting Rights Act, and in the years since, States have enacted dozens of anti-voting laws. On January 6, 2021—one of the darkest moments of our Nation's history—we saw the violent and deadly insurrection at the Capitol perpetrated by election deniers. It is clear that the fight to preserve our democratic values and norms is not over. Just as generations of Americans past rose to the occasion, protecting and securing the right to vote, we must answer the call to fight for our democracy today.

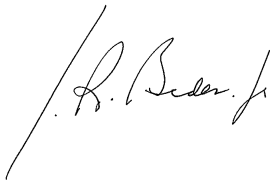
Delivering a Government by and for the people begins and ends with the ballot box. My Administration will do everything in our power to protect it. It is why I signed an Executive Order that established a whole-of-government effort to promote access to voter registration and election information all across America, including in underserved communities. In response, Federal agencies have taken action to help make it easier for veterans and college students to register to vote. The Department of Justice has also doubled its voting rights staff. As President, I will continue to fight back against State legislation that undermines the will of the American people. I continue to call on the Congress to pass the Freedom to Vote Act and the John Lewis Voting Rights Advancement Act to expand access to voting and prevent voter suppression. Passing these laws is the only way to fully secure the right to vote in every State.

Today, I think of the words of the late civil rights trailblazer Representative John Lewis: ''Democracy is not a state; it is an act.'' As our democracy faces threats from those who seek to weaken the right to vote, it has never been more important to act—to protect and expand the right to vote. I know that we will—not just because our cause is just, our vision is clear, and our hearts are full but because generations of Americans refused to give up until they secured voting rights for all of us. Now it is our turn to secure the right to vote for all Americans once more. For the generations to come, for the strength of our democracy, and for the preservation of our extraordinary experiment in self-government, we must remain committed to securing the right to vote for all and redeeming the soul of our Nation.

On National Voter Registration Day, I call on all eligible Americans to ensure that they are registered to vote by checking that their registration is accurate and up to date and to help their communities do the same. Visit www.Vote.gov for more information on how to register to vote. I also urge policymakers and constituents alike to join me in preserving, reinforcing, and expanding this essential constitutional right.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 19, 2023, as National Voter Registration Day. I call on all eligible Americans to observe this day by ensuring that they are accurately registered and by committing to cast a ballot in upcoming elections.

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



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