



FEDERAL REGISTER

Vol. 89

Thursday,

No. 143

July 25, 2024

Pages 60287–60548

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Memorandum of July 22, 2024

The President

Delegation of Certain Functions and Authorities Under the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

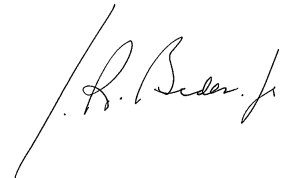
By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

Section 1. (a) I hereby delegate to the Secretary of the Treasury the functions and authorities vested in the President by sections 104(a)(1) and 104(a)(2)(A) of the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act (Division F of Public Law 118–50) (the “Act”).

(b) I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, the functions and authorities vested in the President by sections 104(g), 104(i), 105(c), 105(e), and 105(g) of the Act.

Sec. 2. The delegations in this memorandum shall apply to any provisions of any future public laws that are the same or substantially the same as those provisions referenced in this memorandum.

Sec. 3. The Secretary of the Treasury is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, July 22, 2024

Rules and Regulations

Federal Register

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 335

[Docket ID: OPM-2023-0041]

RIN 3206-AO52

Time-Limited Promotions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to specify that employees who are detailed or temporarily promoted to higher-grade duties of a higher-graded position should be paid accordingly for the entire time spent performing the duties of the higher-graded position, as found pursuant to a final order by an appropriate authority.

DATES: Effective August 26, 2024.

FOR FURTHER INFORMATION CONTACT: Timothy Curry by email at awr@opm.gov or by telephone at (202) 606-2930.

SUPPLEMENTARY INFORMATION:

I. Background

Agencies must follow competitive procedures for time-limited promotions of more than 120 days to higher-graded positions in the competitive service. 5 CFR 335.103. The Federal Labor Relations Authority (FLRA) has found union proposals requiring the temporary promotion of bargaining unit employees officially assigned to a higher-graded position, or to the duties of a higher-graded position, for certain specified time periods are within the duty to bargain.¹ The FLRA has further found that, under Federal personnel law, an employee may be entitled to a temporary promotion for performing the duties of a higher-graded position for an

extended period of time. The FLRA has emphasized that “the entitlement must be based on a provision of a collective bargaining agreement or an agency regulation making a temporary promotion mandatory for details to, or the performance of the duties of, a higher-grade position after a specified period of time.”² As a result, some collective bargaining agreements between Federal agencies and unions have provisions requiring the temporary promotion of employees officially assigned to a higher-graded position or to the duties of a higher-graded position when such assignment is made without use of competitive procedures. As provided for in 5 U.S.C. 7121, disagreements on application and interpretation of such provisions are subject to negotiated grievance procedures that provide for binding arbitration.

Prior to 2004, arbitrators awarded backpay to employees who filed grievances after being assigned to higher-graded duties and were not temporarily promoted, and those awards were not time-limited to 120 days.³ However, on September 10, 2003, the FLRA, in accordance with 5 U.S.C. 7105(i), requested an advisory opinion from OPM regarding an interpretation of 5 CFR part 335 and posed the following question: “Where an agency violates a collective bargaining agreement provision entitling employees to noncompetitive temporary promotions and an arbitrator grants a retroactive temporary promotion of more than 120 days to remedy that violation with the retroactive promotion what is the applicability, if any, of the requirements of 5 CFR part 335 § 103(c)(1)(i) that ‘competitive procedures’ apply to promotions exceeding 120 days. If the requirements apply, what effect do they have on the arbitral remedy of a retroactive temporary promotion exceeding 120 days?”⁴ On February 27,

2004, the OPM General Counsel provided a letter response to the FLRA. In its letter, OPM noted: “Upon analysis of this issue, OPM concludes that 5 CFR 335.103 applies and that the arbitration award in this matter is contrary to the regulatory requirement that executive agencies must apply competitive procedures for the purposes of implementing temporary promotions in excess of 120 days.”

Relying upon OPM’s February 27, 2004, advisory opinion about 5 CFR 335.103(c)(1)(i), the FLRA rendered a decision finding that an arbitrator’s decision involving an employee of the Department of Veterans Affairs (DVA), to the extent that it directs a retroactive temporary promotion of more than 120 days, is contrary to 5 CFR 335.103(c) and a DVA regulation. The FLRA noted that OPM advised the arbitrator’s decision was contrary to a government-wide regulation, 5 CFR 335.103(c), by providing the grievant a retroactive temporary promotion exceeding 120 days with no competitive process. Based on this advisory opinion from OPM, the FLRA modified the arbitrator’s award and ordered the agency to grant the grievant a retroactive temporary promotion with backpay for the difference between GS-7 and GS-9 wage rate, effective August 1999, for a period of 120 days because there was no evidence that competitive procedures were applied in the promotion of the grievant.⁵ Furthermore, the FLRA decided there was “no showing that a personnel action resulted in the withdrawal or reduction of the grievant’s pay and therefore the grievant was not entitled to back pay for the period exceeding the 120-day limitation.”⁶ Following its decision in 2004, the FLRA has issued various decisions which set aside portions of

Johnson Medical Center Charleston, South Carolina, and National Association of Government Employees, 60 FLRA 46 (2004).

⁵ *Id.*

⁶ In a concurrence to the *Johnson Medical Center* decision, Member Carol Waller Pope noted “I have concerns that OPM’s interpretation actually encourages agencies to violate, rather than comply with, § 335.103(c). Specifically, under OPM’s interpretation, an agency that ignores competitive procedures cannot be required to pay employees for higher-graded duties performed in excess of 120 days, while an agency that complies with competitive procedures can be required to pay employees for those duties. This provides agencies a strong incentive to ignore competitive procedures when they want to assign employees higher-graded duties for more than 120 days.”

² See *National Treasury Employees Union v. Department of Treasury Internal Revenue Service*, 29 FLRA 348 (1987).

³ See *Oklahoma City Air Logistics Center, Tinker AFB, OK and AFGE Local 9116*, 42 FLRA 62 (October 1991); *U.S. Department of the Army, Fort Polk, LA, and the National Association of Government Employees, Local R5-168*, 44 FLRA 121 (1992); and *Social Security Administration and the American Federation of Government Employees, Local 220*, 57 FLRA 115 (2001).

⁴ The case before the FLRA that prompted the request to OPM for an advisory opinion was *United States Department of Veterans Affairs Ralph H.*

¹ See *National Federation of Federal Employees v. Department of the Interior Bureau of Land Management*, 29 FLRA 1491 (1987).

arbitration awards ordering backpay on temporary promotions for the time period exceeding 120 days when the temporary promotion occurred without use of competitive procedures.⁷ These subsequent decisions by the FLRA eventually resulted in a request to OPM by the National Treasury Employees Union (NTEU).

On August 5, 2022, OPM received a petition from NTEU, which represents Federal workers in 34 agencies and departments,⁸ to amend OPM regulations at 5 CFR 335.103 “to remove the existing 120-day cap on back pay for employees who perform higher graded work during noncompetitive temporary promotions and details.” NTEU noted that OPM’s existing regulation, as interpreted in the 2004 OPM advisory opinion, has led to “significant unfairness.”⁹ NTEU stated that prior to that advisory opinion, arbitrators had awarded back pay to employees who performed higher-graded duties. “Arbitrators made employees whole for the time they spent performing such work, without any 120-day limitation.” NTEU expressed the view that the FLRA’s 2004 decision abandoned years of former precedent by limiting the back pay remedy for employees performing higher-graded duties to 120 days each year. NTEU correctly noted that the FLRA’s decision “was based entirely on [OPM’s] advisory opinion.”

In response to NTEU’s petition, OPM published a proposed rule in the **Federal Register** at 88 FR 89321 on December 27, 2023. Specifically, OPM proposed to amend 5 CFR part 335 to specify that a bargaining unit employee found, pursuant to a final order by an arbitrator, adjudicative body, or court, to have been detailed or temporarily promoted to a higher-graded position should be paid accordingly (that is, higher compensation) for the entire time the employee performed the duties of the higher-graded position. This proposal was limited to situations where an employee meets qualification and time-in-grade requirements established by OPM regulations and the agency made the assignment without use of competitive procedures. For bargaining unit employees, this may include when a collective bargaining

agreement provided for the temporary promotion of employees officially assigned to a higher-graded position or to the duties of a higher-graded position when such assignment is made without use of competitive procedures and the employee otherwise meets qualification and time-in-grade requirements. As proposed, this provision would apply only when a third party has found the employee is entitled to receive a retroactive temporary promotion. The proposed amendment noted that an adjudicative body could include, but not be limited to, a third party such as the U.S. Merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC). The proposed modification to 5 CFR 335.103(c)(2) would mean that competitive procedures do not apply to situations where a third party has found the bargaining unit employee is entitled to receive a retroactive temporary promotion.

Similarly, the proposed amendment provided that, when a non-bargaining unit employee has been temporarily promoted to a higher-graded position as found by an adjudicative body or court, that employee should be paid accordingly (that is, higher compensation) for the entire time performing these duties of a higher-graded position, pursuant to a final order by that adjudicative body or court. It was also limited to situations where an employee meets qualification and time-in-grade requirements established by OPM regulations and the agency made the assignment without use of competitive procedures. While the issue originally arose based on disputes related to collective bargaining agreements, OPM recognized that non-bargaining unit employees may pursue grievances or complaints related to temporary promotions in forums outside of procedures found in collective bargaining agreements. The proposed rule addressed such matters for the sake of consistency and fairness regardless of the employee’s bargaining unit status. As proposed, the provisions for non-bargaining unit employees would only apply when a third party has found the employee is entitled to receive a retroactive temporary promotion. The proposed rule noted that an adjudicative body could include, but not be limited to, a third party such as the MSPB or the EEOC. As with bargaining unit employees, the proposed changes to 5 CFR 335.103(c)(2) would mean that competitive procedures do not apply to situations where a third party has found the non-bargaining unit employee is

entitled to receive a retroactive temporary promotion.

After considering the comments received, OPM is finalizing the proposed amendments with modifications as discussed in the next section.

Public Comments

In response to the proposed rule, OPM received 21 comments during the 60-day public comment period from multiple individuals (primarily Federal employees), multiple labor organizations, a professional organization representing employment law lawyers, and one Federal agency. At the conclusion of the public comment period, OPM reviewed and analyzed the comments. In general, the comments largely supported the rule change. The comments are summarized below, along with the suggestions for revisions that were considered and either adopted, adopted in part, or declined, and the rationale therefor.

In the first section below, we address general or overarching comments. In the section that follows, we address comments related to the specific portion of the regulation that OPM proposed to revise.

General Comments

A national labor organization expressed support for the rule and stated the regulatory changes are necessary to ensure compliance with merit system principles requiring fair and equitable treatment and equal pay for work of equal value. Comment 0021.¹⁰ This labor organization further noted the changes are necessary to ensure that Federal agencies are properly incentivized to comply with Federal regulations concerning the non-competitive placement of employees in temporary promotions. The labor organization noted that employees, with limited exceptions not applicable here, are obligated to follow the instructions and orders of their supervisors and managers. Accordingly, the primary remedy available to employees assigned to perform higher-graded duties without a concurrent temporary promotion is to seek third-party review of the agency’s actions. The labor organization noted that the changes “will eliminate the arbitrary 120-day limit on backpay recovery and are necessary to ensure that employees are fully and fairly

⁷ See *United States Department of the Treasury Internal Revenue Service and National Treasury Employees*, 61 FLRA 667 (2006) and *United States Department of the Navy Commander, Navy Region Mid-Atlantic Naval Weapons Station Earle and International Association of Firefighters Local F-147*, 72 FLRA 533 (2021).

⁸ See NTEU, “Our Agencies,” available at <https://www.nteu.org/who-we-are/our-agencies>.

⁹ See NTEU petition posted here: www.nteu.org/~media/Files/nteu/docs/public/judicial-notice/opm-petition-re-120-day-rule.

¹⁰ References to comments provide the location of the item in the public record (that is, the two-digit number associated with the location in the docket). Comments filed in response to the proposed rule are available at <https://www.regulations.gov/comment/OPM-2023-0041-00nn>, where 00nn is the comment number.

compensated for the assigned work they perform.” The labor organization further stated, “the elimination of the 120-day limit will, moreover, lead to more effective and efficient administration of the Federal government because it will remove the financial benefit agencies accrued by failing to comply with OPM regulations.” This labor organization stated that OPM’s proposed regulatory changes are consistent with the statutory authority delegated to OPM to regulate the civil service and laws governing the competitive service. Finally, this labor organization stated that the FLRA decision and OPM’s 2004 advisory opinion to the FLRA were “based solely and myopically on the existing OPM regulation,” but OPM’s “proposed changes, on the other hand, heed Congress’ instruction that ‘[f]ederal personnel management should be implemented consistent with the . . . merit system principles,’ 5 U.S.C. 2301, and ensure that appropriate deference is given to the whole of Title 5.”

OPM thanks the labor organization for the support of the proposed rule and is not making any changes based on these comments. However, OPM wishes to respond to the labor organization’s statement that “the elimination of the 120-day limit will, moreover, lead to more effective and efficient administration of the Federal government because it will remove the financial benefit agencies accrued by failing to comply with OPM regulations.” OPM notes that neither the proposed rule nor this final rule is eliminating the requirement for agencies to use competitive procedures when temporarily promoting employees for periods exceeding 120 days. The requirements for competitive procedures have not changed, but this final rule will require agencies to provide a time-limited promotion as a result of a determination by an appropriate authority as defined in 5 CFR 550.803.

Comment 0016, submitted by a professional organization representing employment lawyers, supports the proposed rule, stating that it clarifies that an employee working in a higher-graded position should be compensated for the entire time they performed the duties. They further note that the post-2004 FLRA cases that limited back pay to the period of temporary promotion did not fit the reality of the actual work performed at the higher grade. OPM thanks the commenter for their support of the proposed rule. OPM will not be making any changes to the proposed rule based on this comment as no recommendations for changes were offered. Nevertheless, OPM believes it is

important to remind the commenter that the rule concerns situations where time-limited promotions exceeding 120 days occurred and there was an order by a third-party to provide the higher pay after a grievance or complaint was filed by the employee. Furthermore, as discussed in the proposed rule, the employee still needs to meet qualification and time-in-grade requirements to receive the time-limited promotion. Finally, agencies are not prohibited from detailing employees to higher-graded positions or duties without commensurate pay. In accordance with 5 U.S.C. 3341, an agency may detail an employee in the competitive service to a position in either the competitive or excepted service. In other words, time-limited promotions are not always required for details to higher-graded duties. There may be exceptions, such as collective bargaining agreement requirements, which require the employee to be temporarily promoted.

Comment 0019, submitted by a coalition of 14 labor organizations, noted that OPM’s proposed changes will “clarify that a bargaining unit employee found by an adjudicator to have been detailed or temporarily promoted to a higher-graded position should be paid accordingly (*i.e.*, higher compensation) for the entire time the employee performed the duties of the higher-graded position.” These labor organizations further state “OPM correctly explains the cost of this change will be negligible. And the compensating benefits are that the new rule will reinforce merit system principles and rectify an inequitable state of affairs for employees doing higher-graded work.”

These labor organizations also note the FLRA erroneously held in 2018 that a grievance on behalf of an employee who had not received appropriate compensation for higher-graded work involved a nongrievable, classification matter. They further note that the FLRA corrected course a few years later explaining that a grievance concerns a classification of a position under 5 U.S.C. 7121(c)(5) when “the substance of the grievance concerns the grade level of the duties permanently assigned to and performed by an employee.” They state that “by contrast, a grievance does not involve classification within the meaning of section 7121(c)(5) when its substance concerns whether the employee is entitled to a temporary promotion . . . because the employee has performed the established duties of a higher-graded position.” Therefore, they state that, to ensure the objective of the proposed rule is met, they

recommend that OPM should further clarify that grievances seeking back pay owed for temporary promotions do not involve classification matters within the meaning of 5 U.S.C. 7121(c)(5).

OPM thanks the labor organizations for their support of the proposed rule. While OPM understands and appreciates the concerns raised by the labor organizations regarding the impact of FLRA decisions interpreting whether temporary promotions concern classification matters within the meaning of 5 U.S.C. 7121(c)(5), the issue raised is beyond the scope of this rulemaking, which addresses the narrow issue of whether an individual may receive backpay for more than 120 days in specified circumstances. Accordingly, OPM is not making any changes based on this recommendation.

Two individual commenters recommended OPM modify the regulations to allow agencies to continue temporary promotion rotations until the next individual is in the position. Comment 0002 and 0003. One of these commenters stated that administrative actions are held up by administrative and leadership decisions while the other commenter stated that it takes up to 8 months to fill the positions. The first commenter noted it would be beneficial to end the temporary promotion in conjunction with a set hiring date, instead of arbitrarily ending. Likewise, the other commenter stated it would save time for human resources personnel and allow for filling of critical positions. OPM thanks the commenters for their suggestions but is not making any changes based on these comments. OPM’s interpretation of 5 CFR 335.103 continues to be that those agencies covered by this regulation must apply competitive procedures for the purpose of implementing time-limited promotions in excess of 120 days. This is consistent with the wording of regulatory language that has existed for decades. OPM believes requiring competition for these opportunities when they exceed 120 days supports the merit system principles outlined in 5 U.S.C. 2301 and provides greater opportunities for the workforce. While OPM understands that competitive actions do not always occur on the schedule desired by management, following these procedures does not prevent agencies from adjusting and improving their internal hiring processes and projecting when a time-limited promotion is scheduled to end and preparing to select another candidate for the position.

Another individual commenter expressed support for the rule change

but noted they support paying employees in time-limited promotions for the full time the employee is performing higher-graded duties, not just the first 120 days. Comment 0005. OPM thanks the commenter for their comments but is not making any changes to the rule based on this comment. OPM's interpretation of 5 CFR 335.103 continues to be that those agencies covered by this regulation must apply competitive procedures for the purpose of implementing time-limited promotions in excess of 120 days. OPM believes requiring competition for these opportunities when they exceed 120 days supports merit system principles and provides greater opportunities to the workforce. Finally, the proposed rule allowed retroactive temporary promotions only when there is a third-party decision ordering the retroactive time-limited promotion. The final rule generally adopts this proposed approach with minor revisions.

Several individual commenters expressed support for this rule and noted that employees detailed to higher-graded duties should always be compensated for higher pay. Comments 0007, 0008, and 0011. For example, one commenter expressed support for this rule noting they are on detail as an acting supervisor but without any higher pay. They noted that, while they are learning, they believe they should be provided pay for the detail or temporarily promoted for at least 120 days. Another commenter stated they were assigned to a higher-graded position for a year and a half but were not compensated and seek OPM's assistance. Another commenter stated that there are employees detailed to higher-graded or higher-level positions without formal paperwork and, when paperwork is completed, the 120-day limit is rarely observed with critical positions being vacant longer than 120 days. OPM thanks the commenters but is not making any changes to the rule based on these comments. As discussed in greater detail earlier in this preamble, agencies are not precluded from detailing employees to higher-graded positions without higher pay. In accordance with 5 U.S.C. 3341, an agency may detail an employee in the competitive service to a position in either the competitive or excepted service.

Comment 0020, submitted by an individual, suggested, if this rule is adopted, there should be a tracking mechanism that would enable all parties involved to see if they are in compliance. The commenter described a personal situation where they were detailed to a higher-graded position for

more than 120 days but needed to file an EEOC complaint to compel the agency to comply with a collective bargaining agreement requirement regarding such matters. The commenter noted a court ruled they were not entitled to any back pay despite producing evidence they were doing the higher-graded work over the six-year period in question. OPM thanks the commenter for their response but is not making any changes to the rule based on this comment. Both the proposed rule and final rule note there must be a third-party decision ordering the retroactive time-limited promotion. The appropriate mechanism for parties to address any compliance issues is with the party ordering the retroactive time-limited promotion. It should be noted that, in the case of the commenter, they state the court ruled they were not entitled to any back pay. The commenter does not explain the rationale the court used in making this determination. In any case, this example highlights that not all third parties will necessarily rule in favor of the employee, and this rule may not have changed the outcome in the commenter's case. OPM also notes that this final rule is prospective in nature and does not apply to any determinations made prior to the effective date of the rule.

Comment 0012, submitted by an individual, stated this rule needs to be adopted and observed by all agencies, even if there is no collective bargaining agreement. The commenter noted that they have seen many temporary promotions happening in excess of 120 days where the employee has all of the duties and responsibilities of the higher-graded position with no benefits of higher pay. Comment 0013, submitted by a bargaining unit employee, stated they strongly support the proposed rule. They noted that all employees who work higher-graded positions should be granted the appropriate pay no matter the length of time they are performing the duty. OPM thanks the commenters for supporting the proposed rule. OPM is not making any changes based on these comments. As discussed in the proposed rule, this is not limited to bargaining unit employees covered by a collective bargaining agreement. Still, the proposed rule noted there must be a third-party decision ordering the retroactive time-limited promotion.

Comment 0018, submitted by an individual, stated they have been acting in a Senior Executive Service (SES) position for 43 weeks without higher compensation. The commenter recommended revisions should be made to 5 CFR 317.903, which concerns

details to SES positions. The commenter also suggested the proposed rule should address changes to 5 CFR part 630 to address accrued annual leave for non-SES employees on detail to SES positions. OPM thanks the commenter for these suggestions. These comments and recommendations are outside the scope of the rulemaking, so there are no changes to the rule based on this comment.

Comment 0010, submitted by an individual, stated that the rule has great potential to be implemented in a manner that sidesteps competitive procedures. The commenter asserted the rule could, in some agencies, prevent an individual from ever being eligible for promotions as they may not receive proper time-in-grade credit. Finally, the commenter stated there needs to be strict prohibitions in place preventing any misuse by agency management, especially when the agency's human capital team is lacking in its ability to provide skillful oversight. OPM thanks the commenter for their concerns and suggestions. OPM will not be making any changes to the proposed rule based on this comment. OPM disagrees with the commenter's conclusion this rule has great potential to be implemented in a manner that sidesteps competitive procedures. As OPM noted in the proposed rule, agencies must still use competitive procedures for any time-limited promotion that exceeds 120 days. The rule only provides for a retroactive time-limited promotion to a higher-graded position pursuant to an order by a third-party to provide the higher-pay. Also, as discussed earlier in this preamble, agencies have authority to detail employees without providing time-limited promotions. OPM also disagrees that this rule would prevent an individual from ever being eligible for promotion. OPM notes that rules have always required an individual to meet both qualification and time in grade requirements in order to receive a time-limited promotion. OPM did not propose to change these requirements.

Another individual stated that it is a fairly common occurrence that agencies assign higher-graded duties to personnel beyond 120 days without following competitive procedures. Comment 0014. They state that, more often than not, employees accept the higher-graded duties in hopes they will earn a greater chance of being selected for the position when the agency finally opens the position for competition. The commenter states this (1) reduces motivation for the agencies to employ competitive procedures even when a need exists to do so; and (2) potentially offers a competitive advantage to

employees who are willing to accept higher-graded assignments without providing opportunities for others to do the same. OPM thanks the commenter for their comments but is not making any changes based on these comments as the commenter makes no recommendations on the proposed rule. As discussed earlier in this preamble, agencies already have the authority to detail employees to higher-graded duties without receiving the higher pay.

Comment 0015, submitted by another individual, would like to see the proposed rule adopted so that “abusive practices” will cease. The commenter stated that it is crucial that employees assigned additional duties, temporary promotions, or temporary details at higher grades are compensated. They further note that failure to establish a policy governing the duration of time-limited promotions and corresponding pay discourages employees from seeking growth opportunities, prolongs periods of vacancies, perpetuates unfair labor practices, and pay inequity, and undermines morale and motivation. They stated that OPM should regulate these practices to ensure the protection of employees and their rights. OPM thanks the commenter for supporting the proposed rule. OPM is not making any changes based on this comment as the commenter makes no recommendations regarding the proposed rule. It is worth noting that agencies are not precluded from detailing employees to other positions without higher pay. It should also be noted that the proposed rule only provides a retroactive time-limited promotion to a higher-graded position pursuant to an order by a third-party to provide the higher-pay. In other words, a third-party would need to make a finding that a temporary promotion exceeding 120 days is appropriate based on the circumstances. For example, an arbitrator could determine the agency failed to follow requirements outlined in a collective bargaining agreement and order a retroactive time-limited promotion as a remedy.

Comment 0009, submitted by an individual, stated that rules are always for the employer’s benefit, and we should start working on rules for a better working environment. This commenter stated that the time spent in a temporary grade and step is not creditable towards the completion of a waiting period when the employee is permanently promoted. The commenter suggests this restriction on creditable service be lifted so it can provide morale and financial benefits to employees on time-limited promotions. This commenter also states that their

organization standardizes position descriptions and recommends they instead be based on real responsibility and not standardized. OPM thanks the commenter for these suggestions. These comments and recommendations are outside the scope of the rulemaking, so OPM is not making changes to the rule based on this comment.

Another individual commenter stated that detailing people into higher-graded positions is happening more often and is needed because the hiring process is too slow and needs to be fixed. Comment 0006. OPM thanks the commenter for their comment but is not making any changes based on this comment. This suggestion is beyond the scope of this rulemaking as OPM did not propose any changes to the hiring process.

Finally, an individual commenter noted that the proposed rule only permits a non-competitive time-limited promotion if a third party makes a decision to do so. Comment 0022. The commenter notes that, for bargaining unit employees, this scenario seems more likely if a collective bargaining agreement calls for it but notes that collective bargaining agreements also should be consistent with government-wide regulations. Yet, the commenter observes that government-wide regulations require competition for time limited promotions exceeding 120 days. The commenter asks whether OPM is giving arbitrators a green light to ignore a government-wide regulation when making decisions on this issue and whether OPM is doing the same for agencies and unions when negotiating new collective bargaining agreement. The commenter asks about non-bargaining unit employees who are not covered by a collective bargaining agreement. The commenter suggests it is not likely that a third party would order a temporary promotion exceeding 120 days for a non-bargaining unit employee not covered by a collective bargaining agreement. The commenter expresses skepticism that the MSPB would adjudicate matters related to this issue and questions whether the EEOC or U.S. Office of Special Counsel would hear such complaints. The commenter questions whether employees could file a pay claim with OPM or another third party on such matters.

OPM thanks the commenter for their comments but will not be making any changes to the proposed rule based on these comments as the commenter does not make any recommendations regarding changes to the proposed rule. The proposed rule does not allow arbitrators to ignore regulatory requirements. In fact, this final rule

changes the regulations to allow arbitrators to provide a remedy for employees where an agency has not complied with regulatory requirements. Similarly, this final rule does not allow agencies or unions to ignore regulatory requirements. The background in the proposed rule provided extensive detail regarding OPM’s expectations that agencies comply with the requirements to use competitive procedures for time-limited promotions exceeding 120 days. The proposed rule reminded agencies to be mindful of government-wide regulations on this matter when negotiating new collective bargaining agreements which include any procedures regarding time-limited promotions. The proposed rule also reminded agencies to be mindful of these regulations when subjecting a collective bargaining agreement to agency head review under the Federal Service Labor-Management Relations Statute. OPM repeats these reminders in this final rule in greater detail in the preamble for “Section 335.103—Agency Promotion Program.” The scope of this rule is limited to situations where an employee meets qualification and time-in-grade requirements established by OPM regulations; and an appropriate authority has made a determination the employee is entitled to a retroactive time-limited promotion to resolve a grievance or a complaint after the agency has made the assignment without use of competitive procedures as required by OPM regulations. OPM’s interpretation of 5 CFR 335.103 continues to be that agencies covered by this regulation must apply competitive procedures for the purpose of implementing time-limited promotions in excess of 120 days, whether the employee is a bargaining unit employee or non-bargaining unit employees. As discussed in more detail in the preamble for “Section 335.103—Agency Promotion Program,” other third parties may have reason to make a determination on such matters.

In the following sections, we address the public comments related to the specific portion of the regulation to which each comment applied.

Part 335—Promotion and Internal Placement

Part 335 addresses promotions and internal placement in the competitive service. The authority citation provided in the proposed rule did not reflect the addition of “Public Law 114–47, sec. 2(a) (Aug. 7, 2015), as amended by Public Law 114–328, sec. 1135 (Dec. 23, 2016), codified at 5 U.S.C. 9602,” which was made by the Appointment of Current and Former Land Management

Employees final rule published on December 6, 2023 (88 FR 84685). OPM also notes that several authority citations were inadvertently removed in that final rule. The updated authority citation in this final rule reinstates the inadvertently deleted authorities, which were provided in the proposed rule, and includes the Land Management appointment authority.

Subpart A—General Provisions

Section 335.103—Agency Promotion Program

In this section, OPM proposed to amend § 335.103 by adding a new paragraph (c)(2)(iii) to read, “Retroactive temporary promotions to higher-graded positions pursuant to a final order by an arbitrator, adjudicative body or court.” This proposed language would require agencies to pay an employee who has been found to have been noncompetitively, temporarily detailed to a higher-graded position at the higher grade even for a period of time that exceeds 120 days, pursuant to a final order by an arbitrator, adjudicative body, or court. As previously noted, this regulatory change would also apply to any employee, including non-bargaining unit employees, pursuant to a final order by an adjudicative body or court unrelated to procedures found in a collective bargaining agreement. For example, an employee may file a complaint with the Equal Employment Opportunity Commission alleging discrimination on matters related to a temporary promotion exceeding 120 days. Finally, as previously discussed, this is limited to situations where an employee meets qualification and time-in-grade requirements established by OPM regulations and the agency made the assignment without use of competitive procedures.

A Federal agency commented that it does not challenge OPM’s proposed change and concurs that, where a collective bargaining agreement provides for a retroactive temporary promotion, the regulation should not limit the promotion to 120 days. Comment 0017. However, the agency expressed significant concerns that the proposed language would not allow an agency to settle grievances where an employee correctly claims that he or she has been temporarily, noncompetitively assigned to a higher-graded position for longer than 120 days and where the collective bargaining agreement or some other document requires the higher compensation. The agency noted that the current language prevents an agency and a union from resolving a grievance at the lowest possible level and would

force the union to invoke arbitration resulting in monetary outlays and lost productivity by both parties for an issue not in dispute. The agency stated these limitations unnecessarily impact the agency’s mission and budget as well as negatively impact the labor-management environment. The agency encouraged OPM to modify the proposed rule to allow for agency settlements, with backpay. Specifically, the agency suggested OPM include a definition of “adjudicative body” to avoid any confusion as to who can direct the monetary award.

OPM notes the proposed rule was never intended to prevent agencies from entering into lawful settlement agreements before a grievance or complaint, informal or formal, was filed with an outside third party. Yet, OPM agrees that the term “adjudicative body” may not be clear on its face and could cause confusion when parties are applying it. Therefore, OPM will revise the language to be consistent with other situations where the Back Pay Act, 5 U.S.C. 5596, is applied.

OPM’s Back Pay Act regulations are found in subpart H of 5 CFR part 550. Specifically, 5 CFR 550.801 notes that the Back Pay Act authorizes the payment of back pay, interest, and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible) when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or grievance), the employee is found by an appropriate authority to have been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due to the employee. Furthermore, 5 CFR 550.803 defines “appropriate authority” as an entity having authority in the case at hand to correct or direct the correction of an unjustified or unwarranted personnel action, including (1) a court, (2) the Comptroller General of the United States, (3) the Office of Personnel Management, (4) the Merit Systems Protection Board, (5) the Equal Employment Opportunity Commission, (6) the Federal Labor Relations Authority and its General Counsel, (7) the Foreign Service Labor Relations Board, (8) the Foreign Service Grievance Board, (9) an arbitrator in a binding arbitration case, and (10) the head of the employing agency or another official of the employing agency to whom such authority is delegated.

With this in mind, OPM will amend the new paragraph (c)(2)(iii) to read as

follows: “A retroactive temporary promotion to a higher-graded position pursuant to a determination by an appropriate authority as defined in 5 CFR 550.803.” This revision not only covers the third parties specifically identified in the proposed rule but would permit agencies to make settlement agreements where appropriate.

The same Federal agency also recommended the regulatory language be revised to elaborate on what a collective bargaining agreement does or does not require as relevant to this issue. OPM thanks the commenter for the suggestion but is not making any changes based on this recommendation. OPM does not believe it is necessary to add regulatory language about collective bargaining agreements. Agencies and unions already have decades of experience resolving negotiated grievances regarding interpretation and application of collective bargaining agreements. If an arbitrator determines a collective bargaining agreement has been violated regarding a time-limited promotion, the arbitrator is essentially determining that an unjustified or unwarranted personnel action has occurred. Likewise, an agency official with the authority to enter into settlement agreements regarding negotiated grievances can make a determination that an unjustified or unwarranted personnel action has occurred. This can and already happens today without specific regulatory language discussing what collective bargaining agreements can and cannot do in this situation or other employment situations that are subjects of negotiated grievances. Therefore, OPM is not revising the regulatory language based on this comment.

Even with the revisions to paragraph (c)(2)(iii), OPM’s interpretation of 5 CFR 335.103 will continue to be that agencies covered by this regulation must apply competitive procedures for the purpose of implementing temporary promotions in excess of 120 days. This is consistent with the wording of regulatory language that has existed for decades. OPM believes requiring competition for these opportunities when they exceed 120 days supports merit system principles at 5 U.S.C. 2301 and provides greater job opportunities to the workforce.

As discussed in the proposed rule and repeated in this final rule, the merit system principles (MSPs)¹¹ are nine basic standards that govern the management of the executive branch

¹¹ See 5 U.S.C. 2301(b) for the enumerated merit system principles.

workforce and serve as the foundation of the Federal civil service. The U.S. Merit Systems Protection Board (MSPB) has noted the general themes of the MSPs and prohibited personnel practices¹² are: (1) Fairness—treating employees fairly in all aspects of their employment; (2) Protection—refraining from misuse of authority and protecting employees from harm, such as reprisal for the exercise of a legally protected right; and (3) Stewardship—managing employees in the short-term and long-term public interest.¹³ For example, MSP #1 provides that recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity. 5 U.S.C. 2301(b)(1). The MSPB has noted MSP #1 “[f]ocuses on attaining a well-qualified and representative workforce through open recruitment and fair, job-related assessment of applicants.”¹⁴ Therefore, OPM continues to believe 5 CFR 335.103 strikes the right balance between when competitive procedures are necessary and when they are not necessary, depending on the duration of the time-limited promotion. For situations where agencies have more immediate, short-term needs of 120 days or less, it is appropriate for agencies to non-competitively assign higher-graded duties to qualified employees to meet these needs. For situations where agencies have longer-term needs exceeding 120 days, use of competitive procedures is consistent with the purpose of MSP #1.

Notwithstanding the addition of the new paragraph (c)(2)(iii), OPM reminds agencies that they should not assign employees to perform higher-graded duties for periods exceeding 120 days such that the employee has been effectively detailed to a higher-graded position without following applicable competitive procedures. Under this final regulation, agencies are reminded that they may be required to provide higher compensation as a result of a determination by an appropriate authority as defined in 5 CFR 550.803 and discussed in greater detail above.

OPM also reminds agencies, subject to the requirements of 5 CFR part 335, that competitive procedures should always be followed if the agency anticipates the assignment of higher-graded duties may exceed 120 days. If the agency incorrectly anticipates the assignment of higher-graded duties will last 120 days or less but later determines the need exceeds 120 days, the agency must follow competitive procedures for assignment of such duties beyond 120 days for any particular employee or assign the higher-graded work to another qualified employee, up to, but not exceeding 120 days. Finally, OPM reminds agencies to consider this when negotiating new collective bargaining agreement provisions regarding temporary promotions. Collective bargaining agreements must be consistent with requirements in Government-wide regulations on this matter. To be clear, newly negotiated collective bargaining agreements that allow non-competitive temporary promotion exceeding 120 days must be disapproved in agency head review for not complying with government-wide regulations.¹⁵

Finally, OPM reminds agencies that 5 CFR part 335 does not apply to positions in the Excepted Service. Therefore, the 2004 OPM advisory opinion and the various FLRA decisions on this matter are not applicable to the issue of when competitive procedures must be followed for time-limited promotions in the Excepted Service. Still, agencies with employees in the Excepted Service are subject to Merit System Principles and should be mindful of these principles when assigning Excepted Service employees the duties of a higher-graded position. These agencies often have bargaining unit employees who may be covered by collective bargaining agreement provisions outlining when an employee should receive a time-limited promotion.

III. Regulatory Analysis

A. Statement of Need

OPM is issuing this final rule for two purposes. First, OPM reminds agencies that competitive procedures must be followed when assigning duties of a higher-graded position to employees for

a period of time exceeding 120 days. Second, in recognition that there continue to be situations where competitive procedures are not followed by agencies subject to 5 CFR part 335, this rule provides the possibility of remedial relief to bargaining unit employees covered by collective bargaining agreements requiring temporary promotions and to non-bargaining unit employees when an appropriate authority makes a determination to provide a retroactive time-limited promotion, usually in response to a grievance or complaint.

OPM's interpretation that competitive procedures must be followed for temporary promotions exceeding 120 days has not changed from what was stated in the proposed rule. Notwithstanding OPM's interpretation of these requirements in 5 CFR 335.103, however, OPM agrees that employees should be compensated accordingly when an agency has been found to be out of compliance with requirements of a collective bargaining agreement. Furthermore, OPM's 2004 advisory opinion should not be cited as a basis for agencies to disregard, whether intentionally or unintentionally, Government-wide regulations on use of competitive procedures and collective bargaining agreement requirements regarding temporary promotions for performing duties of a higher-graded position. Therefore, OPM has modified 5 CFR 335.103 to address these scenarios.

This modification reinforces the President's recognition that Federal civil servants' rights deserve to be protected. President Biden has stated that “[c]areer civil servants are the backbone of the Federal workforce, providing the expertise and experience necessary for the critical functioning of the Federal Government. It is the policy of the United States to protect, empower, and rebuild the Federal workforce.” Executive Order 14003, Protecting the Federal Workforce (86 FR 7231, Jan. 22, 2021). As NTEU stated in its petition to OPM, it supports merit-based competition for long-term promotions or details to positions that are properly classified at a higher grade to ensure that the merit system principles of fair and open competition are met.

NTEU also noted that “[i]n practice, many of these cases arise where higher-graded duties are assigned to employees on a different, lower-graded position description, due to staffing shortages, budget constraints, retirements, etc. Agency managers, who are often tasked with delivering the agency's mission without the resources to do so, simply assign the higher graded work to

¹² See 5 U.S.C. 2302: Prohibited personnel practices.

¹³ See The Merit System Principles: Keys to Managing the Federal Workforce (*mspb.gov*), October 2020, available at https://www.mspb.gov/studies/studies/The_Merit_System_Principles_Keys_to_Managing_the_Federal_Workforce_1371890.pdf.

¹⁴ *Id.*

¹⁵ 5 U.S.C. 7114(c) provides that “(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.” and “(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).”

whomever is available and convenient.” NTEU noted that “these employees are precluded from any remedial relief beyond 120 days—not because the inequity has ceased to exist, but because the relevant regulation has been reinterpreted since 2004 to undermine, rather than strengthen, merit system principles.” OPM believes this final rule is a reasonable solution to address those situations where an agency has assigned higher-graded duties to an employee without using competitive procedures, a collective bargaining agreement requires a temporary promotion, and an appropriate authority has determined a retroactive promotion is an appropriate remedy. Likewise, OPM believes this final rule provides a reasonable solution to address similar situations for non-bargaining unit employees where an appropriate authority, such as the EEOC, has determined the employee’s rights were violated.

B. Regulatory Alternatives

An alternative to this rulemaking is to not issue a regulation and to continue the possibility of agencies not using competitive procedures when assigning an employee the duties of a higher-graded position over 120 days because of an absence of clarification. As a result, employees may not have an opportunity to be made whole for time performing higher-graded duties in excess of 120 days even if the employee challenges the agency action in a grievance or complaint process. OPM has determined this is not an equitable option. As NTEU noted, an inequity exists and employees are precluded from any remedial relief beyond 120 days because the relevant regulation has been reinterpreted since 2004 to undermine, rather than strengthen, merit system principles.

Another regulatory alternative is to address this issue through OPM’s oversight function. OPM’s statutory responsibility to oversee the Federal personnel system encompasses assessment of compliance with merit system principles, and supporting laws, rules, regulations, executive orders, and OPM standards, as well as the effectiveness of personnel policies, programs, and operations.¹⁶ The legal authority for OPM oversight is 5 U.S.C. 1104(b)(2) and 5 CFR parts 5 and 10. Under this authority, OPM can evaluate the effectiveness of agency personnel policies, programs and operations, and agency compliance with and enforcement of applicable laws, rules, regulations, and OPM directives. OPM

can also direct corrective action where appropriate.

While OPM can, through its oversight process, identify situations where an agency is not complying with the requirement to use competitive procedures for time-limited promotions that exceed 120 days, OPM’s enforcement process may not provide timely relief to employees who are impacted by an agency’s failure to follow OPM procedures on time-limited promotions. Furthermore, based on OPM’s 2004 advisory opinion, although OPM may direct, as part of its oversight process, an agency to follow competitive procedures for time-limited promotions exceeding 120 days, this would not provide any monetary relief for employees covered by collective bargaining agreements that require time-limited promotions and are identified by OPM as having been given a time-limited promotion where OPM’s regulations were not properly followed.

C. Impact

OPM is issuing this final rule to authorize a retroactive temporary promotion when a competitive service employee, effectively, has been detailed or temporarily promoted to higher-graded duties of a higher-graded position if a collective bargaining agreement requires it and the employee has been assigned these duties outside of competitive hiring procedures, as found pursuant to a determination by an appropriate authority. By authorizing a retroactive promotion in these situations, OPM affirms that an employee should be paid accordingly for the entire time performing these duties of a higher-graded position in certain circumstances, such as when a collective bargaining agreement requires a temporary promotion and pursuant to an order by an appropriate authority, such as an arbitrator. In addition, a non-bargaining unit competitive service employee who is temporarily promoted to higher grade duties of a higher-graded position should be paid accordingly for the entire time performing these duties of a higher-graded position, as found pursuant to a determination by an appropriate authority.

OPM reminds agencies to use competitive procedures when assigning an employee duties of a higher-graded position when the assignment exceeds 120 days. This is not a new requirement and simply reinforces what agencies, subject to 5 CFR part 335, should already be doing and should have no impact. In those situations where an agency does not meet this regulatory requirement, it reinforces the commitment an agency has already

made as part of the collective bargaining process under 5 U.S.C. chapter 71. It also provides all employees, whether bargaining unit or non-bargaining unit, an opportunity to be made whole if an agency does not properly follow employment policies, particularly those related to temporary promotions, and the employee pursues a grievance or complaint processes which may be available.

D. Costs

OPM received one comment from an individual commenter regarding the estimated costs of the proposed rule. Comment 0004. The commenter stated that OPM’s notice assumed a rate of 200% the pay rate but the commenter believes this rate may be higher (or lower) than the cost of government civilian manpower. The commenter points to a “Full Cost of Manpower” tool used by the Department of Defense, which the commenter believes may be more accurate or appropriate for estimations. They recommended exploring the tool as a basis for any cost estimates.

OPM thanks the commenter for their suggestion but will not be revising its estimated costs based on this comment. OPM recognizes that costs may vary by agency and is only providing an estimated Government-wide cost. OPM cannot estimate costs with great specificity because they will vary depending on the number of times an agency may assign higher grade duties to employees that result in a decision on a grievance or complaint providing a retroactive time-limited promotion. Each agency will need to consider the potential costs of this final rule based on their unique circumstances and the practices and tools used by that agency. The economic assessment is finalized with no changes other than updates to salary costs based on 2024 average salary rates.

This rule will affect the operations of approximately 80 Federal agencies in the executive branch—ranging from cabinet-level departments to small independent agencies. We do not believe this rule will substantially increase the ongoing administrative costs to agencies as this rule leverages existing procedures and requires agencies to comply with collective bargaining agreements that they have made with unions (where applicable). Likewise, there may be other agency policies that impact time-limited promotions. Furthermore, OPM believes costs will be negligible. Agencies should be able to leverage existing resources to implement the reminders in this rule and the regulatory requirements.

¹⁶ OPM oversight activities—www.opm.gov/policy-data-oversight/oversight-activities.

Ultimately, costs are likely to vary from agency to agency since some agencies have collective bargaining unit agreements with language regarding the process for detailing bargaining unit employees to a higher-graded position for more than 120 days. Furthermore, some agencies are currently already closely adhering to OPM regulations in § 335.103. Therefore, OPM has determined that finalizing this rule is not dependent on whether our cost estimate is accurate for any specific agency. As discussed earlier, OPM believes this final rule is a reasonable solution to address those situations where an agency has assigned higher-graded duties to an employee without using competitive procedures, a collective bargaining agreement requires a temporary promotion, and an appropriate authority has determined a retroactive promotion is an appropriate remedy. Likewise, OPM believes this final rule provides a reasonable solution to address similar situations for non-bargaining unit employees where an appropriate authority, such as the EEOC, has determined the employee's rights were violated. At the same time, the rule supports merit system principles by reminding agencies to use competitive procedures for time-limited promotions exceeding 120 days.

With the above in mind, we estimate this rule will require agencies to review their policies on time-limited promotions subject to 5 CFR part 335; update these policies if needed; and provide reminders and, if necessary, training to implement this final rule and reinforce existing requirements in 5 CFR part 335. For the purpose of this cost analysis, the assumed staffing for Federal employees performing the work required by the regulations in § 335.103 is one executive; one GS-15, step 5; one GS-14, step 5; and one GS-13, step 5 in the Washington, DC, locality area. The 2024 basic rate of pay for an executive at an agency with a certified SES performance appraisal system is \$246,400 annually, or \$118.06 per hour. For General Schedule employees in the Washington, DC, locality area, the 2024 pay table rates are \$185,824 annually and \$89.04 hourly for GS-15, step 5; \$157,982 annually and \$75.70 hourly for GS-14; and \$133,692 annually and \$64.06 hourly for GS-13, step 5. We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in assumed hourly labor costs of \$236.13 for an executive; \$178.08 for a GS-15, step 5; \$151.40 for a GS-14, step 5; and \$128.12 for a GS-13, step 5. In order to comply

with the regulatory changes in this final rule and the reminder in this preamble to follow competitive procedures for time-limited promotions exceeding 120 days, affected agencies will need to review and update (if applicable) their policies, procedures and develop appropriate training or communications to appropriate personnel. Agencies are reminded to review 5 CFR part 335, agency merit promotion plans, and related guidance to ensure compliance. Agencies are also encouraged to communicate with managers, supervisors, and agency staff who are responsible for completing actions related to part 335. We estimate that this will require an average of 10 hours of work by employees with an average hourly cost of \$173.43. This would result in estimated costs of about \$1,734 per agency, and about \$138,720 in total government wide. If an agency follows existing requirements to use competitive procedures for time-limited promotions exceeding 120 days, there should be no need for employees to file grievances ending in binding arbitration that could order backpay with interest. To the extent that grievances are filed and arbitration decisions order backpay or backpay is provided in other forums, the costs will vary by agency depending on the number of employees impacted, the salaries of these employees, and the amount of time performing the higher-graded duties beyond 120 days.

OPM does not have data to make a determination on potential costs related to arbitration decisions implementing the proposed regulatory language. OPM did not receive any comments on the implementation and impacts of the rule beyond what was discussed above.

E. Benefits

This final rule has several important benefits. First, it supports merit system principles by reminding agencies to use competitive procedures for time-limited promotions exceeding 120 days. OPM believes 5 CFR 335.103 strikes the right balance between when competitive procedures are necessary and when they are not necessary, depending on the duration of the time-limited promotion. OPM believes that fair and open competition is appropriate for performing duties for a period of time exceeding 120 days.

On the other hand, OPM also agrees that it is unfair for employees to be assigned these higher-graded duties and not be compensated accordingly when assignment of these duties exceeds 120 days and a third party awards the employee a retroactive temporary promotion. Therefore, the second benefit of this rule is that it facilitates

agencies' provision of monetary relief to employees who perform duties of a higher-graded position for more than 120 days where the agency has failed to follow the requirements of 5 CFR part 335. OPM expects this rule to further incentivize agencies to follow proper procedures when assigning higher-graded duties and to honor the commitment agencies made in their collective bargaining agreements when they agreed to temporarily promote employees. This final rule not only reinforces merit system principles for bargaining unit and non-bargaining unit employees but reinforces the agency's obligations under the Federal Service Labor-Management Relations Statute for bargaining unit employees.

Regulatory Review

Executive Orders 13563, 12866, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with effects of \$200 million or more in any one year. This rule does not reach that threshold but has otherwise been designated by the Office of Management and Budget (OMB) as a "significant regulatory action" under section 3(f) of Executive Order 12866, as supplemented by Executive Orders 13563 and 14094.

Regulatory Flexibility Act

The Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and Federal employees.

Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule does not satisfy the criteria listed in 5 U.S.C. 804.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521)

This regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 335

Government employees.
Office of Personnel Management.
Kayyonne Marston,
Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, OPM amends 5 CFR part 335 as follows:

PART 335—PROMOTION AND INTERNAL PLACEMENT

■ 1. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 2301, 2302, 3301, 3302, 3304(f), 3330, 9602; sec. 511, Pub. L. 106–117, 113 Stat. 1575; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11478, 3 CFR, 1966–1970 Comp., p. 803, unless otherwise noted; E.O. 13087, 3 CFR, 1998 Comp., p. 191; E.O. 13152, 3 CFR, 2000 Comp., p. 264; and 5 CFR 2.2 and 7.1.

Subpart A—General Provisions

- 2. Amend § 335.103 by:
- a. Removing the word “and” at the end of paragraph (c)(2)(i);
- b. Removing the period at the end of paragraph (c)(2)(ii) and adding “; and” in its place; and
- c. Adding paragraph (c)(2)(iii).
- The addition reads as follows:

§ 335.103 Agency promotion programs.

* * * * *

(c) * * *

(2) * * *

(iii) A retroactive temporary promotion to a higher-graded position pursuant to a determination by an

appropriate authority as defined in 5 CFR 550.803.

* * * * *

[FR Doc. 2024–16030 Filed 7–24–24; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 212

[CIS No. 2769–24; DHS Docket No. USCIS–2021–0018]

RIN 1615–AC75

International Entrepreneur Program: Fiscal Year 2025 Automatic Increase of Investment and Revenue Amount Requirements

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Final rule; technical amendment.

SUMMARY: On January 17, 2017, DHS published a final rule with new regulatory provisions guiding the use of parole on a case-by-case basis with respect to certain entrepreneurs of start-up entities. The 2017 regulation provided that the investment and revenue amount requirements would automatically adjust every three years. DHS is issuing this rule to update the investment and revenue amounts in the regulations to adjust for inflation.

DATES: This final rule is effective on October 1, 2024.

FOR FURTHER INFORMATION CONTACT: For technical questions only: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588–0009, telephone (240) 721–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. The International Entrepreneur Program

On January 17, 2017, the Department of Homeland Security (DHS) published a final rule with new regulatory provisions guiding the use of parole on a case-by-case basis with respect to entrepreneurs of start-up entities. These entrepreneurs would be eligible for consideration of parole if they could

demonstrate a significant public benefit to the United States through substantial and demonstrated potential for rapid business growth and job creation.¹ The final rule was to be effective July 17, 2017.²

On July 11, 2017, DHS published a rule delaying the effective date to March 14, 2018.³ Two individuals, two businesses, and the National Venture Capital Association sued DHS, challenging the delay rule for violating the Administrative Procedure Act’s notice and comment requirement at 5 U.S.C. 553. The D.C. Circuit, agreeing with the plaintiffs, vacated the delay rule on December 1, 2017, allowing the rule to go into effect without further delay.⁴

The regulatory provisions established by the January 17, 2017 rule, which were implemented after the delay rule was vacated on December 1, 2017,⁵ provide specific investment and revenue amounts that can support an application for parole and re-parole.⁶ The rule also promulgated a regulatory provision at 8 CFR 212.19(l) stating that the investment and revenue amounts will be automatically adjusted every 3 years by the Consumer Price Index for All Urban Consumers (CPI–U) and posted on the USCIS website at www.uscis.gov and that investment and revenue amounts adjusted under 8 CFR 212.19(l) will apply to all applications filed on or after the beginning of the fiscal year for which the adjustment is made.⁷

B. Investment and Revenue Increased for Fiscal Year 2022

On September 13, 2021, DHS issued a final rule (the 2021 final rule) adjusting the investment and revenue

¹ 82 FR 5238 (Jan. 17, 2017).

² *Id.*

³ 82 FR 31887 (July 11, 2017).

⁴ *Nat’l Venture Capital Assoc., et al., v. Duke*, 291 F. Supp. 3d 5 (D.D.C. Dec. 1, 2017).

⁵ On May 29, 2018, DHS published a notice of proposed rulemaking (NPRM) to remove the international entrepreneur program from DHS regulations, but never finalized the proposal. *See* 83 FR 24415 (May 29, 2018). Instead, on May 11, 2021, DHS withdrew the NPRM. *See* 86 FR 25809 (May 11, 2021).

⁶ *See* 8 CFR 212.19(a)(5), (b)(2)(ii), and (c)(2)(ii).

⁷ While DHS did not discuss these automatic adjustments in the preamble to the final rule, DHS explained in the proposed rule that it believed that automatically adjusting the minimum dollar amounts by the CPI–U every 3 years will maintain investment and revenue requirements at an appropriate level in relation to future economic conditions. DHS also believed automatically adjusting the minimum dollar amounts in 3-year increments would be more manageable operationally for DHS and less burdensome to applicants than adjustments at more frequent intervals. *See generally* 81 FR 60129, 60151 (Aug. 31, 2016).

amounts beginning in FY 2022.⁸ The automatic adjustment required by 8 CFR 212.19(l) affected the amounts then stated in 8 CFR 212.19(a)(5) (2020) (no less than \$600,000 in aggregate investments by the qualifying investor and at least \$500,000 in revenue by at least two entities), 8 CFR 212.19(b)(2)(ii)(B) (2020) (at least \$250,000 in investments or at least \$100,000 in government awards or grants), and 8 CFR 212.19(c)(2)(ii)(B) (2020) (at least \$500,000 in additional investment or revenue). As shown in the 2021 final rule, these amounts were adjusted for inflation using the CPI-U calculator published by the Department of Labor, Bureau of Labor Statistics.⁹

In light of these automatic adjustments in December 2020, beginning in FY 2022, under 8 CFR 212.19(b)(2)(ii)(B) as updated by the 2021 final rule, an applicant may be considered for initial parole, on a case-by-case basis, if they demonstrate that their entity has received, within 18 months immediately preceding the filing of an application for initial parole, either a qualified investment amount of at least \$264,147 from one or more qualified investors or an amount of at least \$105,659 through one or more qualified government awards or grants. In the alternative, an applicant who partially meets one or both of those criteria may still qualify for further consideration by providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation. Similarly, revised 8 CFR 212.19(c)(2)(ii)(B) provided that an applicant may be considered for re-parole if they establish that during the initial parole period, their entity:

- Received at least \$528,293 in qualifying investments, qualified government grants or awards, or a combination of such funding, during the initial parole period;
- Created at least 5 qualified jobs with the start-up entity during the initial parole period; or
- Reached at least \$528,293 in annual revenue in the United States and averaged 20 percent in annual revenue growth during the initial parole period.

In the alternative, an applicant who meets the criteria in paragraph (c)(2)(ii)(A) and partially meets one or more of the criteria in paragraph (c)(2)(ii)(B) of § 212.19 could still qualify for consideration for re-parole by

providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation. Finally, revised 8 CFR 212.19(a)(5) defined a qualified investor as an individual or investor who, among other requirements, has made investments in start-up entities comprising a total of no less than \$633,952 in a specified 5-year period and, subsequent to the investment, at least two of those entities each created at least 5 jobs or generated at least \$528,293 in revenue with an average annualized revenue growth of at least 20 percent.

The revised amounts in the 2021 final rule were also posted on the USCIS website, <https://www.uscis.gov/working-in-the-united-states/entrepreneur-employment-pathways/nonimmigrant-or-parole-pathways-for-entrepreneur-employment-in-the-united-states>.

C. Investment and Revenue Increase Beginning With Fiscal Year 2025

In this final rule and in accordance with the 2017 final rule, DHS calculates new investment and revenue amounts and revises the applicable provisions to adjust for inflation.¹⁰ According to the CPI-U calculator, \$105,659 in December 2020 had a present dollar value of \$124,429 in December of 2023 (FY 2024); and \$264,147 in December 2020 had a present dollar value of \$311,071 in December 2023. The CPI-U calculator also showed that \$528,293 in December 2020 had a present dollar value of \$622,142 in December 2023; and \$633,952 in December 2020 had a present dollar value of \$746,571 in December 2023. Beginning in Fiscal Year 2025 (*i.e.*, beginning October 1, 2024), under 8 CFR 212.19(b)(2)(ii)(B) as updated by this final rule, an applicant may be considered for initial parole on a case-by-case basis if they demonstrate that their entity has received, within 18 months immediately preceding the filing of an application for initial parole, either a qualified investment amount of at least \$311,071 from one or more qualified investors or an amount of at least \$124,429 through one or more qualified government awards or grants.¹¹ In the alternative, an applicant who partially meets one or both of those criteria may still qualify for further consideration by providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation.¹² Similarly, revised 8 CFR

212.19(c)(2)(ii)(B) provides that an applicant may be considered for re-parole if they establish that during the initial parole period, their entity:

- Received at least \$622,142 in qualifying investments, qualified government grants or awards, or a combination of such funding, during the initial parole period;
- Created at least 5 qualified jobs with the start-up entity during the initial parole period; or
- Reached at least \$622,142 in annual revenue in the United States and averaged 20 percent in annual revenue growth during the initial parole period.¹³

In the alternative, an applicant who meets the criteria in paragraph (c)(2)(ii)(A) and partially meets one or more of the criteria in paragraph (c)(2)(ii)(B) of § 212.19 could still qualify for consideration by providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation.¹⁴ Finally, revised 8 CFR 212.19(a)(5) defines a qualified investor as an individual or investor who, among other requirements, has made investments in start-up entities comprising a total of no less than \$746,571 in a specified 5-year period and, subsequent to the investment, at least two of those entities each created at least 5 jobs or generated at least \$622,142 in revenue with an average annualized revenue growth of at least 20 percent.

The revised amounts in this final rule will be posted on the USCIS website, <https://www.uscis.gov>.

II. Statutory and Regulatory Requirements

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), as Amended by E.O. 14094 (Modernizing Regulatory Review), and E.O. 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563

⁸ 86 FR 50839 (Sept. 13, 2021). The current amounts and analysis for calculating them appears in that rule.

⁹ See https://www.bls.gov/data/inflation_calculator.htm.

¹⁰ DHS rounded these amounts to the nearest dollar.

¹¹ 8 CFR 212.19(b)(2)(ii)(B).

¹² 8 CFR 212.19(b)(2)(iii).

¹³ 8 CFR 212.19(c)(2)(ii)(B).

¹⁴ 8 CFR 212.19(c)(2)(iii).

emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as

amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action.

The population that may be affected by this rule are the applicants that file Form I-941, Application for Entrepreneur Parole, after this rule becomes effective. Table 1 presents the

historical annual receipts for Form I-941 received for FYs 2018–2023. During this period, 112 total Form I-941 applications have been filed with USCIS, and DHS estimates that USCIS received an average of 19 (rounded) Form I-941 applications per year.

TABLE 1—ANNUAL RECEIPTS OF FORM I-941, APPLICATION FOR ENTREPRENEUR PAROLE, FY 2018–2023

Form	2018	2019	2020	2021	2022	2023	6-year average annual receipts
Form I-941	19	8	1	24	39	21	19

Source: USCIS, Immigrant Program Office, Claims 3 (C3) database (as of January 11, 2024).

Note: Calculation of 6-year Average Annual receipts is rounded up.

B. Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The final rule merely updates the investment and revenue amounts to account for inflation consistent with the regulatory requirement at 8 CFR 212.19(l) providing that these amounts will automatically adjust every three years by the Consumer Price Index. This amendment is a technical change to ensure that the regulation accurately reflects these updated investment amounts, automatically adjusted for inflation, and avoids potential confusion for applicants and other interested parties regarding the applicable investment amounts under 8 CFR 212.19. Therefore, notice and comment for this rule is unnecessary because the rule is simply a ministerial update to the regulations. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required “to publish a general notice of proposed rulemaking for any proposed rule.”¹⁵ Because this rule is being issued as a final rule, on the grounds set forth in section II.A. of this rule, a

regulatory flexibility analysis is not required under the RFA.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA)¹⁶ is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, that may directly result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. This rule is exempt from the written statement requirement because USCIS did not publish a notice of proposed rulemaking for this rule. Additionally, the inflation-adjusted value of \$100 million in 1995 is approximately \$199.96 million in 2023 based on the Consumer Price Index for All Urban Consumers (CPI-U).¹⁷ This final rule does not contain such a

mandate. The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. Executive Order 13132 (Federalism)

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. National Environmental Policy Act (NEPA)

DHS and its component agencies analyze their actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, applies to them and, if so, what degree of analysis is required. DHS Directive 023–01, Revision 01¹⁸ and “Instruction Manual 023–01–001–01 Revision 01, (Instruction Manual)”¹⁹ establish the policies and procedures DHS and its component agencies use to comply with NEPA and the Council on

¹⁶ 2 U.S.C. 1501 *et seq.*

¹⁷ See BLS, “Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month,” www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202312.pdf (last visited Mar. 18, 2024). Calculation of inflation:

(1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2023);

(2) Subtract reference year CPI-U from current year CPI-U;

(3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U;

(4) Multiply by 100 [(Average monthly CPI-U for 2023 – Average monthly CPI-U for 1995)/(Average monthly CPI-U for 1995)] * 100 = [(304.702 – 152.383)/152.383] * 100 = (152.318/152.383) * 100 = 0.99957 * 100 = 99.96 percent (rounded). Calculation of inflation-adjusted value: \$100 million in 1995 dollars * 1.9996 = \$199.96 million in 2023 dollars.

¹⁵ 5 U.S.C. 603(a).

¹⁸ See DHS, “Implementation of the National Environmental Policy Act,” Directive 023–01, Revision 01 (Oct. 31, 2014), available at https://www.dhs.gov/sites/default/files/publications/DHS_Directive%2023-01%20Rev%2001_508compliantversion.pdf.

¹⁹ Available at https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%202023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.

Environmental Quality (CEQ) regulations for implementing NEPA.²⁰

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (“Categorical Exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require the preparation of an Environmental Assessment or Environmental Impact Statement.²¹ Appendix A of the Instruction Manual lists the DHS Categorical Exclusions.²² Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the Categorical Exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.²³

In this rule, DHS is updating regulations codified in 8 CFR part 212 to reflect the automatic increase of the investment and revenue amount requirements for the International Entrepreneur Parole Program effective October 1, 2024. On January 17, 2017, DHS published a final rule with new regulatory provisions guiding the use of parole on a case-by-case basis with respect to certain entrepreneurs of start-up entities. The 2017 regulation provided that the investment and revenue amount requirements would automatically adjust every three years. On September 13, 2021, DHS issued a final rule that adjusted the investment and revenue amounts as of October 1, 2021. DHS is issuing this rule to update the investment and revenue amounts in the regulations to adjust for inflation. DHS is not aware of any significant impact on the environment, or any change in environmental effect, that will result from this final rule. This rule is of a strictly administrative nature to make required adjustments in investment and revenue amounts. DHS finds promulgation of the rule clearly fits within categorical exclusion A3, established in the Department’s NEPA implementing procedures.

This final rule is a standalone regulatory action applicable to the International Entrepreneur Parole Program and is not part of any larger action. In accordance with its NEPA

implementing procedures, DHS has determined that this final rule will not result in any major Federal action that would significantly affect the quality of the human environment, and that no extraordinary circumstances exist that would create the potential for significant environmental effects requiring further analysis and documentation. Therefore, this final rule is categorically excluded and no further NEPA analysis or documentation is required.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3512, DHS must submit to the Office of Management and Budget (OMB) for review and approval, any reporting requirements inherent in a rule, unless they are exempt. This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995. Separate from but related to the technical amendments made in this Final Rule, DHS has revised the Application for Entrepreneur Parole, Form I–941, to conform with the new investment and revenue amounts set forth by this Final Rule. The revised information collection has been submitted for approval to the Office of Management and Budget (OMB) for review and approval under procedures covered under the PRA.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, DHS amends 8 CFR part 212 as set forth below:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The general authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185 note (sec. 7209, Pub. L. 108–458, 118 Stat. 3638), 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 CFR part 2. Section 212.1(q) also issued under sec. 702, Pub. L. 110–229, 122 Stat. 754, 854.

* * * * *

■ 2. In § 212.19, revise paragraphs (a)(5)(i) and (ii), (b)(2)(ii)(B)(1) and (2), and (c)(2)(ii)(B)(1) and (3) to read as follows:

§ 212.19 Parole for entrepreneurs.

(a) * * *

(5) * * *

(i) The individual or organization made investments in start-up entities in exchange for equity, convertible debt, or other security convertible into equity commonly used in financing transactions within their respective industries comprising a total in such 5-year period of no less than \$746,571; and

(ii) Subsequent to such investment by such individual or organization, at least 2 such entities each created at least 5 qualified jobs or generated at least \$622,142 in revenue with average annualized revenue growth of at least 20 percent.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) * * *

(1) Received, within 18 months immediately preceding the filing of an application for initial parole, a qualified investment amount of at least \$311,071 from one or more qualified investors; or

(2) Received, within 18 months immediately preceding the filing of an application for initial parole, an amount of at least \$124,429 through one or more qualified government awards or grants.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) * * *

(1) Received at least \$622,142 in qualifying investments, qualified government grants or awards, or a combination of such funding, during the initial parole period;

* * * * *

(3) Reached at least \$622,142 in annual revenue in the United States and averaged 20 percent in annual revenue growth during the initial parole period.

* * * * *

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2024–16138 Filed 7–24–24; 8:45 am]

BILLING CODE 9111–97–P

²⁰ 40 CFR parts 1500 through 1508.

²¹ 40 CFR 1507.3(e)(2)(ii) and 1501.4.

²² See Instruction Manual, Appendix A, Table 1.

²³ See Instruction Manual, section V.B(2)(a) through (c).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2493; Aerospace
Docket No. 23–AGL–25]

RIN 2120–AA66

Amendment of Jet Route J–89 and
VOR Federal Airway V–161, and
Establishment of Canadian RNAV
Route Q–834; Northcentral United
States

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on June 18, 2024, that amended Jet Route J–89 and Very High Frequency Omnidirectional Range (VOR) Federal Airway V–161, and established Canadian Area Navigation (RNAV) Route Q–834 in United States (U.S.) airspace. In the Q–834 description in the final rule, the order of the listed route points was reversed in error. This action makes editorial corrections to list the Q–834 route points to match the route data forms and the FAA National Airspace System Resource (NASR) database information.

ALBNG, MN
Duluth, MN (DLH)

Issued in Washington, DC, on July 19,
2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–16274 Filed 7–24–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 240722–0202]

RIN 0694–AI06

Standards-Related Activities and the
Export Administration Regulations;
Corrections

AGENCY: Bureau of Industry and
Security, Commerce.

ACTION: Correcting amendments.

SUMMARY: On July 18, 2024, the Bureau of Industry and Security published an interim final rule that revised the Export

DATES: Effective date 0901 UTC,
September 5, 2024. 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 7400.11 and
publication of conforming amendments.

ADDRESSES: A copy of the Notice of
Proposed Rulemaking (NPRM), all
comments received, the final rule, this
final rule correction, 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:

Q–834 ALBNG, MN TO DULUTH, MN (DLH) [NEW]

WP (Lat. 48°59'58.05" N, long. 095°38'10.41" W)
VORTAC (Lat. 46°48'07.79" N, long. 092°12'10.33" W)

Administration Regulations (EAR). That
rule inadvertently revised language
related to recent changes to the Entity
List. This document corrects the
inadvertent revisions introduced in the
July 18, 2024, rule.

DATES: Effective July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Nancy Kook, Regulatory Policy
Division, Bureau of Industry and
Security, Department of Commerce.
Phone: (202) 482–2440; Email:
Nancy.Kook@bis.doc.gov.

SUPPLEMENTARY INFORMATION: On July
18, 2024, BIS published in the **Federal
Register** the interim final rule (IFR),
“Standards-Related Activities and the
Export Administration Regulations” (89
FR 58265) that revised parts 734, 744
and 772 of the EAR. The revisions in the
July 18, 2024, rule inadvertently
reverted changes to part 744 that were
amended in a final rule that BIS
published on June 18, 2024 (89 FR
51644). This document corrects the
inadvertent revisions introduced in the
Federal Register on July 18, 2024,

History

The FAA published a final rule in the
Federal Register (89 FR 51403; June 18,
2024), amending Jet Route J–89 and
VOR Federal Airway V–161, and
establishing Canadian RNAV Route Q–
834 in U.S. airspace. Subsequent to
publication, the FAA determined that
the Q–834 route points listed in the
route description did not match the
order of the route points listed in the
route data forms or the FAA NASR
database. This rule corrects that
mismatch of route points listed in the
rule, the route data forms, and NASR
database by reversing the order of the
route points listed in the Q–834
description published in the final rule.

This is an editorial change only to
match the Q–834 description with the
route data forms and FAA NASR
database information and does not alter
the alignment of the new Q–834 route.

Correction to Final Rule

Accordingly, pursuant to the
authority delegated to me, Canadian
RNAV route Q–834 reflected in Docket
No. FAA–2023–2493, as published in
the **Federal Register** of June 18, 2024
(89 FR 51403), FR Doc. 2024–13209, is
corrected as follows:

■ 1. On page 51405, correct the table for
Q–834 Duluth, MN (DLH) to ALBNG,
MN [New] to read:

specifically to §§ 744.11, 744.16, and
supplement no. 4 to part 744, to
reintroduce language that was added in
the June 18, 2024, rule that reflected the
addition of paragraph (f) under § 744.16.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping
requirements, Terrorism.

Accordingly, 15 CFR 744 is corrected
by making the following correcting
amendments:

**PART 744—CONTROL POLICY: END-
USER AND END-USE BASED**

■ 1. The authority citation for part 744
continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C.
4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C.
3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201
et seq.; 22 U.S.C. 7210; E.O. 12058, 43 FR
20947, 3 CFR, 1978 Comp., p. 179; E.O.
12851, 58 FR 33181, 3 CFR, 1993 Comp., p.
608; E.O. 12938, 59 FR 59099, 3 CFR, 1994
Comp., p. 950; E.O. 13020, 61 FR 54079, 3
CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR
58767, 3 CFR, 1996 Comp., p. 228; E.O.
13222, 66 FR 44025, 3 CFR, 2001 Comp., p.

783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; 3 CFR, 2022 Comp., p. 563; Notice of September 7, 2023, 88 FR 62439 (September 11, 2023); Notice of November 1, 2023, 88 FR 75475 (November 3, 2023).

■ 2. Section 744.11 is amended by revising paragraph (a) introductory text to read as follows:

§ 744.11 License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States.

* * * * *

(a) *License requirement, availability of license exceptions, and license application review policy.* A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity that is listed on the Entity List, or any entity using an address identified on the Entity List as presenting a high risk of diversion to activities of concern, is a party to the transaction as described in § 748.5(c) through (f) of the EAR unless otherwise authorized or excluded in this section. License exceptions may not be used unless authorized in the Entity List entry for the entity that is party to the transaction or for an address that presents a high diversion risk that is used by a party to the transaction. Applications for licenses required by this section will be evaluated as stated in the relevant Entity List entry, in addition to any other applicable review policy stated elsewhere in the EAR.

* * * * *

■ 3. Section 744.16 is amended by revising paragraph (a) to read as follows:

§ 744.16 Entity List.

* * * * *

(a) *License requirements.* In addition to the license requirements for items specified on the CCL, you may not, without a license from BIS, export, reexport, or transfer (in-country) any items included in the License Requirement column of an entry on the Entity List (supplement no. 4 to this part) when an entity associated with that entry or when any entity using an address of high diversion risk associated with that entry is a party to a transaction as described in § 748.5(c) through (f) of the EAR. The specific license requirement for each listed entity or address with high diversion risk is identified in the license requirement column on the Entity List in supplement no. 4 to this part.

* * * * *

■ 4. Supplement no. 4 to part 744 is amended by revising the introductory text to read as follows:

Supplement No. 4 to Part 744—Entity List

This supplement lists certain entities or addresses subject to license requirements for specified items under this part 744 and part 746 of the EAR. License requirements for these entities include exports, reexports, and transfers (in-country) unless otherwise stated. A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity or a party to the transaction is operating at an address that is listed on the Entity List under an address entry is a party to the transaction as described in § 748.5(c) through (f) of the EAR. This list is revised and updated on a periodic basis in this supplement by adding new or amended notifications and deleting notifications no longer in effect.

* * * * *

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2024–16379 Filed 7–24–24; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0644]

RIN 1625–AA00

Safety Zone; Banana River, and Parts of Atlantic Ocean, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around the National Aeronautics and Space Administration (NASA) barge PEGASUS and attached towing vessel while engaged in towing in the navigable waters of Sector Jacksonville Captain of the Port Zone, to encompass parts of the Atlantic Ocean, through the Canaveral Locks to the Banana River ending at the Kennedy Space Center turning basin. The temporary moving safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards associated with the planned transit of the NASA barge PEGASUS and cargo within these navigable waters. No vessel or person will be permitted to enter the safety zone unless authorized by the

Captain of the Port Jacksonville or a designated representative.

DATES: This rule is effective without actual notice from July 25, 2024, through August 30, 2024. For the purposes of enforcement, actual notice will be used from July 20, 2024, until July 25, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0644 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 Marine Science Technician Second Class Matthew Woods, Waterways Management Division, U.S. Coast Guard; telephone 904–714–7661, email Matthew.A.Woods@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AOR Area of Responsibility
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NASA National Aeronautics and Space Administration
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 it is impracticable. Details of the event which begins on July 20, 2024, were not made available until June 26, 2024. The Coast Guard was not notified with ample time to allow for public comment. Timely action is needed to respond to the potential safety hazards associated with the transit of the National Aeronautics and Space Administration (NASA) barge PEGASUS. It would be impracticable and contrary to the public interest to publish a NPRM because we must establish the safety zone by July 20,

2024, to ensure the protection of the safety of personnel, vessels, and waterway users during the NASA barge transit.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this temporary interim rule would be contrary to the rule's objectives of ensuring the protection of vessels and waterway users in during the transit of the NASA barge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector (COTP) Jacksonville has determined that potential hazards associated with the transit of the NASA barge PEGASUS. The rule is needed to protect persons, vessels, and the marine environment in the navigable waters within the safety zone while the barge PEGASUS and attached towing vessel are transiting the navigable waters of Sector Jacksonville Captain of the Port Zone, to encompass parts of the Atlantic Ocean, through the Canaveral Locks to the Banana River ending at the Kennedy Space Center turning basin.

IV. Discussion of the Rule

This rule establishes a temporary moving safety zone from 12:01 a.m. July 20, 2024, through August 30, 2024. The temporary moving safety zone will cover all navigable waters within a 100-yard radius around the NASA barge PEGASUS and attached towing vessel while engaged in towing while transiting the Sector Jacksonville Captain of the Port Zone, to encompass parts of from the Atlantic Ocean, through the Canaveral Locks to the Banana River ending at the Kennedy Space Center turning basin. The temporary moving safety zone is necessary to protect persons, vessels, and the marine environment in these navigable waters while the PEGASUS barge and cargo are towed.

The anticipated date of the transit may necessitate change due to inclement weather, waterway conditions, infrastructure issues, or other marine services. The Captain of the Port (COTP) Jacksonville will notify mariners of the change in enforcement period via a Marine Safety Information Bulletin, Local Notice to Mariners, or Broadcast Notice to Mariners.

No vessel or person will be permitted to enter the moving safety zone without obtaining permission from the COTP

Jacksonville or a designated representative.

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, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of the Banana River, near Port Canaveral, FL, for approximately 4 hours. The safety zone will be enforced in a manner that minimizes conflict with transiting commercial and recreational traffic. Moreover, vessels may transit through the safety zone with the permission of the COTP or make satisfactory passing arrangements with the Master of the towing vessel towing the NASA barge PEGASUS, that may be used in accordance with this rule and the Rules of the Road (33 CFR subchapter E). The Coast Guard will notify the mariners of the change in enforcement period via a Marine Safety Information Bulletin, Local Notice to Mariners, or Broadcast Notice to Mariners.

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 a moving safety zone that prohibits persons or vessels from entering, transiting through, anchoring in, or transiting within a 100-yard radius from the NASA barge PEGASUS and the towing vessel while in transit to the Kennedy Space Center dock. 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, Waterway.

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.T07–0736 to read as follows:

§ 165.T07–0736 Safety Zone; Port Canaveral Barge Canal, Banna River and Atlantic Ocean, Sector Jacksonville.

(a) *Location.* The following area is a moving safety zone: All navigable waters within a 100-yard radius from the NASA barge PEGASUS towing configuration as it transits through the Sector Jacksonville Captain of the Port Zone, to encompass parts of the Atlantic Ocean near Port Canaveral, FL, and Banana River until it reaches the Kennedy Space Center dock.

(b) *Definitions.* As used in this section, *designated representative* is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of the Captain of the Port (COTP) Jacksonville.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the moving safety zone unless authorized by the COTP Jacksonville or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or designated representative.

(2) Persons who must notify or request authorization from the COTP Jacksonville may do so by Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(d) *Enforcement period.* This section will be enforced from 12:01 a.m. on July 20, 2024, through 11:59 p.m. on August 30, 2024. The moving safety zone will be enforced while the NASA PEGASUS barge is being towed and until it is moored at the Kennedy Space Center. Should enforcement times be delayed by weather or other unforeseen circumstances, the Coast Guard will inform mariners of the change in enforcement period via a Marine Safety Information Bulletin, Local Notice to Mariners, or Broadcast Notice to Mariners.

Dated: July 19, 2024.

J.D. Espino-Young,

Captain, U.S. Coast Guard, Captain of the Port, Sector Jacksonville.

[FR Doc. 2024–16288 Filed 7–24–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0659]

RIN 1625–AA00

Safety Zone; Gulf Intracoastal Waterway, Gibbstown, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 1000-foot radius of the Gibbstown Bridge. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pulling transmission wires over the waterway. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Marine Safety Unit Port Arthur.

DATES: This rule is effective without actual notice from July 25, 2024 through July 30, 2024. For the purposes of enforcement, actual notice will be used from July 23, 2024, through July 30, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0659 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 Chief Jay Buehner, U.S. Coast Guard; telephone 337–912–0073, email msulcwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Marine Safety Unit Port Arthur
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 under authority in 5 U.S.C. 553(b)(B). This statutory 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.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Prompt action is needed to respond to the potential safety hazards associated with pulling transmission wires over the waterway. It is impracticable to publish an NPRM because the Coast Guard must establish this temporary safety zone by July 23, 2024 and lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Also, 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 prompt action is needed to respond to the potential safety hazards associated with wire pulls across the Gulf Intracoastal Waterway.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Marine Safety Unit Port Arthur (COTP) has determined that potential hazards associated with transmission wire pulling operations within a 1000-foot radius of the Gibbstown Bridge will be a safety concern for recreational and commercial vessel traffic. The purpose of this rule is to ensure the safety of personnel, vessels, and the marine environment in the navigable waters within the safety zone during the wire pulling operations.

IV. Discussion of the Rule

This rule establishes a safety zone from July 23, 2024, through July 30, 2024 that will be enforced from 8:00 a.m. through 1:00 p.m. on the day of wire pulling operations. The COTP or a designated representative will inform the public of the actual wire pull date, as well as any subsequent changes in the date and times of the enforcement period, through Broadcast Notices to Mariners and Marine Safety Information Bulletins as appropriate.

The safety zone will cover all navigable waters within a 1000-foot

radius of Gibbstown Bridge located at 29°56′01.2″ N and 093°04′47.3″ W. The duration of the safety zone is intended to protect persons and vessels, in the nearby navigable waters during the wire pulling operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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 size, location, and duration of the safety zone. The safety zone will impact a small, designated area of the Gulf Intracoastal Waterway for five hours. Moreover, the Coast Guard will issue a Local Notice to Mariners and Broadcast Notice to Mariners about the zone. The rule allows 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 a safety zone that will be enforced for five hours to prohibit entry within a 1000-foot radius of wire pulling operations. 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.T08–0659 to read as follows:

§ 165.T08–0659 Safety Zone; Gulf Intracoastal Waterway, Gibbstown, LA.

(a) *Location.* The following area is a safety zone: All navigable waters within a 1000-foot radius of the Gibbstown Bridge located at 29°56′01.2″ N and 093°04′47.3″ W, on the Gulf Intracoastal Waterway. These coordinates are based on WGS 84.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Marine Safety Unit Port Arthur (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, entry of vessels or persons into the zone described in paragraph (a) is prohibited unless authorized by the COTP or a designated representative. During the enforcement period, all persons and vessels permitted to enter the safety zone described in paragraph (a) must comply with the lawful order or directions of the COTP or a designated representative.

(2) To seek permission to enter the safety zone, contact the COTP or the COTP's representative on VHF–FM channel 13 or 16, or by phone at telephone at 337–912–0073.

(d) *Enforcement period.* This safety zone is in effect from July 23, 2024 through July 30, 2024. It will be subject to enforcement from 8:00 a.m. through 1:00 p.m. on the day of the wire pulling operations. The COTP or a designated representative will inform the public of the date of wire pulling operations through Broadcast Notices to Mariners and Marine Safety Information Bulletins as appropriate.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone, as well as any changes in the date and times of enforcement, through Broadcast Notices to Mariners and Marine Safety Information Bulletins as appropriate.

Morgan Kelly,

Commander, U.S. Coast Guard, Acting Captain of the Port Marine Safety Unit Port Arthur.

[FR Doc. 2024–16360 Filed 7–24–24; 8:45 am]

BILLING CODE 9110–04–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

[Docket No. ATBCB–2023–0001]

RIN 3014–AA45

Standards for Accessible Medical Diagnostic Equipment

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (hereafter, “Access Board” or “Board”), is issuing this final rule to remove the sunset provisions in the Board’s existing accessibility standards for medical diagnostic equipment related to the low height specifications for transfer surfaces, and replace them with a final specification for the low transfer height of medical diagnostic equipment used in the supine, prone, side-lying, and the seated position.

DATES: The final rule is effective September 23, 2024.

FOR FURTHER INFORMATION CONTACT: Accessibility Specialist Bobby Stinnette, (202) 272–0021, stinnette@access-board.gov; or Attorney Advisor Wendy Marshall, (202) 272–0043, marshall@access-board.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Access Board issues this final rule to amend 36 CFR part 1195 to establish a 17-inch low transfer height specification for transfer surfaces of medical diagnostic equipment used in the supine, prone, side-lying, and seated position. This final rule also removes the sunset provisions at 36 CFR 1195.1, appendix, M301.2.2 and M302.2.2, that were promulgated in 2017 to allow the Board additional time to determine the appropriate low height specification.

II. Legal Authority

Section 510 of the Rehabilitation Act charges the Access Board with developing and maintaining minimum technical criteria to ensure that “medical diagnostic equipment used in or in conjunction with physician’s offices, dental offices, clinics, emergency rooms, hospitals, and other medical settings, is accessible to, and usable by, individuals with accessibility needs, and shall allow independent entry to, use of, and exit from the equipment by such individuals to the maximum extent possible.” 29 U.S.C.

794f. The Access Board's minimum technical criteria do not impose any mandatory requirements on health care providers or medical device manufacturers. Agencies or entities may issue regulations or adopt policies requiring health care providers to acquire accessible medical diagnostic equipment that complies with the technical criteria set forth by the Access Board. Agencies would be permitted to "propose or adopt [such enforceable regulations] only upon a reasoned determination that the benefits of the intended regulation justify its costs," E.O. 12866 section 1(b)(6), a determination the Access Board has not made. These agencies or entities would have to develop the appropriate scoping provisions to determine how to apply these technical criteria and could strengthen or lessen the requirements.

III. Rulemaking History

In January 2017, the Board issued a final rule establishing technical criteria for medical diagnostic equipment. 82 FR 2810 (codified at 36 CFR part 1195). The Accessibility Standards for Medical Diagnostic Equipment (MDE Standards) set forth technical criteria to ensure that medical diagnostic equipment used by health care providers (such as examination tables, weight scales, and imaging equipment) is accessible to, and usable by, individuals with disabilities. One of the areas covered by the MDE Standards is the adjustability of transfer surfaces for diagnostic equipment used by patients in a supine, prone, side-lying, or seated position. The MDE Standards currently specify the following adjustability requirements for transfer-height surfaces: a high height of 25 inches, a low height of 17–19 inches, and four unspecified intermediate heights between the high and low transfer height, which are separated by a minimum of one inch. 36 CFR part 1195, appendix, M301.2.1 and M302.2.2. Unlike the other transfer height specifications, the low transfer height was set as a temporary range with a five-year sunset provision. *Id.*

As explained in the preamble to the final rule, the Board took this approach because "there was insufficient information to designate a single minimum low height requirement at [that] time. Specifically, there [was] insufficient data on the extent to which and how many individuals would benefit from a transfer height lower than 19 inches." 82 FR 2816. The Board explained that the MDE Advisory Committee was unable to come to an agreement on a single low height transfer position.

In the 2013 MDE Advisory Committee Report, minority reports submitted by disability advocates and academics supported a minimum low height of 17 inches. *See* Minority Reports from Boston Center for Living Inc., National Network for ADA Centers, and Medical Diagnostic Equipment Advisory Committee, available at <https://www.regulations.gov/docket/ATBCB-2013-0009/document> (last visited Dec. 4, 2023). These reports referenced the importance of accessible care, ensuring as many independent transfers as possible, and minimizing the risk of injury to both patient and provider if an assisted transfer is necessary. The reports asserted that the 17-inch low height provides "the greatest number of individuals the opportunity to transfer independently." 82 FR 2810, 2815 (Jan. 9, 2017).

The minority reports submitted in 2013 by manufacturers supported a minimum low height of 19 inches. *See* Minority Reports from Hologic, Inc., Midmark Corporation, Medical Imaging and Technology Alliance (MITA) Advisory Committee Members, and Recommendation of 19-inch Lower Adjustable Height as the Minimum Accessibility Standard (Joint Report), available at <https://www.regulations.gov/docket/ATBCB-2013-0009/document> (last visited Dec. 4, 2023). The exam table manufacturers asserted that they would incur costs to comply with the 17-inch low height, but not similarly for the 19-inch low height. The manufacturers asserted that, at that time, there were no accessible diagnostic tables on the market that met a 17-inch low height requirement. *Id.*

Thus, the Board decided to specify a five-year sunset period to afford time for needed research and subsequent promulgation of a final specification for the low transfer height position. *Id.* On February 3, 2022, the Board issued a direct final rule extending the sunset provision until January 10, 2025. 87 FR 6037 (Feb. 3, 2022).

The Board commissioned Dr. D'Souza to complete a secondary analysis of occupied seat heights based on the 2010 *Anthropometry of Wheeled Mobility Project* to address some of the concerns raised about the original study. In 2021 Dr. D'Souza completed the 2021 *Analysis of Low Wheelchair Seat Heights and Transfer Surfaces for Medical Diagnostic Equipment Final Report*. The report was presented at the Access Board's public meeting on May 12, 2022, and the Board solicited public comments on the report.

On May 23, 2023, following the completion of this research and review of the public comments received, the

Access Board issued a notice of proposed rulemaking of Standards for Accessible Medical Diagnostic Equipment proposing to remove the sunset provision and replace the low-transfer-height specification range with a 17-inch requirement for medical diagnostic equipment used in the supine, prone, side-lying, and seated position. 88 FR 33056 (2023 MDE NPRM).

IV. Comment Review

In response to the 2023 MDE NPRM the Board received 76 comments: 60 from individuals, 7 from disability rights organizations, 2 from independent living centers, 6 comments from 4 manufactures and manufacturer/trade associations, and one comment from a health delivery system. In response to a request from MITA for an extension of the comment period to allow them to provide a more thorough comment, the Board extended the comment period by 30 days to August 31, 2023. Notice of proposed rulemaking extension of comment period, 88 FR 50096 (Aug. 1, 2023). Below the Board addresses each group of comments received.

The Board first acknowledges a few comments received from various individuals and entities suggesting there was some confusion about the sunset provision. The Board emphasizes that this final rule removes the sunset provision, the effect of which is to make the low transfer height of 17 inches and a high transfer height of 25 inches the applicable standard as of the effective date for this final rule. However, the MDE Standards are not enforceable unless adopted by an enforcement agency, and that agency would determine any effective date during its rulemaking process, which could include a delayed effective date for the low transfer height if appropriate.

There were also a few comments concerning whether equipment currently on the market that meets the MDE Standards as issued in 2017 would be exempt from the 17-inch low transfer height or would be deemed as "not complying." That determination will be made by enforcement agencies if they adopt these or other requirements for MDE as enforceable standards.

Additionally, a few commenters raised concerns about a potential overlap or conflict between the MDE Standards and FDA's oversight and review of medical devices. In accordance with Section 510 of the Rehabilitation Act, the Access Board consulted with the Food and Drug Administration in the promulgation of this rule. 29 U.S.C. 794f(a). FDA advised

that the low transfer height standard generally does not appear to present safety or effectiveness issues, and FDA does not anticipate design changes implemented solely to conform to such a standard would preclude market authorization. FDA further advised that conformance or nonconformance with the MDE Standards low transfer height provision would not factor into FDA's evaluation of whether a device has satisfied the applicable legal standard to support marketing authorization. Based on that consultation, the Board has determined that there is no conflict between the MDE Standards and FDA's oversight and review of medical device.

A. Comments From Individuals

The Board received 60 comments from individuals, most of whom identified as having disabilities. The vast majority support the proposal and explain the commenters' experiences with inaccessible medical diagnostic equipment. Some of the commenters expressed a preference for a transfer height higher than 17 inches (which can be accomplished under the final rule requiring that the MDE be adjustable in height between 17 and 25 inches), and a few thought the transfer height should be as low as possible without specifying a height. None of the individual commenters, however, opposed the low transfer height of 17 inches.

B. Manufacturers and Trade Associations

The Access Board received comments from two manufacturers of medical diagnostic equipment, one trade association representing manufacturers of medical imaging equipment, and one association representing radiologists. The two manufacturers previously commented on the 2021 *Analysis of Low Wheelchair Seat Heights and Transfer Surfaces for Medical Diagnostic Equipment Final Report*. These manufacturers also participated in the MDE Advisory Committee for the original rulemaking and provided comments during the public comment period for the original 2016 rulemaking. Many of the Comments submitted in response to the 2023 MDE NPRM reiterated previous comments received during the rulemaking process, including comments about the D'Souza research study, concerns about costs, and the ability of the table/chair to raise to a level comfortable for the medical professionals. Below we address the manufacturers' and trade association's comments, but also adopt the explanations provided in the preamble to the 2023 MDE NPRM. See 88 FR 33056, 33058–33060 (May 23, 2023).

(1) General Exception

One manufacturer of exam tables and chairs asserted that having to reduce the low transfer height to 17 inches would force manufacturers to alter structural or operational characteristics of MDE and would prevent the intended diagnostic purpose of the equipment. Additionally, the two associations voiced concern that height-adjustability may not be feasible for medical imaging devices due to technical limitations, and one asked for an exemption for advanced diagnostic imaging equipment from the adjustability requirement.

The MDE Standards address these concerns at M201.2 with a general exception that states that MDE “shall not be required to comply with one or more applicable requirements in the MDE Standards in the rare circumstances where compliance would alter diagnostically required structural or operational characteristics of the equipment and would prevent the use of the equipment for its intended diagnostic purpose. Diagnostic equipment subject to M201.2 shall comply to the maximum extent practicable.” 36 CFR 1195.1, appendix, M201.2.

In the preamble to the 2017 MDE final rule, the Board explained that this exception applies when the “diagnostically required structural or operational characteristics cannot be made to comply with the technical requirements without preventing the use of the equipment for its intended purpose.” See Standards for Accessible Medical Diagnostic Equipment, 82 FR 2810, 2813 (Jan. 9, 2017). In that case, this exception would require the equipment to lower as close to 17 inches as possible without affecting the diagnostic characteristics. In the 2017 MDE final rule, the Board specifically explained its expectation that some medical imaging equipment may have to rely on this general exception to ensure that the diagnostic characteristics are not compromised. The Board believes this exception may also be used in some cases for medical diagnostic equipment that does not currently reach 17 inches; however, the Board has not determined how often this would be the case as it will depend on the state of the market conditions and scoping requirements if this rule is adopted as an enforceable standard.

With respect to exam tables and chairs, one commenter asserted that a 17-inch low transfer height would make it impossible to move patients into the Trendelenburg position (head lower than feet), where required for medical and dental care. Although the general

exception may be appropriate if such a position would not be attainable with a 17-inch low height requirement, the vast majority of dental chairs on the market already have a low transfer height at or below 17 inches. See notice of proposed rulemaking, Standards for Accessible Medical Diagnostic Equipment, 88 FR 33056, 33060 (May 23, 2023).

(2) Scoping

One comment from a manufacturer explained that while the number of height adjustable tables in the market is increasing in the United States, noting an increase from 5 percent in 2001 to 45 percent in 2023, the majority of tables on the market are still the fixed height table (32 inches) due to the cost. This commenter asserted that the adoption rate of adjustable tables would be further impeded with a requirement that the accessible MDE have a low transfer height of 17 inches. In response to the commenter's concern, the Board notes that if enforcement agencies adopt the MDE Standards, those agencies may provide scoping requirements prescribing the minimum percentage of MDE that would need to meet the MDE Standards. If an enforcement agency were to adopt the MDE Standards, only the percentage of MDE that the agency's regulation specified would have to meet them.

(3) Maintain the Current Range 17–19 Inches as the Final Specification

Two of the commenters recommend maintaining the 17–19-inch range as the final specification, asserting that it is consistent with existing accessibility standards for fixed elements where transfer is expected, such as water closets and toilet seats. These commenters stated that the widely accepted existing transfer height range of 17–19 inches suggest the importance of maintaining this standard for exam tables and procedure chairs. The Access Board refers these commenters to the preamble to the 2023 MDE NPRM where the Board addressed this concern and explained the difference between the height range provided for a fixed element in the ADA Accessibility Guidelines versus the low height provision for an adjustable transfer surface on MDE. There, we explained that the two situations are not the same, “as [water closets and toilet seats] only provide one height for transfer, so in determining that height, the Board had to specify a range for a static height that would effectuate transfer for the majority of users. With MDE and the ability to have 6 different transfer points, the goal is to accommodate all people with disabilities who are able to

effectuate an independent transfer.” *Id.* at 33061.

(4) Legacy Clause

One commenter recommended that a “legacy clause” be added to the MDE Standards that would allow MDE that complied with the MDE Standards prior to the finalization of the 17-inch low height to be considered accessible until replaced. As previously noted, if enforcement agencies adopt these technical standards, they will determine how previously compliant equipment should be treated.

(5) Use of 2010 Anthropometry of Wheeled Mobility Project Data

One of the commenters reasserted concerns with the methodology of the 2010 Anthropometry of Wheeled Mobility Project Data previously raised in response to D’Souza’s 2021 *Analysis of Low Wheelchair Seat Heights and Transfer Surfaces for Medical Diagnostic Equipment Final Report*. Available at <https://www.access-board.gov/research/human/wheelchair-seat-height/>. The commenter again requested that the Board conduct additional studies on how level transfer can be achieved by individuals with disabilities and requests a definition of level transfer. The Board previously addressed these concerns in the preamble to the 2023 MDE NPRM and reiterates that based on the risk of falls and injuries to patients and providers, the success of transfer at a height level to a user’s wheelchair, and the exertion needed for vertical transfer, providing a level transfer height for medical diagnostic equipment whenever possible ensures that almost everyone, if not everyone, who is capable of an independent transfer would be able to transfer to this adjustable height surface from 17 to 25 inches. *Id.* at 33059–33060.

(6) Cost and Time To Implement

One manufacturer responded to the questions posed in the 2023 MDE NPRM about the cost to manufacturers to modify current 18–19-inch MDE to comply with 17-inch low height requirements. This manufacturer asserted that its exam tables and chairs cannot be modified and would need to be completely redesigned in order to comply; that the development costs for redesign would be around \$6 million and would take at least 17 years, assertedly what it took to reach 19 inches; and that the cost increase to the product itself would be 20–30%, which would not diminish over time. Later, the same commenter asserted it would take 10 years to redesign the equipment.

Based on the change in availability of height adjustable exam tables and chairs since the publication of the MDE Standards in 2017, the Board is not convinced that compliant equipment would take 17 years to be redesigned, especially if this Standard is adopted and market demand for compliant equipment increases. However, the Board recommends that any agency adopting the MDE Standards consider the state of the market at the time of its adoption to determine if a delayed effective date for low transfer height is warranted.

C. Disability Rights Organizations/Independent Living Centers

The Board received 9 comments from disability rights organizations and independent living centers. These comments fully supported the Board’s proposed 17-inch low height. The Paralyzed Veterans of America (PVA) noted that accessible MDE is essential for full and equal access to healthcare services for wheelchair users. Available at <https://www.regulations.gov/comment/ATBCB-2023-0001-0058>. PVA explained that numerous studies show that people with disabilities cannot access routine medical exams and procedures because of inaccessible basic MDE, like exam tables and chairs, noting a longstanding devaluation of the lives of people with disabilities. *Id.*

Another commenter explained its enthusiastic support for the 17-inch provision, noting its awareness and understanding of the persistent and systemic barriers disabled people encounter when seeking medical care and that a 17 to 19-inch range would simply be akin to establishing a 19-inch low height. Available at <https://www.regulations.gov/comment/ATBCB-2023-0001-0060>.

Another commenter asserted that the older adult population is projected to dramatically increase in the coming years, climbing from 61.6 million today to 94.7 million by 2060 which will result in the increase of use of mobility devices as nearly 10 percent of older adults adopt mobility devices each year. Available at <https://www.regulations.gov/comment/ATBCB-2023-0001-0059>. Finally, one commenter strongly supports the largest range possible to provide access to the greatest number of people and recommended a low transfer height of 15 inches. Available at <https://www.regulations.gov/comment/ATBCB-2023-0001-0071>.

D. Health Care System

The Access Board received one comment from a health care system,

Sutter Health, a not-for-profit health delivery system that operates 24 acute care hospitals and 200 clinics in Northern California. Sutter Health supports the change to a 17-inch low transfer height and noted that this change will “improve access for people with disabilities.” Sutter Health also explained that some manufacturers already produce medical equipment that meets this slightly stricter standard, and that its “healthcare system has already made the 17” low height transfer surface [its] standard for purchasing accessible medical equipment, and [it is] very pleased with the results.” Sutter Health further stated, “Cost has not been an issue.” Comment of Sutter Health, available at <https://www.regulations.gov/comment/ATBCB-2023-0001-0065> (last visited Dec. 4, 2023).

V. Current Status of Accessible Medical Diagnostic Equipment

The Access Board informally reviewed publicly available information on current medical diagnostic equipment, specifically examination tables and chairs, to discern the current low transfer height and cost of adjustable MDE for the 2023 MDE NPRM. There, the Board provided an analysis of the current status of accessible medical diagnostic equipment and provided the *Access Board Review of MDE Low Height and MSRP* (December 2022). 88 FR 33056 (May 23, 2023) and <https://www.regulations.gov/docket/ATBCB-2023-0001>. The Board has again reviewed all of the MDE listed in the *Access Board Review of MDE Low Height and MSRP* and found two discrepancies in regard to Midmark podiatry chairs that were listed at 19 inches in the NPRM but are now listed at 21 inches on the manufacturer’s website. The changes of these two heights to 21 inches instead of 19 inches does not change the overall conclusion that 17 inches is the appropriate height. Therefore, we adopt the evaluation in the 2023 MDE NPRM here for this final rule.

The Board reviewed information on individual products to determine what low height the product could achieve; it did not undertake a systematic review of every feature of each product to assess potential compliance with the MDE Standards. The level of specificity of publicly available information regarding each product varies by manufacturer and product line, limiting the ability to compare every feature of every product. Further, such a detailed study would be inappropriate at this point, given that the MDE Standards have no mandatory

application. For most of the products, the Board was able to find publicly available price information.

A number of online MDE suppliers listed both a manufacturer suggested retail price (MSRP) and discounted prices. As the actual price paid for a certain piece of medical equipment can vary widely depending on the supplier from which it is purchased and the type of contract a purchaser may have, the Access Board focused on the MSRP. The prices reported here are likely higher than the actual prices the MDE purchasers would pay, because purchasers typically pay less than MSRP due to special sales, volume discounts, or other reasons. The information the Board collected, including links to the public websites where the Access Board obtained the product and price information, is available in the *2023 Review of MDE Low Heights and MSRP*. See *Access Board Review of MDE Low Height and MSRP*, dated Dec. 5, 2023, available at <https://www.regulations.gov/docket/ATBCB-2023-0001>.

The Board relied on the suppliers' and manufactures' websites for its information collection, including photographs, schematics, and other specification lists and descriptions provided by the manufacturer or supplier online. The Board did not directly contact any manufacturers or suppliers to discuss their products.

Adjustable Height Exam Tables

The Access Board reviewed 28 adjustable exam tables currently on the market, 21 of which meet the current requirement with low heights within the 17-to-19-inch range. Of these 21 exam tables, five have a low height of 19 inches and an MSRP range of \$5,923.01 to \$12,742.00, or an average cost of \$8,290.40; 16 exam tables have a low height of 18 inches and a MSRP range of \$2,127.08 to \$14,144, or an average cost of \$4,635.11; and one exam table has a low height of 15.5 inches and a MSRP of \$10,644. The other seven exam tables have low heights between 20 to 27 inches, falling outside of the current low transfer height requirement and have a MSRP range of \$3,114.82 to \$6,699.42, or an average cost of \$4,173.33. The Board also reviewed 18 fixed height exam tables with a height range of 27 to 33 inches and a MSRP range of \$548.90 to \$3,966.38, with an average cost of \$1,505.07.

In comparing the average MSRP of these adjustable exam tables, we found the difference between the one exam table that currently reaches below 17 inches and the average cost of exam tables in the 18-to-19-inch range to be a

\$5,138.58 difference. It would be an additional \$1,332 if comparing the 15.5-inch exam table to exam tables that were adjustable but outside of the current MDE Standard low height range.

It is important to note that the Board did not evaluate them to determine if they comply with the other provisions of the MDE Standards, and given the large range of cost for exam tables within the 18-to-19-inch range (\$2,127.08 to \$14,144), it is difficult to ascertain the actual specific cost of moving from a low height range of 17 to 19 inches to a single specification of 17 inches. Additionally, the Board believes that with this final rule, other manufacturers will produce tables that reach a low height of 17 inches, which will cause the cost to decrease, as we saw an increase in lower exam table transfer heights since the promulgation of the original MDE Standards in 2017.

Adjustable Height Exam Chairs

The Board also reviewed specialized adjustable height exam chairs. Specifically, Obstetrics and Gynecological (OB-GYN) chairs, phlebotomy chairs, podiatry chairs, optometry/ophthalmology chairs, and dental chairs. Only the dental chairs met the requirement for a 17-inch low transfer height. Consequently, for the other types of chairs, we were not able to determine the approximate additional cost per unit that would be required to comply with this rule.

The Access Board reviewed three OB/GYN chairs, one of which has a low height of 22 inches and a MSRP of \$3,450, and two which have a low height of 18 inches and 18.5 inches and a MSRP range of \$3,972.67 to \$5,470, with an average cost of \$4,721.34. The Board also reviewed six fixed height OB-GYN chairs, finding a height range of 31 to 33 inches and a MSRP range of \$543.82 to \$2,624.08, with an average cost of \$1,554.54.

The Board reviewed 12 phlebotomy chairs, two of which have low heights of 18 and 18.5 inches with a MSRP range of \$1,199 to \$2,249, and an average cost of \$1,724. The other ten phlebotomy chairs have low heights from 20.25 inches to 22 inches and a MSRP range of \$1,474 to \$2,959, with an average cost of \$2,056.4. The Board also reviewed 16 fixed height phlebotomy chairs, finding a height range from 18 to 26 inches with a MSRP range of \$500 to \$3,015.49, with an average cost of \$1,432.98.

All 16 dental chairs that the Access Board reviewed have a low height of 19 inches or lower. Three of the chairs have a low height from 18 to 19 inches; however, the Board was only able to

obtain the cost for one of these chairs, which is a refurbished price at \$3,568. The other 13 chairs have a low height from 13.5 inches to 17 inches, with five having a low height below 14 inches. The Board was only able to ascertain an MSRP for six of these 13 chairs, which have an MSRP range from \$5,598.00 to \$9,490, with an average cost of \$7,492.95. It is difficult to compare costs between these sets of dental chairs, as the only cost information the Board was able to obtain for a chair at 18 inches was a refurbished cost. However, based on the fact that the vast majority of dental chairs' low height was well below 17 inches and the other differences in the features of these chairs, low height doesn't appear to be a significant driver of cost difference for dental chairs.

The Access Board reviewed four podiatry chairs, two of which have a low height between 18 and 19 inches. For one of these podiatry chairs the Board was able to ascertain a MSRP of \$15,241.38.¹ The other two podiatry chairs have a low height of 21–24 inches and a MSRP range of \$4,995 to \$11,299 or an average cost of \$8,147.

Finally, the Board reviewed 11 optometry/ophthalmology chairs, all of which fall outside the current low height range. The seat height of these chairs ranged from 19.75 to 23 inches; the MSRP range was from \$4,200 to \$10,352; and the average cost was \$6,073. However, the Board notes that since the original rulemaking a new type of optometry/ophthalmology chair has entered the market, which allows the examination chair to spin out of the way to permit patients in wheelchairs to move up to and use the equipment while remaining in their personal chairs. This examination chair with the accompanying stand for the equipment is \$8,900, the chair alone is \$4,650. This specific chair also provides a headrest, movable armrests and a chair the moves up and down and reclines, but the Board was unable to determine the low height. The Board acknowledges that for examinations where transfer is not necessary for a complete and accurate examination, such as an eye examination, there is a benefit to allowing patients to remain in their wheelchairs and avoid any potential for injury that accompanies transfer. In this situation the equipment would need to meet the requirements for diagnostic equipment used by patients seated in a wheelchair at M303. Enforcement authorities would need to address applicable specifications in the scoping

¹ The Board was unable to obtain a MSRP for the UMF Power Podiatry Chair, Model number 5015.

of an enforceable rule for dual use equipment that allows patients either to remain in their wheelchairs or to transfer to the examination chair. However, one possibility would be to exempt MDE from the low transfer height requirement where transfer is not required for examination.

VI. Regulatory Process Matters

A. Regulatory Planning and Review (Executive Orders 12866, 13563 and 14094)

The Access Board has examined the impact of this final rulemaking under Executive Orders 12866, 13563, and 14094. These Executive orders direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This final rule is a significant regulatory action within the meaning of Executive Order 12866, as amended by Executive Order 14094. *See* E.O. 14094 section 1(b), 88 FR 21879 (April 11, 2023) (defining “significant regulatory action” as, among other things, regulatory actions that have an annual effect on the economy of \$200 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities, or raise legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles set forth in Executive Order 12866).

It is not possible to assess the costs or benefits of this rule with precision. The Board has analyzed the potential costs and benefits of a 17-inch low transfer height standard from a qualitative perspective, and the costs and benefits of an enforceable 17-inch low transfer height would depend in part on any scoping requirements that enforcement agencies might establish specifying the percentage of MDE that must be accessible. Unlike many of the Board’s other rulemakings that provide minimum guidelines that enforcement agencies must adopt as minimum standards for accessibility, Section 510 of the Rehabilitation Act (the statutory provision under which the Board promulgated the MDE Standards) does not require enforcement agencies to adopt the technical criteria set forth in the MDE Standards as minimum standards or at all. Enforcement agencies must undertake their own cost/

benefit analysis pursuant to Executive Order 12866 before they can adopt the MDE Standards—or portions thereof, such as the 17-inch low transfer height standard set forth in this rule—as enforceable requirements and establish scoping requirements. In the final regulatory impact analysis for the MDE Standards issued in 2017 (FRIA 2017), the Board explained that it was unable to estimate what costs (if any) manufacturers, providers, or others would incur as a result of the rule, or what level of social benefits would be accrued. Available at <https://www.access-board.gov/files/mde/mde-assessment.pdf>. Instead, that FRIA provided a brief overview of commonly used MDE in the current U.S. market to give a sense of how the technical requirements in the MDE Standards were or were not met among products being sold. *Id.* The FRIA 2017 analyzed the potential costs and benefits of the MDE Standards from a qualitative perspective. The change from a range of 17 to 19 inches to one specification of 17 inches would not have changed the analysis in the original FRIA, nor does the Access Board believe that finalizing this provision with a specification within the already proposed range would have an annual effect on the economy of \$200 million or more. For this final rule the Access Board has followed the same methodology of analyzing the potential costs and benefits from a qualitative perspective.

The MDE FRIA 2017 reviewed the market cost of particular models of MDE but did not assess the cost of compliance with the MDE Standards. During our market research for the 2023 MDE NPRM and this final rule, we again looked at the cost of MDE on the market and also assessed the low transfer heights, when available on manufacturer or other third party websites; however, there were other differences in the MDE, beyond just a lower transfer height, so we are unable to attribute all of the cost difference to simply a lower transfer height. For example, we saw a wide range in the adjustable examination table market; tables with a low height of 18 to 19 inches had an MSRP range of \$2,127 to \$14,144. Currently, on the market there is one examination table that reaches a low transfer height below 17 inches, the Midmark 626 Barrier-Free examination chair, which reaches a low height of 15.5 inches and has an MSRP of \$10,644. 2023 Access Board Review of MDE Low Height and MSRP Available at <https://www.regulations.gov/docket/ATBCB-2023-0001/document>.

The Board received a couple of comments in response to the questions

posed regarding this regulatory assessment in the 2023 MDE NPRM. In Section 7 above, we summarize and address comments regarding cost and implementation time. Additionally, one commenter raised concerns about the data collected from manufacturer websites and asserted that the seat heights collected from company websites were marketing or advertised seat heights and not based on actual measurements. This commenter suggested the Access Board physically measure each product referenced in 2023 MDE NPRM document, *the Access Board Review of MDE Low Height and MSRP* to determine height. Available at <https://www.regulations.gov/document/ATBCB-2023-0001-0002>.

In creating the market review for the 2023 MDE NPRM and this final rule, the Access Board followed the same protocols that it relied on in the 2017 MDE FRIA, and again relied on publicly available information to determine the current status of MDE on the market. The Board relies on the information that manufacturers have put in their marketing specifications for the seat height of MDE for this assessment.

The benefits of establishing technical specifications for accessible MDE were well documented throughout the original MDE rulemaking process, including the extensive explanation in the Final Regulatory Analysis (FRIA 2017). Available at <https://www.access-board.gov/files/mde/mde-assessment.pdf>. These arguments continue to be valid today; as noted above, 60 percent of examination rooms still provide only a fixed-height table which is completely inaccessible to a person in a wheelchair.

In 2020, the National Council on Disability (NCD) issued a report titled *Enforceable Accessible Medical Equipment Standards—A Necessary Means to Address the Health Care Needs of People with Mobility Disabilities*. Available at <https://ncd.gov/publications/2021/enforceable-accessible-medical-equipment-standards>.

In this report, NCD describes the difficulty people with mobility disabilities still face in trying to access medical care. NCD explains that “[a]dults with physical disabilities are at higher risk of foregoing or delaying necessary care and having unmet medical, dental, and prescription needs compared to adults without disabilities. Lack of timely access to primary and preventive care can result in the development of chronic and secondary conditions as well as exacerbation of the original disability condition itself, resulting in poorer health outcomes. Of

the 61 million people with disabilities in the United States, more than 20 million people over the age of 18 years have a disability that limits their functional mobility; this can pose challenges to accessing standard medical diagnostic equipment.” *Id.* at 13. Further, NCD explains that “[i]f patients are not transferred to an examination table, when it is clinically appropriate, it may be difficult if not impossible to conduct a comprehensive examination, which may lead to missed or delayed diagnosis.” *Id.* at 17. NCD explains, and the Access Board concurs, that accessible MDE not only benefits the quality of care of patients with disabilities, but also impacts “the occupational health and safety of health care workers, especially nurses and nursing assistants.” *Id.* at 19. NCD notes that research is showing a relationship between musculoskeletal injuries and workers’ compensation claims for health care professionals and safe patient handling, “due in part to the overreliance on manual transfers to inaccessible equipment.” *Id.*

While there are many provisions within the MDE Standards that address all aspects of the equipment, including the requirement for the ability to use a lift with the MDE (M301.4), to ensure that a person is able to be examined on the diagnostic equipment, the low transfer height selected should provide access to independent transfers to the largest percentage of people who use wheeled mobility devices that are capable of such a transfer. Independent transfer is safer for the patient and provides a safer environment for the health care provider in reducing the risk of injury during an assisted transfer.

As explained above in Dr. D’Souza’s report, if the Board was to adopt a low transfer height of 19 inches, then between 39 to 42 percent of wheelchair users would not be able to effectuate a level transfer. However, by requiring a low height of 17 inches and high height of 25 inches and at least four other intermediate heights in between, the adjustable height transfer surface should be accessible to and usable by almost all (95 percent) of wheelchair users that can independently transfer.

The Board asserts that the benefits of establishing a low transfer height standard of 17 inches, both for the millions of Americans that use mobility devices and for the medical professionals and caregivers assisting

those individuals transfer, outweighs the potential costs of establishing a low transfer height standard of 17 inches. Specifically, the Board finds that there is a significant need for accessible medical diagnostic equipment and that the safety of both the patient and caregiver are affected by ensuring as many individuals as possible who are capable of independent transfer are provided the opportunity to effectuate that transfer with a height specification for medical diagnostic equipment that is level to their current mobility device. These benefits, outweigh the costs of establishing a 17-inch low transfer height standard. However, as noted above, the Access Board has not assessed who would incur these potential costs and to what extent. Agencies considering whether to adopt the 17-inch transfer height as a requirement would be required to analyze the costs and benefits of doing so, including by assessing factors not included in the Access Board’s analysis, such as the number of accessible devices required at facilities, when full compliance would be required, and whether covered entities would be allowed to rely on compliance with the 17- to 19-inch range for MDE procured during the pendency of the sunset provision and during any time thereafter. Therefore, the Access Board expects that if rulemaking agencies propose to adopt the 17-inch low transfer height standard as enforceable, they will carry out regulatory assessments that provide specific cost and benefit estimates relevant to their rules.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to analyze the impact of regulatory actions on small entities, unless an agency certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 604, 605 (b). The MDE Standards do not impose any mandatory requirements on any entity, including small entities. Therefore, we did not prepare a final regulatory flexibility analysis.

C. Federalism (Executive Order 13132)

The Access Board has evaluated this final rule in accordance with the principles and criteria set forth in Executive Order 13132. We have determined that this action will not have a substantial direct effect on the

States, the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (codified at 2 U.S.C. 1531 *et seq.*) (“UMRA”) generally requires that Federal agencies assess the effects of their discretionary regulatory actions that may result in the expenditure of \$100 million (adjusted for inflation) or more in any one year by the private sector, or by state, local, and Tribal governments in the aggregate. The MDE standards do not impose any mandatory requirements on State, local, or Tribal governments or the private sector. Therefore, the Unfunded Mandates Reform Act does not apply.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA), Federal agencies are generally prohibited from conducting or sponsoring a “collection of information: as defined by the PRA, absent OMB approval. See 44 U.S.C. 3507 *et seq.* The MDE Standards do not impose any new or revised collections of information within the meaning of the PRA.

F. Congressional Review Act

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

List of Subjects in 36 CFR Part 1195

Health care, Individuals with disabilities, Medical devices.

For the reasons stated in the preamble, and under the authority of 29 U.S.C. 794f, the Board amends 36 CFR part 1195 as follows:

PART 1195—STANDARDS FOR ACCESSIBLE MEDICAL DIAGNOSTIC EQUIPMENT

■ 1. The authority citation for part 1195 continues to read as follows:

Authority: 29 U.S.C. 794f.

■ 2. Amend appendix by:

- a. Revising M301.2.1, paragraph A;
- b. Removing and reserving M301.2.2;
- c. Revising M302.2.1, paragraph A; and
- d. Removing and reserving M302.2.2.

The revisions read as follows:

Appendix to Part 1195—Standards for Accessible Medical Diagnostic Equipment

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Chapter 3 * * *

M301 * * *

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M301.2.1 * * *

A. A low transfer position at a height of 17 inches (430 mm);

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M302 * * *

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M302.2.1 * * *

A. A low transfer position at a height of 17 inches (430 mm);

* * * * *

Approved by vote of the Access Board on January 24, 2024.

Christopher Kuczynski,

General Counsel, U.S. Access Board.

[FR Doc. 2024–16266 Filed 7–24–24; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R01–OAR–2024–0310; FRL–12108–01–R1]

Designations of Areas for Air Quality Planning Purposes; New York, New Jersey, Connecticut; New York-Northern New Jersey-Long Island, NY-NJ-CT 2015 8-Hour Ozone Nonattainment Area; Reclassification to Serious

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (CAA or the “Act”), the Environmental Protection Agency (EPA) is granting a request from the States of New York, New Jersey, and Connecticut to reclassify the New York-Northern New Jersey-Long Island, NY-NJ-CT ozone nonattainment area from “Moderate” to “Serious” for the 2015 8-hour ozone national ambient air quality standards (NAAQS). This action does not reclassify any areas of Indian country within the boundaries of this ozone nonattainment area.

DATES: This rule is effective on July 25, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2024–0310. All documents in the docket are listed on the <https://www.regulations.gov>

website. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA, and at the U.S. Environmental Protection Agency, EPA Region 2 Regional Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: For questions relating to Connecticut, contact Bob McConnell, Air and Radiation Division (Mail Code 5–MD), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1046, or by email at mcconnell.robert@epa.gov, and for questions relating to New York and/or New Jersey, contact Fausto Taveras, Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866, at (212) 637–3378, or by email at Taveras.Fausto@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

- I. Reclassification of the New York-Northern New Jersey-Long Island, NY-NJ-CT Area to Serious Ozone Nonattainment
- II. Statutory and Executive Order Reviews

I. Reclassification of the New York-Northern New Jersey-Long Island, NY-NJ-CT Area to Serious Ozone Nonattainment

Effective August 3, 2018, the EPA classified the New York-Northern New Jersey-Long Island, NY-NJ-CT area under the CAA as “Moderate” for the 2015 8-hour ozone NAAQS. *See* 83 FR 25776 (June 4, 2018). This area is herein referred to as the NY-NJ-CT 2015 NAAQS nonattainment area. Classification of this area as a Moderate ozone nonattainment area established a

requirement that the area attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than six years from designation, *i.e.*, August 3, 2024. On May 23, 2024, the New Jersey Department of Environmental Protection requested that the EPA reclassify the NY-NJ-CT 2015 NAAQS nonattainment area from moderate to Severe, or, in the alternative, to Serious if the States of New York and Connecticut did not both submit requests to reclassify the area to Severe but did submit requests to reclassify this area to Serious. On June 5, 2024, the New York Department of Environmental Conservation (NYSDEC) requested that the NY-NJ-CT 2015 NAAQS nonattainment area be reclassified to Serious, and on June 13, 2024, the Connecticut Department of Energy and the Environment also submitted a request that the NY-NJ-CT 2015 NAAQS nonattainment area be reclassified to Serious.

We are approving these States’ reclassification request under section 181(b)(3) of the Act, which provides for “voluntary reclassification.” Because the plain language of section 181(b)(3) mandates that we approve such a request, the EPA is granting the States’ request for voluntary reclassification under section 181(b)(3) for the NY-NJ-CT 2015 NAAQS nonattainment area for the 2015 ozone NAAQS, and the EPA is reclassifying the area from Moderate to Serious. Because of this action, the NY-NJ-CT 2015 NAAQS nonattainment area must now attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than nine years from the date of the initial designation as nonattainment, *i.e.*, August 3, 2027. Applicable SIP requirements and deadlines associated with the reclassification will be addressed in a separate notice.

Within the geographic boundaries of the NY-NJ-CT 2015 NAAQS nonattainment area Indian country exists under the jurisdiction of the Shinnecock Indian Nation. Because the State of New York does not have jurisdiction over Indian country located within its borders, NYSDEC’s request to reclassify the NY-NJ-CT 2015 NAAQS nonattainment area does not apply to this area of Indian country. The EPA implements Federal CAA programs, including reclassifications, in Indian country consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. The EPA has not received a reclassification request from any Tribe with jurisdiction within the NY-NJ-CT 2015 NAAQS nonattainment area. In this action, we are adding regulatory text to 40 CFR part 81 to indicate that the area under the jurisdiction of the Shinnecock Indian

Nation will retain the Moderate classification and the areas under the jurisdiction of the States will be reclassified as Serious.

The EPA has determined that this action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation where public notice and comment procedures are “impracticable, unnecessary or contrary to the public interest.” The EPA has determined that public notice and comment for this action is unnecessary because our action to approve voluntary reclassification requests under CAA section 181(b)(3) is nondiscretionary both in its issuance and in its content. As such, notice and comment rulemaking procedures would serve no useful purpose.

The EPA also finds that there is good cause under APA section 553(d)(3) for this reclassification to become effective on the date of publication. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. The schedule for required plan submittals for the NY-NJ-CT 2015 NAAQS nonattainment area under the new classification will be proposed in a separate action. For this reason, the EPA finds good cause under APA section 553(d)(3) for this reclassification to become effective on the date of publication.

II. Statutory and Executive Order Reviews

Under the Clean Air Act this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies. Connecticut, New York, and New Jersey did not evaluate environmental justice considerations as part of their submittals; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this

action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: July 17, 2024.

David Cash,

Regional Administrator, EPA Region 1.

Dated: July 18, 2024.

Lisa Garcia,

Regional Administrator, EPA Region 2.

For the reasons set out in the preamble, the Environmental Protection Agency amends 40 CFR Chapter 1 as set forth below:

PART 81—DESIGNATION FOR AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*
Subpart C—[Amended]
■ 2. In § 81.307 the table entitled “Connecticut—2015 8-Hour Ozone NAAQS” is amended by revising the

entry for “New York-Northern New Jersey-Long Island, NY-NJ-CT” to read as follows:
§ 81.307 Connecticut.
* * * * *

CONNECTICUT—2015 8-HOUR OZONE NAAQS
[Primary and Secondary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
New York-Northern New Jersey-Long Island, NY-NJ-CT Fairfield County. Middlesex County. New Haven County.		Nonattainment	July 25, 2024	Serious.

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the State has regulatory authority under the Clean Air Act for such Indian country.
² This date is August 3, 2018, unless otherwise noted.

■ 3. In § 81.331 the table entitled “New Jersey—2015 8-Hour Ozone NAAQS” is amended by revising the entry for “New

York-Northern New Jersey-Long Island, NY-NJ-CT” to read as follows:
§ 81.331 New Jersey.
* * * * *

NEW JERSEY—2015 8-HOUR OZONE NAAQS
[Primary and Secondary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
New York-Northern New Jersey-Long Island, NY-NJ-CT Bergen County. Essex County. Hudson County. Hunterdon County. Middlesex County. Monmouth County. Morris County. Passaic County. Somerset County. Sussex County. Union County. Warren County.		Nonattainment	July 25, 2024	Serious.
* * * * *	*	*	*	*

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the State has regulatory authority under the Clean Air Act for such Indian country.
² This date is August 3, 2018, unless otherwise noted.

* * * * *
■ 4. In § 81.333 the table entitled “New York—2015 8-Hour Ozone NAAQS” is amended by revising the entry for “New

York-Northern New Jersey-Long Island, NY-NJ-CT” and adding an entry at the end of the table for “Shinnecock Indian Nation”.
The revision and addition reads as follows:
§ 81.333 New York.
* * * * *

NEW YORK—2015 8-HOUR OZONE NAAQS
[Primary and Secondary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
New York-Northern New Jersey-Long Island, NY-NJ-CT Bronx County. Kings County. Nassau County.		Nonattainment	July 25, 2024	Serious.

NEW YORK—2015 8-HOUR OZONE NAAQS—Continued
[Primary and Secondary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
New York County. Queens County. Richmond County. Rockland County. Suffolk County. Westchester County. Shinnecock Indian Nation		Nonattainment	August 3, 2018	Moderate.
* *	* *	* *	* *	* *

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the State has regulatory authority under the Clean Air Act for such Indian country.

² This date is August 3, 2018, unless otherwise noted.

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[FR Doc. 2024–16244 Filed 7–24–24; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17–84; FCC 23–109; FR ID 232182]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's revised pole attachment rules. This document is consistent with *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Fourth Report and Order, Declaratory Ruling*, FCC 23–109, which stated that the Bureau would publish a document in the **Federal Register** announcing the effective date of the revised rules.

DATES: Amendatory instruction 2 (adding § 1.1411(c)(4)) and amendatory instruction 4 (adding § 1.1415), published at 89 FR 2151, January 12, 2024, are effective on July 25, 2024

FOR FURTHER INFORMATION CONTACT: Michael Ray, Attorney Advisor, Wireline Competition Bureau, at (202) 418–0357, or by email at Michael.Ray@fcc.gov. For additional information concerning the Paperwork Reduction

Act information collection requirements, contact Nicole Ongele at (202) 418–2991 or nicole.ongele@fcc.gov.

SUPPLEMENTARY INFORMATION: On December 13, 2023, the Commission adopted *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Fourth Report and Order, Declaratory Ruling*, FCC 23–109, published at 89 FR 2151, January 12, 2024. In the *Fourth Report and Order*, the Commission adopted a revision to 47 CFR 1.1411 that provides communications providers with information about the status of the utility poles they plan to use as part of their broadband buildouts. The Commission also added new 47 CFR 1.1415 that creates a new expedited process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment and established FCC Form 5653—Request for RBAT Review and Assessment—to initiate the expedited process. The Commission stated that these rule changes may contain new or modified information collection requirements and would not become effective until OMB completes its review of any information collection requirements that the Bureau determined is required under the Paperwork Reduction Act. The Commission also directed the Bureau to announce the effective date for the revision to § 1.1411 and new § 1.1415 by subsequent public release.

On July 2, 2024, OMB approved, for a period of three years, the information collection requirements related to the pole attachment rules contained in the *Fourth Report and Order*. The OMB Control Number is 3060–1151. The Bureau publishes this document as an announcement of the effective date of the pole attachment rules adopted in the

Fourth Report and Order, as well as FCC Form 5653. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include the OMB Control Number 3060–1151 in your correspondence. The Commission also will accept your comments via email at PR@fcc.gov. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Bureau is notifying the public that it received final OMB approval on July 2, 2024, for the information collection requirements contained in the changes to the Commission's pole attachment rules in 47 CFR 1.1411 and 1.1415, as well as FCC Form 5653.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The foregoing notification is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the affected respondents are as follows:

OMB Control Number: 3060–1151.

OMB Approval Date: July 2, 2024.

OMB Expiration Date: July 31, 2027.

Title: Sections 1.1411, 1.1412, 1.1415, and 1.1416 Pole Attachment Access and Dispute Resolution Requirements.

Form Number: FCC Form 5653.

Type of Review: Revision of a currently-approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,380 respondents; 165,009 responses.

Estimated Time per Response: 0.25–5 hours.

Frequency of Response: On occasion reporting requirement and third-party disclosure requirements.

Obligation to Respond: Mandatory or required to obtain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 224.

Total Annual Burden: 120,980 hours.

Total Annual Cost: \$1,800.

Needs and Uses: The Commission received OMB approval for a revision to an existing information collection, OMB Collection No. 3060–1151. In *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Fourth Report and Order, Declaratory Ruling*, FCC 23–109, published at 89 FR 2151, January 12, 2024, the Commission adopted rules that implement the pole attachment requirements in section 224 of the Communications Act of 1934, as amended. The Order substantially revised 47 CFR 1.1411, redesignated existing 47 CFR 1.1415 as 47 CFR 1.1416, and added a new 47 CFR 1.1415.

Section 1.1411. In the Order, the Commission adopted regulations requiring utilities to share information about their poles with prospective telecommunications and cable attachers. The Commission created this requirement to help improve the attachment process and potentially reduce disputes, thus facilitating broadband deployment. Specifically, the Order requires utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports, or any intervening, periodic reports created before the next cyclical inspection, for the poles covered by a submitted attachment application, including whether any of the affected poles have been “red tagged” by the utility for replacement and the scheduled replacement date or timeframe (if any). For the purposes of this new transparency requirement, a cyclical pole inspection report is any report that a utility creates in the normal course of its business that sets forth the

results of the routine inspection of its poles during the utility’s normal pole inspection cycle, while a periodic pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of the inspection of any of its poles outside the utility’s normal pole inspection cycle. When asking for information about the status of a utility’s poles for a planned buildout, the attacher must submit its information request no earlier than contemporaneously with an attachment application. The utility will have ten business days to respond to the request. Where an attacher amends its application based on the information it receives from the utility, the utility will have the option to restart the 45-day period for responding to the application on the merits and conducting the required make-ready survey. Regardless of whether the utility elects to restart the 45-day response period, any additional survey costs necessitated by the amended application, such as a second survey after a survey for the original application has been completed, will be borne by the new attacher consistent with the new attacher’s obligation to pay for make-ready costs associated with its application. The Commission also required utilities to retain copies, in whatever form they were created, of any such cyclical or periodic pole inspection reports they conduct in the normal course of business, until such time as the utility completes a superseding cyclical pole inspection report covering the poles included in the attachment application. The Commission reiterated that utilities are required to provide only the information they already possess and track in the normal course of conducting pole inspections at the time of the attacher’s request for data. The Commission did not require utilities to collect or create new information for the purpose of responding to such requests or to provide all information they may possess on the affected poles outside their pole inspection reports. The Commission found that adopting this limited requirement achieves a balance between a potential attacher’s need for more information about the poles that it plans to use as part of a broadband buildout and the utility’s interest in minimizing the burden of mandatory disclosures.

Section 1.1415. To expedite the resolution of pole attachment disputes that impede or delay active broadband deployment projects, the Commission established the Rapid Broadband Assessment Team (RBAT), which will

consist of one or more staff from the Commission’s Enforcement Bureau and one or more staff from the Commission’s Wireline Competition Bureau. The Commission created the RBAT in an effort to make the Commission’s pole attachment dispute resolution process more responsive and adaptable with the goal of facilitating broadband deployment. The Order charged the RBAT with expediting the resolution of such disputes by swiftly engaging key stakeholders, gathering relevant information, distilling issues in dispute, and recommending to the parties, where appropriate, an abbreviated mediation process, placement of a complaint (or portion of a complaint) on the Commission’s Accelerated Docket based on consideration of specified criteria, and/or any other action that the RBAT determines will help the parties resolve their dispute. To request RBAT review and assessment of a dispute that a party to the dispute contends is impeding or delaying deployment of broadband facilities, the party must first notify the Chief of the Enforcement Bureau’s Market Disputes Resolution Division (MDRD) of the request by phone and in writing. The MDRD Chief will direct the party to FCC Form 5653—Request for RBAT Review and Assessment—on the MDRD website and to instructions for completing and electronically transmitting the form to the RBAT. The form will elicit information relevant to the scope and nature of the dispute, and to whether the dispute is appropriate for expedited mediation and/or placement on the Accelerated Docket. The information submitted by a party on the FCC Form 5653 will assist the RBAT in efficiently reviewing and assessing the party’s dispute and in providing guidance on the most effective means of resolving it. The RBAT also may request that one or both parties provide the RBAT with documentation or other information relevant to the dispute. After reviewing the parties’ submissions, the RBAT will provide guidance and advice to the parties on the most effective means of resolving their dispute, including staff-supervised mediation, use of the Accelerated Docket, and/or other action. Should the RBAT recommend staff-supervised mediation, it shall be conducted pursuant to 47 CFR 1.737, the requirements of which may be modified or waived as appropriate in this context or as needed in light of the facts or circumstances of a particular case. In the event that the parties are unable to settle their dispute, and a prospective complainant seeks placement of its complaint on the Accelerated Docket,

the RBAT will decide whether the complaint or a portion of the complaint is suitable for inclusion on the Accelerated Docket based on a totality of the factors listed in 47 CFR 1.1415(e).

List of Subjects in 47 CFR Part 1

Telecommunications, cable, utility, procedures, filing requirements.

Federal Communications Commission

Katura Jackson,

Federal Register Liaison.

[FR Doc. 2024–16209 Filed 7–24–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2023–0053;
FXES1111090FEDR–245–FF09E22000]

RIN 1018–BG55

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Sira Curassow and Southern Helmeted Curassow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for the Sira curassow (*Pauxi koepckeae*) and southern helmeted curassow (*Pauxi unicornis*), two bird species from South America. This rule extends the protections of the Act to these species.

DATES: This rule is effective August 26, 2024.

ADDRESSES: This final rule is available on the internet at <https://www.regulations.gov>. Comments and materials we received are available for public inspection at <https://www.regulations.gov> at Docket No. FWS–HQ–ES–2023–0053.

Availability of supporting materials: Supporting materials we used in preparing this rule, such as the species status assessment report, are available at <https://www.regulations.gov> at Docket No. FWS–HQ–ES–2023–0053.

FOR FURTHER INFORMATION CONTACT: Rachel London, Manager, Branch of Delisting and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2491. Individuals in the United States who are

deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

Please refer to the proposed listing rule (88 FR 34800) for the Sira curassow and southern helmeted curassow published on May 31, 2023, for a detailed description of previous Federal actions concerning these species.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the Sira curassow and southern helmeted curassow. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of these species, including the impacts of past, present, and future factors (both negative and beneficial) affecting these species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing actions under the Act, we solicited independent scientific review of the information contained in the Sira curassow and southern helmeted curassow SSA report. As discussed in the proposed rule, we sent the SSA report to five independent peer reviewers and received one response. The peer review can be found at <https://www.regulations.gov> under Docket No. FWS–HQ–ES–2023–0053. In preparing the proposed rule, we incorporated the results of this review, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule. A summary of the peer review comments and our responses can be found in the proposed rule (88 FR 34800; May 31, 2023).

Summary of Changes From the Proposed Rule

In this final rule, we make no substantive changes from the May 31, 2023, proposed rule (88 FR 34800) after considering the comments we received during the comment period.

Summary of Comments and Recommendations

In the proposed rule published on May 31, 2023 (88 FR 34800), we requested that all interested parties submit written comments on the proposal by July 31, 2023. We also contacted appropriate Federal agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. All substantive information received during comment periods has either been incorporated directly into this final determination or is addressed below.

Public Comments

We considered all comments and information we received from the public during the comment period for the proposed listing of the Sira curassow and southern helmeted curassow. We received a total of five comments from the public, all of which support the proposed listing of these species as endangered.

One commenter suggested that both species may be in international trade because there may be demand for species in the *Pauxi* genus, particularly for ornamental use of the species' helmet (casque). The commenter provided some examples of trade in *Pauxi* species; however, the species involved were either not the Sira or southern helmeted curassow or the species were not determined. While the commenter noted some efforts to regulate and monitor international trade in southern helmeted curassow by other countries, international trade has not been noted for the Sira curassow or southern helmeted curassow in assessments of these species (BLI 2023a and 2023b, unpaginated; IUCN 2023b and IUCN 2023c, unpaginated). Our evaluation of the best available data does not indicate international trade is a threat to either species. However, as explained in further detail below, after evaluating the best scientific and commercial data available regarding threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined endangered species status for each species as proposed.

Four of the five public comments suggested that the length of time between when we were petitioned to list the southern helmeted curassow in 1991 and the proposed listing in 2023 is too long, particularly because we had determined the species was warranted for listing in 1994 but precluded by other priorities. We recognize the length of time between first making the southern helmeted curassow a

candidate species and this final listing rule. For more information on our process and progress making listing decisions for foreign species, see the annual review of candidate species, annual notification of findings on resubmitted petitions, and description of progress on listing actions (88 FR 41560; June 27, 2023). In June 2023, the Service released its most recent Foreign Species Workplan for addressing the Act’s foreign listing decisions, which is available online at: <https://www.fws.gov/project/foreign-species-listing-workplan>.

I. Final Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the Sira curassow (*Pauxi koepckeae*) and southern helmeted curassow (or horned curassow; *Pauxi unicornis*) is presented in the SSA report (version 1; Service 2023, pp. 2–8).

The Sira curassow, which is endemic to central Peru, and southern helmeted curassow, which is endemic to central Bolivia, are gallinaceous birds (relating to the order Galliformes of heavy-bodied, largely terrestrial birds) in the Cracidae family (subfamily Cracinae; del Hoyo 1994, in Hosner et al. 2016, p. 6; del Hoyo et al. 2020a, unpaginated). Both species are large (83–94 centimeters (32–37 inches) in length) and relatively heavy-bodied (about 3.6 kilograms (8 pounds)) with bright red bills and a pale blue “helmet” (casque)

atop their heads (del Hoyo et al. 2020b, unpaginated).

Both curassow species occur on the eastern side of the Andes Mountains of South America, although their ranges do not overlap and are separated by more than 1,000 kilometers (km) (621 miles (mi)) (Gastañaga et al. 2007, p. 63). The Sira curassow is resident in cloud forests at mid to high elevation (1,100 to 1,500 meters (m) (3,609 to 4,921 feet (ft)) above sea level (asl); Begazo 2022, unpaginated; Beirne et al. 2017, p. 150; Gastañaga et al. 2011, p. 268) and is known only from the Cerros del Sira in central Peru that is an isolated mountain outcrop of the Peruvian Andes. Almost all the species’ range is within the El Sira Communal Reserve (Birdlife International (BLI) 2023a, unpaginated; Gastañaga et al. 2011, p. 269; Gastañaga et al. 2007, p. 63; Tobias and del Hoyo 2006, p. 61). The southern helmeted curassow is resident at lower elevations (400 to 1,400 m (1,312 to 4,593 ft) asl) in upper tropical and lower montane zones in central Bolivia (Herzog and Kessler 1998, pp. 46–47; Cox et al. 1997, p. 200; Cordier 1971, p. 10; Birds of Bolivia 2019, unpaginated; Beirne et al. 2017, p. 150), although most observations are between 500 and 900 m (1,640 to 2,953 ft) asl (Armonía 2021, p. 3). The species occurs only within three national parks in central Bolivia: Amboró, Carrasco, and Isiboro-Securé Indigenous Territory and National Park (TIPNIS) (BLI 2023b, unpaginated).

Both the Sira curassow and southern helmeted curassow are endemic to small

areas in relatively narrow elevational bands and are considered rare, locally uncommon with densities estimated at less than one individual per square kilometer, and their populations are decreasing (BLI 2023a and 2023b, unpaginated). The Sira curassow was surveyed in 2006 and 2008, but rangewide surveys have not occurred for this species (Gastañaga et al. 2011, p. 273). The species was observed in one population at four locations, all located within 30 km (18.6 mi) of each other (Gastañaga et al. 2011, p. 273). The Sira curassow’s population is very small (50–249 mature individuals) and occurs within 550 square kilometers (km²) (212 square miles (mi²)) (BLI 2023a, unpaginated; MacLeod and Gastañaga in litt. 2014, cited in BLI 2018a, unpaginated). The southern helmeted curassow was surveyed in 2018 and 2021 in the three national parks where the species resides. The southern helmeted curassow’s population is also small and is less than what it was historically, including declining by 90 percent over the past 20 years (Boorsma 2023, pers. comm.). The population is currently estimated at 1,000–4,999 individuals within 10,700 km² (4,131 mi²) (BLI 2023b, unpaginated; Armonía 2018, pp. 3–4; Boorsma 2023, pers. comm.). Information about the status of both species populations is supplemented with anecdotal information based on interviews with local indigenous communities. The following table presents population information for each species:

TABLE—SIRA CURASSOW AND SOUTHERN HELMETED CURASSOW POPULATION SIZE, COUNTRY OF ORIGIN, AND DISTRIBUTION

Species	Population	Country	Range/distribution
Sira curassow	50 to 249 mature individuals ..	Peru	Cerros del Sira; in the El Sira Communal Reserve.
Southern helmeted curassow ..	1,000 to 4,999 individuals	Bolivia	Amboró and Carrasco National Parks and Isiboro-Securé Indigenous Territory and National Park (TIPNIS).

The Sira curassow and southern helmeted curassow are both large, ground-dwelling birds very similar in appearance and life history. Large body size in tropical birds is often associated with large territory size, small population size, and low reproductive rate (Pearson et al. 2010, p. 508). The Sira curassow and southern helmeted curassow likely take at least 2 to 3 years to reach sexual maturity and have low reproductive outputs as females lay one egg per clutch (Cox et al. 1997, p. 207; Banks 1998, p. 154). We are not aware of how many clutches per year these

species produce in the wild; however, in captivity, the southern helmeted curassow produced four clutches within 1 year, each with one egg per clutch (Banks 1998, p. 154). Generation time, which is the average time between two consecutive generations in lineages of a population, is estimated at 14.5 years (BLI 2023a and 2023b, unpaginated). Detailed information on the biology of both species is limited because, despite their relatively large size, these species are difficult to detect and not well studied.

Regulatory and Analytical Framework
Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. On April 5, 2024, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in

50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and what criteria we apply when designating listed species' critical habitat (89 FR 24300). On the same day, the Service published a final rule revising our protections for endangered species and threatened species at 50 CFR part 17 (89 FR 23919). These final rules are now in effect and are incorporated into the current regulations. Our analysis for this final decision applied our current regulations. Given that we proposed listing the Sira curassow and southern helmeted curassow under our prior regulations (revised in 2019), we have also undertaken an analysis of whether our decision would be different if we had continued to apply the 2019 regulations; we concluded that the decision would be the same. The analyses under both the regulations currently in effect and the 2019 regulations are available on <https://www.regulations.gov>.

The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or

required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term "foreseeable future," which appears in the statutory definition of "threatened species." Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M-37021, January 16, 2009; "M-Opinion," available online at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf>). The foreseeable future extends as far into the future as the U.S. Fish and Wildlife Service and National Marine Fisheries Service (hereafter, the Services) can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. "Reliable" does not

mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the viability of Sira curassow and southern helmeted curassow, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases (or decrease with decreases in) in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available data to characterize viability as the ability of a species to sustain populations in the wild over time. We

use this data to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at FWS-HQ-ES-2023-0053 on <https://www.regulations.gov>.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and their resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

The Sira curassow and southern helmeted curassow are both large, ground-dwelling birds very similar in appearance and life history. These species occur in the Yungas forests and adjacent evergreen forest, and they rely on dense to semi-open primary forested areas with relatively open understory.

Large tropical birds, such as the two curassow species, are often associated with large territory size (Pearson et al. 2010, p. 508; Thorton et al. 2012, p. 572; Rios et al. 2021, p. 418). However, the forest area or patch size required for the Sira curassow and southern helmeted curassow is unknown. These species are primarily frugivores (fruit-eaters) and require larger forested patch sizes than non-frugivores because they depend on naturally patchy resources in larger home ranges. Fragmentation into smaller forest patches could cause scarcity and a reduction of food resources within those smaller fragments. As patch size decreases, large-bodied species are generally at a disadvantage because they need more space to nest and forage compared to small-ranging species (Kattan et al. 1994, pp. 141–143; Lees and Peres 2009, pp. 286–288; Lees and Peres 2010, p. 619; Vetter et al. 2011, p. 6; Thorton et al. 2012, p. 572; Kattan et al. 2016, pp. 27–28; Rios et al. 2021, pp. 416–418). The forested and steep slopes where the species occur may provide some protection from human influence.

Hunting, habitat loss and degradation, small population size, climate change, and protected areas are the main factors that affect the species' viability throughout their ranges. Hunting is the primary factor that negatively affects the Sira curassow and southern helmeted curassow throughout their respective ranges (del Hoyo et al. 2020a, 2020b, unpaginated). Habitat loss and degradation affect both species, although to a lesser degree than hunting (Rios et al. 2021, p. 418). Limited loss of forest cover and degradation has occurred within the range of these

species because of small-scale agriculture such as coca plantations and road building. However, human incursions into the protected areas are likely to increase. Because habitat loss and hunting pressure often work in tandem, further human encroachment into their habitats that results in deforestation, road building, and other land clearance creates opportunities to increase human encounters and hunting opportunities (Laurance et al. 2009, p. 662). Literature reviews of several species in the cracid family, including curassows, demonstrate that they are more likely to persist in forested landscapes with low human density and greater distance from human settlements, primarily because these forested areas would be unaffected, or minimally affected by hunting pressure (Thorton et al. 2012, p. 572; Kattan et al. 2016, pp. 27–28; Rios et al. 2021, pp. 416–418).

Climate change will result in additional loss of forested habitat for these species by shifting these species' habitat upslope, reducing these species' range because the geometric shape of mountains means there is less area on mountain slopes as elevation increases (Chen et al. 2011, entire; Freeman et al. 2018, p. 11983; Forero-Medina et al. 2011, entire; Sekercioglu et al. 2012, p. 3). A meta-analysis of existing data for a suite of taxonomic groups across multiple geographic regions and a study of tropical birds within the El Sira Communal Reserve in Peru showed a median shift to higher elevations of approximately 10 m (33 ft) per decade (Chen et al. 2011, p. 1024; Forero-Medina et al. 2011, p. 4). In the case of tropical bird species in the El Sira Communal Reserve, a gradual, upward shift occurred because of changes in temperature, habitat conditions, and the availability of food resources (Forero-Medina et al. 2011, p. 4). Because birds are endothermic and may tolerate a wider range of temperatures, species that shift their ranges may be responding more to gradual changes in habitat availability, food resources based on long-lived elements of their ecosystem (trees), and response of competitors, than to temperatures, *per se* (Forero-Medina et al. 2011, p. 4). However, habitat expansion to newly suitable areas will not take place at the same rate as habitat loss due to climate change, especially for relatively sedentary tropical forest species (Sekercioglu et al. 2012, p. 12). Vegetation changes make it more difficult for species to find suitable habitat that will provide their preferred climate envelope and nesting and

foraging needs (Forero-Medina et al. 2011, p. 4).

Almost all the Sira curassow's range is within the El Sira Communal Reserve in Peru. The southern helmeted curassow's range in Bolivia is within three national parks: Amboró, Carrasco, and TIPNIS. The protected areas where these species occur were designated by laws in Peru and Bolivia. These areas are primarily inhabited by local indigenous communities that share management responsibilities with government ministries. The protected areas have been somewhat successful at limiting the magnitude of negative effects to biodiversity within the protected-area boundaries. However, the lack of personnel and financial resources make the enforcement of the protected-area boundaries difficult, which has resulted in the loss of wildlife because of continued hunting by locals and people from outside the protected areas as well as loss of primary forest resulting from small-scale agriculture, illegal logging, and road building within the protected-area boundaries (Bucklin 2010, p. 44; Solano 2010, p. 37).

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Conservation Efforts and Regulatory Mechanisms

Our evaluation of the status of the species considers the extent to which threats are reduced or removed as a result of conservation efforts or existing regulatory mechanisms.

Within Peru and Bolivia, we do not have information on whether either of these species are protected species under existing laws in their range countries. However, the Sira curassow and southern helmeted curassow reside in protected areas throughout their respective ranges. Almost all the Sira curassow's range is within the El Sira Communal Reserve in Peru. The southern helmeted curassow's range in

Bolivia is within three national parks: Amboró, Carrasco, and TIPNIS.

In Peru, policies on protected areas were established in the Natural Protected Areas Act (1997), the Master Plan for Natural Protected Areas (1999), and the General Environmental Act (2005) (Solano 2010, pp. 6–7, 46–49). The primary objective of the protected areas is the conservation of biological diversity (Solano 2010, pp. 12–13). Protected areas are monitored by the Intendancy of Protected Natural Areas and managed by the National Service for Natural Protected Areas, a specialized technical body under the Ministry of the Environment (Solano 2010, p. 6; Parkswatch 2003, p. 6).

The El Sira Communal Reserve was established in 2001 by a Supreme Decree (038–2001–AG). The reserve is 616,413 hectares (ha) (1.5 million acres (ac)) and was established for the conservation of wildlife and to acknowledge the rights of indigenous communities on their lands and consider the traditions and cultures of the local communities (Solano 2010, pp. 10–15, 50; WorldBank 2007, pp. 13–15; Parkswatch 2003, p. 5). The reserve is classified as an International Union for Conservation of Nature (IUCN) category VI protected area, which is a protected area that conserves ecosystems and habitats together with associated cultural values and traditional natural-resource management systems (IUCN 2008, p. 2). A portion of the area is under sustainable natural-resource management and where low-level non-industrial use of natural resources compatible with nature conservation is seen as one of the main aims of the area (IUCN 2023a, unpaginated; UN Environment Programme 2020, unpaginated).

In Bolivia, the Political Constitution of the State (2009) defines protected areas as a common good that is part of the natural and cultural heritage of the country and that fulfills environmental, cultural, social, and economic functions for sustainable development. Likewise, the Framework Law of Mother Earth and Integral Development for Living Well (No. 300; 2012) indicates the System of Protected Areas as one of the main instruments for biodiversity (Elkins et al. 2014, p. 102; Lexivox 2023, unpaginated).

The Bolivian National Protected Area System was established in 1992 through Environmental Law No. 1333 as a collective of interlinked protected areas of different categories (Wildlife Conservation Society (WCS) 2017, unpaginated). The core of the system is the national protected areas, which include Amboró, Carrasco, and TIPNIS

and cover a total of 20 percent of Bolivia. The National Service of Protected Areas (Sernap) oversees the protected areas of national interest to conserve biological and cultural diversity (Sernap 2023, unpaginated). The involvement of local and indigenous communities in park management plays a vital role to recognize the rights of indigenous and local communities to preserve their cultural identity, value systems, knowledge and traditions, and territory (WCS 2017, unpaginated).

Overall, the protected areas in Peru and Bolivia were designated by laws and have been somewhat successful at limiting the magnitude of negative effects to biodiversity within the protected-area boundaries. The protected areas are in remote areas and far from government services, which makes enforcement of the protected-area boundaries difficult due to a lack of personnel and financial resources. The lack of resources and enforcement has resulted in loss of wildlife due to continued hunting and loss of primary forest within the protected-area boundaries (Solano 2010, p. 37; Armonía 2018, p. 7).

The nonprofit, nongovernmental organization Asociación Armonía (Armonía) has initiated educational campaigns to raise awareness and discourage hunting of both species. The program works with local and indigenous communities to protect wild bird populations through management of protected areas and reducing threats (Armonía 2018, p. 1; Gastañaga et al. 2011, p. 277; Gastañaga 2006, p. 11; Gastañaga and Hennessey 2005, p. 21).

The Sira curassow is classified as critically endangered on the IUCN Red List (IUCN 2023b, unpaginated). Sira curassow is not known to be in international trade and is not included in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The southern helmeted curassow is classified as critically endangered on the IUCN Red List (IUCN 2023c, unpaginated). Trade has not been noted internationally and the species is not included in the Appendices to CITES. The species is listed on Annex D of the European Union Wildlife Trade Regulations; species listed on Annex D require the importer to complete an import-notification form.

To assess their current conditions, we considered the ecology of the Sira curassow and southern helmeted curassow and factors that influence their viability, including their resiliency, redundancy, representation,

and their overall viability. We know of minimal occurrence records and both species are narrow endemics; thus, we assess resiliency, redundancy, and representation rangewide for both species.

We gauge resiliency for the Sira curassow and southern helmeted curassow by evaluating their population abundance, the availability and condition of habitat throughout their respective ranges, and these species' life-history traits that minimize their ability to rapidly recover from disturbances and population losses.

Both the Sira curassow and southern helmeted curassow are considered rare, locally uncommon, and decreasing (BLI 2023a and 2023b, unpaginated). The Sira curassow's population is very small (50–249 mature individuals). The southern helmeted curassow's population is also small; it declined by 90 percent over the past 20 years and is currently estimated at 1,000–4,999 individuals. These species are endemic to small areas in relatively narrow elevational bands. Their ranges are mostly within protected areas that are intact forest landscapes that show no to minimal signs of human alteration. However, these species' habitats are subject to some deforestation and human encroachment is increasing into protected areas because of small-scale illegal agriculture and road construction that spawns additional small-scale development. Over a 20-year period between 2000 and 2020, only 62 ha (153 ac), or 0.16 percent, of forest cover has been lost within the range of the Sira curassow. During the same 20-year period, 27,320 ha (67,509 ac), or 3.33 percent, of forest cover has been lost within the range of the southern helmeted curassow. Most of the forest-cover loss in the region is outside the range of the species and outside the protected areas where the species occur.

Hunting is ongoing and will continue in the future. Both species are more likely to persist in patches located further from settlements and in forested landscapes with low human density, primarily because these areas would be unaffected, or minimally affected, by hunting. The presence of local indigenous communities in addition to people from outside the protected areas that engage in small-scale agricultural activities or create inroads that further increase human presence into the species' habitats results in overexploitation of these species. Low rates of reproduction and slow recovery of these species' populations make it difficult to tolerate high levels of continuous hunting. Because these species are endemic to small ranges and

have population sizes that are decreasing, combined with low rates of reproduction and recovery, the Sira curassow and southern helmeted curassow are not likely to be resilient to ongoing threats.

We gauge redundancy of these species by assessing the number and distribution of their populations relative to any anticipated catastrophic events within the species' ranges. Redundancy also depends on availability of quality habitat throughout these species' respective ranges. Because most of the current habitat is intact, even though the species are restricted to relatively narrow ranges, we expect the species to have some redundancy through distribution of subpopulations within their narrow ranges. An increase of fires in humid forest habitat and road building that are directly drying the landscape, combined with climate change that causes suitable habitat to shift upslope and is expected to result in the loss of a substantial amount of montane forest ecosystems within these species' ranges in the future, could be catastrophic for these species in the future. We are not aware of any other catastrophic events anticipated within the range of these species that could lead to collapse of these species' populations.

The Sira curassow is known only from the Cerros del Sira region of central Peru in the El Sira Communal Reserve. Surveys in 2006 and 2008 found the species in one population at four locations, all located within 30 km (18.6 mi) of each other (Gastañaga et al. 2011, p. 273). Because the population and range are very small, we conclude that the species has minimal redundancy. The southern helmeted curassow has moderate redundancy and is known to occur at 10 total sites in Amboró, Carrasco, and TIPNIS, the latter of which is the area that is likely to hold the largest remaining population (Armonía 2018, pp. 3–4; Armonía 2021, entire; Armonía 2022, unpaginated; Boorsma 2023, pers. comm). We have no information on the connectivity between populations (Armonía 2018, p. 7). The available data of population size and distribution for these species is minimal and there is uncertainty regarding the number of extant populations for both species throughout their ranges.

We gauge representation of these species by assessing their ability to adapt to changes in their physical and biological environments because the ability to adapt is essential for species' viability. Both species are restricted to narrow elevational bands of Yungas forests and adjacent evergreen forests on

the east side of the Andes Mountains. Microhabitats that have important resources for the life history of these species are likely present within their respective ranges because the birds move in response to patchy resource availability. In 2014, these species were determined to be distinct species, but we have no information about the genetic diversity within each species and there is no information on the degree to which these species exhibit behavioral plasticity, so the ability to assess representation is limited.

As part of the SSA, we developed two future-condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the Sira curassow and southern helmeted curassow. The scenarios assumed an increased probability of forest-cover loss, continued hunting pressure, and ongoing designation of the protected areas where the species occur. The best available data indicate that both species' populations and distributions will decline in the future. However, because we have determined that the Sira curassow and southern helmeted curassow meet the definition of an endangered species based on their current conditions (see Determination of Status for the Sira Curassow and Southern Helmeted Curassow, below), we are not presenting the results of the future scenarios in this final rule. Please refer to the SSA report (Service 2023, entire) for the full analysis of future scenarios.

Determination of Status for the Sira Curassow and Southern Helmeted Curassow

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an "endangered species" as a species in danger of extinction throughout all or a significant portion of its range and a "threatened species" as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or

manmade factors affecting its continued existence.

Status Throughout All of Its Range—Sira Curassow

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the Sira curassow. The best available data indicate that the Sira curassow is a narrow endemic with a very small population size of 50 to 249 mature individuals that is decreasing (BLI 2023a, unpaginated; MacLeod and Gastañaga in litt. 2014, cited in BLI 2018a, unpaginated).

The Sira curassow is known only from the Cerros del Sira region of central Peru in the El Sira Communal Reserve and is not likely to be resilient to ongoing threats. The resiliency of the Sira curassow is based on population abundance, the availability of quality habitat throughout its range, and the species' life-history traits that minimize recovery from disturbances and population losses. The El Sira Communal Reserve has been somewhat successful at limiting the loss of forest cover from small-scale agriculture activities, although small-scale agriculture is increasing within the protected area. Over a 20-year period between 2000 and 2020, only 62 ha (153 ac), or 0.16 percent, of forest cover has been lost within the range of the species. However, the species has historically faced and continues to face hunting pressure, and human incursions into the protected area are increasing.

Precise estimates of hunting pressure on the Sira curassow do not exist given the difficulty of monitoring and documenting hunting activities. Generally, curassows rank as the highest category of avian biomass taken by subsistence hunters (Strahl and Grajal 1991, p. 51). Hunting by local indigenous communities, in addition to people from outside the protected areas that encroach into the species' habitat, results in overexploitation of the species. Literature reviews of several species in the cracid family, including curassows, demonstrate that they are more likely to occur in forested landscapes with low human density and in patches located further from settlements, primarily because these forested areas would be unaffected, or minimally affected, by hunting pressure (Kattan et al. 2016, pp. 27–28; Rios et al. 2021, pp. 416–418; Thorton et al. 2012, p. 572). The viability of the Sira curassow is likely more affected by hunting than habitat loss and degradation, although habitat loss and hunting pressure often work in tandem because incursions into forested areas

for small-scale agriculture and road building create more opportunities for hunters (Rios et al. 2021, p. 418).

Climate change has caused and will cause a loss of the species' habitat, which is particularly detrimental to endemic species that are restricted to narrow elevational bands (Velasquez-Tibata et al. 2012, p. 235). Climate change shifts the species' habitat upslope, reducing the species' range because the geometric shape of mountains means there is less area on mountain slopes as elevation increases (Chen et al. 2011, entire; Freeman et al. 2018, p. 11983; Forero-Medina et al. 2011, entire; Sekercioglu et al. 2012, p. 3). Even though birds are endothermic and may tolerate a wider range of temperatures, Sira curassows are not known to have great dispersal capabilities, making them unlikely to colonize new areas if their current habitat is damaged by climate change and other anthropogenic factors (Foster 2001, p. 73).

We are not aware of the number of Sira curassow populations that occur within the limited range of the Sira curassow in the El Sira Mountains because the species is not well studied and rangewide surveys for the species do not exist, but the best available data indicate that the species has a low area of occurrence and occupancy. Because the population size and its range are very small, we find the species likely has minimal redundancy throughout its range. We are also not aware of any information about the genetic diversity in the Sira curassow, and there is no information on the degree to which the species exhibits behavioral plasticity, so the ability to assess representation is limited for the species. However, the species likely has low representation because it is endemic to the El Sira Mountains and occurs only within 550 square km² (212 mi²) in a narrow elevational band.

Overall, the species has a very small population and is considered rare and locally uncommon, and its population is decreasing (BLI 2023a, unpaginated). The species is long-lived and has a long generation time and low reproductive output. Low reproductive output in conjunction with other factors like a high degree of habitat specialization, small population size, and low vagility (ability of an organism to move freely) typically equate to low innate adaptive capacity (Thurman et al. 2020, entire). The Sira curassow's low redundancy combined with the species not likely being resilient to ongoing threats and having minimal capacity to adapt to ongoing threats limits the viability of the Sira curassow in the face of ongoing

threats. After assessing the best scientific and commercial data available, we conclude that the Sira curassow currently lacks sufficient resiliency, redundancy, and representation for its continued existence to be secure.

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determine that the Sira curassow is in danger of extinction throughout all of its range. The species does not fit the statutory definition of a threatened species because it is currently in danger of extinction, whereas threatened species are those likely to become in danger of extinction within the foreseeable future.

Status Throughout All of Its Range—Southern Helmeted Curassow

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the southern helmeted curassow. The best available data indicate that the southern helmeted curassow is a narrow endemic with a small population size of 1,000 to 4,999 mature individuals that is decreasing (BLI 2023b and 2018b, unpaginated).

The southern helmeted curassow is not likely to be resilient to ongoing threats. The species' resiliency is based on population abundance, the availability of quality habitat throughout its range, and the species' life-history traits that minimize recovery from disturbances and population losses. Even though the species resides in three national parks in central Bolivia that have been somewhat successful at limiting the loss of forest cover from small-scale agriculture activities, small-scale agriculture is increasing within the protected areas, particularly because of coca plantations. Over a 20-year period between 2000 and 2020, 27,320 ha (67,509 ac), or 3.33 percent, of forest cover has been lost within the range of the species. The southern helmeted curassow is likely more affected by hunting than habitat loss and degradation (Rios et al. 2021, p. 418). The species has historically faced and continues to face hunting pressure. Hunting increases with associated habitat loss, and human incursions into the protected areas are increasing.

Precise estimates of hunting pressure do not exist given the difficulty of monitoring and documenting hunting activities. Between 2001 and 2004, surveys showed that the then-largest known population of southern helmeted curassow declined from 20 singing males to zero because hunting associated with incursions of coca

growers into the area (MacLeod et al. 2006, p. 62; MacLeod 2009, p. 16). However, in 2017–2018, curassows were observed at this site (Boorsma 2023, pers. comm.). Additionally, in TIPNIS, there are records of southern helmeted curassows being hunted and eaten by community members (Boorsma 2023, pers. comm.). Encroachment into the species' habitat, including by local indigenous communities in addition to people from outside the protected areas, results in overexploitation of the species. Curassow species are targeted by subsistence hunters and based on reviews of several cracid species, including curassows, these species are more likely to occur in forested landscapes with low human density and located further from settlements (Kattan et al. 2016, pp. 27–28; Rios et al. 2021, pp. 416–418; Thorton et al. 2012, p. 572).

Climate change has caused and will cause a loss of the species' habitat, which is particularly detrimental to endemic species that are restricted to narrow elevational bands (Velasquez-Tibata et al. 2012, p. 235). Climate change shifts the species' habitat upslope, reducing the species' range because the geometric shape of mountains means there is less area on mountain slopes as elevation increases (Chen et al. 2011, entire; Freeman et al. 2018, p. 11983; Forero-Medina et al. 2011, entire; Sekercioglu et al. 2012, p. 3). Even though birds are endothermic and may tolerate a wider range of temperatures, southern helmeted curassows are not known to have great dispersal capabilities, making them unlikely to colonize new areas if their current habitat is damaged by climate change and other anthropogenic factors (Foster 2001, p. 73).

The best available data indicate the southern helmeted curassow is known from 10 locations spread throughout the 3 national parks; we are not aware of any information regarding the connectivity between the known occurrences. Therefore, even though the species' population and range are small, the species has some redundancy throughout its range. However, the species' range is smaller than it was historically, and its population has been reduced by 90 percent over the past 20 years (Armonía 2018, p. 7; Boorsma 2023, pers. comm.). We are not aware of any information about the genetic diversity in the southern helmeted curassow, and there is no information on the degree to which the species exhibits behavioral plasticity, so the ability to assess representation is limited for the species. However, the species likely has low representation

because it is endemic to the three national parks within a narrow elevational band and occurs only within 10,700 km² (4,131 mi²).

Overall, the species has a small population and is considered rare and locally uncommon, and its population is decreasing (BLI 2018b, unpaginated; Birds of Bolivia 2019, unpaginated; BLI 2023b, unpaginated). The species is long-lived and has a long generation time and low reproductive output. Low reproductive output in conjunction with other factors like a high degree of habitat specialization, small population size, and low vagility typically equates to low innate adaptive capacity (Thurman et al. 2020, entire). The southern helmeted curassow's moderate redundancy combined with the species not likely being resilient to ongoing threats and having minimal capacity to adapt to ongoing threats limits the viability of the southern helmeted curassow. After assessing the best scientific and commercial data available, we conclude that the southern helmeted curassow currently lacks sufficient resiliency, redundancy, and representation for its continued existence to be secure.

After evaluating the best scientific and commercial data available regarding threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determine that the southern helmeted curassow is in danger of extinction throughout all of its range. The species does not fit the statutory definition of a threatened species because it is currently in danger of extinction, whereas threatened species are those likely to become in danger of extinction within the foreseeable future.

Status Throughout a Significant Portion of Their Ranges

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the Sira curassow is in danger of extinction throughout all of its range, and the southern helmeted curassow is in danger of extinction throughout all of its range, and accordingly we did not undertake an analysis of any significant portion of their ranges. Because the Sira curassow and southern helmeted curassow warrant listing as endangered throughout all of their ranges, our determination does not conflict with the decision in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020), which vacated the

provision of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578, July 1, 2014) providing that if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status for the Sira Curassow and Southern Helmeted Curassow

Our review of the best available scientific and commercial data indicates that both the Sira curassow and the southern helmeted curassow meet the definition of an endangered species. Therefore, we are listing the Sira curassow and southern helmeted curassow as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the Act. Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, financial assistance for conservation programs, and prohibitions against certain activities.

Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species.

Our regulations at 50 CFR part 402 implement the interagency cooperation provisions found under section 7 of the Act. Under section 7(a)(1) of the Act, Federal agencies are to use, in consultation with and with the assistance of the Service, their authorities in furtherance of the purposes of the Act. Section 7(a)(2) of the Act, as amended, requires Federal agencies to ensure, in consultation with the Service, that any action authorized, funded, or carried out by such agency is

not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of its critical habitat.

A Federal "action" that is subject to the consultation provisions of section 7(a)(2) is defined in our implementing regulations at 50 CFR 402.02 as all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. With respect to the Sira curassow and southern helmeted curassow, no known actions require consultation under section 7(a)(2) of the Act. Given the regulatory definition of "action," which clarifies that it applies to activities or programs "in the United States or upon the high seas," the Sira curassow and southern helmeted curassow are unlikely to be the subject of section 7 consultations, because the entire life cycles of the species occur in terrestrial areas outside of the United States and are unlikely to be affected by U.S. Federal actions. Additionally, we will not designate critical habitat for these species because, under 50 CFR 424.12(g), we will not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.

Section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect) within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4)

deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Exceptions to the prohibitions for endangered species may be granted in accordance with section 10 of the Act and our regulations at 50 CFR 17.22.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits for endangered species are codified at 50 CFR 17.22, and general Service permitting regulations are codified at 50 CFR part 13. With regard to endangered wildlife, a permit may be issued: for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service may also register persons subject to the jurisdiction of the United States through its captive-bred wildlife (CBW) program if certain established requirements are met under the CBW regulations (see 50 CFR 17.21(g)). Through a CBW registration, the Service may allow a registrant to conduct certain otherwise prohibited activities under certain circumstances to enhance the propagation or survival of the affected species, including take; export or re-import; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce in the course of a commercial activity; or sale or offer for sale in interstate or foreign commerce. A CBW registration may authorize interstate purchase and sale only between entities that both hold a registration for the taxon concerned. The CBW program is available for species having a natural geographic distribution not including any part of the United States and other species that the Service Director has determined to

be eligible by regulation. The individual specimens must have been born in captivity in the United States.

It is the policy of the Service, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species.

At this time, we are unable to identify specific activities that will not be considered likely to result in a violation of section 9 of the Act beyond what is already clear from the descriptions of prohibitions or already excepted through our regulations at 50 CFR 17.21. Also, as discussed above, certain activities that are prohibited under section 9 may be permitted under section 10 of the Act. We are unable to identify specific activities that will be considered likely to result in a violation of section 9 of the Act beyond what is already clear from the descriptions of the prohibitions at 50 CFR 17.21.

Applicable wildlife import/export requirements established under section 9(d) through (f) of the Act, the Lacey Act Amendments of 1981 (16 U.S.C. 3371, *et seq.*), and 50 CFR part 14 must also be met for the Sira curassow and southern helmeted curassow imports and exports. Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Management Authority (managementauthority@fws.gov; 703–358–2104).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis

under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> in Docket No. FWS–HQ–ES–2023–0053 and upon request from the Headquarters Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Branch of Delisting and Foreign Species.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

- 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. In § 17.11, amend paragraph (h) by adding an entry for “Curassow, Sira” and an entry for “Curassow, southern helmeted” to the List of Endangered and Threatened Wildlife in alphabetical order under BIRDS to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules		
*	*	*	*	*	*	*
BIRDS						
*	*	*	*	*	*	*
Curassow, Sira	<i>Pauxi koepckeae</i>	Wherever found	E	89 FR [INSERT	FEDERAL REGISTER	PAGE
				WHERE THE	DOCUMENT	BEGINS], 7/25/
				2024.		
Curassow, southern	<i>Pauxi unicornis</i>	Wherever found	E	89 FR [INSERT	FEDERAL REGISTER	PAGE
helmeted (= horned				WHERE THE	DOCUMENT	BEGINS], 7/25/
curassow).				2024.		
*	*	*	*	*	*	*

Martha Williams,
Director, U.S. Fish and Wildlife Service.
[FR Doc. 2024–16003 Filed 7–24–24; 8:45 am]
BILLING CODE 4333–15–P

Proposed Rules

Federal Register

Vol. 89, No. 143

Thursday, July 25, 2024

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

[NCUA–2024–0037]

RIN 3133–AF42

Succession Planning

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: On February 3, 2022, the NCUA Board (Board) published a proposed rule to require Federal credit union (FCU) boards of directors to establish processes for succession planning for key positions. Based on the public comments received in response to the proposal, and upon further consideration of the issues involved, the Board is publishing this second proposed rule addressing succession planning. The new proposal is based on the earlier proposed rule but includes several changes that the Board believes will further strengthen succession planning efforts for both consumer FCUs and consumer federally insured, State-chartered credit unions (FISCUs).

DATES: Comments must be received on or before September 23, 2024.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF42, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. The docket number for this proposed rule is NCUA–2024–0037. Follow the instructions for submitting comments. A plain language summary of the proposed rule is also available on the docket website.

- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

- *Hand Delivery/Courier:* Same as mailing address.

- *Public inspection:* You may view all public comments on the Federal

eRulemaking Portal at <https://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518–6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

Office of Examination and Insurance: John Berry, Policy Officer, at (703) 664–3909 or at 1775 Duke Street, Alexandria, VA 22314. *Office of General Counsel:* Ariel Pereira, Senior Attorney, Office of General Counsel, at (703) 548–2778 or at the above address.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Succession Planning

Board members play a key role in a federally insured credit union's (FICU) success.¹ The Federal Credit Union Act (FCU Act) vests the general direction and control of an FCU in its board.² The managerial structure for FISCUs is governed by State law; however, in general, the operational oversight of FISCUs is under a board of directors or comparable body.³ FICU boards are

faced with a multitude of complicated challenges, such as meeting evolving member needs, fostering employee loyalty and trust, retaining, and developing necessary skills, and keeping pace with technological and industry changes. Among this list of issues, succession planning is one of the most critical.

Succession planning is the process through which an organization helps identify, develop, and retain key personnel to ensure its viability and continued effective performance. It also allows an organization to prepare for the unexpected, including the sudden departure of key staff. Succession planning is recognized as vital to the success of any institution, including FICUs. One of the variables over which a FICU board has control is the hiring of the organization's senior management.

Succession planning is a critical component of a FICU's overall strategic plan. It helps ensure that the appropriate personnel are available to execute the FICU's strategic plan and mission. There are two elements to a FICU board's succession planning strategy. First, the FICU's board should develop a pool of talented candidates to potentially stand for election to the board, to fill temporary board and committee vacancies by appointment, and to fill appointed positions, such as to the FICU's supervisory committee (or equivalent body under State law). The NCUA Board recognizes the importance of the election process in FICU governance and emphasizes that the proposed rule is meant to complement and not supplant the vital role member-owners play in FICU governance. Second, in furtherance of the board's responsibility to oversee the operations of the FICU, it must consider how best

a FICU (providing that an "insured credit union shall notify the Board of the proposed addition of any individual to the board of directors" and that an "insured credit union may not add any individual to the board of directors" under certain conditions.) This is also reflected in the NCUA regulations. For example, *see* 12 CFR 701.14(a), which provides that 12 U.S.C. 1790a "sets forth conditions under which a credit union must notify NCUA in writing of any proposed changes in its board of directors." *See also*, 12 CFR 741.3(a)(2) (providing that a FICU "board of directors may authorize" the designation of certain dividends on nonconforming investments as undivided earnings) and 12 CFR 747.2001(b) (referring to the service of credit union notices, directives, and decisions on appeal to "a dismissed director or officer thereof" of a FICU).

¹ The term FICU encompasses both FCUs and FISCUs.

² 12 U.S.C. 1761, 1761b; 12 CFR 701.4, and Article VI, section 6 of the FCU Bylaws codified in appendix A of 12 CFR part 701.

³ The FCU Act, at 12 U.S.C. 1790a reflects the general proposition that a board of directors governs

to fill vacancies in senior management positions held by employees, such as the chief executive officer and the chief financial officer.⁴ This includes establishing an order of succession among existing employees for temporarily filling senior management roles in the event of a vacancy, as well as the development of strategies to identify, develop, and retain employees capable of filling these senior positions.

A board's failure to plan for vacancies in elected and appointed positions, as well as the transition of its management, could come with high costs. The FICU runs the risk of creating a leadership vacuum, disrupting operations and potentially jeopardizing the FICU's ability to adequately manage liquidity risk, address cybersecurity threats, or ensure continued compliance with consumer protection, bank secrecy, and other critical responsibilities. The FICU may also incur higher costs or be unable to recruit and retain new leadership and top talent than would be the case if it had an established succession plan. Failure to plan for succession can also negatively impact the FICU's ability to maintain relationships with members and suppliers and to secure future business opportunities. Accordingly, the failure to adequately plan for changes in leadership can jeopardize the continued viability of a FICU, potentially resulting in the unplanned merger of the FICU or other disruptions to safe and sound operations upon the departure of key personnel.

For the above reasons, the Board finds that a compelling safety and soundness case exists for rulemaking in this area. The failure of FICUs to adequately plan for succession poses a risk not only to individual FICUs and their member-owners, but to the credit union system as a whole and to the National Credit Share Insurance Fund (NCUSIF). The proposed regulatory changes are designed to mitigate this risk and are consistent with the Board's statutory duty to ensure a safe and sound system of cooperative credit for its member-owners. Board action is also consistent with the guidance issued by the other banking agencies to address succession planning.⁵

⁴ The NCUA regulation at 12 CFR 701.14 defines the term "senior executive officer" to include "the chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager) and the chief financial officer (controller)."

⁵ See e.g., Federal Reserve Board, *Supervisory Guidance on Board of Directors' Effectiveness* (Feb. 26, 2021); also, the guidelines of the Office of the Comptroller of the Currency (OCC) at 12 CFR part 30, appendix D, captioned "*OCC Guidelines*

B. Increased Relevance of Succession Planning

Several factors have contributed to the increased relevance of succession planning for FICU boards. In 2000, the credit union system had 10,316 FICUs.⁶ The total number of FICUs declined to 4,645 by the third quarter of 2023.⁷ This decline is largely attributable to the long-running trend of consolidation across all depository institutions.⁸ This trend has remained relatively constant across all economic cycles for more than three decades. In 1999, the NCUA approved 431 FICU consolidations.⁹ The number of annual consolidations has decreased since that time but remains steady. For example, in 2022, the Board approved 181 FICU consolidations.¹⁰ In 2023, the number of approved consolidations was only slightly lower at 145.¹¹

Data suggests that smaller FICUs may be more likely to merge. The decline in the total number of FICUs has been particularly steep among the smallest FICUs with less than \$10 million in assets. At the close of 2015, there were 1,816 FICUs with less than \$10 million in assets.¹² By the third quarter of 2023, the number of these smallest FICUs was 938.¹³ This figure represents a decrease from 975 FICUs the previous year.¹⁴ By comparison, during the same period, the number of FICUs with assets of at least \$1 billion increased to 424 from 414.¹⁵

The available data does not differentiate between those smaller FICUs that consolidated or were liquidated, versus those that expanded into a larger asset category. However, the sharper decline of FICUs in the smaller asset categories, combined with the ongoing industry trend of consolidation, suggests that mergers may be more prevalent among smaller FICUs.

Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches."

⁶ NCUA, *Historical Timeline*, <https://ncua.gov/about/historical-timeline#:~:text=2000,more%20than%2077%20million%20members>.

⁷ NCUA, *Quarterly Credit Union Data Summary 2023 Q3*, <https://ncua.gov/files/publications/analysis/quarterly-data-summary-2023-Q3.pdf>.

⁸ *Id.*

⁹ NCUA, *NCUA 2000 Annual Report*, <https://ncua.gov/files/annual-reports/2000AR.pdf>.

¹⁰ NCUA, *Merger and Insurance Reports*, <https://ncua.gov/analysis/chartering-mergers/merger-activity-insurance-report>.

¹¹ *Id.*

¹² NCUA, *Quarterly Credit Union Data Summary 2015 Q4*, <https://ncua.gov/files/publications/analysis/PACA-Facts-2015-12.pdf>.

¹³ *Supra*, note 7.

¹⁴ *Id.*

¹⁵ *Id.*

Voluntary mergers can be used to create economies of scale to offer more or better products and services to FICU members. However, the Board is also aware of numerous instances in recent years where FICUs merged because of a lack of succession planning. An NCUA analysis found that poor succession planning was either a primary or secondary reason for almost a third (32 percent) of FICU consolidations.¹⁶ This data has been corroborated by industry participants.¹⁷ The Board is interested in helping FICUs reduce the number of mergers resulting from the lack of succession planning.

The Board finds that this goal is consistent with the FCU Act, which contains provisions that disfavor consolidation, implying a presumption that the public is better served with a greater number of credit unions. For example, the statute imposes added limitations on the addition of larger groups to multiple common-bond credit unions, prompting the Board to consider the feasibility of formation of a separate credit union.¹⁸ Further, the FCU Act provides that the Board shall "encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union."¹⁹

Another reason for a heightened focus on succession planning is the ongoing retirements of the "Baby Boomer" generation (individuals born between 1946 and 1964). According to the U.S. Census Bureau, there are approximately 73 million Baby Boomers, the second-largest age group after "Millennials" (those born between 1982 and 2000).²⁰ By 2030, all Baby Boomers will have reached age 65 and be eligible for retirement.²¹ The COVID-19 pandemic

¹⁶ NCUA, *Truth in Mergers: A Guide for Merging Credit Unions*, page 9, <https://www.ncua.gov/files/publications/Truth-In-Mergers.pdf>.

¹⁷ See, for example, CUtoday.info, *A Look at What Members, Mgmt. Get in Mergers* (November 16, 2021) ("Credit unions merging out of existence, nearly all of them smaller, shared reasons for merging that included inability to invest in technology (even though some had very high capital levels), inability to find volunteers and staff and, a common theme, a lack of any succession planning and a retiring CEO"), available at: <https://www.cutoday.info/THE-feature/A-Look-at-What-Members-Mgmt.-Get-in-Mergers>.

¹⁸ 12 U.S.C. 1759(d)(1).

¹⁹ 12 U.S.C. 1759(f).

²⁰ U.S. Census Bureau, *By 2030, All Baby Boomers Will Be Age 65 or Older*, (December 10, 2019), <https://www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html>.

²¹ *Id.*

accelerated the pace of retirements among this generational cohort.²² These retirements include credit union board members and executives. According to some sources, approximately 10 percent of credit union chief executive officers were expected to retire between 2019 and 2021.²³ Succession planning is critical to the continued operation of those credit unions with board members and executives that are part of this retirement wave.

C. NCUA Efforts To Strengthen FICU Succession Planning Efforts

Given the increased importance of the topic, the NCUA has taken several steps to strengthen current succession planning efforts being taken by FICUs, and to encourage others that have not yet done so to commence their succession planning process.

In March 2022, the NCUA issued Letter to Credit Unions 22–CU–05, *CAMELS Rating System*, which provides that “succession planning for key management positions” is a key factor considered when assessing the management of a credit union.²⁴ The Letter to Credit Unions 23–CU–01 included succession planning as one of the NCUA’s supervisory priorities for 2023.²⁵

Several factors have highlighted the need for rulemaking in this area. While the NCUA does assess succession planning as part of the CAMELS Management component, there is no NCUA regulation requiring FICUs to implement a formal, written succession plan. As a result, the NCUA lacks a full complement of regulatory tools to help address deficiencies in a FICU’s

succession planning process. For example, Letter to Credit Unions 23–CU–01 makes clear that NCUA examiners are precluded from evaluating “any formal or informal succession plans developed by credit unions beyond what would normally be considered in assigning the Management component of the CAMELS rating.”²⁶ Moreover, examiners may “not issue an *Examiner’s Finding or Document of Resolution* if the credit union has not conducted succession planning, or the planning is not adequate, unless the credit union is in violation of its own policy for conducting succession planning or administering any such plan(s).”²⁷ The absence of specific regulations on this topic also means there are no requirements as to what constitutes an acceptable succession plan. A regulation would therefore establish a needed, clearly articulated, and consistently enforceable set of succession planning standards.

II. The Board’s February 3, 2022, Proposed Rule

At its January 27, 2022, meeting, the Board approved a proposed rule to establish succession planning requirements for FCUs. The proposed rule was published in the **Federal Register** on February 3, 2022.²⁸ The proposed rule would have required FCU boards of directors to establish succession plans for key positions, such as officers of the board, management officials, executive committee members, supervisory committee members, and (where provided for in the FCU’s bylaws) the members of the credit committee. Directors would have been required to have a working familiarity with the succession plan. The board of directors would also have been required to review the succession plan in accordance with a schedule established by the board, but no less than annually. While the proposed rule would have applied only to consumer FCUs (excluding corporate FCUs), the preamble noted that the Board’s purpose was to encourage and strengthen succession planning for all FICUs. The preamble of the February 3, 2022, proposed rule provides additional details regarding the proposed regulatory amendments.

The preamble to the proposed rule presented nine questions on which the Board specifically sought public input. The proposed rule provided for a 60-day comment period, which closed on April

4, 2022. The Board received 26 public comments on the proposal.²⁹ Comments were received from individual credit unions, individuals, a law firm, and from national, State, and regional organizations representing credit unions. All of the public comments received by the Board are available for public review on the *Regulations.gov* web portal, at: <https://www.regulations.gov/document/NCUA-2022-0016-0002/comment>.

Most commenters opted to provide general comments rather than address the specific questions posed in the preamble. Most commenters acknowledged the importance of succession planning but questioned the need for succession planning regulations and raised concerns about the specifics of the proposed regulatory amendments.

Based on the comments received in response to the 2022 proposed rule, and upon further consideration of the issues involved, the Board is publishing this second proposed rule addressing succession planning. The new proposal is based on the earlier proposed rule but includes several changes that the Board believes will further strengthen succession planning efforts for all FICUs. This proposed rule would require that consumer FICUs have succession plans to proactively address key positions, such as officers of the board and management officials. The succession plans will also aid FICU efforts to foster a culture of growth and development.

III. Legal Authority

The Board is issuing this proposed rule pursuant to its authority under the FCU Act. The proposed rule would establish succession planning requirements for an FCU. Section 113 of the FCU Act provides that an FCU’s board of directors shall have the general direction and control of the affairs of the FCU.³⁰ The board of directors must oversee the credit union’s operations to ensure the credit union operates in a safe and sound manner. For example, the board must be kept informed about the credit union’s operating environment, hire and retain competent management, and ensure that the credit union has a risk management structure

²² Kevin McCarthy, “Just Tired:” Why So Many Bank, Credit Union CEOs Are Calling it Quits, *American Banker* (December 7, 2021), <https://www.americanbanker.com/creditunions/news/just-tired-why-so-many-bank-credit-union-ceos-are-calling-it-quits>; and Richard Fry, *The Pace of Boomer Retirements Has Accelerated in the Past Year*, Pew Research Center (November 9, 2020), <https://www.pewresearch.org/fact-tank/2020/11/09/the-pace-of-boomer-retirements-has-accelerated-in-the-past-year/>.

²³ CUTOday.info, *CUNA ACUC Coverage: What’s Happening in Executive Compensation* (June 19, 2019), <https://www.cutoday.info/Fresh-Today/CUNA-ACUC-Coverage-What-s-Happening-in-Executive-Compensation>.

²⁴ NCUA, *Letter to Credit Unions 22–CU–05, CAMELS Rating System* (March 2022), <https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/camels-rating-system>. CAMELS is the acronym for the rating system used by the NCUA to assess a FICU’s performance and risk profile derived from the six critical elements of a FICU’s operations: Capital adequacy, Asset quality, Management, Earnings, Liquidity and Sensitivity to Market Risk.

²⁵ NCUA, *Letter to Credit Unions 23–CU–01, NCUA’s 2023 Supervisory Priorities* (January 2023), <https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/ncuas-2023-supervisory-priorities>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ 87 FR 6078 (Feb. 3, 2022).

²⁹ Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Board also published a separate notice soliciting comments for a period of 60 days on the information collection requirements contained in the 2022 proposed rule. (87 FR 7502, Feb. 9, 2022.) The Board did not receive comments specifically in response to the February 9, 2022, notice.

³⁰ 12 U.S.C. 1716b.

and process suitable for the credit union's size and activities.

Further, under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the Federal supervisory authority for FISCUs.³¹ The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and all FISCUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.³² Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.³³ Section 209 of the FCU Act is a plenary grant of regulatory authority to the Board to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FISCUs.³⁴ Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

IV. This Proposed Rule

While the data discussed previously, on their own, support the need for this rulemaking, the Board finds the need for succession planning as a sound governance practice equally compelling. As noted, succession planning is a vital element of a FICU's long-term strategic plan. This rulemaking will further strengthen FICU succession planning efforts. The following presents an overview of the proposed regulatory changes.

A. Applicability of Proposed Rule

These proposed regulatory amendments would apply to all consumer FISCUs. The Board recognizes the importance of State law in FISCUs' internal governance and that some FISCUs may already be subject to State-specific succession planning requirements.³⁵ However, as discussed, the Board finds the proposed rule is appropriate to protect the NCUSIF from undue risk associated with mergers that may cause a loss to the NCUSIF or negatively affect the credit union industry's overall health. The Board also recognizes that under its statutory authorities relating to unsafe or unsound practices, the NCUA may act

to address such practices in all FISCUs.³⁶ However, to the extent that a FICU is subject to a State statutory or regulatory requirement that conflicts with the proposed rule, the NCUA will defer to the State requirement.

The Board specifically invites public comment on the inclusion of FISCUs within the scope of the regulatory amendments.

Consistent with the prior proposal, this proposed rule would not amend the regulations in 12 CFR part 704, which establish requirements applicable to federally insured corporate credit unions. These regulations contain provisions that address succession planning. For example, § 704.13(c)(1) requires that the corporate's board of directors must ensure that "[s]enior managers . . . are capable of identifying, hiring, and retaining qualified staff." Further, paragraph (c)(2) of the section requires that the corporate's board of directors ensure that "[q]ualified personnel are employed or under contract for all line support and audit areas, and designated back-up personnel or resources with adequate cross-training are in place." While the scope of the proposed rule does not include corporate credit unions, the Board welcomes public comment on whether changes to the wording of § 704.13 are necessary to effectuate the purposes of the proposed regulatory amendments.

Additionally, while the proposed rule does not add any specific requirements for Minority Depository Institutions (MDI), the Board encourages MDIs to consider how their succession plans will affect their MDI designation status. Recently the Board voted to update its policy to preserve MDI institutions. To that end, we encourage federally insured credit unions to the greatest extent possible, to develop a succession plan that maintains the board and senior leadership composition to maintain MDI eligibility. The Board also invites public comment on how the NCUA can support this effort and any unique barriers MDIs may face when developing succession plans.

B. Succession Plan Requirements

The Board proposes to establish the new succession planning requirements by amending part 701 of its regulations, which govern the organization and operation of FCUs. Specifically, the proposed rule would add a new paragraph (e) to § 701.4, which sets forth the general duties and responsibilities of FCU directors. The proposed rule would make these amendments applicable to

FISCUs through an amendment to 12 CFR part 741, subpart B, which sets forth regulations codified elsewhere in the NCUA's regulations as applying to FCUs that also apply to FISCUs. The Board proposes to add a new § 741.228 that addresses succession planning.

The proposal would require that a FICU board of directors establish a written succession plan that addresses specified positions and contains certain information. In addition, the board of directors would be required to review the succession plan in accordance with a schedule it establishes, but no less than annually. The Board recognizes that circumstances might necessitate deviations from the plan in filling specific vacancies. The proposed regulatory text accommodates such exigencies but, as with substantive deviations in budgets and strategic plans, it would be expected the board would be informed of changes and rationale and document them in its meeting minutes.

The Board invites comments on the proposed board responsibilities in the development of succession plans. Would the succession planning process be better served by restricting or prohibiting deviations from the succession plan in between the mandated regular review period? Additionally, the Board invites comments on how the NCUA can provide better support to credit unions in developing succession plans, and attracting new talent to the credit union system? The Board is also interested in comments on the timetable for regular review of the plans and whether the final rule should provide for a different timeframe or grant boards additional flexibility in establishing the review period.

In specifying the officials covered by the succession plan, the Board has relied on the language of the FCU Act, which provides that "[t]he management of a Federal credit union shall be by a board of directors, a supervisory committee, and where the bylaws so provide, a credit committee."³⁷ The model FCU bylaws codified in appendix A of 12 CFR part 701 expand the list of senior FCU officials to include management officials, assistant management officials, and loan officers. In addition, the NCUA regulation at 12 CFR 701.14 defines the term "senior executive officer" to include the FICU's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (for example, any assistant president, any vice president,

³¹ 12 U.S.C. 1752–1775.

³² 12 U.S.C. 1766(a).

³³ 12 U.S.C. 1787(b)(1).

³⁴ 12 U.S.C. 1789(a)(11).

³⁵ The Board recognizes that State law also plays a role in FCUs' governance, as the model FCU bylaws reflect in several instances; however, the Board performs a significant role in this process in preparing the form of the bylaws under 12 U.S.C. 1758.

³⁶ See 12 U.S.C. 1786(e), (k).

³⁷ 12 U.S.C. 1761.

or any assistant treasurer/manager) and the chief financial officer (controller).³⁸

Accordingly, under the proposed rule, the written succession plan must, at a minimum, cover the following FICU positions, or their equivalent if the FICU has adopted different position titles:

- Members of the board of directors;
- Members of the supervisory committee;
- Members of the credit committee, where such a committee is provided for in the FICU's bylaws and is involved daily in the review of loans;
- Loan officers, where provided for in the FICU's bylaws in lieu of a credit committee and the loan officers are involved daily in the review of loans;
- Management officials and assistant management officials, as those terms are defined in the model FCU bylaws, if the FICU has provided for such positions in its bylaws; and
- The FICU's "senior executive officers" as defined in 12 CFR 701.14 and any other FICU personnel the board of directors deems critical given the FICU's size, complexity, or risk of operations. This includes new positions that may be required due to planned changes in operations, supervisory landscape, or corporate structure.

As noted, the succession plans would be required to address credit committee members and loan officers only if such personnel are involved on a daily basis in the review of loans. The succession plans are intended to cover senior leadership positions responsible for the oversight of the FICU or its day-to-day management. Accordingly, the NCUA believes credit committee members and loan officers may not merit inclusion if their duties are limited to the review of periodic, specific lending decisions or other "as-needed" basis. However, the Board invites public comments on the inclusion of credit committee members and loan officers.

The proposed rule would also establish certain required contents for a written succession plan. First, the succession plan would be required to identify the title of the incumbent for each covered position, the expiration of the incumbent's term (if serving in a term-limited capacity) or other

anticipated vacancy date (such as the incumbent's retirement eligibility date or announced departure date). The succession plan must also describe the FICU's general plan or strategy for temporarily and permanently filling vacancies for each of the positions, including vacancies due to unexpected circumstances.

For example, the plan could provide an order or succession among the FICU's senior executive officers for temporarily assuming the role of chief executive officer in the event of vacancy until such time as a permanent hiring decision is made. Similarly, the plan might establish an order of succession within individual components of the FICU for temporarily filling specific senior executive positions (for example, the deputy chief financial officer temporarily filling the role of chief financial officer). Likewise, to the extent provided in the bylaws, certain board members might be designated to assume specific duties until the selection of a permanent successor (for example, a specified board member temporarily assuming the duties of a vacated position on the investment committee). Also, a smaller credit union could establish a relationship with a larger credit union to help manage the credit union during the time it takes to recruit and fill a senior executive vacancy.

There is no expectation the plan specify particular successors, only how the FICU will go about appointing interim replacements and recruiting for a permanent replacement. The FICU's bylaws may establish procedures for filling vacancies on the board of directors and certain other positions. The succession plan should be consistent with any such provisions of the bylaws. Further, FICUs must continue to comply with all applicable employment or personnel laws and other requirements in making hiring decisions.

In addition, the succession plan would be required to address the FICU's strategy for recruiting candidates with the potential to assume each of the positions. This could include, for example, the availability of associate director positions on the FICU's board, mentorship programs, educational opportunities offered by the FICU, internships, staff development plans, and other similar efforts. The strategy must consider how the selection and diversity among the employees covered by the succession plan collectively and individually promotes the safe and sound operation of the FICU. The board of directors should also consider budgetary impacts in the development of its succession plans. For example, the

plan should consider the compensation that will be required to attract talented candidates, given such factors as the necessary education and skills, or the market for comparable positions at other FICUs. The decision regarding the compensation for one position may impact the FICU's ability to budget for other staffing needs. Accordingly, FICUs should account for these future needs in financial planning to strengthen their ability to plan for future personnel needs.

The Board emphasizes that succession plans should provide sufficient detail and use language that is reasonably understandable to the FICU's member owners in describing its strategies for filling vacancies and for recruiting, developing, and retaining employees. A FICU is owned by its members, who elect the board and to whom the directors are ultimately answerable. Accordingly, the Board believes it is vital that succession plans be clearly and concisely written, use everyday language to the extent possible, and avoid ambiguous phrasing open to differing interpretations.

The Board welcomes comment on the list of covered positions and the other proposed contents of the succession plan, and whether the final rule should require FICUs to address additional or different information in the plans. Depending on the comments and its continued consideration of this issue, in finalizing the proposed rule, the Board may adopt minor changes or additions to these requirements to meet the proposal's goal of promoting thorough succession planning.

The proposed rule would also amend § 701.4(b)(3), which sets forth certain education requirements for FCU directors, to require that directors have a working familiarity with the FCU's succession plan no later than 6 months after appointment. In making this change, the Board also proposes to reorganize the current contents of paragraph (b)(3) for clarity and grammar. No additional substantive changes are proposed to the current requirements of § 701.4(b)(3). These amendments would be made applicable to FISCUs through proposed new § 741.228.

The expectation is for a FICU to develop a succession plan that is consistent with its size and complexity. Therefore, smaller FICUs are more likely to have a simple succession plan that only addresses a few key leadership positions. Larger and more sophisticated FICUs are expected to have more detailed plans. For example, smaller FICUs may have fewer board members, or have fewer staff that would qualify

³⁸ This provision applies to all FICUs. See also 12 CFR 741.205 (Reporting requirements for credit unions that are newly chartered or in troubled condition). In the preamble to the 1990 final rule establishing the definition of "senior executive officer," the Board clarified the intended scope: "By definition, a vice president or assistant manager holds a senior position, ranking immediately below the president or manager, serves as a deputy or assistant in carrying out management functions, and is empowered, among other things, to assume the duties of president or manager in that individual's absence" 55 FR 43084, 43085 (Oct. 26, 1990).

for the positions listed in the proposed rule for inclusion in the succession plan. Likewise, smaller FICUs are likely to have less expansive employee recruitment, development, and retention strategies. In evaluating whether a succession plan meets the requirements of the rule, the NCUA will consider the size of the FICU, as well as the complexity and risk of its operations.

The Board emphasizes that succession plans should include an estimate of the budgetary impacts of executing the succession plan, including costs associated with new hires, such as the hiring of recruitment firms and increased compensation packages for new hires. It is not required for credit unions to have an exact figure but at a minimum consider an estimate to allow for better planning.

C. Available Resources

The NCUA offers training and other resources to aid FICUs in developing their succession plans. For example, the NCUA has posted a video series on succession planning on the internet.³⁹ In addition, the Board's 2019 final rule on FCU bylaws promoted succession planning efforts by providing guidance to FCUs on associate director positions.⁴⁰ The final rule clarified, through staff commentary, that these positions may be thought of as apprenticeships in which the incumbent receives training and knowledge about the business of the board, with the expectation that the experience will prepare the individual to serve as a director if elected for such a position by the membership or appointed on an interim basis in an exigent circumstance.⁴¹ FISCUs may wish to provide for similar positions if consistent with applicable State law and regulation, and applicable credit union bylaws.

In addition, credit union trade associations may also provide training and have guidance available to assist credit unions in the development of their succession plan. FICUs with a low-income designation may be able to apply for technical assistance grants to support succession planning or offset training costs through the Community Development Revolving Loan Fund. FICUs are encouraged to make use of these and other available resources in complying with the proposed rule.

FICUs are also encouraged to use already existing information in

preparing their plans. For example, under the NCUA guidelines codified in 12 CFR part 749, appendix B, all FICUs are encouraged to develop a program to prepare for a catastrophic act. The codified guidelines suggest that the program address several elements that are also relevant to succession planning. These suggested elements include a "business impact analysis to evaluate potential threats," the determination of "critical systems and necessary resources," and the identification of the "[p]ersons with authority to enact the plan."

D. Small FICU Considerations

As discussed previously, smaller FICUs may be more likely to merge, and data indicates the lack of succession planning is a significant cause of mergers.⁴² Accordingly, smaller FICUs may be the most likely to benefit from the proposed rule. The Board recognizes, however, that these FICUs may lack the resources or expertise to develop succession plans. Accordingly, smaller FICUs may especially benefit from the existing resources identified above. The NCUA's Small Credit Union Support Program is another available resource through which FICUs with less than \$100 million in total assets may seek assistance in a variety of areas, including succession planning. In addition, the Board has developed a sample template for a succession plan that may be appropriate for some smaller FICUs, though all FICUs may benefit from it. FISCUs electing to use the template should consult applicable State requirements to ensure their succession plans are consistent with any such requirements. The proposed template is available for review and comment within the *Regulations.gov* docket for this notice of proposed rulemaking.

Smaller FICUs may also benefit from seeking the assistance of larger and more sophisticated FICUs in developing and implementing their succession plans. For example, a larger FICU may provide technical expertise in the drafting of the plan or may detail personnel to temporarily fill a critical vacancy in a smaller credit union until such time as it is permanently filled. In general, a FICU may engage outside parties to assist in compliance, so long as the FICU's board retains authority and is cognizant that it is responsible for compliance.

The Board specifically invites comment from smaller credit unions on the proposed template, as well as other suggestions, to improve succession

planning and reduce any burden associated with the proposal.

V. Regulatory Procedures

A. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) (Act) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as *regulations.gov*). The Act, under its terms, applies to notices of proposed rulemaking and does not expressly include other types of documents that the Board publishes voluntarily for public comment, such as notices and interim-final rules that request comment despite invoking "good cause" to forgo such notice and public procedure. The Board, however, has elected to address the Act's requirement in these types of documents in the interests of administrative consistency and transparency.

In summary, the proposed rule would require that FICU boards of directors establish succession plans to proactively address any vacancies that may occur for key positions. The proposal is based on a prior February 3, 2022, proposed rule but includes several changes that the Board believes will further strengthen FICU succession planning.

The proposal and the required summary can be found at <https://www.regulations.gov>.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act⁴³ generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the agency makes such a certification, it shall publish the certification at the time of publication of either the proposed rule or the final rule, along with a statement providing the factual basis for such certification.⁴⁴ For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.⁴⁵ The Board fully considered the potential economic impacts of the

³⁹ NCUA, *Succession Planning* (2021), https://ncua.csod.com/LMS/catalog/Welcome.aspx?tab_page_id=67&tab_id=221000382.

⁴⁰ 84 FR 53278 (Oct. 4, 2019).

⁴¹ *Id.* at 53301.

⁴² *Supra*, note 16.

⁴³ 5 U.S.C. 601 *et seq.*

⁴⁴ 5 U.S.C. 605(b).

⁴⁵ 80 FR 57512 (Sept. 24, 2015).

regulatory amendments on small credit unions.

The proposed rule would require that FICU board of directors establish, and comply with, a written succession plan that addresses certain specified positions and contains specified elements. In addition, the board of directors would be required to review the succession plan no less than annually. These requirements may impose some cost on FICUs. However, the NCUA believes several factors mitigate the potential costs, especially for small FICUs with assets of less than \$100 million.

First, the preamble makes clear that an FICU is expected to develop a succession plan that is consistent with its size and complexity. Therefore, small FICUs may have a simple succession plan that is less costly to prepare than would be the case for larger and more complex FICUs. Further, in recognition that smaller FICUs may lack the resources or expertise to develop succession plans, the Board is providing a sample template for a simple succession plan that may be appropriate for these FICUs.

The Board is also aware that many FICUs, including small FICUs, have already adopted succession plans. Many of these existing plans should already address, either partially or in their entirety, the elements that would be required by the proposed rule. This could minimize the burden of complying with the new requirements. The NCUA also offers training and other resources to aid credit unions in developing their succession plans. For example, the NCUA has posted a video series on succession planning on the internet. Smaller FICUs are encouraged to seek assistance from larger or more sophisticated FICUs in the development of the required succession plans. FICUs are also encouraged to use already existing information in preparing their plans, such as the data used to develop the recommended program to prepare for a catastrophic act. These resources should further reduce the costs of preparing the succession plans.

Accordingly, the NCUA certifies the proposed rule would not have a significant economic impact on a substantial number of small credit unions.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemaking in which an agency creates a new or amends existing information collection requirements.⁴⁶ For purposes of the

PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The proposed changes to part 701 would establish new information collections in the form of succession policies and plans. These revisions will be submitted for approval by the Office of Information and Regulatory Affairs at OMB. Persons interested in submitting comments with respect to the information collection aspects and the estimated burden of the proposed rule should submit them via email or to OMB as noted below.

Estimated PRA Burden

The NCUA estimates a total annual burden of 46,750 hours as follows:

- *OMB Control Number:* 3133–NEW.
- *Title of Information Collection:* Succession Planning.
- *Estimated number of respondents:* 4,675.
- *Estimated number of responses per respondent:* 1.
- *Estimated total annual responses:* 4,675.
- *Estimated total annual burden hours per response:* 10.
- *Estimated total annual burden hours:* 46,750.

The NCUA invites comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Interested persons are invited to submit written comments via email to (1) PRAComments@ncua.gov or (2) visit www.reginfo.gov/public/do/PRAMain (find this particular information collection by selecting the tab titled “Information Collection Review” and

click on to the section titled “Currently under Review—Open for Public comment”).

D. Executive Order 13132 on Federalism

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order to adhere to fundamental federalism principles. This proposed rule applies to FCUs and, if adopted, will also apply to FISCUs. By law, FISCUs are already subject to numerous provisions of NCUA's rules, based on the agency's role as the insurer of member share accounts and the significant interest NCUA has in the safety and soundness of their operations. The rulemaking may, therefore, have an occasional direct effect on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Board specifically requests comment on ways to eliminate, or at least minimize, potential conflicts in this area. Based on the comments received, the final rule may modify the application of the succession planning requirements to FISCUs as necessary to carry out the purposes of this rulemaking and the intent of the Executive order.

E. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.⁴⁷ The proposed regulatory requirements are exclusively concerned with succession planning policies of FICUs for replacing vacancies among board members and other key management officials. While the proposed rule is intended to maintain access to quality credit union services by reducing unplanned or forced consolidations, the potential positive effect on family well-being, including financial well-being is, at most, indirect.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

⁴⁶ 44 U.S.C. 3501–3520; 5 CFR part 1320.

⁴⁷ Public Law 105–277, 112 Stat. 2681 (1998).

12 CFR Part 741

Bank deposit insurance, Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, this 18th day of July 2024.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons stated in the preamble, the NCUA Board proposes to amend 12 CFR parts 701 and 741 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNION

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Amend § 701.4 by revising paragraph (b)(3) and adding paragraph (e) to read as follows:

§ 701.4 General authorities and duties of Federal credit union directors.

* * * * *

(b) * * *

(3) At the time of election or appointment, or within a reasonable time thereafter, not to exceed six months, have at least a working familiarity with, and to ask, as appropriate, substantive questions of management and the internal and external auditors of:

(i) Basic finance and accounting practices, including the ability to read and understand the Federal credit union's balance sheet and income statement; and

(ii) The Federal credit union's succession plan established pursuant to paragraph (e) of this section.

* * * * *

(e) *Succession planning requirements*—(1) *General.* A Federal credit union must establish a written succession plan as provided in this paragraph that is approved by the board of directors and consistent with the credit union's size and complexity. In evaluating whether a succession plan meets the requirements of this paragraph, the NCUA will consider the size of the Federal credit union, as well as the complexity and risk of its operations.

(2) *Covered positions.* The succession plan shall, at a minimum, cover the

following positions, or their equivalent if the Federal credit union has adopted different position titles:

(i) Members of the board of directors;

(ii) Members of the supervisory committee;

(iii) Members of the credit committee, where such a committee is provided for in the Federal credit union's bylaws and is involved daily in the review of loans;

(iv) Loan officers, where provided for in the Federal credit union's bylaws in lieu of a credit committee and the loan officers are involved daily in the review of loans;

(v) Management officials and assistant management officials, as those terms are defined in appendix A, if provided for in the Federal credit union's bylaws; and

(vi) The Federal credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (for example, any assistant president, any vice president, or any assistant treasurer/manager), the chief financial officer (controller), and any other personnel the board of directors deems critical given the Federal credit union's size, complexity, or risk of operations. This includes new positions that may be required due to planned changes in operations, supervisory landscape, or corporate structure.

(3) *Contents of succession plan.* The succession plan must, at minimum, contain the following information regarding each of the positions covered under paragraph (e)(2) of this section:

(i) The title for each covered position and the expiration of the incumbent's term (if serving in a term-limited capacity) or other anticipated vacancy date (such as the incumbent's retirement eligibility date or announced departure date).

(ii) The Federal credit union's plan for temporarily and permanently filling vacancies for each of the positions, including vacancies due to unexpected circumstances.

(iii) The Federal credit union's strategy for recruiting candidates with the potential to assume each of the positions. The strategy must consider how the selection and diversity among the employees covered by the succession plan collectively and individually promotes the safe and sound operation of the Federal credit union.

(4) *Board responsibilities.* The board of directors must:

(i) Approve a written succession plan that meets the requirements of paragraphs (e)(2) and (3) of this section; and

(ii) Review, and update as necessary, the succession plan in accordance with a schedule established by the board of directors but no less than annually.

(5) *Adherence to plan.* The board of directors shall approve and document in its meeting minutes the rationale for substantive deviations from its approved succession plan.

PART 741—REQUIREMENTS FOR INSURANCE

■ 3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 4. Add § 741.228 to read as follows:

§ 741.228 Succession planning.

Any credit union that is insured pursuant to title II of the Act must adhere to the requirements in § 701.4(b)(3) and (e) of this chapter, to the extent these regulatory provisions do not conflict with an applicable State requirement.

[FR Doc. 2024–16227 Filed 7–24–24; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. FDA–2024–F–1912]

Filing of Food Additive Petition From Environmental Defense Fund, Breast Cancer Prevention Partners, Center for Food Safety, Environmental Working Group, Tom Neltner, and Maricel Maffini; Request To Amend the Food Additive Regulations To Remove Authorization of Fluorinated Polyethylene; Reopening of the Comment Period; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition, reopening of the comment period; correction.

SUMMARY: The Food and Drug Administration (FDA or we) is reopening the comment period for the notification of petition, published in the **Federal Register** of April 26, 2024, announcing that we have filed a food additive petition, submitted by Environmental Defense Fund, et al., proposing that the food additive regulations be amended to remove fluorinated polyethylene. FDA is reopening the comment period to add the food additive petition to the docket.

FDA is also making a correction to the filing notice.

DATES: FDA is reopening the comment period on the notification of petition published in the **Federal Register** of April 26, 2024 (89 FR 32386). Either electronic or written comments must be submitted by September 23, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 23, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-F-1912 for "Filing of Food Additive Petition From Environmental Defense Fund, Breast Cancer Prevention Partners, Center for Food Safety, Environmental Working Group, Tom Neltner, and Maricel Maffini; Request To Amend the Food Additive Regulations To Remove Authorization of Fluorinated Polyethylene; Reopening of the Comment Period." 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." We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Lillian Mawby, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 301-796-4041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 26, 2024 (89 FR 32386), FDA published a notification of filing of a food additive petition (FAP 3B4837), submitted by Environmental Defense Fund, Breast Cancer Prevention Partners, Center for Food Safety, Environmental Working Group, Tom Neltner, and Maricel Maffini, c/o Maricel Maffini, Frederick, MD 21701. The petition proposes that FDA revoke § 177.1615 (21 CFR 177.1615, "Polyethylene, fluorinated"). Interested persons were originally given until June 25, 2024, to comment.

Following publication of the filing notice in the **Federal Register** of April 26, 2024, FDA was alerted that FAP 3B4837 was not uploaded to the docket, which did not allow respondents the ability to view the FAP when the notice was published in the **Federal Register**. Therefore, we are reopening the comment period for 60 days (which corresponds to the amount of time that the petition was missing from the docket) to allow for interested parties to view the FAP posted to the docket.

Correction

In the **Federal Register** of Friday, April 26, 2024 (89 FR 32886), in FR Doc. 2024-09027, on page 32387, in the second column in the paragraph under Section II. "Request To Repeal 21 CFR part 177.1615," correct the second sentence to read: "Specifically, the petitioners state that the fluorinated polyethylene manufactured consistent with § 177.1615 can produce per- and poly-fluorinated alkyl substances that can migrate to food and, therefore, are not safe pursuant to section 409(c)(5) of the FD&C Act (21 U.S.C. 348(c)(5))."

We are correcting the sentence to delete the word "polymeric."

Dated: July 22, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-16337 Filed 7-24-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AS11

Privacy Act of 1974; Implementation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations governing the confidentiality and release of VA records subject to the Privacy Act of 1974. VA proposes to exempt portions of the new “Law Enforcement Officer Evaluations (LEO Evals)—VA” (216VA10) system of records from certain provisions of the Privacy Act of 1974 to prevent compromising the objectivity and fairness of the testing and evaluation process.

DATES: Comments must be received on or before September 23, 2024.

ADDRESSES: Comments may be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. Comments received before the close of the comment period on www.regulations.gov will be posted as soon as possible after they have been received. VA will not post Regulations.gov public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period’s closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at Regulations.gov, under RIN 2900–AS11.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Chief Privacy Officer, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, stephania.griffin@va.gov, 704–245–2492 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, codified at section 552a of title 5, United States Code (U.S.C.), governs the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to such information that is maintained in a “system of records.” A system of records is a group of any records under the control of an agency from which information about

an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See section 552a(a)(4) and (5).

VA maintains numerous systems of records and, in accordance with section 552a(e)(4), provides notice in the **Federal Register** each time a system of records is established or revised. In order to safeguard personal information contained in VA’s systems of records and carry out the requirements of the Privacy Act, VA has established regulations in 38 Code of Federal Regulations (CFR) 1.575 through 1.582. These regulations govern VA’s policy on maintenance, use, and disclosure of information contained in its systems of records, including the ability of individuals to access information about themselves under the Privacy Act.

While individuals may request access to records containing information about themselves under the Privacy Act, sections 552a(j) and (k) allow the head of a Federal agency to promulgate rules to exempt a system of records from the general accounting, access, and administrative provisions of the Privacy Act contained in section 552a(c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f). In particular, section 552a(j) provides for general exemptions and section 552a(k) provides for specific exemptions.

Concurrent with this proposed rulemaking, notice is being provided in the **Federal Register** that VA is establishing a new system of records entitled “Law Enforcement Officer Evaluations (LEO Evals)—VA (216VA10).” Information in this new system of records will be used to document the records of VA police officer candidates and VA police officers undergoing psychological evaluations for hire or annually after hire. The function of the VA Police Service is to provide for the maintenance of law and order and the protection of persons and property on Department property. Having qualified individuals is critical to this function. Psychological evaluations, testing, and notes will contain data to assess the applicant’s or employee’s psychological fitness to meet the functional requirements of a VA police officer position. Such information will be provided by VA Police Officers and VA Police Officer candidates; VA psychologists and psychiatrists conducting psychological evaluations; VA police chiefs and supervisors; and VA human resources and occupational health staff.

Consistent with section 552a(k)(6), which allows an agency to exempt testing or examination materials used

solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process, VA proposes to exempt portions of the “LEO Evals” system of records from the accounting, access, and administrative provisions of the Privacy Act established in section 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) through (I), and (f).

VA proposes this exemption because portions of a record may relate to testing and examination material used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by VA police officers and VA police officer candidates would compromise the objectivity and fairness of the testing or examination process. Amendment of such records could also impose a highly impracticable administrative burden by requiring testing and examinations to be continuously re-administered.

Without this proposed exemption, the accounting, access, and administrative provisions of the Privacy Act contained in 38 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) through (I), and (f) would allow VA police officers and VA police officer candidates to obtain their personal information contained in the “LEO Evals” system of records, to obtain an accounting of certain disclosures of such personal information, and to amend certain personal information contained therein.

Therefore, VA proposes to add this exemption to its current list of Privacy Act exemptions in new paragraph (f) of 38 CFR 1.582. This would ensure the integrity of the testing and examination process to certify only those VA police officers that possess the emotional and mental stability to serve in this critical role.

As proposed, 38 CFR 1.582(f) would thus state that VA provides limited access to Law Enforcement Officer Evaluations (LEO Evals)—VA (216VA10). Subparagraph (1) would state that records contained in this system of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(6) from 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) through (I), and (f). Subparagraph (2) would further explain that these exemptions apply to the extent that information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a(k)(6) because they relate to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the

disclosure of which could compromise the objectivity or fairness of the testing or examination process.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This proposed rule would exempt certain personnel evaluations from disclosure under certain provisions of the Privacy Act of 1974. The Privacy Act primarily affects individuals and not entities and the proposed rule would impose no duties or obligations on small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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 one year. This proposed rule would have no such effect on State, local, and Tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Government employees, Privacy, Reporting and recordkeeping requirements, Security measures.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 18, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 1 as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 5101, and as noted in specific sections.

- 2. Amend § 1.582 by adding paragraph (f) to read as follows:

§ 1.582 Exemptions.

* * * * *

(f) *Exemption of Law Enforcement Officer Evaluation Records.* VA provides limited access to Law Enforcement Officer Evaluations (LEO Evals)—VA (216VA10).

(1) Records contained in this system of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(6) from 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) through (I), and (f).

(2) These exemptions apply to the extent that information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a(k)(6) because they relate to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the

disclosure of which could compromise the objectivity or fairness of the testing or examination process.

* * * * *

[FR Doc. 2024–16275 Filed 7–24–24; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0264; FRL–8980–01–R4]

Air Plan Approval; North Carolina; Mecklenburg Emission Control Standards and Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg Local Implementation Plan (LIP). The revision was submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality (MCAQ) via a letter dated April 24, 2020. The revision includes updates to various emission control standards contained in the Mecklenburg County Air Pollution Control Ordinance (MCAPCO) incorporated into the LIP. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before August 26, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0264 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or

other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT:

Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8085. Mr. Ortiz Borrero can also be reached via electronic mail at ortizborrero.josue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The original Mecklenburg County LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. See 56 FR 20140. Mecklenburg County prepared three submittals to modify the LIP for, among other things, general consistency with the North Carolina SIP.¹ The three submittals were submitted as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but later withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and also submitted the January 21, 2016, and January 14, 2019, updates. Due to an inconsistency with public notice at the local level, these submittals were withdrawn from EPA through a letter dated February 15, 2019. Mecklenburg County corrected this error, and NCDAQ submitted the updates to EPA in a submittal dated April 24, 2020.²

II. What action is EPA taking?

The April 24, 2020, submittal includes changes and updates to the following rules to align them more closely with their analogous SIP-approved North Carolina regulations: MCAPCO Rules 2.0502, *Purpose*; 2.0507, *Particulates from Chemical Fertilizer Manufacturing Plants*; 2.0508, *Particulates from Pulp and Paper Mills*; 2.0513, *Particulates from Portland*

Cement Plants; 2.0514, *Particulates from Ferrous Jobbing Foundries*; 2.0515, *Particulates from Miscellaneous Industrial Processes*; and 2.0533, *Stack Height*.³ EPA is proposing to incorporate these rules into the Mecklenburg LIP.

1. Rule 2.0502, “Purpose”

The April 24, 2020, revision updates Rule 2.0502, *Purpose*, under Article 2.0000, *Air Pollution and Control Regulations and Procedures*, to more closely align the rule with the SIP-approved State rule at 15A NCAC 02D .0502, *Purpose*. The April 24, 2020, revision corrects a typographical error, removing the “s” from the word “Section.” EPA is proposing to approve Rule 2.0502 because it better aligns the LIP with the SIP and will not interfere with any applicable CAA requirements.

2. Rule 2.0507, “Particulates From Chemical Fertilizer Manufacturing Plants”

The April 24, 2020, revision updates Rule 2.0507, *Particulates from Chemical Fertilizer Manufacturing Plants*, to more closely align the rule with the SIP-approved State rule at 15A NCAC 02D .0507, *Particulates from Chemical Fertilizer Manufacturing Plants*. Rule 2.0507 is revised to convert the text emission rates from the current version of the LIP-approved rule into equations for readability, along with a non-substantive phrasing change. EPA is proposing to approve Rule 2.0507 because it better aligns the LIP with the SIP and will not interfere with any applicable CAA requirements.

3. Rule 2.0508, “Particulates From Pulp and Paper Mills”

The April 24, 2020, revision updates Rule 2.0508, which is currently entitled *Control of Particulates from Pulp and Paper Mills* in the Mecklenburg LIP. The update renames the rule *Particulates from Pulp and Paper Mills* and increases the stringency of the opacity standards in Paragraph (b) of the rule. The update also includes non-substantive formatting changes. These changes more closely align the rule with the SIP-approved State rule at 15A NCAC 02D .0508, *Particulates from Pulp and Paper Mills*. Rule 2.0508 differs from its State counterpart by starting the second sentence under Paragraph (b) with “However,” and changing the capital “S” in “Six” to lower-case. EPA is proposing to approve Rule 2.0508

because it better aligns the LIP with the SIP and will not interfere with any applicable CAA requirements.

4. Rule 2.0513, “Particulates From Portland Cement Plants”

The April 24, 2020, revision updates Rule 2.0513, which is currently entitled *Control of Particulates from Portland Cement Plants* in the Mecklenburg LIP. The update names the rule *Particulates from Portland Cement Plants* and includes non-substantive wording and formatting changes. These changes more closely align the rule with the SIP-approved State rule at 15A NCAC 02D .0513, *Particulates from Portland Cement Plants*. EPA is proposing to approve Rule 2.0513 because it better aligns the LIP with the SIP and will not interfere with any applicable CAA requirements.

5. Rule 2.0514, “Particulates From Ferrous Jobbing Foundries”

The April 24, 2020, revision updates Rule 2.0514, which is currently entitled *Control of Particulates from Ferrous Jobbing Foundries* in the Mecklenburg LIP. The update renames the rule *Particulates from Ferrous Jobbing Foundries* and includes formatting and wording changes. The revised rule also updates the cross-reference to Regulation 2.0515 such that it now refers to Regulation 2.0515(a). These changes more closely align the rule with the SIP-approved State rule at 15A NCAC 02D .0514, *Particulates from Ferrous Jobbing Foundries*. EPA is proposing to approve Rule 2.0514 because it better aligns the LIP with the SIP and will not interfere with any applicable CAA requirements.

6. Rule 2.0515, “Particulates From Miscellaneous Industrial Processes”

The April 24, 2020, revision updates Rule 2.0515, *Particulates from Miscellaneous Industrial Processes*, to more closely align the rule with the SIP-approved State rule at 15A NCAC 02D .0515, *Particulates from Miscellaneous Industrial Processes*. The changes to Rule 2.0515 include changes such as converting the text emission rates in Paragraph (a) of the current version of the LIP-approved rule into equations for readability and updating the phrase “process weight” such that it now says “process rate.” EPA is proposing to approve Rule 2.0515 because it better aligns the LIP with the SIP and will not interfere with any applicable CAA requirements.

7. Rule 2.0533, “Stack Height”

The April 24, 2020, revision updates Rule 2.0533, *Stack Height*, to more

¹ The Mecklenburg County, North Carolina revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals—one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

² EPA notes that the April 24, 2020, submission was received by EPA on June 19, 2020. For clarity, throughout this notice EPA will refer to the June 19, 2020, submission by its cover letter date of April 24, 2020.

³ EPA has previously taken action on portions of the April 24, 2020, submittal. The April 24, 2020, submittal contains changes to other Mecklenburg LIP-approved rules that are not addressed in this document. EPA will be acting on those rules in separate actions.

closely aligns the rule with the SIP-approved State rule at 15A NCAC 02D .0533, *Stack Height*. The revised rule re-orders certain provisions, such as the definitions (which are now alphabetical). The revised rule also updates certain cross-references within the rule and includes minor wording changes, such as updating the phrase “reasonable time” to now say “time that is normally required.”

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I and II of this preamble, EPA is proposing to incorporate by reference the following revised MCAPCO Rules, with a local effective date of December 15, 2015, into the Mecklenburg LIP: 2.0502, *Purpose*; 2.0507, *Particulates from Chemical Fertilizer Manufacturing Plants*; 2.0508, *Particulates from Pulp and Paper Mills*; 2.0513, *Particulates from Portland Cement Plants*; 2.0514, *Particulates from Ferrous Jobbing Foundries*; 2.0515, *Particulates from Miscellaneous Industrial Processes*; and 2.0533, *Stack Height*. EPA has made and will continue to make these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the above-described SIP revision by incorporating the following MCAPCO Rules, with a local effective date of December 15, 2015, into the Mecklenburg LIP: 2.0502, *Purpose*; 2.0507, *Particulates from Chemical Fertilizer Manufacturing Plants*; 2.0508, *Particulates from Pulp and Paper Mills*; 2.0513, *Particulates from Portland Cement Plants*; 2.0514, *Particulates from Ferrous Jobbing Foundries*; 2.0515, *Particulates from Miscellaneous Industrial Processes*; and 2.0533, *Stack Height*. EPA is proposing to approve these rules into the Mecklenburg LIP because they are consistent with the CAA and its implementing regulations, and because these revisions would not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the 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,

February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

NCDAQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed 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 proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 18, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–16251 Filed 7–24–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2003-0156; FRL-7547-03-OAR]

RIN 2060-AU60

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units Revisions to Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This action supplements the proposed amendments to the new source performance standards (NSPS) and emission guidelines (EG) for the Other Solid Waste Incineration (OSWI) units source category published in the **Federal Register** on August 31, 2020. In that action, the Environmental Protection Agency (EPA) proposed changes to OSWI subcategories and related maximum achievable control technology (MACT) floor redeterminations, applicability-related changes and testing and monitoring flexibilities for certain small OSWI units, among other proposed changes. Based on the EPA's analysis of comments received after proposal and discussions with the state of Alaska and tribes, we are proposing to add a definition for a rudimentary combustion device and are asking for specific comment on this definition. We are also proposing to postpone developing standards for such devices.

DATES: Comments must be received on or before September 9, 2024.

Public hearing. If anyone contacts us requesting a public hearing on or before July 30, 2024, we will hold a virtual hearing. Please refer to the **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2003-0156, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- **Email:** a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2003-0156 in the subject line of the message.

- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2003-

0156, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand/Courier Delivery:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday-Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Noel Cope, Sector Policies and Programs Division (E143-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2128 and email address: cope.noel@epa.gov.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. To request a virtual public hearing, contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov. If requested, the hearing will be held via virtual platform on August 9, 2024. The hearing will convene at 11:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details on the virtual public hearing at <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>.

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance> or contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov. The last day to pre-register to speak at the hearing will be August 6, 2024. Prior to the hearing, the EPA will post a general agenda for the hearing that will

list pre-registered speakers at: <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing. However, please plan for the hearing to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to cope.noel@epa.gov. The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing team and describe your needs by August 1, 2024. The EPA may not be able to arrange accommodations without advance notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2003-0156. All documents in the docket are listed on the <https://www.regulations.gov/>. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in <https://www.regulations.gov/>.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2003-0156. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI, PBI, or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, PBI, or otherwise protected through <https://www.regulations.gov/> or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov/> or

email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in Instructions above. If you include other information whose disclosure is restricted by statute in your comment, clearly mark your submission as including that information. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Information whose disclosure is otherwise restricted by statute will be processed by the EPA Docket Center in accordance with the applicable statute. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2003-0156. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

Preamble acronyms and abbreviations. Throughout this preamble the use of "we," "us," or "our" is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
CISWI commercial and industrial solid waste incineration
EG emission guidelines
EJ environmental justice
EPA Environmental Protection Agency
FR Federal Register
IWI institutional waste incineration
MACT maximum achievable control technology
MSW municipal solid waste

NACAA National Association of Clean Air Agencies
NSPS new source performance standards
NTAA National Tribal Air Association
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
OSWI other solid waste incineration
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
SBEAP Small Business Environmental Assistance Program
SSM startup, shutdown, and malfunction
TPD tons per day
UMRA Unfunded Mandates Reform Act
VSMWC very small municipal waste combustion

Organization of this document. The information in this preamble is organized as follows:

- I. General Information
 - A. Does this action apply to me?
 - B. Where can I get a copy of this document and other related information?
- II. Background
 - A. What is the regulatory history for this action?
 - B. What changes did we propose for the OSWI source category in our August 31, 2020, proposal?
 - C. What action is the Agency taking in this action?
 - D. What is the Agency's authority for taking this action?
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- IV. Request for Comments
- V. Summary of Cost, Environmental, and Economic Impacts
 - A. What are the affected facilities?
 - B. What are the air quality impacts?
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 - I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

I. General Information

A. Does this action apply to me?

Categories and entities potentially affected by this supplemental proposal are those that operate rudimentary combustion devices as described in section II.C. of this preamble and

currently subject to the OSWI EG and NSPS. OSWI units are not commercial and industrial solid waste incineration units (CISWI), hazardous waste combustion units, hospital/medical/infectious waste incinerators, sewage sludge incinerators, or other

incinerators regulated under other provisions of section 129 of the Clean Air Act (CAA). The NSPS and EG for OSWI, hereinafter referred to as “the OSWI standards,” affect the categories of sources identified in table 1 of this preamble:

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NAICS code ¹	Examples of potentially regulated entities
Any state, local, or tribal government using a very small municipal waste combustion (VSMWC) unit.	562213, 92411	Solid waste combustion units burning municipal solid waste (MSW).
Any correctional institutions using an institutional waste incineration (IWI) unit.	922, 7213	Correctional institutions.
Any nursing or residential care facilities using an OSWI unit	623	Any nursing care, residential intellectual and developmental disability, residential mental health and substance abuse, or assisted living facilities.
Any Federal government agency using an OSWI unit	928, 7121	Department of Defense (labs, military bases, munition facilities) and National Parks.
Any educational institution using an OSWI unit	6111, 6112, 6113	Primary and secondary schools, universities, colleges, and community colleges.
Any church or convent using an OSWI unit	8131	Churches and convents.
Any civic or religious organization using an OSWI unit	8134	Civic associations and fraternal associations.

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this supplemental proposal. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 60.2885, 60.2981, and 60.2991. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble, your delegated authority, or your EPA Regional representative listed in 40 CFR 60.4 (general provisions).

B. Where can I get a copy of this document and other related information?

A memorandum showing the rule edits that would be necessary to incorporate the changes to 40 CFR part 60, subparts EEEE and FFFF proposed in this action is available in the docket (Docket ID No. EPA–HQ–OAR–2003–0156). Following signature by the EPA Administrator, the EPA also will post a copy of this document to <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>.

II. Background

A. What is the regulatory history for this action?

Section 129 of the CAA requires the EPA to develop and adopt NSPS and EG for solid waste incineration units, in

accordance with CAA sections 129 and 111. Section 129(a) of the CAA requires the EPA to establish NSPS for new sources, and CAA section 129(b) requires the EPA to establish procedures for states to submit plans for implementing EG for existing sources (see CAA sections 111(b) and (d)). The EPA proposed NSPS and EG for OSWI units on December 9, 2004, and promulgated them on December 16, 2005 (70 FR 74870), at 40 CFR part 60, subparts EEEE and FFFF.

Under the 2005 regulations, the term “OSWI unit” means either a very small municipal waste combustion (“VSMWC”) unit or an institutional waste incinerator (“IWI”) unit. A VSMWC unit is any municipal waste combustion unit that has the capacity to combust less than 35 tons per day (TPD) of municipal solid waste (MSW) or refuse-derived fuel. An IWI unit is any combustion unit that combusts institutional waste and is a distinct operating unit of the institutional facility (e.g., university, correctional institutions) that generated the waste. As required by section 129 of the CAA, the OSWI NSPS and EG rules set emission standards for nine pollutants: cadmium, carbon monoxide, dioxins/furans, hydrochloric acid, lead, mercury, oxides of nitrogen, particulate matter, and sulfur dioxide. They also establish opacity standards.

CAA section 129(a)(5) requires the EPA to review and, if appropriate, revise the requirements for solid waste incineration units. In 2018, the U.S. District Court for the District of

Columbia ordered the EPA to publish a proposed rulemaking by August 31, 2020, and promulgate a final rule by May 31, 2021, because the EPA had not reviewed and revised the 2005 OSWI standards as required by law. *Sierra Club v. Wheeler*, 330 F. Supp. 3d 407, 413 (D.D.C. 2018).¹ The EPA published a proposed rulemaking on August 31, 2020. The EPA proposed testing and monitoring flexibilities to help rudimentary combustion devices demonstrate compliance with the rule, but additional information is needed to address the issues related to these devices. This supplemental notice of proposed rulemaking proposes additional amendments to address issues related to certain rudimentary combustion devices as described in sections II.C. and III. of this preamble.

B. What changes did we propose for the OSWI source category in our August 31, 2020, proposal?

On August 31, 2020, the EPA published a proposed rule in the **Federal Register** for the OSWI NSPS and EG rules that addressed the requisite CAA section 129(a)(5) periodic review (85 FR 54178). We proposed that no new developments in practices, processes, or control technologies exist for any OSWI units and that it was not necessary to revise the OSWI standards under CAA section 129(a)(5). In accordance with the EPA’s general authority under CAA section 129(a), we

¹ The deadline was extended to June 30, 2025. *Sierra Club v. Wheeler*, Civ. No. 16–2461, D. DC, Minute Order filed 11/7/2023.

proposed: (1) MACT floors for newly proposed small OSWI unit subcategories; (2) changes to applicability provisions for the EG and NSPS including removing the term “collected from” as used in the “municipal solid waste” definition; (3) revised regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); (4) testing and monitoring flexibilities so that units with rudimentary designs can demonstrate compliance with the rule; (5) provisions for electronic reporting of certain notices and reports; (6) revisions to recordkeeping and reporting provisions consistent with the revised testing and monitoring; (7) changes to title V permitting requirements; and (8) other technical edits, clarifications, and revisions intended to improve the understanding of the rules and improve consistency with other CAA section 129 rules.

C. What action is the Agency taking in this action?

Based on comments received on the proposed rulemaking and discussions with state and tribal agencies in Alaska regarding rudimentary combustion devices, we are proposing to add a definition for a rudimentary combustion device to address the unique issues associated with them. Comments received on the proposed rulemaking are discussed in section III. of this preamble. The EPA is proposing to define a rudimentary combustion device as a combustion device with a capacity less than or equal to 10 TPD that is designed and constructed without one or more of the following elements: (1) a stack, chimney, or pipe designed for the purpose of managing air flow and discharging flue gases from combustion; (2) mechanical draft to provide air flow; (3) burners designed to manage the combustion process; (4) an ancillary power supply to operate; or (5) supplemental fuel burners or nozzles. We are also proposing to postpone developing standards for these devices.

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

Section 129 of the CAA requires the EPA to establish NSPS and EG pursuant to sections 111 and 129 of the CAA for new and existing solid waste incineration units, including “other categories of solid waste incineration units.” This action supplements our 2020 proposal² to amend the OSWI standards under such authority as discussed in greater detail in section III. of this preamble. In addition, CAA

section 129(a)(5) specifically requires the EPA to review and revise the standards and the requirements for solid waste incineration units, including OSWI units, every 5 years.

The EPA has discretion to distinguish among classes, types, and sizes of incinerator units within a category while setting standards. CAA section 129(a)(2) provides that standards “applicable to solid waste incineration units promulgated under . . . [section 111] and this section shall reflect the maximum degree of reduction in emissions of . . . [listed air pollutants] that the Administrator, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new and existing units in each category.”

E. What outreach and engagement did we conduct?

In developing this supplemental proposal, the EPA conducted outreach activities with communities with environmental justice (EJ) concerns, states, and tribes. In addition to public comments received on the 2020 proposal, we obtained feedback from interested parties and evaluated and weighed the information received as we developed this supplemental proposal. In June 2020, the EPA conducted four pre-proposal informational calls for Federally Recognized Tribes, including an overview presentation during the June 25, 2020, National Tribal Air Association (NTAA) call. On August 31, 2020, the EPA sent an email notification to stakeholders announcing that this action had been published with a 45-day comment period with an opportunity to request a public hearing. In September 2020, the EPA held several consultation meetings with tribes, including the Northway Village Tribe, Qagan Tayagungin Tribe, Loudon Tribe, and the Mescalero Apache Tribe. The EPA also conducted four informational calls on the OSWI rule in September 2020, including an overview at the Small Business Environmental Assistance Program (SBEAP) Annual Training, the Alaska Air Workgroup call, the Tribal Environmental Leaders Summit call. The EPA also provided an update at the NTAA call. Although a public hearing was not requested, the EPA continued to seek out additional opportunities for communities with EJ concerns and other key interested parties to be informed about potential requirements of this action. Outreach included a presentation to the SBEAP on June 5, 2023; regular meetings with the state of Alaska to discuss units that

could potentially be subject to the rule; and a presentation during the National Association of Clean Air Agencies (NACAA) Permitting and New Source Review Committee meeting in October 2020.

III. Proposed Revisions

We received numerous comments on the August 31, 2020, proposal and held discussions with state and tribal agencies in Alaska regarding rural rudimentary combustion devices and waste management concerns. Following consideration of the information and comments received, we are proposing to add a definition for a rudimentary combustion device to the OSWI rules to address the issues raised by commenters regarding these units. The issues raised are summarized in this section.

Several commenters stated that burning MSW in simple burn boxes is a crucial aspect of waste management in rural Alaska. The commenters noted that according to the state of Alaska Solid Waste Program, 147 rural Alaskan landfills practice some type of waste burning. Of these, 118 depend on small burn units to manage their landfills. The commenters added that this inexpensive and effective waste management method helps isolated communities reduce physical waste volume, maintain safety, and extend the useful life of their landfills. The commenters stated that removing the Alaska class II/III municipal solid waste landfill exemption could result in an unfunded mandate and that it would be nearly impossible for most rural Alaskan communities to comply with the proposed standard. Commenters noted the costs for testing, monitoring, recordkeeping and reporting, and controls for these units would be unaffordable for rural Alaskan communities and would result in other methods of disposal that would be less environmentally friendly. Commenters added:

- Very little funding is available for solid waste activities. Installing controls, increased operation and maintenance costs, and required monitoring would be financially impossible for rural Alaskan communities and their partner organizations. At a minimum, a new unit capable of meeting the proposed standards would cost several hundred thousand dollars. According to quotes from Anchorage-based stack testers, annual testing would cost \$80,000-\$100,000 per community.

- Many communities are likely to abandon their burn units and return to poorer burning practices, such as open burning of waste on the ground or barrel

² 85 FR 54178 (Aug. 31, 2020).

burning, which would result in poorer air quality and inhalation exposure to more toxics for the affected areas, and a significant increase in wildfires caused by sparks or flames escaping the area. On the ground burning is also a fire issue for which the majority of villages are ill-prepared due to lack of firefighting equipment. The resident exposures entailed in extinguishing dump fires are substantial, involving a significant portion of the population in fighting the fire with inadequate or no personal protective equipment. If the number of villages with regular ground burning nearly doubled as commenters projected, concomitant doubled risk for dump-origin wildland fires would be expected.

- Other communities may return to loose filling waste which would significantly decrease landfill life and increase adverse health and safety impacts of the landfill. This would cause a significant setback in rural waste management for Alaska. Rural Alaskan communities off the road system do not have the option to send their waste to larger regional landfills. Unburned waste attracts wildlife to rural Alaskan landfills. Animals such as bears impose an immediate health and safety risk and the constant prevalence of rabies in the Western Alaskan fox make it exceedingly important that waste disposal practices do not attract these possible vectors of human disease.

- Waste burning is not an alternative to landfill disposal in rural Alaska. It is an essential aspect of landfill operations because space for landfill activities is extremely limited and burning waste reduces the physical volume of waste. Burning waste also aids in turning MSW into inert substances that are safe to dispose of locally. Heavy equipment required for traditional landfiling activities is expensive to purchase and difficult to maintain and use in rural Alaskan communities due to economic, environmental, and geological constraints. Burn units allow landfills to use smaller equipment, reducing operating and maintenance costs. Material required to provide adequate cover is not available in vast areas of the state. The spongy tundra that covers most of Western Alaska cannot be used for cover. Likewise, wetland environments, including tundra, make it exceedingly difficult to bury large quantities of non-inert waste without contaminating surface and groundwater sources.

- If no to little alternate burning is carried out by these communities the dumpsites are more likely to get out of control, with residents more likely to experience waste contact exposures

when self-hauling or, as site access and aesthetics incentivize greater storage of waste in town and around homes, when simply conducting daily life in town.

Commenters contended that the proposed stack test methods for Alaska burn boxes would be inapplicable or impractical because:

- A majority of units do not have a stack,
- Those with stacks are not capable of properly being tested as is and would need to be modified resulting in a substantial cost,
- The proposed OSWI stack testing requirements would overwhelm existing testing infrastructure and capacity in Alaska. If all the villages that use burn boxes now were to continue operating with the exclusion removed (either by retrofit or new OSWI purchase), 120 villages would require 20 total sets of testing and analysis equipment, and 35 to 40 personnel (*i.e.*, 3–4 person teams could each test only twice per month). This demand would well exceed the current capacity of qualified Alaska companies. Testing equipment must be freighted from far off locations resulting in substantial cost. Field testing logistics would result in substantial cost such as travel costs, and testing could only be performed with favorable wind conditions, resulting in delaying and extending testing.

- The proposed test methods and sample numbers were not designed for this type of unit. The method assumes that the unit is operating for a minimum of 1 hour. However, there is no ignition and temperature control. Once the unit is lit, the batch burns. Regardless of the heterogeneity of the MSW, the average emissions and temperature vary substantially from load to load depending on how it is lit and how the load is placed. Because the test methods are inapplicable, a separate testing procedure would have to be developed by the testing company and approved by the EPA—for each burnbox type and field condition.

- Operating a retrofitted or newly purchased incinerator capable of passing a stack test would add additional costs each year thereafter, regardless of whether it is a testing year.

A commenter added that the definition of OSWI is inapplicable to burnboxes, which are dissimilar in multiple ways, as follows:

- Burnboxes are absent a waste feed system, flue gas system, heat recovery and bottom ash system.
- Burnboxes contain only a single chamber. There is no flue gas “system.” Burnboxes operate with natural venting.
- Burnboxes lack a bottom ash system or equipment that transfers the ash. A

shovel is used for ash or it is tipped out and deposited there. There is no final disposal.

Following consideration of the comments received and discussions with state and tribal agencies, we are proposing to add a definition for rudimentary combustion device. The state of Alaska and communications with tribal representatives have provided us with additional information on the types of units used in rural communities spread across Alaska, many of which are located within Native American villages, and have small populations that have extremely limited financial resources. This information is available in the docket. We agree with commenters that many of these communities have limited road access to haul waste to a larger community for burning or landfiling. As a result, local waste disposal is the only option available. The rudimentary combustion devices used in these villages are often primitive in nature; often not commercially constructed or engineered; and have capacities less than 10 TPD. Because villages are likely to abandon their burn units and return to poorer burning practices, such as open burning of waste on the ground, if required to comply with the August 31, 2020, OSWI proposed rule, the EPA has determined that the affected areas would experience poorer air quality and a significant increase in risk of wildfires caused by sparks or flames escaping burning areas. We also agree with the commenters that some communities might return to loose-filling waste, which would significantly decrease landfill life and increase adverse health and safety impacts of the landfill. We agree these results would cause a significant setback in rural waste management for Alaska. We consider this a negative outcome of regulating these rudimentary combustion devices under the OSWI rules and are taking into consideration their unique situation for the final rulemaking.

We reviewed incinerator information submitted in comment letters and in communications with tribal leaders and the state of Alaska to determine the characteristics of these units. As a result, we are proposing to define “rudimentary combustion device” as a combustion device with capacity less than or equal to 10 TPD that is designed and constructed without one or more of the following elements: (1) a stack, chimney, or pipe designed for the purpose of managing air flow and discharging flue gases from

combustion;³ (2) mechanical draft to provide airflow; (3) burners designed to manage the combustion process; (4) an ancillary power supply to operate; or (5) supplemental fuel burners or nozzles. These elements may also apply to small incineration units in the contiguous United States, particularly in rural areas. Because rudimentary combustion devices lack one or more of these elements, the emissions information, limits, and controls developed for the proposed OSWI rule would not be appropriate for them. Consequently, we are also proposing to postpone regulating rudimentary combustion devices. The EPA will undertake a separate rulemaking specific to these units.

IV. Request for Comments

We are not opening comment on aspects of the 2020 proposal (85 FR 54178) that have not changed and are not addressed in this supplemental proposal. Those comments will be addressed in the EPA's Response to Comments document and in the final rule preamble for the OSWI source category.

We do however solicit comments on this supplemental proposed action. In addition to general comments on this supplemental proposed action, the EPA is interested in additional data to refine the definition of "rudimentary combustion device," including additional parameters that should be considered, capacity (tpd) and location of specific units, the number of devices per rural community, the five design elements, and any emissions test information available for them. We are also requesting information on the number of individuals in rural communities that use a rudimentary combustion device. Additionally, we request comments on the rudimentary combustion device definition, including the proposed capacity threshold of less than or equal to 10 tpd for a rudimentary combustion device, and, more specifically, whether a smaller capacity threshold of less than 10 tpd would adequately capture these rudimentary combustion devices. We would also like to hear from the public, including states, tribes, and local governments, if this proposed definition, including the amount of waste being burned in rudimentary combustion devices, presents regulatory issues or unintended consequences.

In the 2020 OSWI proposal, the EPA proposed to remove the definition of the term "collected from" as used in, and

limiting the definition of, "municipal solid waste" in order to place focus on the source and type or nature of the waste, rather than the manner in which it is "collected" (85 FR 54186–87). The Agency did not receive any adverse comments. In light of the proposed change in this supplemental proposal, to add a definition of rudimentary combustion device, and this proposed change in the 2020 OSWI proposal to modify the definition of "municipal solid waste," we are also soliciting comment on removing "collected from" from the "municipal solid waste" definition.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected facilities?

We do not believe that we have complete information on the number of rudimentary combustion devices. We estimate that the OSWI database developed for the August 31, 2020, proposal includes at least 130 facilities with 143 units that may be rudimentary combustion devices. Through contacts with Alaskan state officials and tribal leaders, we have learned that there may be an additional 200 to 400 incinerators that could be classified as rudimentary combustion devices in Alaska. Due to their limited capacities, we believe that rudimentary combustion devices may be regulated by local governments through zoning or other ordinances.

B. What are the air quality impacts?

There are no air quality impacts associated with this supplemental proposal. The proposed addition of the rudimentary combustion device definition does not have an effect on the stringency of the standards in 40 CFR part 60, subparts EEEE or FFFF.

C. What are the cost and economic impacts?

There are no cost or economic impacts associated with this supplemental proposal. The proposed addition of the rudimentary combustion device definition does not have an effect on the stringency of the standards in 40 CFR part 60, subparts EEEE or FFFF.

VI. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This supplemental proposal does not impose an information collection burden under the PRA. There are no information collection request activities associated with this action.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities that may be subject to the requirements of this action are small businesses, small government jurisdictions, and small nonprofits that operate rudimentary combustion devices currently subject to the OSWI EG and NSPS. This supplemental proposal defines rudimentary combustion device and proposes to postpone developing standards for devices owned by small entities that meet the definition of rudimentary combustion device. We have therefore concluded that this action will have no regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This supplemental proposal does not contain an unfunded mandate of \$100 million or more as described in the UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This supplemental proposal does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This supplemental proposal has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law. This action

³ Under this element, the source does not have an exhaust stack.

proposes to provide regulatory relief to units that meet the definition of rudimentary combustion device.

The EPA consulted with Tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this supplemental proposal to have meaningful and timely input into its development. A summary of that consultation is provided in section II.E. of this preamble.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order.

Therefore, this supplemental proposal is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, the EPA’s Policy on Children’s Health also does not apply.

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

This supplemental proposal is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, we have concluded that this supplemental proposal is not likely to have adverse energy effects because this supplemental proposal does not involve energy supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This supplemental proposal does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that

exist prior to this supplemental proposal result in disproportionate and adverse effects on communities with environmental justice concerns. The EPA is not aware of the number of incineration units that will meet the definition of rudimentary combustion device. Therefore, the EPA is unable to fully evaluate a potential baseline for environmental justice concerns.

The EPA identified and addressed environmental justice concerns by conducting outreach activities with communities with environmental justice concerns, states, and tribes.

The information supporting this Executive Order review is contained in section II.E. of this preamble.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

[FR Doc. 2024–16256 Filed 7–24–24; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 89, No. 143

Thursday, July 25, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Employment Records Collection From Implementing Partners of Contracts in Afghanistan

AGENCY: United States Agency for International Development (USAID).

ACTION: Notice of OMB approval.

SUMMARY: In accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (PRA), USAID is requesting emergency approval from the Office of Management and Budget (OMB) for a new data collection survey on employees of the Implementing Partners of USAID contracts in Afghanistan for the purpose of facilitating the Special Immigrant Visa (SIV) Chief Of Mission (COM) approval process overseen by the Department of State.

DATES: USAID plans to collect this information starting from October, 2024.

FOR FURTHER INFORMATION CONTACT: Sulieman Hedayat, Afghanistan Partner Relocation Task Force's SIV inbox: afghansiv@usaid.gov and 202-712-1914.

SUPPLEMENTARY INFORMATION: Pursuant to 5 CFR 1320.13, the Agency submitted a request for emergency approval to collect new information on the employment records of full-time Afghan employees from USAID contractors in Afghanistan.

Description of Proposed Use of Information: The information will include employee details such as dates of employment and contract number, which will be used to verify employment as part of the COM approval step of the SIV application process. This information will be collected via email through encrypted Microsoft Excel spreadsheets.

Estimated Time Burden

The total amount of time estimated for this data collection is less than 1,000 hours (considered at 3 hours per partner for an estimated 300 contractors).

Kevin Brownawell,

Executive Director, Afghan Partner Relocation Task Force, USAID.

[FR Doc. 2024-16396 Filed 7-24-24; 8:45 am]

BILLING CODE 6116-01-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 August 26, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information

unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations—Reporting and Recordkeeping Burden.

OMB Control Number: 0584-0043.

Summary of Collection: The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides supplemental foods, nutrition education, including breastfeeding promotion and support, and health care referrals to low income, nutritionally at-risk pregnant, breastfeeding and postpartum women, infants, and children up to age five. Currently, WIC operates through State health departments in 50 States, 33 Indian Tribal Organizations, American Samoa, District of Columbia, Guam, Commonwealth of the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. The Federal regulations governing the WIC Program (7 CFR part 246) require that certain program-related information be collected and that full and complete records concerning WIC operations are maintained. The WIC Program is authorized by the Child Nutrition Act of 1966, as amended.

In accordance with the Child Nutrition Act of 1996, as amended the final rule titled, Special Supplemental Nutrition Program for Women, Infants and Children (WIC), revised regulations to align the WIC food packages with the current Dietary Guidelines for Americans and to reflect recommendations from the National Academies of Science, Engineering, and Medicine while promoting nutrition security and equity and considering program administration. As a result, the changes made encourages fruit and vegetable consumption; addresses key nutritional needs to support healthy dietary patterns; provides greater flexibility, variety, and choice to accommodate personal and cultural food preferences and special dietary needs; and strengthens support for individual breastfeeding goals to help establish long-term breastfeeding.

Need and Use of the Information: The Food and Nutrition Service (FNS) collects information from state and local agencies, applicants, and retail vendors to determine eligibility in the WIC Program. This ongoing information collection is mandatory for state

agencies and required to obtain or retain benefits for the WIC participants. The information collection includes an explanation to participants about the food package changes, identification of foods acceptable for use in the Program for each State agency and vendor application and agreement information. The foods provided in the WIC food package are critical to the integrity of the Program and its mission to provide the nutrition needed during periods of rapid growth and development among infants, children, and pregnant, postpartum, and breastfeeding individuals. The vendor application and agreement information are necessary to ensure that vendors comply with the updated stocking requirements in the rule so that participants have access to a greater variety of vegetables. The information is also used by FNS to manage, plan, evaluate, make decisions, and report on WIC Program operations. If the information were not collected, the efficiency and effectiveness of the Program would be jeopardized, improper use of Federal funds would increase, and FNS' ability to detect violations would diminish greatly.

Description of Respondents:

Individuals or Households; Businesses or Other for Profit; Not-for profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 6,283,126.

Frequency of Responses:

Recordkeeping; Reporting: Quarterly; Semi-annually; Monthly; Annually; and as Needed.

Total Burden Hours: 17,362,904.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024-16413 Filed 7-24-24; 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 August 26, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Understanding Knowledge and Beliefs about Translocation of Wild Pigs Study.

OMB Control Number: 0579-NEW.

Summary of Collection: Under the Act of March 2, 1931 (7 U.S.C. 8351), the Secretary of Agriculture is authorized to conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program. Additionally, the Secretary of Agriculture is authorized to conduct activities to control nuisance mammals and birds (except for urban rodent control) and those mammals and bird species that are reservoirs for zoonotic disease. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS) Wildlife Services (WS). Two responsibilities of the Deputy Administrator of WS are to assist Federal, State, local, and foreign agencies and individuals regarding wildlife damage and control and conduct research to develop wildlife damage management methods (7 CFR 371.6).

Need and Use of the Information: APHIS plans to conduct an online survey of members of the public and hunters in five southeastern states (Mississippi, Missouri, North Carolina, Oklahoma, and Tennessee) that would

measure knowledge and beliefs about the transportation and release of wild pigs.

Data collected, analyzed, and interpreted from the Understanding Knowledge and Beliefs about Translocation of Wild Pigs study will be used to disseminated to a variety of constituents, including the APHIS WS and open access or subscription-based journals. Additionally, all data and metadata collected and used in peer-reviewed publications will be made publicly accessible in a data repository per the USDA Departmental Regulation 1020-006.

APHIS will use the data collected to:

1. Identify if there is a difference in awareness related to restrictions for transporting and releasing wild pigs between members of the public and hunters within their state;
2. Identify what key beliefs contribute to non-compliance related to restrictions for transporting and releasing wild pigs;
3. Identify what sources of information and beliefs contribute to the amount of awareness related to restrictions for transporting and releasing wild pigs;
4. Identify if there is a difference in tolerance of wild pigs between members of the public and hunters within their state and whether wild pig tolerance explains or influences beliefs about translocating wild pigs;
5. Identify if respondents' perceived awareness of their state regulations for transporting and releasing wild pigs is the same as their actual awareness;
6. Identify which sources of wild pig information are associated with greater awareness about wild pigs;
7. Identify respondents' beliefs about appropriate penalties for transporting and releasing wild pigs, including what factors are associated with such beliefs;
8. Identify how respondents' concerns about wild pigs impact their likelihood of reporting the transport and release of wild pigs to the authorities;
9. Provide input into wild pig management policy and outreach; and
10. Help inform policy by providing scientifically accurate data.

Description of Respondents:

Individuals or Households.

Number of Respondents: 6,667.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,401.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024-16392 Filed 7-24-24; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE**Submission for OMB Review;
Comment Request**

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (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 the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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 these information collections are best assured of having their full effect if received by August 26, 2024. 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.

National Agricultural Statistics Service

Title: Agricultural Labor Survey.
OMB Control Number: 0535–0109.

Summary of Collection: The 1938 Agricultural Adjustment Act, as amended, requires USDA to compute parity prices of farm products. This computation uses an index of Prices Paid by Farmers which in turn is composed of five indexes, one of which is an index of wage rates. These estimates measure actual agricultural wage rates and the year-to-year changes.

General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. Agricultural labor statistics are an integral part of National Agricultural Statistics Service (NASS) primary function of collecting, processing, and disseminating current state, regional, and national agricultural statistics. Comprehensive and reliable agricultural labor data are also needed by the Department of Labor in the administration of the “H–2A” program (non-immigrants who enter the United States for temporary or seasonal agricultural labor) and for setting “Adverse Effect Wage Rates.” The Agricultural Labor Survey is the only timely and reliable source of information on the size of the farm worker population. NASS will collect information using a survey. There is an increase in burden due to an additional mailing nation-wide to increase response and NASS having to collect data for the Agricultural Labor Survey in California due to the discontinuation of a data collection arrangement with the California Employment Development Department (EDD).

Need and Use of the Information: Agricultural labor statistics are an integral part of the primary function of the National Agricultural Statistics Service (NASS), which is the collection, processing, and dissemination of current State, regional, and national agricultural statistics. Wage rate estimates have been published since 1866 and U.S. farm employment estimates have been published since 1910. The information is used by farm worker organizations to help set wage rates and negotiate labor contracts as well as determine the need for additional workers and to help ensure federal assistance for farm worker assistance programs supported with government funding.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 20,050.

Frequency of Responses Reporting: Biannually.

Total Burden Hours 23,140.

Levi S. Harrell,

*Departmental Information Collection
Clearance Officer.*

[FR Doc. 2024–16366 Filed 7–24–24; 8:45 am]

BILLING CODE 3410–20-P

ACTION: Notice.

SUMMARY: The Bridger-Teton National Forest is proposing to establish two recreation fee sites. Proposed recreation fees collected at the proposed recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the proposed recreation fees that would be charged at the new recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the proposed recreation fees would be established no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Bridger-Teton National Forest, Attention: Recreation Fees, 340 N Cache, P.O. Box 1888, Jackson, WY 83001.

FOR FURTHER INFORMATION CONTACT: Shannon Connolly, Forest Recreation Program Manager, (406) 544–4734, shannon.connolly@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish a six-month advance notice in the **Federal Register** of establishment of proposed recreation fee sites. In accordance with Forest Service Handbook 2309.13, Chapter 30, the Forest Service will publish the proposed recreation fee sites and proposed recreation fees in local newspapers and other local publications for public comment. Most of the proposed recreation fees would be spent where they are collected to enhance the visitor experience at the proposed recreation fee sites.

A proposed expanded amenity recreation fee of \$20 per night would be charged for Swift Creek campground. A proposed expanded amenity recreation fee of \$100 per night for groups of up to 40 people would be charged for Lynx Creek group campground. Expenditures of recreation fees collected at the proposed recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, the proposed recreation fee sites and proposal recreation fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. Campgrounds could be reserved online at www.recreation.gov or by calling 877–444–6777. Reservations would cost \$8.00 per reservation.

DEPARTMENT OF AGRICULTURE**Forest Service****Proposed Recreation Fee Sites**

AGENCY: Forest Service, USDA.

Dated: July 16, 2024.

Jacqueline Emanuel,
Associate Deputy Chief, National Forest System.

[FR Doc. 2024–16372 Filed 7–24–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Daniel Boone National Forest is proposing to establish several recreation fee sites. Proposed recreation fees collected at the proposed recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the proposed recreation fees that would be charged at the proposed recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the proposed recreation fee sites and proposed recreation fees would be established no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Daniel Boone National Forest, Attention: Recreation Fees, 1700 Bypass Road, Winchester, KY 40391.

FOR FURTHER INFORMATION CONTACT: Tim Eling, Public Affairs Staff Officer, 859–745–3145, tim.eling@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish in the **Federal Register** a six-month advance notice of establishment of recreation fee sites. In accordance with Forest Service Handbook 2309.13, Chapter 30, the Forest Service will publish the proposed recreation fee sites and proposed recreation fees in local newspapers and other local publications for public comment. Most of the proposed recreation fees would be spent where they are collected to enhance the visitor experience at the proposed recreation fee sites.

A proposed expanded amenity recreation fee of \$5 for 1 day per vehicle, \$7 for multiple days per vehicle, and \$50 per season or year per vehicle would be charged at Hightop, Rockcastle Ramp, and Mouth of Laurel boating developed recreation sites. In addition, a proposed standard amenity recreation fee of \$5 per day per vehicle, \$7 for multiple days per vehicle, and

\$50 per season or year per vehicle would be charged at Paleo, Pioneer, Rock Bridge Recreation Area, Sandstone, Sky Bridge Recreation Area, Stanton Sheltopee, Tarr Kiln, Osborne Bend, Auxier Ridge, Bison Way, Chimney Top Overlook, Indian Creek 1, East Fork Indian Creek 2, Fort Ancient, Grays Arch, Half Moon, Archaic, Martins Fork, and Woodland developed recreation sites. The Daniel Boone National Forest Day Use Pass and the America the Beautiful—the National Parks and Federal Recreational Lands Pass would be honored at these standard amenity recreation fee sites.

Expenditures of recreation fees collected at the proposed recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, the proposed recreation fee sites and proposal recreation fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. Developed recreation sites could be reserved online at www.recreation.gov or by calling 877–444–6777. Reservations would cost \$8.00 per reservation.

Dated: July 16, 2024.

Jacqueline Emanuel,
Associate Deputy Chief, National Forest System.

[FR Doc. 2024–16375 Filed 7–24–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Chugach National Forest is proposing to establish several recreation fee sites. Proposed recreation fees collected at the proposed recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the proposed recreation fees that would be charged at the proposed recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the proposed recreation fee sites and proposed recreation fees would be established no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Chugach National Forest, Attention: Recreation Fees, 33599 Ranger Station Spur, Seward, AK 99664.

FOR FURTHER INFORMATION CONTACT: Jesse Labenski, Recreation Program Manager, 907–312–0018, jesse.labenski@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish in the **Federal Register** a six-month advance notice of establishment of recreation fee sites. In accordance with Forest Service Handbook 2309.13, Chapter 30, the Forest Service will publish the proposed recreation fee sites and proposed recreation fees in local newspapers and other local publications for public comment. Most of the proposed recreation fees would be spent where they are collected to enhance the visitor experience at the proposed recreation fee sites.

A proposed expanded amenity recreation fee of \$75 per night would be charged for rental of Tincan, Granite 1, Granite 2, Porcupine, and Meridian Lake cabins.

Expenditures of recreation fees collected at the proposed recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, the proposed recreation fee sites and proposed recreation fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. Cabins could be reserved online at www.recreation.gov or by calling 877–444–6777. Reservations would cost \$8.00 per reservation.

Dated: July 16, 2024.

Jacqueline Emanuel,
Associate Deputy Chief, National Forest System.

[FR Doc. 2024–16378 Filed 7–24–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Monongahela National Forest is proposing to establish several recreation fee sites. Proposed recreation fees collected at the proposed recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation

fee sites with similar amenities shows the proposed recreation fees that would be charged at the proposed recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the proposed recreation fee sites and proposed recreation fees would be established no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Monongahela National Forest, Attention: Recreation Fees, 200 Sycamore Street, Elkins, WV 26241.

FOR FURTHER INFORMATION CONTACT: W.J. Cober, Forest Recreation Program Manager, 304-285-1574, william.cober@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish in the **Federal Register** a six-month advance notice of establishment of recreation fee sites. In accordance with Forest Service Handbook 2309.13, Chapter 30, the Forest Service will publish the proposed recreation fee sites and proposed recreation fees in local newspapers and other local publications for public comment. Most of the proposed recreation fees would be spent where they are collected to enhance the visitor experience at the proposed recreation fee sites.

A proposed expanded amenity recreation fee of \$15 per night would be charged for Stonecoal campground. A proposed expanded amenity recreation fee of \$75 per day for groups of up to 75 people would be charged for Seneca Rocks, Summit Lake, and Cranberry Mountain Nature Center group picnic sites; and a proposed expanded amenity recreation fee of \$50 per day for groups of up to 75 people would be charged for the Woodbine group picnic site. In addition, a proposed expanded amenity recreation fee of \$100 per night would be charged for rental of Red Oak Lookout.

Expenditures of recreation fees collected at the proposed recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, the proposed recreation fee sites and proposal recreation fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. Campgrounds, group picnic sites, and lookouts could be reserved online at www.recreation.gov or by calling 877-

444-6777. Reservations would cost \$8.00 per reservation.

Dated: July 16, 2024.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024-16374 Filed 7-24-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Prescott National Forest is proposing to establish several recreation fee sites. Proposed recreation fees collected at the proposed recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the proposed recreation fees that would be charged at the proposed recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the proposed recreation fee sites and proposed recreation fees would be established no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Prescott National Forest, Attention: Julie Rowe, 735 N Hwy. 89, Chino Valley, AZ 86323.

FOR FURTHER INFORMATION CONTACT: Julie Rowe, Recreation Program Manager, 928-856-2687, julie.rowe@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish in the **Federal Register** a six-month advance notice of establishment of recreation fee sites. In accordance with Forest Service Handbook 2309.13, Chapter 30, the Forest Service will publish the proposed recreation fee sites and proposed recreation fees in local newspapers and other local publications for public comment. Most of the proposed recreation fees would be spent where they are collected to enhance the visitor experience at the proposed recreation fee sites.

A proposed standard amenity recreation fee of \$5 per day per vehicle would be charged at White Spar, Grief Hill, Bean Peaks, Bignotti, Beasley Flat, Black Canyon, and Skidmore day use

developed recreation sites. The Prescott National Forest Day Use Pass and the America the Beautiful—the National Parks and Federal Recreational Lands Pass would be honored at these standard amenity recreation fee sites.

Expenditures of recreation fees collected at the proposed recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, the proposed recreation fee sites and proposal recreation fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. Day use developed recreation sites could be reserved online at www.recreation.gov or by calling 877-444-6777. Reservations would cost \$8.00 per reservation.

Dated: July 15, 2024.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024-16371 Filed 7-24-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Tongass National Forest is proposing to establish several recreation fee sites. Proposed recreation fees collected at the proposed recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the proposed recreation fees that would be charged at the proposed recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the proposed recreation fee sites and proposed recreation fees would be established no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Tongass National Forest, Attention: Recreation Fees, 648 Mission Street, Suite 110, Federal Building, Ketchikan, AK 99901-6591.

FOR FURTHER INFORMATION CONTACT: John Suomala, Recreation Program Manager, 907-802-4229, john.p.suomala@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish in the **Federal Register** a six-month advance notice of establishment of recreation fee sites. In accordance with Forest Service Handbook 2309.13, Chapter 30, the Forest Service will publish the proposed recreation fee sites and proposed recreation fees in local newspapers and other local publications for public comment. Most of the proposed recreation fees would be spent where they are collected to enhance the visitor experience at the proposed recreation fee sites.

A proposed expanded amenity recreation fee of \$15 per night would be charged for El Cap Campground. In addition, a proposed expanded amenity recreation fee of \$75 per night would be charged for rental of El Cap, Woodpecker, Little Lake, and Herbert Glacier View cabins; a proposed expanded amenity recreation fee of \$65 per night would be charged for rental of the Perseverance Lake cabin; and a proposed expanded amenity recreation fee of \$125 per night would be charged for rental of the Mendenhall Campground cabin.

Expenditures of recreation fees collected at the proposed recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, the proposed recreation fee sites and proposal recreation fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. Campgrounds and cabins could be reserved online at www.recreation.gov or by calling 877-444-6777. Reservations would cost \$8.00 per reservation.

Dated: July 16, 2024.

Jacqueline Emanuel,
Associate Deputy Chief, National Forest System.

[FR Doc. 2024-16382 Filed 7-24-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-112-2024]

Foreign-Trade Zone 214; Application for Subzone Expansion; Consolidated Diesel Company; Whitakers, North Carolina; Correction

The **Federal Register** notice published on July 8, 2024 (89 FR 55914) regarding

the subzone expansion application for Consolidated Diesel Company, located in Whitakers, North Carolina, is corrected as follows:

In the title of the notice, the company name should read "Consolidated Diesel Company".

For further information, contact Christopher Kemp at Christopher.Kemp@trade.gov.

Dated: July 22, 2024.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2024-16393 Filed 7-24-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Massachusetts Institute of Technology, et al.; Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before August 14, 2024. Address written comments to Statutory Import Programs Staff, Room 41006, U.S. Department of Commerce, Washington, DC 20230. Please also email a copy of those comments to Dianne.Hanshaw@trade.gov.

Docket Number: 24-010. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02114. Instrument: Fiber Laser. China. Manufacturer: PreciLasers, China. Intended Use: According to the applicant, the instrument is intended to be used for Potassium 40 atoms that are fermionic alkali atoms; their alkali electronic structure makes them straight-forward to trap and manipulate using lasers. The potassium 40 atoms will first be cooled sympathetically by sodium 23 atoms, then transferred into a series of optical traps, which will use the lasers ordered from PreciLasers. The final optical trap will be a 2D square optical lattice, where additional optical potentials and magnetic fields will be applied, and the response of the atoms observed through a microscope.

Justification for Duty-Free Entry: According to the applicant, there are no

instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: March 20, 2024.

Docket Number: 24-012. Applicant: The University of Texas at Austin, BEG—JJ Pickle Research Campus, 10100 Burnet Road, Building 130, Austin, TX 78758. Instrument: Ocean Alpha SL20-Autonomous Survey Boat. Manufacturer: Ocean Alpha Group Ltd., China. Intended Use: According to the applicant, the instrument is intended to be used as an unmanned surface vehicle (USV) that is designed to survey the depths of inland waters where it is not accessible for UT Austin staff. USV will have complimentary use of the in-house airborne lidar system (Lecia Chiroptera-5) where lidar derived depths require verification. UT Austin staff will be able to deploy the USV from a shoreline, and control it remotely, with safety. **Justification for Duty-Free Entry:** According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 18, 2024.

Docket Number: 24-017. Applicant: State University of New York at Stony Brook, 100 Nicolls Road, 230 Admin Building, Stony Brook, NY 11794. Instrument: 556 nm high power, narrow linewidth laser. Manufacturer: Shanghai Precilasers Technology Co., Ltd., China. Intended Use: According to the applicant, the instrument is intended to be used in a quantum optics apparatus using Ytterbium atoms in an ultrahigh vacuum environment. The experiment will laser cool and trap single Ytterbium atoms and interface them with single photons in an optical cavity. The importance is the long-lived clock states of Ytterbium atoms, as well as the hyperfine ground states, both of which are excellent to use as qubits in a quantum device and store quantum information for a long time. **Justification for Duty-Free Entry:** According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: May 22, 2024.

Docket Number: 24-018. Applicant: Harvard University, 17 Oxford Street, Cambridge, MA 02138. Instrument: Single Frequency Fiber Laser. Manufacturer: Shanghai Precilasers Technology Co., Ltd., China. Intended Use: According to the applicant, the instrument is intended to be used to explore methods of taking full control of the internal and external degrees of freedom of single diatomic molecules

(calcium monofluoride, CaF) for various quantum applications. The interest is in quantum simulation of lattice-spin models using CaF molecules trapped in an optical tweezer array. To load CaF molecules into an optical tweezer array, they must be first laser slowed and laser cooled to very low temperature and high density. The laser cooling transition used here is one of the only two desired strong electronic transitions in CaF molecules that possesses a diagonal Frank-Condon factor which supports scattering many photons with reasonable number of repump lasers. This laser system will be used to perform the above work in a research laboratory in the Department of Physics at Harvard University. The research work enabled by this system is part of the training of graduate students, undergraduate students, and postdoctoral research fellows.

Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 4, 2024.

Docket Number: 24–019. Applicant: Harvard University, Department of Physics, 60 Oxford Street, Cambridge, MA 02138. Instrument: Fiber Laser. Manufacturer: SHANGHAI PRECILASERS TECHNOLOGY CO., LTD., China. Intended Use: According to the applicant, the instrument is intended to be used for Ytterbium (Yb) atom's dipolar interaction. When Yb atoms excite their Rydberg states, there will be a strong dipolar interaction between the atoms. This interaction is also long-range. The main techniques used will be (a) ultra-high vacuum techniques and (b) laser stabilization techniques. The instrument will be used to educate undergraduate and graduate students. **Justification for Duty-Free Entry:** According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 12, 2024.

Dated: July 22, 2024.

Gregory W. Campbell,

Director, Subsidies and Economic Analysis, Enforcement and Compliance.

[FR Doc. 2024–16409 Filed 7–24–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration [C–570–171]

Disposable Aluminum Containers, Pans, Trays, and Lids From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable July 25, 2024.

FOR FURTHER INFORMATION CONTACT: Brian Warnes, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0028.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 2024, the U.S. Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of disposable aluminum containers, pans, trays, and lids (disposable aluminum containers) from the People's Republic of China (China).¹ Currently, the preliminary determination is due no later than August 9, 2024.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) the petitioner² makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25

days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On July 15, 2024, the petitioner submitted a timely request that Commerce postpone the preliminary CVD determination.³ The petitioner stated that it requests postponement “to permit the agency to review the initial questionnaire response and to issue supplemental questionnaires to the respondents and the {Government of China} to clarify responses and to determine accurately the extent to which countervailable subsidies have benefitted the respondents during the period of investigation.”⁴

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to no later than 130 days after the date on which this investigation was initiated, *i.e.*, October 15, 2024.⁵ Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: July 18, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–16390 Filed 7–24–24; 8:45 am]

BILLING CODE 3510–DS–P

³ See Petitioner's Letter, “Petitioners' Request for Postponement of Preliminary Determination,” dated July 15, 2024.

⁴ *Id.*

⁵ Postponing the preliminary determination to 130 days after initiation would place the deadline on Sunday, October 13, 2024. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

¹ See *Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 89 FR 49833 (June 12, 2024) (*Initiation Notice*).

² The petitioner is the Aluminum Foil Container Manufacturers Association.

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Community Engagement on the Open Security Controls Assessment Language (OSCAL)**

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) is seeking to identify stakeholders involved in ongoing or planned activities, including but not limited to standardization, education, and adoption, related to the Open Security Controls Assessment Language (OSCAL).

DATES: NIST will accept written questions for clarification, comments, and/or pertinent feedback until 11:59 p.m. Eastern Time on August 8, 2024.

ADDRESSES: Community members involved in ongoing or planned OSCAL-related efforts can submit written questions for clarification, comments, and/or pertinent feedback via email to: oscal@nist.gov or by mail to the contact identified below. Submissions via email should include “OSCAL Engagement” in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Michaela Iorga via email to oscal@nist.gov or by phone at 301-975-8431, or by mail to National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, Maryland 20899, Attn: Michaela Iorga, ITL/CSD.

SUPPLEMENTARY INFORMATION:

Background: The Federal Information Security Modernization Act (FISMA) of 2014 (Pub. L. 113-283, 44 U.S.C. 3554) emphasized the importance of information security to the economic and national security interests of the United States. FISMA requires agency heads to report on the adequacy and effectiveness of their enterprise’s information security policies, procedures, and practices. For two decades, agencies worked diligently to implement the Office of Management and Budget (OMB) Circular A-130: “Managing Information as a Strategic Resource,” employing *Authorization to Operate (ATO)* processes reliant on paper-based documentation, manual assessment processes, and non-interoperable proprietary automation processes and tools that do not support security data portability.

NIST initiated the development of the Open Security Controls Assessment

Language (OSCAL) to support automated (or computer-assisted) assessment and risk management through operationally sustainable means and to fill federal, national, and international gaps in security assessment automation by providing a set of data-centric, regulatory-agnostic, technical specifications capable of expressing security information in machine-readable formats (XML, JSON or YAML), in support of risk management automation.

The NIST OSCAL program has been working with the public to develop a standardized, open-source, actionable data framework referred to as OSCAL, OSCAL models, or OSCAL framework, and a service interface and proof-of-concept tools for representing and exchanging high-fidelity controls-based IT system risk management data between applications hosted by multiple organizations. This OSCAL framework, the service interface, and tools provide the foundation for a high degree of automation around assessing the underlying system implementation state and the extent to which this state ensures that security and privacy controls are implemented and remain effective.

The immediate acceptance and successful international adoption of the OSCAL framework calls for a long-term NIST vision of OSCAL evolution and incremental maturity into open-source standards developed by industry-accepted standards development organizations. OSCAL will also promote innovation around applying machine learning, robotic process automation, and new knowledge domains to the IT system risk management space.

Community Engagement Areas: NIST seeks to identify community members involved in ongoing or planned activities, including but not limited to standardization, education, and adoption, related to OSCAL. Individual and organizational community members with ongoing or planned activities in these areas may respond to this notice to describe these activities and inform NIST’s planning and coordination efforts across the OSCAL program.

Exemplary activities could include, but are not limited to, the following:

- Assessing OSCAL maturity level readiness for international standardization. The category could include development of open-source OSCAL content for community’s consumption based on the OSCAL latest released set of models (7), development of tests or OSCAL content exercising the latest prototype OSCAL models.

- Developing enhancements or new OSCAL models as deemed necessary by the community.

- Developing OSCAL educational material (tutorials, videos) for all OSCAL-adoption levels, from novice to advanced.

- Organizing OSCAL events such as conferences, webinars, workshops for security experts, assessors, auditors and developers implementing OSCAL-based solutions.

- Establishing OSCAL incubators (labs) that will develop proof of concept implementations (pilots), tools and adoption best practices guidance.

- Implementing OSCAL solutions for internal purpose.

- Implementing OSCAL Governance Risk and Compliance (GRC) tools.

Authority: 15 U.S.C. 272(b)(10).

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024-16381 Filed 7-24-24; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XE074]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the New England Wind Project, Offshore Massachusetts

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

ACTION: Notice; issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to Avangrid Renewables, LLC (Avangrid), the parent company of the original applicant, Park City Wind, LLC (Park City Wind), LLC, for the taking of marine mammals incidental to the construction of the New England Wind Project (hereafter known as the “Project”).

DATES: The LOA is effective from March 27, 2025, through March 26, 2030.

ADDRESSES: The LOA and supporting documentation are available online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT:

Karolyn Lock, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:**Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

An authorization for incidental taking 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. The MMPA defines “take” to mean harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13); 50 CFR 216.103). Level A harassment is defined as 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). Level B harassment is defined as 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 authorize NMFS to propose and, if appropriate, promulgate regulations and issue associated LOA(s).

On June 21, 2024, NMFS promulgated a final rule (89 FR 52222) responding to

a request from the applicant for authorization to take small numbers of marine mammals (39 species comprising 39 stocks). After reviewing the request and making the required findings, NMFS is authorizing the take, by harassment only, of 38 species, representing 38 stocks (19 species by Level A harassment and all 38 species by Level B harassment) incidental to select construction activities occurring in Federal and State waters off of Massachusetts, specifically within and around 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 0534, OCS-A 0561, the southwest (SW) portion of Lease Area OCS-A 0501 (collectively referred to as the Lease Area), and along an export cable routes to sea-to-shore transition points (collectively, the Project Area) over the course of 5 years (March 27, 2025 through March 26, 2030). The specified activities are impact pile driving, vibratory pile driving, and drilling of wind turbine generator (WTG) and electrical service platform (ESP) foundations; high-resolution geophysical (HRG) site characterization surveys; detonation of unexploded ordnances (UXOs) or munitions and explosives of concern (MECs); fisheries and benthic monitoring surveys; placement of scour protection; trenching, laying, and burial activities associated with the installation of the export cable from the ESP(s) to shore based converter stations and inter-array cables between WTG foundations; vessel transit within the specified geographical region to transport crew, supplies, and materials; and WTG operations.

Marine mammals exposed to elevated noise levels during foundation pile driving and/or UXO/MEC detonation, may be taken by Level A harassment (limited to blue whales, fin whales, humpback whales, minke whales, sei whales, sperm whales, dwarf sperm whale, pygmy sperm whale, Atlantic spotted dolphin, Atlantic white-sided dolphin, common bottlenose dolphin, common dolphin, long-finned pilot whales, short-finned pilot whale, Risso’s dolphin, harbor porpoise, gray seal, harbor seal, and harp seal). Marine mammals exposed to elevated noise levels during impact pile driving, vibratory pile driving, and drilling during foundation installation, UXO/MEC detonation, and site characterization surveys may be taken by Level B harassment (all 38 stocks). For reasons described in the final rule,

no mortality or serious injury of any marine mammal is anticipated to occur or authorized. Further, for reasons described in the final rule, no take by Level A harassment of several species, including the North Atlantic right whale, is expected to occur or authorized.

Authorization

In accordance with the final rule (89 FR 52222, June 21, 2024; see 50 CFR 217.326), we have issued a LOA to Avangrid authorizing the take, by harassment, of marine mammals incidental to specified activities within the specified geographical region. As previously stated, no mortality or serious injury of any marine mammal species is anticipated to occur or authorized. The incidental takes authorized herein are the same as those analyzed in the final rule (89 FR 52222, June 21, 2024). Takes of marine mammals will be minimized through the following planned mitigation and monitoring measures, as applicable for each specified activity: (1) implementation of spatio-temporal work restrictions; (2) use of multiple NMFS-approved Protected Species Observers (PSOs) to visually observe for marine mammals (with any detection within specifically designated zones triggering a delay or shutdown, as applicable); (3) use of NMFS-approved passive acoustic monitoring (PAM) operators to acoustically detect marine mammals during foundation installation activities, with a focus on detecting baleen whales (with any detection within designated zones triggering a delay or shutdown, as applicable); (4) implementation of clearance and shutdown zones; (5) use of soft-start prior to the start of foundation impact pile driving; (6) use of noise attenuation technology; (7) use of situational awareness monitoring for marine mammal presence; (8) conducting sound field verification during foundation installation and UXO/MEC detonation; (9) use of ramp-up acoustic sources during HRG surveys; and (10) implementation of several vessel strike avoidance measures (e.g., speed and separation distance measures) to reduce the risk of a vessel interaction with a marine mammal. Additionally, Avangrid is required to submit reports frequently to NMFS. Through adaptive management, NMFS may modify the LOA’s mitigation, monitoring, or reporting measures, based on new information, when appropriate.

As described in the preamble of the final rule, NMFS has determined that the take authorized in the LOA is of small numbers of marine mammals, will

have a negligible impact on marine mammal stocks, will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses, and the mitigation measures provide a means of affecting the least practicable adverse impact on the affected stocks and their habitat.

Dated: July 22, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2024–16411 Filed 7–24–24; 8:45 am]

BILLING CODE 3510–22–P

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; NOAA Satellite Customer Questionnaire

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 September 23, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at Adrienne.thomas@noaa.gov. Please reference OMB Control Number 0648–0227 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 Mark Turner and Toby Hutchings at Mark.W.Turner@noaa.gov, 301–817–4446 and Toby.Hutchings@noaa.gov, 240–569–0871, Suitland Federal Center,

4231 Suitland Road, Bldg. NSOF, Suitland, MD 20746.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for the extension of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) operates a minimum of four meteorological satellite imagery transmission systems, two from geostationary operational environmental (GOES) satellites and two from Joint Polar Satellite System (JPSS) satellites. In addition, a commercially broadcast data stream and legacy/backup/standby polar-orbiting satellites continue to be operated as their health permits. The data transmitted are available worldwide, and any user can establish a ground receiving station for reception of the data without the prior consent, notification, or other approval from NOAA. With such an open access policy, it is currently not possible to have a comprehensive understanding of the range and numbers of the data users and application of the data received and/or used. The purpose of collecting the information contained in the “Questionnaire” is to satisfy the following objectives: (1) To comply with international agreements such as the Department of Commerce (DOC)/NOAA’s memorandum of understanding (MOU) with the World Meteorological Organization (WMO), so that NOAA can provide environmental satellite data and processed satellite data products to the public domain, and (2) To improve Government efficiencies of data dissemination using cost-saving technologies to minimize the expenditure of personnel and financial resources. The NOAA Policy on Partnerships in the Provision of Environmental Information is also pertinent to this information collection. This policy was developed to strengthen the partnership among government, academia, and the private sector, which provides the nation with high quality environmental information.

The collection of information from a respondent is initiated when an individual contacts National Environmental Satellite, Data, and Information Service (NESDIS) via letter, telephone, fax or email, or when they visit a web page. If the nature of the contact indicates the individual may operate a satellite receiving station for the acquisition of NOAA satellite data or may use NOAA satellite data or services, the individual is requested to complete an on-line electronic questionnaire, which is found on a NOAA internet site. The questionnaire

is completed at the respondent’s discretion. The information received is used by NOAA for short-term operations and long-term planning. Collection of this data assists in complying with the terms of the MOU with the WMO, MOU with DOC, and NOAA on areas of common interest and other international agreements.

II. Method of Collection

Information will be collected via an online questionnaire.

III. Data

OMB Control Number: 0648–0227.

Form Number(s): None.

Type of Review: Regular submission [extension of a current information collection].

Affected Public: Federal government, Not-for-profit institutions.

Estimated Number of Respondents: 30.

Estimated Time per Response: 6 minutes per response.

Estimated Total Annual Burden Hours: 30 hours.

Estimated Total Annual Cost to Public: \$0.

Respondent’s Obligation: Voluntary.

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. 2024–16306 Filed 7–24–24; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD989]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Coast Guard Fast Response Cutter Homeporting in Seward and Sitka, Alaska

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

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewals.

SUMMARY: NMFS has received a request from the United States Coast Guard (USCG) for authorization to take marine mammals incidental to fast response cutter (FRC) homeporting in Seward and Sitka, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two incidental harassment authorizations (IHAs) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on possible one-time, 1-year renewals that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 26, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to ITP.clevenstine@noaa.gov. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained

online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the monitoring and

reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualify to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA requests.

Summary of Request

On January 19, 2024, NMFS received a request from the USCG for two IHAs to take marine mammals incidental to pile driving (installation and removal) associated with construction of two FRC homeporting docks in Seward and Sitka, Alaska. Following NMFS’ review of the application, the USCG submitted revised versions on April 3, 2024, June 6, 2024, and June 11, 2024. The application was deemed adequate and complete on June 11, 2024. The USCG’s request is for take of 11 species (18 stocks) of marine mammals by Level B harassment and, for a subset of five these species, Level A harassment. Neither the USCG nor NMFS expect serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

Description of Proposed Activity

Overview

The USCG proposes to construct shore-side facilities and associated infrastructure at Moorings Seward to homeport one FRC located in the Seward Marine Industrial Center (SMIC) boat basin, and demolishing and constructing shore side facilities at Moorings Sitka in Sitka Harbor to

support a second FRC. The shore-side facilities and associated infrastructure for Moorings Seward would be constructed parallel to the existing SMIC dock. Construction of a new floating dock at Moorings Sitka would be attached to the existing pier. The projects are needed to provide adequate vessel berthing capability to support modern USCG cutters and ultimately, readiness as part of the USCG's overall mission. The USCG would use a variety of methods, including impact, down-the-hole (DTH), and vibratory pile driving, to install and remove piles, including concrete, steel, plastic, and timber piles. These methods of pile driving would introduce underwater sounds that may result in take, by Level A and Level B harassment, of marine mammals. Pile removal may occur by vibratory, cutting, or clipping methods. Cutting and clipping are not anticipated to have the potential to result in incidental take of marine mammals because they are either above water, do not last for sufficient duration to present the reasonable potential for disruption of behavioral patterns, do not produce sound levels with likely potential to

result in marine mammal harassment, or some combination of the above.

Dates and Duration

Each IHA would be effective for 1 year from the date of issuance. Pile extraction and installation activities at Moorings Seward would occur for a total of 22 non-consecutive days, of which pile removal is anticipated to take 2 days and pile installation is anticipated to take a maximum of 20 days (15 days to complete installation plus 5 additional days to account for potential weather-related delays). Pile removal and installation activities at Moorings Sitka would occur for a total of 117 non-consecutive days, of which pile removal is anticipated to take 3 days and pile installation is anticipated to take a maximum of 114 days (89 days to complete installation plus 25 additional days to account for potential weather-related delays).

Specific Geographic Region

The current USCG Moorings Seward is located within the City of Seward Harbor while the SMIC (where the new Moorings will be constructed) is located approximately 3.5 miles southeast of Seward Harbor on the east side of

Resurrection Bay (figure 1). The SMIC currently occupies approximately 200 acres (0.809 square kilometer (km²)) on the eastern shore of Resurrection Bay and maintains an enclosed basin protected by rip-rap seawall with a floating dock. Depths in the vicinity of the SMIC are dredged to an approximate depth of -21 feet (ft; -6.4 meters (m)) below mean lower low water (MLLW) in the boat basin and up to -25 ft (-7.6 m) MLLW at the North Dock.

USCG Moorings Sitka is located on the northeast side of Japonski Island within Sitka Harbor on the Sitka Channel separating Japonski Island from the larger Baranof Island (figure 2). The shore side and in-water cutter facilities at Moorings Sitka currently occupy a 1.13-acre (0.005 km²) upland site with adjacent waterside structures on the southeastern shore of Japonski Island. Currently, only one dock is present at Moorings Sitka and supports USCG Cutter Kukui. The bathymetry of the narrow Sitka Channel, less than 1,000 ft (304.8 m) wide at points, is steep at the sides and reaches approximately 30 ft (9.1 m) MLLW at the end of the pier where the moorings facility is located.

BILLING CODE 3510-22-P



Figure 1 – Seward Project Area Map



Figure 2 – Sitka Project Area Map

BILLING CODE 3510-22-C

Detailed Description of the Specified Activity

At Moorings Seward, reconfiguration of the SMIC floating dock would be required to allow for construction of a new FRC floating dock. Extraction of 10 existing 14-inch (35.56 centimeter (cm)) steel piles would occur over 2 days at a rate of five piles per day, potentially using vibratory methods (table 1), pile cutting, or diamond wire sawing. Pile

cutting and diamond wire sawing are not expected to cause take of marine mammals because they occur either above water, do not last for sufficient duration to present the reasonable potential for disruption of behavioral patterns, do not produce sound levels with likely potential to result in marine mammal harassment, or some combination of the above, and are thus not addressed further. Installation of 30 30-inch (76.2 cm) concrete piles would

occur over a maximum of 20 days using DTH, vibratory, and impact driving. Installation of a single concrete pile would require the following sequence: up to 3 hours of DTH (rock socketing) drilling to create a socket in the bedrock, followed by 10 minutes using a vibratory pile driver to settle the pile into its socket, and finally proofing the pile using 5 strikes from an impact driver to ensure the pile is fully embedded at an expected rate of two

piles per day, plus 5 days of buffer (table 2).

At Moorings Sitka, removal of existing mooring dolphins and float, owned by the City of Sitka, would be required to allow for construction of a new sea-going buoy tender pier and FRC floating dock. Extraction of 10 piles (four 24-inch (60.96 cm) concrete piles and six 14-inch timber piles) would occur over a maximum of 3 days, with vibratory extraction of the timber piles requiring

2 days and 1 day to remove the concrete piles, potentially using vibratory methods (table 3), pile cutting, or diamond wire sawing. Installation of 178 piles (118 30-inch concrete piles, 54 13-inch (33.02 cm) plastic piles, and six 14-inch timber piles) would occur over a maximum of 117 days using DTH, vibratory, and impact driving. Installation of plastic piles and timber piles would only require impact hammers. Installation of a single

concrete pile would require the same sequence described above for Moorings Seward: up to 3 hours of DTH drilling to create a socket in the bedrock, followed by 10 minutes using a vibratory pile driver to settle the pile into its socket, and finally proofing the pile using 5 strikes from an impact drive to ensure the pile is fully embedded at an expected rate of two piles per day, plus 25 days of buffer (table 4).

TABLE 1—PILE REMOVAL METHODS AND DURATIONS AT USCG MOORINGS SEWARD

Removal method and pile type	Number of piles	Duration per pile	Piles removed per day	Estimated duration (days)
Vibratory extraction of 14-in steel piles	10	30 min	5	2

Note: A total of 10 steel piles will be removed over a total of 2 days (rate 5 piles/day). Pile cutting and diamond wire sawing may also be used but these methods are not expected to cause take of marine mammals.

TABLE 2—PILE INSTALLATION METHODS AND DURATIONS AT USCG MOORINGS SEWARD

Installation method and pile type	Number of piles	Duration or strikes per pile	Piles driven per day	Estimated duration (days)
DTH drilling of 30-in concrete piles	30	180 min	2	20
Vibratory driving of 30-in concrete piles	30	10 min	2	
Impact driving of 30-in concrete piles	30	5 strikes per pile	2	

Note: A total of 30 concrete guide piles will be installed via all methods listed above. Installation of a single concrete pile would require the following sequence: up to 3 hours of DTH, followed by 10 minutes using a vibratory pile driver, and proofing the pile using 5 strikes from an impact hammer (rate 2 piles per day plus 5 days of buffer).

TABLE 3—PILE REMOVAL METHODS AND DURATIONS AT USCG MOORINGS SITKA

Removal method and pile type	Number of piles	Duration per pile	Piles removed per day	Estimated duration (days)
Vibratory extraction concrete and timber piles	10	30 min	5	3

Note: A total of 10 piles (four concrete piles and six timber piles) will be removed over a total of 3 days (rate 5 piles per day). The applicant expects it will require 2 days to remove the six timber piles and 1 day to remove the four concrete piles. Pile cutting and diamond wire sawing may also be used but these methods are not expected to cause take of marine mammals.

TABLE 4—PILE INSTALLATION METHODS AND DURATIONS AT USCG MOORINGS SITKA

Installation method and pile type	Number of piles	Duration or strikes per pile	Piles driven per day	Estimated duration (days)
Impact driving plastic fender piles	54	100 strikes per pile	2	27
Impact driving timber guide piles	6	160 strikes per pile	2	3
DTH drilling concrete piles	118	180 min	2	84
Vibratory driving concrete piles	118	10 min	2	
Impact pile driving concrete piles	118	5 strikes per pile	2	

Note: A total of 178 piles (118 concrete piles, 54 plastic piles, and six timber piles) will be installed via all methods listed above. Installation of plastic and timber piles will require impact driving only. Installation of a single concrete pile would require the following sequence: up to 3 hours of DTH, followed by 10 minutes using a vibratory pile driver, and proofing the pile using 5 strikes from an impact hammer (rate 2 piles per day plus 25 days of buffer).

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially

affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs); <https://www.fisheries.noaa.gov/>

national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 5 lists all species or stocks for which take is expected and proposed to be authorized for the activities at Seward and Sitka, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA), and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural

mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock

abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in either NMFS' U.S. Alaska SARs or U.S. Pacific SARs. All values presented in table 5 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 5—MARINE MAMMAL SPECIES¹ LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Family Eschrichtiidae						
Gray Whale	<i>Eschrichtius robustus</i>	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016) ..	801	131
Family Balaenopteridae (rorquals)						
Fin Whale	<i>Balaenoptera physalus</i>	Northeast Pacific	E, D, Y	UND (UND, UND, 2013)	UND	0.6
Humpback Whale	<i>Megaptera novaeangliae</i>	Hawai'i	-, -, N	11,278 (0.56, 7,265, 2020) ...	127	27.09
Humpback Whale	<i>Megaptera novaeangliae</i>	Mexico-North Pacific	T, D, Y	N/A (N/A, N/A, 2006)	UND	0.57
Minke Whale ⁵	<i>Balaenoptera acutorostrata</i> ...	Alaska	-, -, N	N/A (N/A, N/A, N/A)	UND	0
Family Delphinidae						
Killer Whale	<i>Orcinus orca</i>	Eastern North Pacific Alaska Resident.	-, -, N	1,920 (N/A, 1,920, 2019)	19	1.3
Killer Whale	<i>Orcinus orca</i>	Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient.	-, -, N	587 (N/A, 587, 2012)	5.9	0.8
Killer Whale	<i>Orcinus orca</i>	Eastern Northern Pacific Northern Resident.	-, -, N	302 (N/A, 302, 2018)	2.2	0.2
Killer Whale	<i>Orcinus orca</i>	West Coast Transient	-, -, N	349 (N/A, 349, 2018)	3.5	0.4
Pacific White-Sided Dolphin ...	<i>Lagenorhynchus obliquidens</i>	North Pacific	-, -, N	26,880 (N/A, N/A, 1990)	UND	0
Family Phocoenidae (porpoises)						
Dall's Porpoise ⁶	<i>Phocoenoides dalli</i>	Alaska	-, -, N	UND (UND, UND, 2015)	UND	37
Harbor Porpoise	<i>Phocoena phocoena</i>	Gulf of Alaska	-, -, Y	31,046 (0.21, N/A, 1998)	UND	72
Harbor Porpoise ⁷	<i>Phocoena phocoena</i>	Yakutat/Southeast Alaska Off-shore Waters.	-, -, N	N/A (N/A, N/A, 1997)	UND	22.2
Family Otariidae (eared seals and sea lions)						
Northern Fur Seal	<i>Callorhinus ursinus</i>	Eastern Pacific	-, D, Y	626,618 (0.2, 530, 376, 2019)	11,403	373
Steller Sea Lion	<i>Eumetopias jubatus</i>	Western	E, D, Y	49,837 (N/A, 49,837, 2022) ...	299	267
Steller Sea Lion	<i>Eumetopias jubatus</i>	Eastern	-, -, N	36,308 (N/A, 36,308, 2022) ...	2,178	93.2
Family Phocidae (earless seals)						
Harbor Seal	<i>Phoca vitulina</i>	Prince William Sound	-, -, N	44,756 (N/A, 41,776, 2015) ...	1,253	413
Harbor Seal	<i>Phoca vitulina</i>	Sitka/Chatham Strait	-, -, N	13,289 (N/A, 11,883, 2015) ...	356	77

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>).

² ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

³ NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

⁴ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁵ No population estimates have been made for the number of minke whales in the entire North Pacific. Some information is available on the numbers of minke whales in some areas of Alaska, but in the 2009, 2013, and 2015 offshore surveys, so few minke whales were seen during the surveys that a population estimate for the species in this area could not be determined (Rone *et al.*, 2017). Therefore, this information is N/A (not available).

⁶ Previous abundance estimates covering the entire stock's range are no longer considered reliable and the current estimates presented in the SARs and reported here only cover a portion of the stock's range. Therefore, the calculated Nmin and PBR is based on the 2015 survey of only a small portion of the stock's range. PBR is considered to be biased low since it is based on the whole stock whereas the estimate of mortality and serious injury is for the entire stock's range.

⁷ Abundance estimates assumed that detection probability on the trackline was perfect; work is underway on a corrected estimate. Additionally, preliminary data results based on environmental DNA analysis show genetic differentiation between harbor porpoise in the northern and southern regions on the inland waters of southeast Alaska. Geographic delineation is not yet known. Data to evaluate population structure for harbor porpoise in Southeast Alaska have been collected and are currently being analyzed. Should the analysis identify different population structure than is currently reflected in the Alaska SARs, NMFS will consider how to best revise stock designations in the future.

As indicated above, all 11 species (with 18 managed stocks) in table 5 temporally and spatially co-occur with the activities to the degree that take is reasonably likely to occur at either location. All species that could potentially occur in the proposed project areas are included in section 4 and tables 3–1 and 3–2 of the USCG's IHA application. While the AT1 Transient stock of killer whales has been reported in the area of Moorings Seward, the stock consists of only 7 individuals, and the temporal and/or spatial occurrence of this species in the project area during the short proposed project timeframe is such that take is not expected to occur. Therefore, they are not discussed further in this notice. In addition, the southcentral and southeastern stocks of northern sea otter (*Enhydra lutris kenyoni*) may be found in Seward and Sitka, respectively. However, this species is managed by the U.S. Fish and Wildlife Service and is not considered further in this document.

Gray whale—Two populations of gray whales are recognized, the eastern and a western North Pacific (ENP and WNP). Whales from the WNP are known to feed in the Okhotsk Sea and off of Kamchatka before migrating south to poorly known wintering grounds, possibly in the South China Sea. The ENP stock of gray whales inhabit California and Mexico in the winter months, and the Chukchi, Beaufort, and Bering Seas in northern Alaska in the summer and fall. The migration pattern of gray whales appears to follow a route along the western coast of Southeast Alaska, traveling northward from British Columbia through Hecate Strait and Dixon Entrance, passing the west coast of Baranof Island from late March to May and then return south in October and November (Jones *et al.*, 1984; Ford *et al.*, 2013). The two populations have historically been considered geographically isolated from each other; however, data from satellite-tracked whales indicate that there is some overlap between the stocks. Two WNP whales were tracked from Russian foraging areas along the Pacific rim to Baja California (Mate *et al.*, 2011). Between 22–24 WNP whales are known to have occurred in the eastern Pacific through comparisons of ENP and WNP photo-identification catalogs (Weller *et al.*, 2011). Therefore, a portion of the WNP population is assumed to migrate, at least in some years, to the eastern

Pacific during the winter breeding season. However, it is extremely unlikely that a gray whale in close proximity to the proposed project areas would be one of the few WNP whales that have been documented in the eastern Pacific. The likelihood that a WNP whale would be present in the vicinity of Moorings Seward or Moorings Sitka is insignificant and discountable, and WNP gray whales are omitted from further analysis. Sitka Sound is within a gray whale migratory Biologically Important Area (BIA) (March–May; November–January) and a feeding BIA (March–June) (Wild *et al.*, 2023).

Fin whale—The fin whale is widely distributed in all the world's oceans (Gambell, 1985), but typically occurs in coastal, shelf, and oceanic waters in temperate and polar regions from 20–70 degrees north and south of the Equator. Stafford *et al.* (2009) noted that sea-surface temperature is a suitable predictor for fin whale call detections in the North Pacific. Fin whales appear to have complex seasonal movements and are seasonal migrants; they mate and calve in temperate waters during the winter and migrate to feed at northern latitudes during the summer (Gambell, 1985). The North Pacific population summers from the Chukchi Sea to California and winters from California southwards (Gambell, 1985). Fin whales are generally solitary but can also occur in groups of two to seven individuals.

Humpback whale—Humpback whales are the most commonly observed baleen whale in Alaska and have been observed in Southeast Alaska in all months of the year (Baker *et al.*, 1986). They undergo seasonal migrations in Alaska from spring until fall with other whale species present. There are two potential stocks of humpback whales that may occur in the project area: the Hawai'i stock and the Mexico-North Pacific stock (ESA-threatened). The Hawai'i stock consists of the Southeast Alaska/Northern British Columbia demographically independent population (DIP) and the North Pacific unit. The Southeast Alaska/Northern British Columbia DIP spends the winter months offshore of Hawai'i and the summer months in Southeast Alaska and Northern British Columbia (Wade *et al.*, 2021). The North Pacific unit migrates between Russia and western and Central Alaska to Hawai'i. The Mexico-North Pacific stock is likely

made up of multiple DIPs, though there is insufficient data to delineate or assess DIPs at this time, and spend winter months off Mexico and the Revillagigedo Islands, while spending summer months primarily in Alaska (Martien *et al.*, 2021). Moorings Sitka is within a seasonal humpback whale feeding BIAs (March–May, September–December) (Wild *et al.*, 2023).

Minke whale—Minke whales are found throughout the northern hemisphere in polar, temperate, and tropical waters. The International Whaling Commission has identified three minke whale stocks in the North Pacific: one near the Sea of Japan, a second in the rest of the western Pacific (west of 180 degrees W), and a third less concentrated stock throughout the eastern Pacific. NMFS further splits this third stock between Alaska whales and resident whales of California, Oregon, and Washington (Muto *et al.*, 2018). Minke whales are found in all Alaska waters, however no population estimates are currently available for the Alaska stock.

Minke whales are generally found in shallow, coastal waters within 200 m (656 ft) of shore (Zerbini *et al.*, 2006). Dedicated surveys for cetaceans in southeast Alaska found that minke whales were scattered throughout inland waters from Glacier Bay and Icy Strait to Clarence Strait, with small concentrations near the entrance of Glacier Bay. Surveys took place in spring, summer, and fall, and minke whales were present in low numbers in all seasons and years (Dahlheim *et al.*, 2009). Additionally, minke whales were observed during the Biorka Island Dock Replacement Project at the mouth of Sitka Sound (Turnagain Marine Construction, 2018).

Killer whale—Killer whales have been observed in all oceans, but the highest densities occur in colder, more productive waters found at high latitudes. Killer whales occur along the entire coast of Alaska (Consiglieri *et al.*, 1982), inland waterways of British Columbia and Washington (Bigg *et al.*, 1990), and along the outer coasts of Washington, Oregon, and California (Forney and Barlow, 1998). Transient killer whales hunt and feed primarily on marine mammals, including harbor seals, Dall's porpoises, harbor porpoises, and sea lions. Resident killer whale populations in the eastern North Pacific feed mainly on salmonids, showing a

strong preference for Chinook salmon (*Oncorhynchus tshawytscha*) (Muto *et al.*, 2020). Both resident and transient killer whales were observed in southeast Alaska during all seasons during surveys between 1991 and 2007, in a variety of habitats and in all major waterways, including Lynn Canal, Icy Strait, Stephens Passage, Frederick Sound, and upper Chatham Strait (Dahlheim *et al.*, 2009). There does not appear to be strong seasonal variation in abundance or distribution of killer whales, but Dahlheim *et al.* (2009) observed substantial variability across different years.

Eight stocks of killer whales are recognized within the Pacific U.S. Exclusive Economic Zone (Young *et al.*, 2023). Of those, five stocks may be present in the project areas: Alaska Resident stock; AT1 Transient stock; Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock; Northern Resident stock; and West Coast Transient stock. The AT1 Transient stock is small and unlikely to occur in the proposed project area at Moorings Seward during the 22 days of proposed in-water work; only the Alaska Resident and Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stocks are expected at Moorings Seward. At Moorings Sitka, the four stocks likely to be present are: Alaska Resident stock; Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock; Northern Resident stock; and West Coast Transient stock.

Pacific white-sided dolphin—The Pacific white-sided dolphin is found in temperate waters of the North Pacific from the southern Gulf of California to Alaska. Across the North Pacific, it appears to occur between 33 and 47 degrees N (Young *et al.*, 2023; Waite and Shelden, 2018). In the eastern north Pacific Ocean, the Pacific white-sided dolphin is one of the most common cetacean species, occurring primarily in shelf and slope waters (Green *et al.*, 1993). During winter, this species is most abundant in California slope and offshore areas, and as northern waters begin to warm in the spring, individuals move north to slope and offshore waters off Oregon and Washington (Green *et al.*, 1993; Barlow, 2003).

Dall's porpoise—Dall's porpoise is found in temperate to subarctic waters of the North Pacific and adjacent seas. It is widely distributed across the North Pacific over the continental shelf and slope waters, and over deep (greater than 2,500 m) oceanic waters (Friday *et al.*, 2012; Friday *et al.*, 2013). It may be the most abundant small cetacean in the North Pacific Ocean, and its abundance

changes seasonally, likely in relation to water temperature.

Harbor porpoise—The harbor porpoise is common in coastal waters. Individuals frequently occur in coastal waters of southeast Alaska and are observed most frequently in waters less than 107 m deep (Dahlheim *et al.*, 2009). There are six harbor porpoise stocks in Alaska: the Bering Sea stock occurs throughout the Aleutian Islands and all waters north of Unimak Pass; the Gulf of Alaska stock occurs from Cape Suckling to Unimak Pass; the Northern Southeast Alaska Inland Waters stock includes Cross Sound, Glacier Bay, Icy Strait, Chatham Strait, Frederick Sound, Stephens Passage, Lynn Canal, and adjacent inlets; the Southern Southeast Alaska Inland Waters stock encompasses Summer Strait, including areas around Wrangell and Zarembo Islands, Clarence Strait, and adjacent inlets and channels within the inland waters of Southeast Alaska north-northeast of Dixon Entrance; and the Yakutat/Southeast Alaska Offshore Waters stock includes offshore habitats in the Gulf of Alaska west of the Southeast Alaska inland waters and the areas around Yakutat Bay (Young *et al.*, 2023). Only the Yakutat/Southeast Alaska Offshore Waters stock and the Gulf of Alaska stocks are expected in the proposed project areas. The Yakutat/Southeast Alaska Offshore Waters stock's range includes Moorings Sitka, while the Gulf of Alaska stock range includes Moorings Seward.

Northern fur seal—The northern fur seal is endemic to the North Pacific Ocean and occurs from southern California to the Bering Sea, Sea of Okhotsk, and Sea of Japan. The worldwide population of northern fur seals has declined substantially from 1.8 million animals in the 1950s due to large-scale fur seal harvests on the Pribilof Islands to supply the fur trade (Muto *et al.*, 2020). Two stocks are recognized in U.S. waters: The Eastern Pacific and the California stocks. The Eastern Pacific stock ranges from southern California during winter to the Pribilof Islands and Bogoslof Island in the Bering Sea during summer (Muto *et al.*, 2020; Carretta *et al.*, 2020). The northern fur seal population appears to be greatly affected by El Niño events and most northern fur seals are highly migratory. The northern fur seal spends approximately 90 percent of its time at sea, typically in areas of upwelling along the continental slopes and over seamounts. The remainder of its life is spent on or near rookery islands or haulouts. During the breeding season, most of the world's population of northern fur seals occurs on the Pribilof

and Bogoslof Islands, with the main breeding season occurring in July (Gentry, 2009).

Steller sea lion—The Steller sea lion's range extends from northern Japan to California, with areas of abundance in the Gulf of Alaska and Aleutian Islands (Muto *et al.*, 2020). In 1997, based on demographic and genetic dissimilarities, NMFS identified two distinct population segments (DPSs) of Steller sea lions under the ESA: a western DPS (Western stock) and an eastern DPS (Eastern stock). The western DPS breeds on rookeries located west of 144 degrees W in Alaska and Russia, whereas the eastern DPS breeds on rookeries in southeast Alaska through California. Movement occurs between the western and eastern DPSs of Steller sea lions, and increasing numbers of individuals from the western DPS have been seen in southeast Alaska in recent years (Muto *et al.*, 2020; Fritz *et al.*, 2016). This DPS-exchange is especially evident in the outer southeast coast of Alaska, including Sitka Sound. Hastings *et al.* (2020) indicates that the Eastern stock is increasing while the Western stock is decreasing, influencing mixing of both populations at new rookeries in northern southeast Alaska.

Steller sea lion critical habitat has been defined in Alaska at major haulouts and major rookeries (50 CFR 226.202) but the project action areas do not overlap with this critical habitat. Designated critical habitat for the Western DPS of Steller sea lions includes two major haulouts south of Moorings Seward at the mouth of Resurrection Bay, one on Resurrection Peninsula and the other at Hive Island.

Harbor seal—Harbor seals are common in the coastal and inside waters of the project areas. Harbor seals in Alaska are typically non-migratory with local movements attributed to factors such as prey availability, weather, and reproduction (Scheffer and Slipp, 1944; Bigg, 1969; Hastings *et al.*, 2004). Harbor seals haul out of the water periodically to rest, give birth, and nurse their pups.

There are 12 stocks of harbor seals in Alaska, two of which occur in the project areas: (1) the Prince William Sound stock ranges from Elizabeth Island off the southwest tip of the Kenai Peninsula to Cape Fairweather, including Moorings Seward; and (2) the Sitka/Chatham Strait stock ranges from Cape Bingham south to Cape Ommaney, extending inland to Table Bay on the west side of Kuiu Island and north through Chatham Strait to Cube Point off the west coast of Admiralty Island, and as far east as Cape Bendel on the

northeast tip of Kupreanof Island, which includes Moorings Sitka.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). 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 6.

TABLE 6—MARINE MAMMAL HEARING GROUPS
[NMFS, 2018]

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales).	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales).	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals).	50 Hz to 86 kHz.

TABLE 6—MARINE MAMMAL HEARING GROUPS—Continued
[NMFS, 2018]

Hearing group	Generalized hearing range*
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals).	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on approximately 65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth *et al.*, 2013). This division between phocid and otariid pinnipeds is now reflected in the updated hearing groups proposed in Southall *et al.* (2019).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals 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 of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and

far (ANSI, 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (e.g., waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (e.g., sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (e.g., vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, DTH, pile cutting, and diamond wire sawing. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (e.g., explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; NMFS, 2018). Non-impulsive sounds (e.g., aircraft, machinery operations such as drilling or dredging, vibratory pile driving, pile cutting, diamond wire sawing, and active sonar systems) can be broadband, narrowband, or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1986; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard

to hearing (e.g., Ward, 1997; Southall *et al.*, 2007).

Three types of hammers would be used on this project: impact, vibratory, and DTH. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005b). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10–20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or sometimes hydraulic) component integrated into the DTH hammer to increase speed of progress through the substrate (*i.e.*, it is similar to a “hammer drill” hand tool). The sounds produced by the DTH method contain both a continuous non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, we treat DTH systems as both impulsive and non-impulsive sound source types simultaneously.

The likely or possible impacts of the USCG’s proposed activity on marine mammals involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile driving activities.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from DTH and pile driving and removal is the means by which marine mammals may be harassed from the USCG’s specified activity. In general, animals exposed to natural or anthropogenic sound may experience behavioral, physiological, and/or physical effects, ranging in magnitude from none to severe

(Southall *et al.*, 2007). In general, exposure to pile driving noise has the potential to result in behavioral reactions (e.g., avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior) and, in limited cases, an auditory threshold shift (TS). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal’s habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (e.g., impulsive versus non-impulsive), the species, age and sex class (e.g., adult male versus mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). Here we discuss physical auditory effects (*i.e.*, TS) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced TS as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual’s hearing range above a previously established reference level (NMFS, 2018). The amount of TS is customarily expressed in dB and TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (e.g., impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal’s frequency spectrum (*i.e.*, how animal uses sound within the frequency band of the signal) (Kastelein *et al.*, 2014), and the overlap between the animal and the source (e.g., spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual’s hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB TS approximates

PTS onset (see Ward *et al.*, 1958; Ward *et al.*, 1959; Ward, 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). PTS levels for marine mammals are estimates as, with the exception of a single study unintentionally inducing PTS in a harbor seal (e.g., Kastak *et al.*, 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual’s hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.*, 2007), a TTS of 6 dB is considered the minimum TS clearly larger than any day-to-day or session-to-session variation in a subject’s normal hearing ability (Finneran *et al.*, 2000; Schlundt *et al.*, 2000; Finneran *et al.*, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum} , the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum} , the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in *Masking*). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to

some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran, 2015; Southall *et al.*, 2019 for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter *et al.*, 1966). 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. For cetaceans, published data on the onset of TTS are limited to captive bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaticorientalis*) (Southall *et al.*, 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*), and California sea lions (*Zalophus californianus*) (Kastak *et al.*, 1999; Kastak *et al.*, 2008; Kastelein *et al.*, 2020b; Reichmuth *et al.*, 2013; Sills *et al.*, 2020). TTS was not observed in spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to single airgun impulse sounds at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense or long-duration sound exposure. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity for a species or hearing group, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.*, a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.*, 2019a; Kastelein *et al.*, 2019b; Kastelein *et al.*, 2020a; Kastelein *et al.*, 2020b). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures but the

resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.*, 2009; Finneran *et al.*, 2010; Kastelein *et al.*, 2014; Kastelein *et al.*, 2015). This means that TTS predictions based on the total SEL_{cum} will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga whale, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.*, 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2018). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and PTS thresholds have not been studied in marine mammals and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above that inducing mild TTS (*e.g.*, a 40-dB threshold shift approximates PTS onset (Kryter *et al.*, 1966; Miller, 1974), while a 6-dB threshold shift approximates TTS onset (Southall *et al.*, 2007; Southall *et al.*, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007; Southall *et al.*, 2019). Given the higher level of sound or longer exposure duration necessary to cause PTS as

compared with TTS, it is considerably less likely that PTS could occur.

Activities for this project include impact and vibratory pile driving and removal. Installing piles requires a combination of impact pile driving, vibratory pile driving, and DTH. For the proposed project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and drilling also has the potential to behaviorally disturb marine mammals. Generally speaking, NMFS considers a behavioral disturbance that rises to the level of harassment under the MMPA a non-minor response—in other words, not every response qualifies as behavioral disturbance, and for responses that do, those of a higher level, or accrued across a longer duration, have the potential to affect foraging, reproduction, or survival. Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses may include changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Southall *et al.*, 2019; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics

associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2004). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a "progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial," rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; NRC, 2005). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (*e.g.*, seismic airguns) have been varied but often consist of avoidance behavior or other behavioral changes (Richardson *et al.*, 1995; Morton and Symonds, 2002; Nowacek *et al.*, 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations

could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*, Frankel and Clark, 2000; 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. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts

resulting from anthropogenic sound exposure (*e.g.*, Kastelein *et al.*, 2005; Kastelein *et al.*, 2006). For example, harbor porpoise' respiration rate increased in response to pile driving sounds at and above a received broadband SPL of 136 dB (zero-peak SPL: 151 dB re 1 μ Pa; SEL of a single strike: 127 dB re 1 μ Pa²-s) (Kastelein *et al.*, 2013).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003) or vocalizations (Foote *et al.*, 2004), respectively, while North Atlantic right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.*, Bowles *et al.*, 1994; Morton and Symonds, 2002). 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).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.*, directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Bowers *et al.*, 2018).

The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.*, when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fishes and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.*, Beauchamp and Livoreil, 1997; Purser and Radford, 2011; Fritz *et al.*, 2002). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.*, decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.*, Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than 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). Note that there is a difference between multi-day substantive (*i.e.*, meaningful) behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

In 2016, the Alaska Department of Transportation and Public Facilities documented observations of marine mammals during construction activities (*i.e.*, pile driving and DTH) at the

Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015). In the marine mammal monitoring report for that project, 1,281 Steller sea lions were observed within the estimated Level B harassment zone during pile driving or drilling. Of these, 19 individuals demonstrated an alert behavior, seven were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 m of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoises were also observed within the estimated Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the USCG's specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.*, small area movements). Monitoring reports from other recent pile driving and DTH projects in Alaska have observed similar behaviors (*e.g.*, the Biorca Island Dock Replacement Project <https://www.fisheries.noaa.gov/action/incidental-take-authorization-faa-biorca-island-dock-replacement-project-sitka-ak>).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.*, Selye, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in

the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.*, Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments for both laboratory and free-ranging animals (*e.g.*, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (*e.g.*, Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced vessel traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales (*Eubalaena glacialis*). These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as "distress." In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however, distress is an unlikely result of the proposed project based on observations of marine mammals during previous, similar projects in the region.

Auditory Masking—Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the receiving

marine mammal (Southall *et al.*, 2007; Clark *et al.*, 2009; Hatch *et al.*, 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.*, 2009). Acoustic masking is when other noises such as from human sources interfere with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995; Erbe *et al.*, 2016). Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.*, signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.*, sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions (Hotchkiss and Parks, 2013).

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is human-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect (though not necessarily one that would be associated with harassment).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered

as a reduction in the communication space of animals (*e.g.*, Clark *et al.*, 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.*, Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007; Di Iorio and Clark, 2010; 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 (Hotchkiss and Parks, 2013). Masking can be tested directly in captive species (*e.g.*, Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.*, Branstetter *et al.*, 2013).

Marine mammals at or near the proposed project sites may be exposed to anthropogenic noise which may be a source of masking. Vocalization changes may result from a need to compete with an increase in background noise and include increasing the source level, modifying the frequency, increasing the call repetition rate of vocalizations, or ceasing to vocalize in the presence of increased noise (Hotchkiss and Parks, 2013). For example, in response to loud noise, beluga whales may shift the frequency of their echolocation clicks to prevent masking by anthropogenic noise (Eickmeier and Vallarta, 2023).

Masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as vibratory pile driving. Energy distribution of pile driving covers a broad frequency spectrum, and sound from pile driving would be within the audible range of pinnipeds and cetaceans present in the proposed action area. While some construction during the USCG's activities may mask some acoustic signals that are relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that the fitness of individual marine mammals would be impacted.

Airborne Acoustic Effects—Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project areas within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to

underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been "taken" because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

The USCG's proposed construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water SPLs and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see *Masking*) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During DTH, impact, and vibratory pile driving, elevated levels of underwater noise would ensonify the project area where both fish and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. In-water pile driving activities would also cause short-term effects on water quality due to increased turbidity. Temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25 ft (7.6 m) radius around the pile (Everitt *et al.*, 1980). The sediments of the project site would settle out rapidly when disturbed. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. The USCG would employ other standard construction best management practices (see section 11 in the USCG's application), thereby reducing any impacts. Therefore, we expect the

impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat—The proposed activities would not result in permanent impacts to habitats used directly by marine mammals and no increases in vessel traffic are expected in either location as a result of the specified activities. The areas likely impacted by the proposed action are relatively small compared to the total available habitat in the Gulf of Alaska and Southeast Alaska. The proposed project areas are highly influenced by anthropogenic activities and provides limited foraging habitat for marine mammals. The total seafloor area affected by piling activities is small compared to the vast foraging areas available to marine mammals at either location. At best, the areas impacted provide marginal foraging habitat for marine mammals and fishes. Furthermore, pile driving at the project locations would not obstruct movements or migration of marine mammals.

In-Water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (e.g., crustaceans, cephalopods, fish, zooplankton, and other marine mammals). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Construction activities would produce continuous, non-impulsive (i.e., vibratory pile driving, DTH) and intermittent impulsive (i.e., impact pile driving, DTH) sounds. Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (Zelick *et al.*, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral

responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (e.g., feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005a) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, several of which are based on studies in support of large, multiyear bridge construction projects (e.g., Scholik and Yan, 2001; Popper and Hastings, 2009). Many studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (e.g., Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Fewtrell and McCauley, 2012; Paxton *et al.*, 2017). In response to pile driving, Pacific sardines (*Sardinops sagax*) and northern anchovies (*Engraulis mordax*) may exhibit an immediate startle response to individual strikes but return to “normal” pre-strike behavior following the conclusion of pile driving with no evidence of injury as a result (see NAVFAC, 2014). However, some studies have shown no or slight reaction to impulse sounds (e.g., Wardle *et al.*, 2001; Popper *et al.*, 2005; Jorgenson and Gyselman, 2009; Peña *et al.*, 2013).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. 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.* (2012b) 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.*, 2012a; Casper *et al.*, 2013) and the greatest potential effect on fish during the proposed project would occur during impact pile driving, if it is required. However, the duration of impact pile driving would be limited to a contingency in the event that vibratory driving does not satisfactorily install the pile depending on observed soil

resistance. In-water construction activities would only occur during daylight hours allowing fish to forage and transit the project area at night. Vibratory pile driving may elicit behavioral reactions from fish such as temporary avoidance of the area but is unlikely to cause injuries to fish or have persistent effects on local fish populations. In addition, it should be noted that the area in question is low-quality habitat since it is already developed and experiences anthropogenic noise from vessel traffic.

The most likely impact to fishes from pile driving and DTH activities in the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of the area after pile driving stops is unknown but a rapid return to normal recruitment, distribution, and behavior is anticipated. There are times of known seasonal marine mammal foraging when fish are aggregating but the impacted areas are small portions of the total foraging habitats available in the regions. In general, impacts to marine mammal prey species are expected to be minor and temporary. Further, it is anticipated that preparation activities for pile driving and DTH (i.e., positioning of the hammer) and upon initial startup of devices would cause fish to move away from the affected area where injuries may occur. Therefore, relatively small portions of the proposed project area would be affected for short periods of time, and the potential for effects on fish to occur would be temporary and limited to the duration of sound-generating activities.

Construction activities, in the form of increased turbidity, also have the potential to adversely affect forage fish in the project area. Pacific herring (*Clupea pallasii*) is a primary prey species of Steller sea lions, humpback whales, and many other marine mammal species that occur in the project areas. As discussed earlier, increased turbidity is expected to occur in the immediate vicinity (approximately 25 ft (7.6 m) or less) of construction activities (Everitt *et al.*, 1980). However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish are expected to be minor or negligible. In addition, best management practices would be in effect to limit the extent of turbidity to the immediate project areas. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in the regions

are routinely exposed to substantial levels of suspended sediment from glacial sources.

In summary, given the short daily duration of sound associated with pile driving and DTH, and the relatively small areas being affected, pile driving and DTH activities associated with the proposed action are not likely to have a permanent adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.*, vibratory and impact pile driving, DTH) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high-frequency species and phocids, because predicted auditory injury zones are large and these species could enter the Level A harassment zones and remain undetected for a sufficient duration to incur auditory injury due to their small size and inconspicuous nature. Although auditory injury could occur for low-frequency species due to large predicted auditory injury zones associated with DTH, due to their large size, conspicuous nature, and proposed

mitigation (*i.e.*, large shutdown zones, boat-based protected species observers (PSOs)), it is assumed that all low-frequency species would be visually detected and, therefore, taking by Level A harassment would be eliminated. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007; Southall *et al.*, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold

based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 microPascal (re 1 μ Pa)) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The USCG's proposed activity includes the use of continuous (vibratory and DTH) and impulsive (impact driving and DTH) sources, and therefore the 120 and 160 dB re 1 μ Pa (RMS) thresholds, respectively, are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (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). The USCG's proposed activity includes the use of impulsive (impact driving and DTH) and non-impulsive (vibratory and DTH) sources.

These thresholds are provided in table 7 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 7—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak SPL thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute (ANSI) standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss (TL) coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.*, impact pile driving, vibratory pile driving, vibratory pile removal, and DTH).

In order to calculate distances to the Level A harassment and Level B

harassment thresholds for the methods and piles proposed for this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes and methods (tables 8–11). This analysis uses practical spreading loss, a standard assumption regarding sound propagation for similar environments, to estimate transmission of sound through water. For this analysis, the TL factor of 15 (4.5 dB per doubling of distance) is used. A weighting adjustment factor of 2.5 or 2, a standard default value for vibratory pile driving and removal or impact driving and DTH respectively, were used to calculate Level A harassment areas.

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and continuous thresholds are used to evaluate Level B harassment. With regards to DTH mono-hammers, NMFS recommends proxy levels for Level A harassment based on available data regarding DTH systems of similar sized piles and holes (Denes *et al.*, 2019; Guan and Miner, 2020; Heyvaert and Reyff, 2021; Reyff, 2020; Reyff and Heyvaert, 2019).

TABLE 8—OBSERVED NON-IMPULSIVE SOUND LEVELS AND DURATIONS FOR IN-WATER ACTIVITIES LIKELY TO OCCUR AT MOORINGS SEWARD

In-water activity	Pile size and type	RMS SPL (dB re 1 μ Pa) at 10 m	Average duration per pile (seconds)	Piles per day
Vibratory Pile Extraction ^a	14-inch steel guide pile	160.0	1,800	5
Vibratory Pile Settling ^a	30-inch concrete guide pile	163.0	600	2
Rock socket drill ^b (non-impulsive component)	30-inch concrete guide pile	174	^c 10,800	2

Abbreviations: dB re 1 μ Pa = decibels referenced to a pressure of 1 microPascal, m = meters.

^a NMFS 2024.

^b NMFS 2022.

^c Rock socket drilling is a DTH activity with multiple strikes per second. DTH activities produce sounds that simultaneously contain both non-impulsive and impulsive components.

TABLE 9—OBSERVED IMPULSIVE SOUND LEVELS AND DURATIONS FOR PILE INSTALLATION ACTIVITIES LIKELY TO OCCUR AT MOORINGS SEWARD

Installation method	Pile size and type	Peak (dB re 1 μ Pa) at 10 m	RMS (dB re 1 μ Pa) at 10 m	SEL-single-strike (dB re 1 μ Pa) at 10 m	Strikes per day	Maximum strikes per pile	Piles per day
Rock socket drill ^a	30-inch concrete guide pile	194	174	164	^c 216,000	108,000	2
Impact hammer proofing ^b	30-inch concrete guide pile	198	186	173	10	5	2

Abbreviations: dB re 1 μ Pa = decibels referenced to a pressure of 1 microPascal, m = meters.

^a NMFS 2022.

^b NMFS 2024.

^c Rock socket drilling is a DTH activity with multiple strikes per second. DTH activities produce sounds that simultaneously contain both non-impulsive and impulsive components.

TABLE 10—OBSERVED NON-IMPULSIVE SOUND LEVELS AND DURATIONS FOR IN-WATER ACTIVITIES LIKELY TO OCCUR AT MOORINGS SITKA

In-water activity	Pile size and type	RMS SPL (dB re 1 μ Pa) at 10 m	Average duration per pile (seconds)	Piles per day
Vibratory Pile Extraction ^a	12-inch timber piles	162.0	1,800	5
Vibratory Pile Settling ^b	30-inch concrete guide and structure pile	163.0	600	2
Rock socket drill ^c (non-impulsive component)	30-inch concrete guide and structure pile	174	10,800	2

Abbreviations: dB re 1 μ Pa = decibels referenced to a pressure of 1 microPascal, m = meters.

^aNMFS 2024.

^bNMFS 2022.

^cRock socket drilling is a DTH activity with multiple strikes per second. DTH activities produce sounds that simultaneously contain both non-impulsive and impulsive components.

TABLE 11—OBSERVED IMPULSIVE SOUND LEVELS AND DURATIONS FOR PILE INSTALLATION ACTIVITIES LIKELY TO OCCUR AT MOORINGS SITKA

Installation method	Pile size and type	Peak (re 1 μ Pa) at 10 m	RMS (dB re 1 μ Pa) at 10 m	SEL ^{single-strike} (dB re 1 μ Pa) at 10 m	Strikes per day
Impact drive ^a	13-inch plastic fender pile	177	153	NA	200 (up to 100 strikes per pile and 2 piles per day).
Impact drive ^a	14-inch timber guide pile	180	170	160	320 (up to 160 strikes per pile and 2 piles per day).
Rock socket drill ^b	30-inch concrete guide pile	194	174	164	216,000 (up to 108,000 strikes per pile and 2 piles per day). ^d
Impact hammer proofing ^c	30-inch concrete guide pile	198	186	173	10 (up to 5 strikes per pile and 2 piles per day).

Abbreviations: dB re 1 μ Pa = decibels referenced to a pressure of 1 microPascal, m = meters.

^aCaltrans 2020.

^bNMFS 2022.

^cNMFS 2024.

^dRock socket drilling is a DTH activity with multiple strikes per second. DTH activities produce sounds that simultaneously contain both non-impulsive and impulsive components.

Level B Harassment Zones—TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R_1/R_2),$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R₁ = the distance of the modeled SPL from the driven pile, and

R₂ = the distance from the driven pile of the initial measurement.

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation

environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the USCG's proposed activities. The Level B harassment zones and approximate amount of area ensonified for the proposed underwater activities are shown in tables 12 and 13.

Level A Harassment Zones—The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this

optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving and DTH, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool (e.g., number of piles per day, duration and/or strikes per pile) are presented in tables 8–11, and the resulting estimated isopleths and total ensonified areas are reported below in tables 12 and 13.

TABLE 12—PROJECTED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS BY MARINE MAMMAL HEARING GROUP AT MOORINGS SEWARD

Activity	Distance to Level A (m) for LF	Distance to Level A (m) for MF	Distance to Level A (m) for HF	Distance to Level A (m) for PW	Distance to Level A (m) for OW	Level B distance (m)	Total ensonified area (km ²)
Vibratory pile extraction	10.8	1.0	16.0	6.6	0.5	4,641.6	1.94
DTH (Impulsive component) concrete	1,945.5	69.2	2,317.4	1,041.2	75.8	39,810.7	* 2.26
Vibratory settling concrete	4.5	0.4	6.6	2.7	0.2	7,356.4	* 2.26

TABLE 12—PROJECTED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS BY MARINE MAMMAL HEARING GROUP AT MOORINGS SEWARD—Continued

Activity	Distance to Level A (m) for LF	Distance to Level A (m) for MF	Distance to Level A (m) for HF	Distance to Level A (m) for PW	Distance to Level A (m) for OW	Level B distance (m)	Total ensonified area (km ²)
Impact driver proofing concrete	10.0	0.4	11.9	5.3	0.4	541.2	0.11

Abbreviations: LF = low-frequency cetaceans, MF = mid-frequency cetaceans, HF = high-frequency cetaceans, PW = phocid pinnipeds in water, OW = otariid pinnipeds in water.

*Total harassment areas are the same despite having varying radii because the maximum distance intersects with the other side of Resurrection Bay near Seward resulting in the same areal extent.

TABLE 13—PROJECTED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS BY MARINE MAMMAL HEARING GROUP AT MOORINGS SITKA

Activity	Distance to Level A (m) for LF	Distance to Level A (m) for MF	Distance to Level A (m) for HF	Distance to Level A (m) for PW	Distance to Level A (m) for OW	Level B distance (m)	Total ensonified area (km ²)
Vibratory pile extraction	14.7	1.3	21.7	6.9	0.6	6,309.6	4.17
Impact drive plastic	13.6	0.5	16.2	7.3	0.5	3.4	0.0
Impact drive timber	13.7	0.5	16.3	7.3	0.5	46.4	0.01
DTH (Impulsive component)	1,945.5	69.2	2,317.4	1,041.2	75.8	39,810.7	6.31
Vibratory settling concrete	4.5	0.4	6.6	2.7	0.2	7,356.4	4.89
Impact driver proofing concrete	10.0	0.4	11.9	5.3	0.4	541.2	0.33

Abbreviations: LF = low-frequency cetaceans, MF = mid-frequency cetaceans, HF = high-frequency cetaceans, PW = phocid pinnipeds in water, OW = otariid pinnipeds in water.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. Available information regarding marine mammal occurrence and density in the project areas includes monitoring data, prior incidental take authorizations, and ESA consultations on previous projects.

When local density information is not available, data aggregated in the Navy's Marine Mammal Species Density Database (Navy, 2019; Navy, 2020) for the Northwest or Gulf of Alaska Testing and Training areas or nearby proxies from the monitoring data are used; whichever gives the most precautionary take estimate was chosen. Daily occurrence probability of each marine mammal species is based on consultation with previous monitoring

reports, local researchers and marine professionals. Occurrence probability estimates at Moorings Sitka are based on conservative density approximations for each species and factor in historic data of occurrence, seasonality, and group size in Sitka Sound and Sitka Channel. A summary of proposed occurrence is shown in table 14. Group size is based on the best available published research for these species and their presence in the project areas.

TABLE 14—ESTIMATED SPECIES OCCURRENCE OR DENSITY VALUES

Species	Stock	Moorings Seward	Moorings Sitka
Steller sea lion ^{a b}	Western	2 individuals/day	1–2 groups of 2 individuals/day of either stock.
Steller sea lion ^{a b}	Eastern	0	1–2 groups of 2 individuals/day of either stock.
Northern fur seal	Eastern Pacific	0	1 individual/month.
Harbor seal	Prince William Sound	48.95 individuals/day	0.
Harbor seal ^a	Sitka/Chatham Strait	0	1–2 groups of 2.1 individuals/day.
Killer whale	Alaska Resident	1 group of 7 individuals/week of either stock.	1 group of 6.6 individuals/week of any stock.
Killer whale	Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.	1 group of 7 individuals/week of either stock.	1 group of 6.6 individuals/week of any stock.
Killer whale	Northern Resident	0	1 group of 6.6 individuals/week of any stock.
Killer whale	West Coast Transient	0	1 group of 6.6 individuals/week of any stock.
Pacific white-sided dolphin	North Pacific	3 individuals/day	0.
Harbor porpoise	Gulf of Alaska	0.4547 individuals/km ²	0.
Harbor porpoise	Yakutat/Southeast Alaska Off-shore Waters.	0	1 group of 5 individuals/2 weeks.
Dall's porpoise	Alaska	0.25 individuals/day	0.121 individuals/km ² .
Sperm whale	North Pacific	0	0.002 individuals/km ² .
Humpback whale ^c	Hawai'i	1 individual/day of either stock	1 group of 3.4 individuals/week of either stock.
Humpback whale ^c	Mexico-North Pacific	1 individual/day of either stock	1 group of 3.4 individuals/week of either stock.
Gray whale	Eastern North Pacific	0.0155 individuals/km ²	1 group of 3.5 individuals/2 weeks.

TABLE 14—ESTIMATED SPECIES OCCURRENCE OR DENSITY VALUES—Continued

Species	Stock	Moorings Seward	Moorings Sitka
Fin whale	Northeast Pacific	0.068 individuals/km ²	0.0001 individuals/km ² .
Minke whale	Alaska	0.006 individuals/km ²	1 group of 3.5 individuals/2 weeks.

Note: Occurrence value presented as individuals per unit time; density value presented as individuals per square kilometer.

^a Likelihood of one group per day in the Level A harassment zone and likelihood of two groups per day in the Level B harassment zone.

^b Steller sea lion stock attribution is 100% Western DPS at Moorings Seward; 97.8% Eastern DPS and 2.2% Western DPS at Moorings Sitka.

^c Humpback whale stock attribution is 89% Hawai'i and 11% Mexico-North Pacific at Moorings Seward; 98% Hawai'i and 2% Mexico-North Pacific at Moorings Sitka.

Gray whale—Members of the ENP stock have a small chance to occur at the northern end of Resurrection Bay near Moorings Seward, with an estimated density of 0.0155 individuals/km².

During 190 hours of observation from 1994 to 2002 from Sitka's Whale Park, only three gray whales were observed (Straley *et al.*, 2017). However, Straley and Wild (unpublished data) note that since 2014, the number of gray whale sightings in Sitka Sound has increased to an estimated 150–200 individuals in 2021 and 2022. Based on this and recent monitoring data collected near Sitka, the estimated occurrence of gray whales at Moorings Sitka is one group of 3.5 individuals every 2 weeks.

Fin whale—Fin whales have the potential to occur at both Moorings Seward and Moorings Sitka. Based on survey data, fin whales in the vicinity of Moorings Seward are anticipated to occur at a density of 0.068/km² and fin whales in the vicinity of Moorings Sitka are anticipated to occur at a density of 0.0001/km².

Humpback whale—Humpback whales found in the project areas are predominantly members of the Hawai'i DPS (89 percent at Moorings Seward, 98 percent probability at Moorings Sitka), which is not listed under the ESA. However, based on a comprehensive photo-identification study, members of the Mexico DPS, which is listed as threatened, have a small potential to occur in all project locations (11 percent at Moorings Seward, 2 percent at Moorings Sitka) (Wade, 2016), and it is estimated that one individual per day of either stock may occur at Moorings Seward while one group of 3.5 individuals per 2 weeks of either stock may occur at Moorings Sitka.

Minke whale—Minke whales are generally found in shallow, coastal waters within 200 m (656 ft) of shore (Zerbini *et al.*, 2006). Dedicated surveys for cetaceans in southeast Alaska found that minke whales were scattered throughout inland waters from Glacier Bay and Icy Strait to Clarence Strait, with small concentrations near the entrance of Glacier Bay. Surveys took

place in spring, summer, and fall, and minke whales were present in low numbers in all seasons and years (Dahlheim *et al.*, 2009). Additionally, minke whales were observed during the Biorka Island Dock Replacement Project at the mouth of Sitka Sound (Turnagain Marine Construction, 2018). Minke whale density at Moorings Seward is estimated as 0.006 individuals/km² while estimated occurrence at Moorings Sitka is one group of 3.5 individuals every 2 weeks.

Killer whale—Killer whales occur along the entire coast of Alaska (Braham and Dahlheim, 1982) and four stocks may be present in the project areas as follows: (1) Alaska Resident stock—both locations; (2) Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock—both locations; (3) Northern Resident—Sitka only; and (4) West Coast Transient stock—Sitka only.

The Alaska Resident stock occurs from southeast Alaska to the Aleutian Islands and Bering Sea. The Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock occurs from the northern British Columbia coast to the Aleutian Islands and Bering Sea. The Northern Resident stock occurs from Washington north through part of southeast Alaska. The West Coast Transient stock occurs from California north through southeast Alaska (Muto *et al.*, 2020). One group of seven individuals per week from either the Alaska Resident stock or the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock are estimated to occur at Moorings Seward. One group of 6.6 individuals per week from any of the four stocks are estimated to occur at Moorings Sitka.

Pacific white-sided dolphin—Pacific white-sided dolphins are anticipated to occur in the vicinity of Moorings Seward only. Previous construction monitoring reported by NOAA as an appropriate proxy for Moorings Seward is three individuals per day. During 8 years of surveys near Sitka, Straley *et al.* (2017) only documented seven Pacific white-sided dolphins, therefore, we do not reasonably expect the species to occur in the vicinity of Moorings Sitka.

Dall's porpoise—Dall's porpoise are anticipated to occur in the vicinity of both locations. At Moorings Seward, the expected occurrence rate is approximately 0.25 animals per day, and the average group size throughout Alaskan waters is estimated to be between 2–12 individuals. We therefore estimate that approximately one group of up to six individuals could occur over 22 non-consecutive days of in-water work. At Moorings Sitka, the estimated density of Dall's porpoise is 0.121 individuals/km².

Harbor porpoise—Only the Yakutat/Southeast Alaska Offshore Waters stock and the Gulf of Alaska stock are expected to be encountered in the project areas. The Gulf of Alaska stock range includes Moorings Seward while the Yakutat/Southeast Alaska Offshore Waters stock's range includes Moorings Sitka. The estimated density of harbor porpoises at Moorings Seward is 0.4547/km² and the estimated occurrence at Moorings Sitka is one group of five individuals every 2 weeks.

Northern fur seal—Northern fur seals are not expected near Moorings Seward and one individual per month is estimated to occur at Moorings Sitka.

Steller sea lion—Only the Western stock of Steller sea lion is expected to occur at Moorings Seward with an estimated occurrence of two individuals per day. Both the Western and Eastern stocks may occur at Moorings Sitka, which is located in the Central Outer Coast population mixing zone delineated by Hastings *et al.* (2020). Based on these data, 2.2 percent of Steller sea lions near Sitka are expected to be from the Western stock while 97.8 percent are expected to be from the Eastern stock (Hastings *et al.*, 2020), and it is estimated that one to two groups of two individuals per day may occur at Moorings Sitka, with a likelihood of no more than one group per day in the Level A harassment zone and likelihood of up to one additional (for a total of two) group per day in the level B harassment zone.

Harbor seal—There are 12 stocks of harbor seals in Alaska, 2 of which occur in the project areas: (1) the Prince

William Sound stock ranges from Elizabeth Island off the southwest tip of the Kenai Peninsula to Cape Fairweather, including Moorings Seward; and (2) the Sitka/Chatham Strait stock ranges from Cape Bingham south to Cape Ommamey, extending inland to Table Bay on the west side of Kuiu Island and north through Chatham Strait to Cube Point off the west coast of Admiralty Island, and as far east as Cape Bendel on the northeast tip of Kupreanof Island, which includes Moorings Sitka. Daily occurrence of harbor seals at Moorings Sitka is estimated as 48.95 individuals/day and at Moorings Sitka one to two groups of 2.1 individuals/day are estimated based on previous monitoring in the vicinity, with a likelihood of no more than one group per day in the Level A harassment zone and likelihood of up to one additional (for a total of two) group per day in the level B harassment zone.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the

take that is reasonably likely to occur and proposed for authorization.

Neither the applicant nor NMFS have fine-scale data to quantitatively assess the number of animals in the relatively small predicted Level A harassment zones at either location. Therefore, we assumed that, for cryptic species (e.g., Steller sea lion, Pacific white-sided dolphin (Moorings Seward only), harbor seal, harbor porpoise), up to 10 percent of the animals that entered the Level B harassment zone could enter the Level A harassment zone undetected, potentially accumulating sound exposure that rises to the level of Level A harassment.

For species with observational data, the following equation was used to estimate take by Level B harassment, where daily occurrence is measured as individuals per day:

$$\text{Estimated take} = (\text{daily occurrence} \times \text{number of days}) - \text{Level A harassment takes}$$

For species with observational data, the following equation was used to estimate take by Level A harassment, where daily occurrence is multiplied by

the number of days of work, which is then multiplied by 10 percent:

$$\text{Estimated take} = (\text{daily occurrence} \times \text{number of days}) \times 10 \text{ percent}$$

For species with density data, the following equation was used to estimate take by Level B harassment, where ensonified area is measured as km²:

$$\text{Estimated take} = (\text{species density} \times \text{daily ensonified Level B harassment area} \times \text{number of days}) - \text{Level A harassment takes}$$

For species with density data, the following equation was used to estimate take by Level A harassment, where species density is multiplied by the daily ensonified Level A harassment area multiplied by the number of days of work:

$$\text{Estimated take} = (\text{species density} \times \text{daily ensonified Level A harassment area} \times \text{number of days})$$

Table 15 summarizes proposed amounts of take by both Level A and Level B harassment, as well as the percentage of each stock expected to be taken, at Moorings Seward.

TABLE 15—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCK PROPOSED TO BE TAKEN AT MOORINGS SEWARD

Species	Stock	Level A	Level B	Total	SAR abundance	Percentage of population
Steller sea lion	Western	4	40	44	49,837	0.09
Harbor seal	Prince William Sound	98	980	1,078	44,756	2.41
Killer whale *	Alaska Resident	0	21	21	1,920	1.09
Killer whale *	Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient.	0	7	7	587	1.19
Pacific white-sided dolphin	North Pacific	6	60	66	26,880	0.25
Harbor porpoise	Gulf of Alaska	5	18	23	31,046	0.07
Dall's porpoise	Alaska	1	5	6	UND	UND
Humpback whale	Hawai'i	0	20	20	11,278	0.18
Humpback whale	Mexico-North Pacific	0	2	2	N/A	N/A
Gray whale	Eastern North Pacific	0	1	1	26,960	0.00
Fin whale	Northeast Pacific	0	3	3	UND	UND

Note: Humpback whale stock attribution: 89% Hawai'i and 11% Mexico-North Pacific.

*Percent of stock impacted for killer whales was estimated assuming each stock is taken in proportion to its population size at each location from the total take. At Moorings Seward, the Alaska Resident and Gulf of Alaska stocks are the only stocks present. Of these, the Alaska Resident stock represents approximately 76 percent of the available animals, while the Gulf of Alaska stock represents approximately 23 percent. This division was replicated for Moorings Sitka for all present stocks. Takes were then calculated for each site based on the proportional representation of available stocks, so for Moorings Seward, this results in 21 Level B harassment takes of the Alaska Resident stock of killer whale and seven Level B harassment takes of the Gulf of Alaska stock of killer whale. Total takes for each stock are shown as a percentage of the stock size.

Table 16 summarizes amount of take proposed to be authorized by both Level A and Level B harassment, as well as the percentage of each stock expected to be taken, at Moorings Sitka.

TABLE 16—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCK PROPOSED TO BE TAKEN AT MOORINGS SITKA

Species	Stock	Level A	Level B	Total	SAR abundance	Percentage of population
Steller sea lion	Western	1	7	8	49,837	0.02
Steller sea lion	Eastern	16	336	352	36,308	0.97
Northern fur seal	Eastern Pacific	0	3	3	626,618	0.00

TABLE 16—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCK PROPOSED TO BE TAKEN AT MOORINGS SITKA—Continued

Species	Stock	Level A	Level B	Total	SAR abundance	Percentage of population
Harbor seal	Sitka/Chatham Strait	18	342	360	13,289	2.71
Killer whale *	Alaska Resident	0	55	55	1,920	2.86
Killer whale *	Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient.	0	17	17	587	2.90
Killer whale *	Northern Resident	0	8	8	302	2.65
Killer whale*	West Coast Transient	0	10	10	349	2.87
Harbor porpoise	Yakutat/Southeast Alaska Off-shore Waters.	3	32	35	N/A	N/A
Dall's porpoise	Alaska	14	52	66	UND	UND
Humpback whale	Hawai'i	0	43	43	11,278	0.38
Humpback whale	Mexico-North Pacific	0	1	1	N/A	N/A
Gray whale	Eastern North Pacific	0	22	22	26,960	0.08
Minke whale	Alaska	0	22	22	N/A	N/A

Note: Steller sea lion stock attribution: 97.8% Eastern DPS and 2.2% Western DPS at Moorings Sitka. Humpback whale stock attribution: 98% Hawai'i and 2% Mexico-North Pacific.

* Percent of stock impacted for killer whales was estimated assuming each stock is taken in proportion to its population size at each location from the total take. At Moorings Sitka, the Alaska Resident, Gulf of Alaska, Northern Resident, and West Coast Transient stocks are expected, and the Alaska Resident stock represents approximately 60 percent of the available animals, the Gulf of Alaska stock represents approximately 19 percent, the Northern Resident stock represents approximately 10 percent, and the West Coast Transient represents approximately 11 percent. Takes were then calculated based on the proportional representation of available stocks, which results in 55 Level B harassment takes of the Alaska Resident stock, 17 Level B harassment takes of the Gulf of Alaska stock, 8 Level B harassment takes of the Northern Resident stock, and 10 Level B harassment takes of the West Coast Transient stock. Total takes for each stock are shown as a percentage of the stock size.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be

effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

For each IHA, the USCG must:

- Ensure that construction supervisors and crews, the monitoring team, and relevant USCG staff are trained prior to the start of all pile driving and DTH activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- Employ PSOs and establish monitoring locations as described in the application and the IHA. The USCG must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving and removal at least one PSO must be used. The PSO will be stationed as close to the activity as possible;
- The placement of the PSOs during all pile driving and removal and DTH activities will ensure that the entire shutdown zone is visible during pile installation;
- Monitoring must take place from 30 minutes prior to initiation of pile driving or DTH activity (*i.e.*, pre-activity

monitoring) through 30 minutes post-activity of pile driving or DTH activity;

- Pre-activity monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in table 17 are clear of marine mammals. Pile driving and DTH may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;

- The USCG must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer; and

- If a marine mammal is observed entering or within the shutdown zones indicated in table 17, pile driving and DTH must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone (table 17) or 15 minutes have passed without re-detection of the animal.

As proposed by the applicant, in-water activities will take place only between civil dawn and civil dusk (generally 30 minutes after sunrise and

up to 45 minutes before sunset), and work may not begin without sufficient daylight to conduct pre-activity monitoring, and may extend up to 3 hours past sunset, as needed to either completely remove an in-process pile or to embed a new pile far enough to safely leave piles in place until work can resume the next day; during conditions with a Beaufort Sea State of four or less; and when the entire shutdown zones are visible.

Protected Species Observers

The placement of PSOs during all pile driving activities (described in Proposed Monitoring and Reporting) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (e.g., fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

PSOs would monitor the full shutdown zones and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre- and Post-Activity Monitoring

Monitoring must take place from 30 minutes prior to initiation of pile driving activities (i.e., pre-clearance monitoring) through 30 minutes post-completion of pile driving. Prior to the

start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for a 30-minute period. If a marine mammal is observed within the shutdown zones listed in table 9, pile driving activity would be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (i.e., the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft-Start Procedures for Impact Driving

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. If impact pile driving is necessary to achieve required tip elevation, the USCG would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Shutdown Zones

The USCG must establish shutdown zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which

shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones would be based upon the Level A harassment thresholds for each pile size/type and driving method where applicable, as shown in table 17. During all in-water piling activities, the USCG has proposed to implement a minimum 30 m shutdown zone, larger than NMFS' typical requirement of a minimum 10 m shutdown zone, with the addition of larger zones during DTH. These distances exceed the estimated Level A harassment isopleths described in tables 12 and 13. Adherence to this expanded shutdown zone will reduce the potential for the take of marine mammals by Level A harassment but, due to the large zone sizes and small, inconspicuous nature of five species (Stellar sea lion, Pacific white-sided dolphin (Mooring's Seward only), harbor seal, harbor porpoise, Dall's porpoise), the potential for Level A harassment cannot be completely avoided. If a marine mammal is observed entering, or detected within, a shutdown zone during pile driving activity, the activity must be stopped until there is visual confirmation that the animal has left the zone or the animal is not sighted for a period of 15 minutes. Proposed shutdown zones for each activity type are shown in table 17.

All marine mammals would be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities would continue and PSOs would document the animal's presence within the estimated harassment zone.

TABLE 17—PROPOSED SHUTDOWN ZONES AND HARASSMENT ZONES

Activity	Shutdown zone (m) for LF	Shutdown zone (m) for MF	Shutdown zone (m) for HF	Shutdown zone (m) for PW	Shutdown zone (m) for OW	Harassment zone (m) at Seward	Harassment zone (m) at Sitka
Vibratory pile extraction	30	30	30	30	30	4,645	6,310
Impact drive plastic pile	30	30	30	30	30	N/A	5
Impact drive timber pile	30	30	30	30	30	N/A	50
DTH (Impulsive component) concrete pile	1,955	85	2,325	1,050	85	39,815	39,815
Vibratory concrete pile settling	30	30	30	30	30	7,360	7,360
Impact drive concrete pile proofing	30	30	30	30	30	545	545

Note: Level A (PTS onset) harassment would only potentially result from DTH rock socket drilling activities that would generate underwater noise in exceedance of Level A harassment thresholds for all marine mammal hearing groups beyond the 30-m shutdown zone that will be implemented for all in-water activities. Therefore, larger shutdown zones will be implemented during DTH activities and at least two additional PSOs will be assigned to a captained vessel at one or more monitoring locations that provide full views of the shutdown zones and as much of the monitoring zones as possible.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat,

paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the

MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing

the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the conditions in this section and this IHA. Marine mammal monitoring during pile driving activities would be conducted by up to five PSOs meeting NMFS' standards and in a manner consistent with the following:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity

pursuant to a NMFS-issued incidental take authorization;

- Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

- A team of three PSOs (up to five PSOs) at up to three locations (including two PSOs on a captained vessel in the case of a five-member team) will conduct the marine protected species monitoring depending on the activity and size of the relevant shutdown and monitoring zones;

- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

- For activities with monitoring zones beyond the visual range of a single PSO (*i.e.*, DTH), additional monitoring locations or the use of a vessel with captain and up to three other PSOs (depending on size of the monitoring zones) will conduct monitoring; and
- PSOs must be approved by NMFS prior to beginning any activity subject to the IHA.

PSOs should have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

For all pile driving activities, at least one PSO (up to five PSOs) must be stationed at the best possible vantage point to monitor the shutdown zones and as much of the Level B harassment zones as possible. A team of three PSOs

(up to five PSOs) at up to three locations (including two PSOs on a captained vessel in the case of a five-member team) would conduct marine mammal monitoring depending on the activity and size of monitoring zones. PSOs would be equipped with high quality binoculars for monitoring and radios or cell phones for maintaining contact with work crews. Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in-water construction activities. In addition, PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities for each IHA, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.*, impact, vibratory, DTH) and the total equipment duration for vibratory removal for each pile or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information:
 - Name of PSO who sighted the animal(s) and PSO location and activity at the time of sighting;
 - Time of sighting;
 - Identification of the animal(s) (*e.g.*, genus/species, lowest possible

taxonomic level, or unidentifiable), PSO confidence in identification, and the composition of the group if there is a mix of species;

- Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting);

- Estimated number of animals (min/max/best estimate);

- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, *etc.*);

- Animal's closest point of approach and estimated time spent within the harassment zone; and

- Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones and shutdown zones; by species; and
- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft reports will constitute the final reports. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the USCG must immediately cease the specified activities and report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*), NMFS, and to the Alaska Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the USCG must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and

updated location information if known and applicable);

- Species identification (if known) or description of the animal(s) involved;

- Condition of the animal(s) (including carcass condition if the animal is dead);

- Observed behaviors of the animal(s), if alive;

- If available, photographs or video footage of the animal(s); and

- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 5, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Pile driving and DTH activities associated with the specified activities, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take in the form of Level B harassment only for all species other than the Steller sea lion, harbor seal, Pacific white-sided dolphin, harbor porpoise, and Dall's porpoise from underwater sounds generated from pile driving and DTH. Potential takes could occur if individual marine mammals are present in the ensonified areas when pile driving or DTH is occurring.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. For all species other than Steller sea lion, harbor seal, Pacific white-sided dolphin, harbor porpoise, and Dall's porpoise, no Level A harassment is anticipated due to the confined nature of the facilities, ability to position PSOs at stations from which they can observe the entire shutdown zones, and the high visibility of the species expected to be present at each site. The potential for injury is small for mid- and low-frequency cetaceans and sea lions, and is expected to be essentially eliminated through implementation of the planned mitigation measures—soft start (for impact driving), and shutdown zones. Further, no take by Level A harassment is anticipated for killer whales, humpback whales, gray whales, fin whales, or minke whales due to the application of planned mitigation measures and the small Level A harassment zones (for killer whales only). The potential for harassment would be minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation).

Take by Level A harassment is proposed for Steller sea lion, harbor seal, Pacific white-sided dolphin, harbor porpoise, and Dall's porpoise. Due to their inconspicuous nature, it is possible an individual of one of these species could enter the Level A harassment zone undetected and remain within that zone for a duration long enough to incur PTS. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals

would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed for authorization;
- Level A harassment would be very small amounts and of low degree;
- Level B harassment would be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where piling is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- The ensonified areas are very small relative to the overall habitat ranges of all species and stocks, and would not adversely affect ESA-designated critical habitat for any species or any areas of known biological importance;
- The amount of take proposed for authorization accounts for no more than, at most, 3 percent of any stock that may occur in the project areas;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and
- The implementation of mitigation measures to minimize the number of marine mammals exposed to injurious levels of sound and ensure take by Level A harassment is, at most, a small degree of PTS.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our

determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one-third of the estimated stock abundance of all species and stocks (take of individuals is less than 3 percent of the abundance of the affected stocks at Moorings Seward and Moorings Sitka; see tables 15, 16). This is likely a conservative estimate because it assumes all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day but PSOs would count them as separate takes if they cannot be individually identified.

There are no valid abundance estimates available for humpback whales (Mexico-North Pacific stock), fin whales (Northeast Pacific stock), minke whales (Alaska stock), Dall's porpoises (Alaska stock), and harbor porpoises (Yakutat/Southeast Alaska Offshore Waters stock). There is no recent stock abundance estimate for the Mexico-North Pacific stock of humpback whale and the minimum population is considered unknown (Young *et al.*, 2023). There are two minimum population estimates for this stock that are over 15 years old: 2,241 (Martínez-Aguilar, 2011) and 766 (Wade, 2021). Using either of these estimates, the 3 takes by Level B harassment proposed for authorization (2 at Moorings Seward, 1 at Moorings Sitka) represent small numbers of the stock. Muto *et al.* (2021) estimate the minimum stock size for the Northeast Pacific stock of fin whale for the areas surveyed is 2,554 individuals. Therefore, the 3 takes by Level B harassment of this stock at Moorings Seward represent small numbers of this stock. There is also no current abundance estimate of the Alaska stock of minke whale but over 2,000 individuals were documented in areas recently surveyed (Muto *et al.*, 2021). Therefore, the 22 takes by Level B harassment at Moorings Sitka represent small numbers of this stock, even if each take occurred to a new individual.

The most recent stock abundance estimate of the Alaska stock of Dall's porpoise was 83,400 animals and, although the estimate is more than 8 years old, it is unlikely this stock has drastically declined since that time. Therefore, the 72 takes proposed for authorization, 15 by Level A and 57 by

Level B harassment (6 total at Moorings Seward, 66 total at Moorings Sitka), represent small numbers of this stock. A current stock-wide abundance estimate for the Yakutat/Southeast Alaska Offshore Waters stock of harbor porpoises in offshore waters (which includes Moorings Sitka) is not available (Young *et al.*, 2023). However, Muto *et al.* (2021) estimate the minimum stock size for the areas surveyed is 1,057 individuals. Therefore, the 35 takes proposed for authorization at Moorings Sitka (3 by Level A harassment, 32 by Level B harassment) represent small numbers of this stock.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an "unmitigable adverse impact" on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

There are two species of marine mammals analyzed herein that have been taken as part of subsistence harvests in Resurrection Bay and southeast Alaska: Steller sea lion and harbor seal. The most recent data on subsistence-harvested marine mammals near Seward is of harbor seals in 2002, and the most recent data near Sitka is of both harbor seals and Steller sea lions in 2013 (ADFG, 2013). The most recent subsistence hunt survey data available indicated approximately 11 percent of Sitka households used subsistence-caught marine mammals (Sill and Koster, 2013) and no data is available since that time.

The proposed project is not likely to adversely impact the availability of any

marine mammal species or stocks that are commonly used for subsistence purposes or impact subsistence harvest of marine mammals in the region. Although the proposed activities are located in regions where subsistence harvests have occurred historically, subsistence harvest of marine mammals is rare in the project areas and local subsistence users have not expressed concern about this project. Both locations are adjacent to heavily traveled industrialized waterways and all project activities will take place within closed and secured waterfronts where subsistence activities do not generally occur. The project also will not have an adverse impact on the availability of marine mammals for subsistence use at locations farther away, where the proposed construction activities are not expected to take place. Some minor, short-term harassment of Steller sea lions and harbor seals could occur, but any effects on subsistence harvest activities in the project areas will be minimal, and not have an adverse impact.

Based on the description of the specified activity and the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from the USCG's proposed activities.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS Alaska Regional Office.

NMFS is proposing to authorize take of Western DPS Steller sea lion, Mexico-North Pacific stock of humpback whale, and the Northeast Pacific stock of fin whale, which are listed under the ESA. The Permits and Conservation Division has requested initiation of section 7 consultation with the Alaska Regional Office for the issuance of this IHA. NMFS will conduct the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorizations.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two IHAs to the USCG for construction of FRC homeporting docks in Seward and Sitka for a period of 1 year each, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Drafts of the proposed IHAs can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Request for Public Comments

We request comment on our analyses, the proposed authorizations, and any other aspect of this notice of proposed IHAs for the proposed construction project. We also request comment on the potential renewal of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or subsequent renewal IHAs.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned; or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:
 - An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (e.g., reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
 - A preliminary monitoring report showing the results of the required monitoring to date and an explanation

showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 22, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2024–16412 Filed 7–24–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD995]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Army Corps of Engineers Baker Bay Pile Dike Repair Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Army Corps of Engineers (ACOE) for authorization to take marine mammals incidental to Baker Bay Pile Dike Repair Project in Baker Bay, Oregon. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 26, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to ITP.Cockrell@noaa.gov. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where

relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On September 8, 2022, NMFS received a request from the ACOE for an IHA to take marine mammals incidental to pile driving and removal at the mouth of the Columbia River in Oregon. Following NMFS’ review of the application, the ACOE submitted two revised versions on March 4, 2024 and May 1, 2024. The application was deemed adequate and complete on June 10, 2024. The ACOE’s request is for take of eight species of marine mammals by Level B harassment and, for harbor seal (*Phoca vitulina*), Level A harassment. Neither ACOE nor NMFS expect serious injury or mortality to result from this

activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

ACOE is planning to conduct pile dike repairs in the Baker Bay system, located in the Columbia River estuary. This system of dikes and channel markers connect the Mouth of the Columbia River Federal navigation channel and the Port of Ilwaco at river mile 3 between jetty A and West Sand Island. This pile dyke system is an important for controlling the tidal flow and sedimentation in the Federal navigation channel to maintain needed depths. Vibratory and impact pile driving would introduce underwater sounds that may result in take, by Level A and Level B harassment, of marine mammals. It is expected to take up to 12 non-consecutive days to complete the pile driving activities from August through October.

Dates and Duration

The pile dike repairs are expected to take 3- months to complete with in-water work beginning from August 1, 2025 through July 31, 2026. No in-water work would be completed from December through June to avoid potential impacts to endangered species act (ESA) listed fish species and Southern Resident killer whales. It is expected to take up to 12 non-consecutive days to complete the pile driving activities. Pile driving would be completed intermittently throughout daylight hours.

Specific Geographic Region

The Baker Bay West pile-dike system contains four pile dikes (figure 1) and is located immediately adjacent to the Baker Bay West Federal navigation channel. The Baker Bay West Federal navigation channel comprises two segments; the segment nearest the Columbia River is 2,000 feet (ft) (609 meters (m)) long, 200 ft. (61-m) wide, and roughly 16 ft. (5 m) deep, and the segment nearest the Port of Ilwaco is 2.5 miles (4 kilometers (km)) long, 150 ft. (46-m) wide, and 16 ft. deep. The Baker Bay West pile dikes are located in the downstream terminus of the Columbia River tidal estuary, which is dominated by freshwater inputs from the Columbia and Willamette rivers. This estuary stretches from the mouth of the river upstream to Bonneville Dam at river mile 146.



Figure 1 -- Location of the Baker Bay Pile Dike system

Detailed Description of the Specified Activity

Port Access and Staging of Equipment

The ACOE anticipates that construction contractors will use either the Port of Ilwaco or Port of Chinook to access West Sand Island. Barges will transport all equipment and material to and from West Sand Island and the pile dike. Barges will serve as staging platforms for in-water construction and may be spudded (temporary steel shaft to anchor a barge) or anchored into position. The proposed access area is located between Baker Bay pile dike 0.86 and pile dike 0.70. Staging equipment is not expected to result in take of marine mammals and is not discussed further.

Material Offloading Facility Construction (Option 1 and Option 2)

ACOE proposes to construct a material offload facility on West Sand Island to offload materials transported by barges. ACOE, and subsequently NMFS, analyzed two construction options for the material offloading facility, and the construction contractor would select one of these two options. Option 1 would require the use of a cofferdam constructed with 24-inch (in) (61 centimeters (cm)) steel sheet piles

that would be set in place with vibratory hammers. Once constructed, the cofferdam would be filled with granular structural material to support the offloading of material. Approximately 25,000 cubic yards (cy) of material would also need to be dredged from the site in order to provide sufficient depth for the rock barge to access the cofferdam. Once construction is complete, the cofferdam would be deconstructed using vibratory hammers to remove the steel sheet piles.

Option 2 would consist of a two-barge system to offload materials on West Sand Island using a transition barge. The contractor would first offload materials from the rock barge onto the transition barge and, those materials would then be offloaded from the transition barge onto West Sand Island. The transition barge would be spudded into place for the duration of the construction period. Approximately 2,800 cy of material would be dredged to provide sufficient depth for rock barges to deliver materials to the construction site. ACOE would construct four mooring dolphins out of 16 24-in steel pipe piles. These mooring dolphins would be used to moor rock barges in an area to offload materials onto the transition barge. The 24-in steel

pipe piles would be driven using vibratory hammers.

ACOE anticipates that the construction contractor is most likely to select Option 2, due to the high cost associated with Option 1. For either option selected, vibratory pile driving and removal may result in take of marine mammals. While marine mammals may behaviorally respond in some small degree to the noise generated by dredging operations, given the slow, predictable movements of these vessels, and absent any other contextual features that would cause enhanced concern, NMFS does not expect ACOE's proposed dredging in either option to result in the take of marine mammals.

Dune Reinforcement

The existing dune along the shoreline at West Sand Island has developed a depression near the proposed location of the project area that needs to be fortified to protect the morphology of the island. To address this risk, ACOE would reinforce the dune by placing material (such as brush, root masses, logs, branches, and sand), grubbed from the staging area into the low spot. NMFS does not expect this activity to result in take of marine mammals due to the activity being conducted on land.

Baker Bay 0.28 Jetty Reinforcement and Repair

To repair Baker Bay 0.28 Jetty, ACOE would place new rock and remove old timber piles. ACOE will place approximately 550 cy of rock material on top of existing enrockment to bring the enrockment back to elevation 0 at both ends of the Baker Bay 0.28 jetty. Land-based and barge-based excavators and/or cranes will place the rock. An equipment barge will be moored adjacent to a rock barge.

For rock placement below the water surface, ACOE would require the contractor to place rock from a clamshell, orange peel grab, or excavator bucket, and it must not open the bucket for placement until the bucket is below the water surface. ACOE will not permit releasing rocks from a bucket above the water surface. For rock placement near or above the water surface, where opening the bucket below the surface is not possible, the contractor must place the bucket as close as safely possible to the placement location before opening. NMFS does not expect rock placement to result in marine mammal harassment and it is not discussed further beyond the explanation provided here. Rock placement would occur in a controlled manner, with the rock release occurring close to the rock destination which would minimize the sound produced. It

does not require seafloor penetration, and would not affect habitat for marine mammals and their prey beyond that already affected by installation the existing Baker Bay 0.28 Jetty.

During rock placement, ACOE would work closely with the contractor to regularly assess subsurface conditions and grades via conditional hydrographic surveys, taking corrective actions as necessary. The contractor would perform hydrographic and topographic surveys pre-construction and post-construction to ensure proper rock placement. Equipment used to conduct hydrographic and topographic surveys are not anticipated to result in take of marine mammals, as any elevated noise levels produced through these activities are expected to be high-frequency, highly-directional, intermittent, and of short duration.

ACOE will also remove 486 timber piles by pulling, cutting, or snapping the pile at the level of enrockment. Noise levels produced by these activities are not expected to exceed baseline levels produced by other routine sources in the area (e.g., vessel transit), and any elevated noise levels produced through these activities are expected to be intermittent, of short duration, and with low peak values. Therefore, this activity is not expected to result in take of marine mammals.

Hazard Pile Marker Installation

Once the new pile dike systems are completed, the enrockment would frequently be just below the surface of the water. This would create a shallow water hazard for river users. The ACOE proposes to place 12 marker piles along the pile dikes in Baker Bay. The marker piles would be steel pipe piles and would range in size from 12 in (30 cm) to 24 in (60 cm) in diameter. The larger piles would be used in areas where the current is stronger. Piles would be driven with either impact or vibratory hammers depending on the substrate at the install location.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. It is anticipated that half of the piles will be driven using impact hammers and half would be driven using vibratory hammers. Driving shoes may be used to facilitate driving and reduce driving time. NMFS expects that take of marine mammals may occur during the use of impact and vibratory hammers during the pile maker installation.

TABLE 1—NUMBER, SIZE, AND TYPES OF PILES TO BE INSTALLED AND REMOVED

	Pile marker install	Pipe pile mooring dolphins install (MOF option 2)	Pipe pile mooring dolphins removal (MOF option 2)	Sheet pile installation (MOF option 1)	Sheet pile removal (MOF option 1)
Pile Diameter size (in)	24 (steel)	24 (steel)	24 (steel)	24 (steel)	24 (steel).
Vibratory Pile Driving/Removal					
Total Quantity	12	16	16	125	125.
Max # of Piles per day	8	8	16	25	60.
Vibratory time per pile (min)	15	20	5	15	3.
Number of Days	3	2	1	5	3.
Impact Pile Driving					
Total Quantity	12	N/A	N/A	N/A	N/A.
Piles per day	5	N/A	N/A	N/A	N/A.
Strikes per pile	225	N/A	N/A	N/A	N/A.
Number of Days	3	N/A	N/A	N/A	N/A.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting sections).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution

and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/>

[marine-mammal-stock-assessments](https://www.fisheries.noaa.gov/marine-mammal-stock-assessments)) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including

regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality

from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area,

if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific SARs. All values presented in table 2 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES¹

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
<i>Family Eschrichtiidae (baleen whale):</i> Gray Whale	<i>Eschrichtius robustus</i>	Eastern N Pacific	- , - , N	26,960 (0.05, 25,849, 2016) ..	801	131
<i>Family Balaenopteridae (rorquals):</i> Humpback whale	<i>Megaptera novaeangliae</i>	Central America/Southern Mexico—CA/OR/WA. Mainland Mexico—CA/OR/WA	E, D, Y T, D, Y	1,494 (0.171, 1,284, 2021) 3,477 (0.101, 3,185, 2018)	3.5 43	14.9 22
Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Delphinidae:</i> Killer whale	<i>Orcinus orca</i>	West Coast Transient	- , - , N	349 (N/A, 349, 2018)	3.5	0.4
<i>Family Phocoenidae (porpoises):</i> Harbor porpoise	<i>Phocoena phocoena</i>	Northern OR/WA Coast	- , - , N	22,074 (0.391, 16,068, 2022)	161	3.2
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions):</i> Steller sea lion	<i>Eumetopias jubatus</i>	Eastern DPS	- , - , N	36,308 (N/A, 36,308, 2022) ...	2,178	93.2
California sea lion	<i>Zalophus californianus</i>	U.S.	- , - , N	257,606 (N/A, 233,515, 2014)	14,011	>321
<i>Family Phocidae (earless seals):</i> Harbor seal	<i>Phoca vitulina</i>	OR/WA Coastal	- , - , N	UNK (UNK, UNK, 1999)	UND	10.6
Northern elephant seal	<i>Mirounga angustirostris</i>	CA Breeding	- , - , N	187,386 (N/A, 85,369, 2013)	5,122	13.7

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy.

² Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

³ NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

⁴ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all eight species (with nine managed stocks) in table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed project areas are included in table 2 of the IHA application. While the following 18 marine mammal species have been sighted in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

The spatial, temporal, and overall occurrence of fin whale (*Balaenoptera physalus*), minke whale (*Balaenoptera acutorostrata*), blue whale (*Balaenoptera musculus*), sei whale (*Balaenoptera borealis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Risso's dolphin (*Grampus griseus*), common bottlenose dolphin (*Tursiops truncatus*), striped dolphin (*Stenella coeruleoalba*), Short-beaked common dolphin, (*Delphinus delphis*), Northern right-whale dolphin (*Lissodelphis borealis*), Short-finned pilot whale (*Globicephala macrorhynchus*), Baird's beaked whale

(*Berardius bairdii*), Mesoplodont beaked whale (*Mesoplodon* spp.), Cuvier's beaked whale (*Ziphius cavirostris*), Pygmy Sperm whale (*Kogia breviceps*), Dwarf Sperm whale (*Kogia sima*), Sperm whale (*Physeter macrocephalus*), and Dall's porpoise (*Phocoenoides dalli*) are such that take is not expected to occur. Many of these species are either rarely present in the proposed project area or typically found in deep offshore waters far from the proposed project site.

Gray Whale

Gray whales in the project area would be of the Eastern North Pacific stock.

During summer and fall, gray whales of the Eastern North Pacific stock migrate from breeding grounds off the coast of Baja California and Mexico to feeding areas in the Bering Seas.

Gray whales along the Oregon coastline are typically part of the Pacific coast feeding group, and their abundance and residence time in Oregon may correlate with the availability of mysids (*Holmesimysis sculpta*), a major prey item (Newell and Cowles 2006). There are few recorded sightings of gray whales in the Mouth of the Columbia River. In 2021, a mother and calf were spotted just upriver from the proposed project sight (K. Tidwell personal communication).

Humpback Whale

Humpback whales from the Central America/Southern Mexico-CA/OR/WA stock and the Mainland Mexico-CA/OR/WA stock are likely to occur in the project area in the respective percentages of 42 and 58 percent.

Humpback whale feeding groups have begun utilizing the Mouth of the Columbia River as foraging ground, arriving in the lower Columbia estuary as early as mid-June, and have been observed as late as mid-November with a peak abundance coinciding with the peak abundance of forage fish in mid-summer. Humpback whale have been observed in the immediate vicinity of West and East Sand Islands in late summer and fall of 2015, 2016, 2017, and 2019 (The Columbian 2016; The Columbian 2019). They were again seen earlier in the season than ever, at the beginning of April in 2020 (Chinook Observer, 2020). Recent monitoring during the Sand Island Test Pile Project reported one humpback whale in the Level B harassment zone during vibratory pile driving. One to two Humpback whales were seen on occasion during the project, with all other detections occurring outside of the Level B harassment zone or while no pile driving was occurring. The whales seemed to come through the area with the incoming tides to forage for food and leave with the outgoing tides (Hamer Environment L.P. 2020). Based on this information, it is possible that humpback whales may pass through and may forage intermittently in the proposed project area.

Killer Whale

The West Coast Transient stock includes animals that range from California to southern Alaska and is genetically distinct from both resident and other transient populations in the region. It is the only killer whale stock that is expected to occur in the project

area, and occurrence in the mouth of the Columbia River is linked to the Chinook salmon run in March and April, although some sightings have occurred in the early fall during aerial surveys (Adams, 2014). Southern resident killer whales occur in the offshore waters of Washington and Oregon but have not been documented entering the mouth of the Columbia River. Killer whales were not sighted during the Sand Island Test Pile Project (Hamer Environment L.P., 2020).

Harbor Porpoise

The Northern Oregon/Washington Coast stock of harbor porpoises ranges from Lincoln City, OR, to Cape Flattery, WA (Carretta *et al.* 2019). Aerial survey data from coastal Oregon and Washington, collected during all seasons, suggest that harbor porpoise distribution varies by depth (Green *et al.* 1992). Although distinct seasonal changes in abundance along the west coast have been noted and attributed to possible shifts in distribution to deeper offshore waters during late winter (Dohl *et al.* 1983, Barlow 1988 cited in NOAA 2014), seasonal movement patterns are not fully understood.

Harbor porpoises are usually found in shallow water, most often nearshore, although they occasionally travel over deeper offshore waters (NOAA 2013). Most harbor porpoise groups are small, generally consisting of less than five or six individuals, though for feeding or migration they may aggregate into large, loose groups of 50 to several hundred animals (Halpin, OBIS-SEAMAP 2019). Behavior tends to be inconspicuous, compared to most dolphins, and they feed by seizing prey which consists of wide variety of fish and cephalopods ranging from benthic or demersal (Halpern, OBIS-SEAMAP 2019). Harbor porpoises are sighted year-round in the mouth of the Columbia River (Griffith 2015). Their abundance peaks with the abundance of anchovy presence in the river and nearshore. Groups of one to two harbor porpoise were observed during pre- and post- monitoring activities of the Sand Island Test Pile Project (Hamer Environment L.P. 2020).

Steller Sea Lion

Steller sea lions forage in nearshore and pelagic waters where they are opportunistic predators.

Large numbers of Steller sea lions use the nearby South Jetty for hauling out (Jeffries 2000) and are present, in varying abundances, all year. Use occurs chiefly at the concrete block structure at the terminus, or head of the jetty. According to Oregon Department of Fish and Wildlife (ODFW) (2014), during the

summer months it is not uncommon to observe between 500 to 1,000 Steller sea lions present per day. More frequent surveys by Washington Department of Fish and Wildlife (WDFW) for the same time frame (2000–2014) put the monthly range at 177 to 1,663 animals throughout the year. Steller sea lions are most abundant in the vicinity during the winter months and tend to disperse elsewhere to rookeries during breeding season between May and July (Corps 2007). All population age classes, and both males and females, use the South Jetty to haul out. No Steller sea lions were observed during the monitoring activities of the Sand Island Test Pile Project (Hamer Environment L.P. 2020).

California Sea Lion

Since the mid-1980s, increasing numbers of California sea lions have been documented feeding on fish along the Washington coast and—more recently—in the Columbia River as far upstream as Bonneville Dam, 145 mi (233 km) from the river mouth. Large numbers of California sea lions (*Zalophus californianus*) use the nearby South Jetty for hauling out (Jeffries 2000). According to ODFW (2014) most California sea lions are concentrated near the tip of the South Jetty. California sea lions can intermingle with Steller sea lions. As, reported in the ODFW survey information (2007 and 2014) indicates that California sea lions are relatively less prevalent in the Pacific Northwest during June and July, though in the months just before and after their presence there can be several hundred using the South Jetty. More frequent WDFW surveys (2014) indicate greater numbers in the summer, and use remains concentrated to fall and winter months. During pile driving work at the Sand Island Test Pile Project in 2020, observers identified 60 individuals in 55 separate sightings and of those 60, 13 animals were observed in the Level B harassment zone (Hamer Environment L.P. 2020).

Harbor Seal

Harbor seals are one of the most abundant pinnipeds in Oregon and typically occur in coastal marine and estuarine waters of the Oregon coast throughout the year. On land, they occur on offshore rocks and islands, along shore, and on exposed flats in the estuary (Harvey 1987). They haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals generally are non-migratory, with local movements associated with tides, weather, season, food availability, and reproduction. (Carretta *et al.* 2019).

During pile driving work at the Sand Island Test Pile Project in 2020, observers identified 303 individuals in 209 separate sightings. Of those 303 individuals, 2 animals were observed in the Level A harassment zone and 106 animals were observed in the Level B harassment zone (Hamer Environment L.P. 2020).

Northern Elephant Seal

The California Breeding Stock of Northern elephant seals breeds and gives birth in California but makes extended foraging trips to areas including coastal Oregon biannually during the fall and spring. They spend about 90 percent of their time at sea underwater, making sequential deep dives. While both males and females may transit areas off the Oregon coast, males seem to have focal forage areas near the continental shelf break while females typically move further offshore and feed opportunistically at numerous

sites while in route (Le Beouf *et al.* 2000). Prior to 1984, only two sightings of Northern elephant seals were recorded near the project site. One was sighted near Tongue Point and another was found dead at river mile 47 (upriver from the project site (Jeffries 1984). Since then, they have been seen at the mouth of the Columbia River infrequently. None have been observed during recent monitoring, but there have been recent sightings upriver from the project area.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities

(*e.g.*, Richardson *et al.* 1995; Wartzok and Ketten 1999; Au and Hastings 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS
[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth *et al.*, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals 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 of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and

anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10 to 20 dB from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to

the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, and vibratory pile removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018). Non-impulsive sounds (*e.g.*, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between impulsive and non-impulsive sound sources is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward 1997; Southall *et al.* 2007).

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers generally produce sound pressure levels (SPLs) 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman, *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson, *et al.* 2005).

The likely or possible impacts of the Haines Borough's proposed activities on marine mammals could be generated by both non-acoustic and acoustic stressors. Potential non-acoustic stressors could include the physical presence of the equipment and personnel; however, given there are no known pinniped haul-out sites in the vicinity of the proposed project site, visual and other non-acoustic stressors would be limited, and any impacts to marine mammals are expected to primarily be acoustic in nature.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving or drilling is the primary means by which marine mammals may be harassed from the Haines Borough specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007; Southall *et al.* 2019). In general, exposure to pile driving noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions, such as communication and predator and prey detection. The effects of pile driving or drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.*, *impulsive* vs. *non-impulsive*), the species, age and sex class (*e.g.*, *adult male* vs. *mother with calf*), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.* 2004; Southall *et al.* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018a), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.*, *impulsive* or *non-impulsive*), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.* how animal uses sound within the

frequency band of the signal; *e.g.* Kastelein *et al.* 2014), and the overlap between the animal and the source (*e.g.* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). PTS does not generally affect more than a limited frequency range, and an animal that has incurred PTS has incurred some level of hearing loss at the relevant frequencies; typically animals with PTS are not functionally deaf (Richardson *et al.*, 1995; Au and Hastings, 2008). Available data from humans and other terrestrial mammals indicate that a 40-dB threshold shift approximates PTS onset (Ward *et al.* 1958 and 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Ahroon *et al.* 1996; Henderson *et al.* 2008). PTS criteria for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (Southall *et al.* 2007; Southall *et al.* 2019), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000; Finneran *et al.* 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with SELcum in an accelerating fashion: at low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in Masking, below). For example, a marine

mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present.

Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter 2013). 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. For cetaceans, published data on the onset of TTS are limited to captive bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaticorientalis*) (Southall *et al.*, 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*), and California sea lions (*Zalophus californianus*) (Kastak *et al.*, 1999 and 2007; Kastelein *et al.* 2019b and 2019c; Reichmuth *et al.* 2019; Sills *et al.* 2020; Kastelein *et al.* 2021; 2022a; and 2022b). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense or long-duration sound exposures. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity for a species or hearing group, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS

exposure levels are higher compared to those in the region of best sensitivity (*i.e.*, a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.* 2019a; 2019c). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.* 2009; Finneran *et al.* 2010; Kastelein *et al.* 2014; 2015). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) and Finneran (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echo-locating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS 2018). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.*, Kryter *et al.* 1966; Miller 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.*, Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary

assumption is that the PTS thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Furthermore, installing piles for this project requires a combination of impact pile driving and vibratory pile driving. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for any TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Weilgart 2007; Archer *et al.* 2010; Southall *et al.* 2021). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder 2007; Weilgart 2007; NRC 2005; Southall *et al.* 2021).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are

highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (e.g., species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (e.g., Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Southall *et al.* 2021; Weilgart 2007; Archer *et al.* 2010). Behavioral reactions can vary not only among individuals but also within exposures of an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.* 2012; Southall *et al.* 2021), and can vary depending on characteristics associated with the sound source (e.g., whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. For a review of studies involving marine mammal behavioral responses to sound, see: Southall *et al.* 2007; Gomez *et al.* 2016; and Southall *et al.* 2021.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.* 2001; Nowacek *et al.* 2004; Madsen *et al.* 2006; Yazvenko *et al.* 2007). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (e.g., Silve *et al.* 2016; Wensveen *et al.* 2017). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

In 2020, the Sand Island Test Pile Project (84 FR 61026, November 12, 2019) documented observations of marine mammals during construction activities (*i.e.*, pile driving) on East and West Sand Island. This project is in the same area as the proposed project site. During the 15-days (September–October) of protected species observers

documented nine humpback whales and eight harbor porpoise were observed feeding and traveling. There were 309 harbor seals and 61 California sea lions observed during the monitoring period of the project with no behaviors recorded during monitoring activities (Hamer Environment L.P. 2020).

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation; Richardson *et al.* 1995). 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., pile driving, 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 of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming near the project site within the range of noise levels exceeding the acoustic thresholds. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most

likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been “taken” because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The proposed project would occur within the same footprint as the current Baker Bay pile dikes. The nearshore habitat where the proposed project would occur is an area of relatively high marine vessel traffic. Most marine mammals do not generally use the area within the immediate vicinity of the project area. Temporary, intermittent, and short-term habitat alteration may result from increased noise levels within the Level A and Level B harassment zones. Effects on marine mammals will be limited to temporary displacement from pile installation and removal noise, and effects on prey species will be similarly limited in time and space.

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 the installation and removal of piles when bottom sediments are disturbed. The installation and removal of piles will disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. During pile extraction, sediment attached to the pile moves vertically through the water column until gravitational forces cause it to slough off under its own weight. The small resulting sediment plume is expected to settle out of the water column within a few hours. Studies of the effects of turbid water on fish (marine mammal prey) suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton 1993).

Impacts to water quality would be localized and temporary and would have negligible impacts on marine mammal habitat. Effects to turbidity and sedimentation are expected to be short-term, minor, and localized. Since the currents are strong in the area, following the completion of sediment-disturbing activities, suspended sediments in the water column should dissipate and quickly return to background levels in all construction scenarios. 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. In general, the area likely impacted by the proposed construction activities is relatively small compared to the available marine mammal habitat in the mouth of the Columbia River and surrounding coastal waters.

Effects on Prey

Construction activities would produce continuous (*i.e.*, vibratory pile driving) and impulsive (*i.e.*, impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan 2001, Scholik and Yan 2002; Popper and Hastings 2009). Sound pulses at received levels may cause noticeable changes in behavior (Pearson *et al.* 1992; Skalski *et al.* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

Impacts on marine mammal prey (*i.e.*, fish or invertebrates) of the immediate area due to the acoustic disturbance are possible. The duration of fish or invertebrate avoidance or other disruption of behavioral patterns in this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Further, significantly large areas of fish and marine mammal foraging habitat are available in the

nearby vicinity in the mouth of the Columbia River.

The duration of the construction activities is relatively short, with pile driving and removal activities expected last less than 1-year. Each day, construction would occur for no more than 12 hours during the day and pile driving activities would be restricted to daylight hours. The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Construction activities, in the form of increased turbidity, have the potential to adversely affect fish in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on fish are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area.

The area likely impacted by the project is relatively small compared to the available habitat in the surrounding waters of the mouth of the Columbia River.

In summary, given the relatively short daily duration of sound associated with individual pile driving and events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities

not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the construction equipment (*i.e.*, pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) of phocids because predicted auditory injury zones are larger than for other species. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also

informed to varying degrees by other factors related to the source or exposure context (e.g., frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (e.g., bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (e.g., Southall *et al.* 2007, 2021; Ellison *et al.* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1

micropascal (re 1 μ Pa)) for continuous (e.g., vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (e.g., seismic airguns) or intermittent (e.g., scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The ACOE's proposed construction includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μ Pa are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0; Technical Guidance 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The ACOE's proposed construction includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus

additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.*, impact pile driving and vibratory pile driving and removal). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 20.72

km² (12.87 mi²), and would consist of most of the mouth of the Columbia River immediately south of West Sand Island (figure 2). Additionally, vessel traffic in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

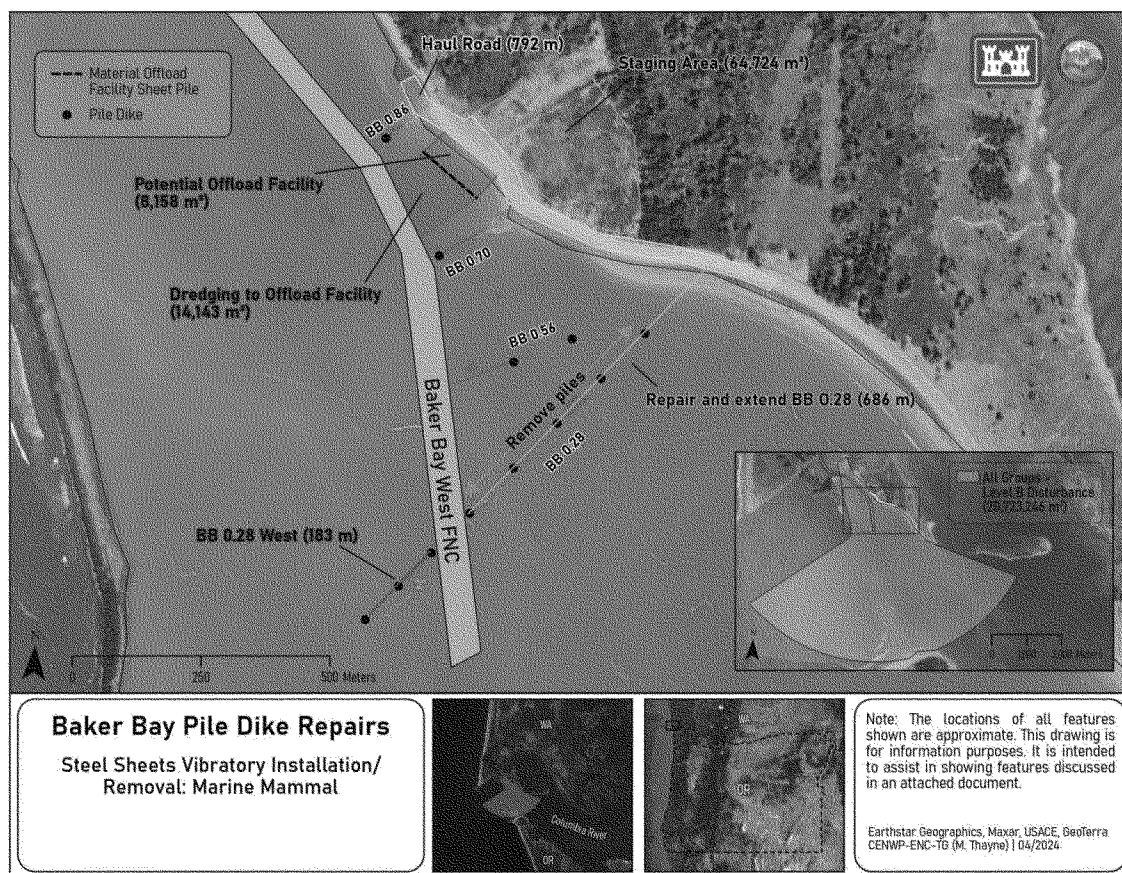


Figure 2 -- Largest isopleth associated with construction activities

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B \times \log_{10} (R_1/R_2),$$

where

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive

conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6-dB reduction in sound level for each doubling of distance from the source ($20 \times \log[\text{range}]$). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source ($10 \times \log[\text{range}]$). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical

environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, the applicant and NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods. The project includes vibratory and impact pile installation of steel pipe and sheet piles and vibratory removal of steel sheet piles. Source levels for 24 in steel pipe piles are used as a proxy for all steel piles that may be placed for marker piles of the dike system, though smaller piles may be used during the construction. NMFS consulted multiple sources to determine valid proxy source levels for the impact installation of sheet piles, as indicated in Table 5. This is the best available data for sheet pile source levels and is based on 24-in sheet piles used for a project in California. Source levels for each pile size and driving method are presented in table 5.

TABLE 5—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Pile size	Method	Proxy source level (at 10 m)			Literature source
		dB RMS re 1μPa	dB SEL re 1μPa²sec	dB peak re 1μPa	
24-in	Vibratory	154	N/A	N/A	Navy 2015. Caltrans 2020. Caltrans 2015.
24-in sheet pile	Vibratory	160	N/A	N/A	
24-in	Impact	189	178	203	

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions

included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as impact or vibratory, the

optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool are reported below (table 6). The resulting estimated Level A harassment isopleths and the Level B harassment isopleths are reported in table 7.

TABLE 6—USER SPREADSHEET INPUTS FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Number of strikes per pile	Number of piles per day	Activity duration (minutes)
24-in vibratory installation (MOF Option 2).	A.1 Vibratory pile driving	2.5	N/A	8	20
24-in vibratory removal (MOF Option 2).	A.1 Vibratory pile driving	2.5	N/A	16	5
24-in sheet pile vibratory installation (MOF Option 1).	A.1 Vibratory pile driving	2.5	N/A	25	15
24-in sheet pile vibratory removal (MOF Option 1).	A.1 Vibratory pile driving	2.5	N/A	60	3
24-in vibratory installation (Pile Markers).	A.1 Vibratory pile driving	2.5	N/A	8	15
24-in impact installation (Pile Markers).	E.1 Impact pile driving	2	225	5	N/A

TABLE 7—CALCULATED LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Activity	Level A harassment zone (m)					Level B harassment zone (m)
	LF-cetaceans	MF-cetaceans	HF-cetaceans	Phocids	Otariids	
24-in Steel Pipe Pile Vibratory Install (MOF Option 2)	4.5	0.4	6.6	2.7	0.2	1,847.8
24-in Steel Pipe Pile Vibratory Removal (MOF Option 2)	2.8	0.3	4.2	1.7	0.1	
24-in sheet pile vibratory installation (MOF Option 1)	23.4	2.1	34.6	14.2	1.0	4,641.1
24-in sheet pile vibratory removal (MOF Option 1)	12.2	1.1	18	7.4	0.5	
24-in vibratory installation (Pile Markers)	3.7	0.3	5.5	2.3	0.2	1,847.8
24-in impact installation (Pile Markers) ...	501.4	17.8	597.2	268.3	19.5	857.7

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. We describe how the information provided is synthesized

to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

When available, peer-reviewed scientific publications were used to estimate marine mammal abundance in the project area. Data from monitoring reports from the previous Sand Island Test Pile Project was used to calculate

take for several species. However, scientific surveys and resulting data, such as population estimates, densities, and other quantitative information, are lacking for some species. The ACOE also gathered qualitative information from discussions with knowledgeable local people that frequent the mouth of the Columbia River. Assumptions

regarding the size of expected groups of different species, and the frequency of occurrence of those groups, were proposed by the ACOE on the basis of the aforementioned information and are described for each species below.

Since reliable densities are not available, the take numbers are based on the assumed occurrence of a given stock during the activity. The applicant used equation 1, below, to estimate take of killer whales and Steller sea lions, equation 2 to estimate take of humpback whale, harbor porpoise, California sea lions, and harbor seals, and neither equation for gray whale or Northern elephant seals. NMFS concurs with this method. The estimated take calculation for these/this species is explained in the relevant section below.

(1) Estimated Take = number of individuals in a group $\times$ groups per day $\times$ days of pile-related activity

(2) Estimated Take = total expected duration of the proposed project (minutes) $\div$ total duration of the Sand Island Test Pile Project $\times$ the total number of animals of a given species observed during the Sand Island Test Pile Project

Gray Whale

Historically gray whales have not frequented the mouth of the Columbia River. No gray whales were observed during monitoring activities of the Sand Island Test Pile Project (Hamer Environment L.P. 2020). In August of 2020, an ACOE biologist observed two gray whales traveling upriver from the project site. Given this recent sighting and the temporal overlap of the project and the most recent sighting, NMFS proposes to authorize two takes of gray whales by the Level B harassment.

The largest Level A harassment zone for gray whales extends 513 m from the noise source (table 7). ACOE is planning to implement shutdown zones for low-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Therefore, especially in combination with the already low occurrence of gray whales in the area, implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of gray whale. Therefore, no take by Level A harassment is anticipated or proposed for authorization for humpback whales.

Humpback Whales

Humpback whales have occurred in the lower Columbia River near the proposed project area in recent years. Feeding groups have been using the mouth of the Columbia River as a foraging ground, arriving as early as

mid-June, and have been observed as late as mid-November with a peak of abundance coinciding with the peak abundance of forage fish in mid-summer (The Columbian 2019). During pile driving activities of the Sand Island Test Pile Project, seven animals were observed (Hamer Environment L.P. 2020). The ACOE estimated take of humpback whales using equation 2 above resulting in a take estimate of 16 takes by Level B harassment (2277 (pile driving minutes for this activity)/1037 (pile driving minutes for Sand Island Test Pile Project) $\times$ 7 observed animals). NMFS agrees with this approach and estimated take. As described above, NMFS anticipates that 42 percent of takes would occur to individuals of the Central America/Southern Mexico-CA/OR/WA stock and 58 percent of takes would occur to individuals of the Mainland Mexico-CA/OR/WA which would equate to seven and nine takes respectively.

The largest Level A harassment zone for humpback whales extends 513 m from the noise source (table 7). ACOE is planning to implement shutdown zones for low-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of humpback whale. No take by Level A harassment is anticipated or proposed for authorization for humpback whales.

Killer Whale

Use of the mouth of the Columbia River is rare for killer whales, but in recent years pods of killer whales have been observed in and around the mouth of the Columbia River. During the recent monitoring of the Sand Island Test Pile Project, no killer whales were observed (Hamer Environment L.P. 2020). Aerial seabird marine mammal surveys observed 0 killer whales in January 2011, 0 in February 2012, and 10 in September 2012 within an approximately 1,500 km² range near the MCR (Adams 2014). A pod of transient killer whales was detected near the Astoria Bridge in May of 2018 (Frankowicz 2018) and in 2022 (Tomlinson 2022). The ACOE estimated the average group sizes from these past observations was seven. Based on the rare occurrence of killer whales in the project area, ACOE expects that one group of seven killer whales may occur during the 12 days of construction in the Level B harassment zone. NMFS concurs and is proposing to authorize 7 takes of killer whale by Level B harassment.

The largest Level A harassment zone for killer whales extends 17.8 m from the noise source (table 7). ACOE is planning to implement shutdown zones for mid-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of killer whale. No take by Level A harassment is anticipated or proposed for authorization for killer whales.

Harbor Porpoise

Harbor porpoises are regularly observed in the offshore waters near the mouth of the Columbia River and are known to occur there year-round. Porpoise abundance peaks when anchovy (*Engraulis mordax*) abundance in the river and nearshore are highest, which is usually between April and August (Litz *et al.* 2008). Harbor porpoise tend to occur in groups of one to two individuals. During the recent monitoring of the Sand Island Test Pile Project, eight harbor porpoise were observed during construction activities (Hamer Environment L.P. 2020). Using equation 2 above, ACOE expects that take by Level B harassment of 18 animals would occur over the 12 days of pile driving (2277 (pile driving minutes for this activity)/1037 (pile driving minutes for Sand Island Test Pile Project) $\times$ 8 observed animals). NMFS agrees with this approach and estimated take.

The largest Level A harassment zone for harbor porpoise extends 597 m from the noise source (table 7). ACOE is planning to implement shutdown zones for high-frequency cetaceans that exceed the Level A harassment isopleth for all activities, and it did not request take by Level A harassment of harbor porpoise. For some activities (*i.e.*, impact driving of 24-in piles), the shutdown zones extends farther than Protected Species Observers (PSO) may be able to reliably detect harbor porpoise. However, given the portion of the zone within which PSOs could reliably detect a harbor porpoise, the infrequency of harbor porpoise observations during the Sand Island Test Pile project monitoring, and harbor porpoise sensitivity to noise, no take by Level A harassment is anticipated or proposed for authorization for harbor porpoise.

Steller Sea Lion

Steller sea lion occurrence was estimated using WDFW survey information haulout information from the South Jetty at the mouth of the Columbia River from 2000 to 2014. During the recent monitoring of the

Sand Island Test Pile Project no Steller sea lions were observed (Hamer Environment L.P. 2020). Given the close proximity of the haulout it is expected that Steller sea lions could occur near the project site. Occurrence was estimated using the monthly haulout numbers for the months when work would be occurring during the proposed project. In August the average number of Steller sea lions hauled out at the jetty was 72 and in October the average number of sea lions at the jetty was 77. In August construction would occur over 7-days and in October construction would occur over 5 days. Given the daily occurrence rates and days of in-water construction, and using equation 1, the ACOE expects that 889 takes by Level B harassment would occur (daily occurrence (72 or 77) $\times$ days of activity), and NMFS proposes to authorize 889 takes by Level B harassment of Steller sea lion.

The largest Level A harassment zone for Steller sea lions extends 19.5 m from the noise source (table 7). ACOE is planning to implement shutdown zones for otariids that exceed the Level A harassment isopleth for all activities. Implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of Steller sea lion. No take by Level A harassment is anticipated or proposed for authorization for Steller sea lion.

California Sea Lion

Similar to Steller sea lions, California sea lions use the South Jetty at the mouth of the Columbia River and make frequent trips inside the mouth of the river. Occurrence on the South Jetty peaks in summer and use in the fall and winter is more concentrated. During recent monitoring activities of the Sand Island Test Pile Project 59 animals were observed (Hamer Environment L.P.

2020). Using equation 2 above, ACOE expects that 144 takes by Level B harassment California sea lions would occur (2277 (pile driving minutes for this activity)/1037 (pile driving minutes for Sand Island Test Pile Project) $\times$ 59 observed animals), and NMFS proposes to authorize 144 takes by Level B harassment of California sea lion.

The largest Level A harassment zone for California sea lions extends 19.5 m from the noise source (table 7). ACOE is planning to implement shutdown zones for otariids that exceed the Level A harassment isopleth for all activities. Implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of California sea lion. No take by Level A harassment is anticipated or proposed for authorization for California sea lion.

Harbor Seal

Harbor seals are the most abundant pinniped in Oregon and occur in the proposed project are year-round. Large numbers of harbor seals move through the mouth of the Columbia River throughout the year and are expected to be present in the proposed project area. During recent monitoring of the Sand Island Test Pile Project, a total of 309 harbor seals were observed during construction activities (Hamer Environment L.P. 2020). Take estimates were generated using equation 2 above and the Sand Island Pile Test Project monitoring results. ACOE expects that 679 takes by Level B harassment of harbor seals would occur during the proposed project (2277 (pile driving minutes for this activity)/1037 (pile driving minutes for Sand Island Test Pile Project) $\times$ 309 observed animals), and NMFS proposes to authorize 679 takes by Level B harassment of harbor seal.

The Level A harassment zone for harbor seals during impact installation is 268 m (table 7). ACOE would implement a shutdown zone of 150 m given the difficulty of observing harbor seals at greater distances and practicability concerns regarding efficient work production rates that would be associated with a larger shutdown zone (see Proposed Mitigation section). During impact installation ACOE expects that two harbor seals could be present in the Level A harassment zone. Therefore, over the three days of impact pile driving, NMFS anticipates, and proposes to authorize, 6 takes by Level A harassment (2 takes per day $\times$ 3 days = 6 takes by Level B harassment).

Northern Elephant Seal

Northern elephant seals occur infrequently in the mouth of the Columbia River. Recent sightings of elephant seals have occurred in the fall and spring upriver from the proposed project site. Although, no Northern elephant seals were observed during the Sand Island Test Pile Project (Hamer Environment L.P. 2020). ACOE expects that two animals may be present in the Level B harassment zone during the 12-days of construction, and NMFS proposes to authorize 2 takes by Level B harassment of elephant seal.

The largest Level A harassment zone for Northern elephant seals extends 268 m from the noise source (table 7). ACOE is planning to implement shutdown zones for Northern elephant seal that exceed the Level A harassment isopleth for all activities. Implementation of the proposed shutdown zones is expected to eliminate the potential for take by Level A harassment of Northern elephant seal. No take by Level A harassment is anticipated or proposed for authorization for Northern elephant seals.

TABLE 8—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Stock abundance ^a	Level A	Level B	Total proposed take	Proposed take as a percentage
Gray Whale	Eastern N Pacific	26,960	0	2	2	<1
Humpback Whale	Central America/Southern Mexico—CA/OR/WA.	1,494	0	7	7	<1
	Mainland Mexico—CA/OR/WA ...	3,477	0	9	9	<1
Killer Whale	West Coast Transients	349	0	7	7	2
Harbor Porpoise	Northern OR/WA Coast	22,074	0	18	18	<1
Steller sea lion	Eastern	36,308	0	889	889	2.4
California Sea Lion	United States.	257,074	0	144	144	<1
Harbor Seal	OR/WA Coastal	UKN	6	679	685	N/A
Northern Elephant Seal	CA Breeding	187,386	0	2	2	<1

^a Stock size is Nbest according to NMFS 2022 Final Stock Assessment Reports.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is

expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

The following measures would apply to the ACOE mitigation requirements:

Implementation of Shutdown Zones—For all pile driving/removal activities, the ACOE would implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Implementation of shutdowns would be used to avoid or minimize incidental

Level A harassment takes from vibratory and impact pile driving and removal (table 9). For all pile driving/removal activities, a minimum 25-m shutdown zone would be established for pinnipeds and 50-m shutdown zone for cetaceans as outlined in the ACOE application for an IHA. For harbor seals, ACOE proposed a shutdown zone of 25 m given its concerns about potential frequent shutdowns that may occur with a larger shutdown zone in consideration of high occurrence of harbor seals in the project area. To minimize the potential of Level A harassment of harbor seals, NMFS recommended a shutdown zone of 150 m for harbor seals. ACOE concurred that this zone was practicable, and therefore, NMFS proposes to require a shutdown zone of 150 m for harbor seals. Shutdown zones for impact pile driving are based on the Level A harassment zones and therefore vary by marine mammal hearing group (table 9). The placement of PSOs during all pile driving activities (described in detail in the Monitoring and Reporting section) would ensure the full extent of shutdown zones are visible to PSOs.

TABLE 9—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Activity	Pile size	Shutdown zones (m)					
		LF cetaceans	MF cetaceans	HF cetaceans	Harbor Seals	Northern elephant seal	Otariids
Vibratory Installation	24-in (pile markers)	50	50	50	25	25	25
Vibratory Installation and removal.	24-in (MOF option 2)	50	50	50	25	25	25
Vibratory Installation and removal.	24-in sheet pile (MOF option 1).	50	50	50	25	25	25
Impact Installation	24-in (pile markers)	510	50	600	150	270	25

Monitoring for Level A and Level B harassment—The ACOE has identified monitoring zones correlated with the Level B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone. PSOs would monitor the entire visible area to maintain the best sense of where animals are moving relative to the zone boundaries defined in table 9. Placement of PSOs on the shorelines around Sand Island would allow PSOs to observe marine mammals near the project area. While not required by this IHA, ACOE states that it may

also place a PSO on a skiff near the project area if safe conditions allow.

Soft Start—Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile

driving/removal of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the monitoring zone has been observed for 30 minutes and marine mammals are not present within the zone, soft-start procedures can commence and work can continue. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones, indicated in table 9, are clear of marine mammals. When a marine mammal for which take by Level

B harassment is authorized is present in the Level B harassment zone, activities may begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone would commence.

Based on our evaluation of the applicant's proposed measures NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual

marine mammals; or (2) populations, species, or stocks;

- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers in accordance with section 5 of the IHA. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

A minimum of two PSO would be on duty during all in-water construction activities. Locations from which PSOs would be able to monitor for marine mammals are readily available from the shore of Sand Island. PSOs would monitor for marine mammals entering the harassment zones.

PSOs would scan the waters using binoculars or spotting scopes and would use a handheld range-finder device to verify the distance to each sighting from the project site. PSOs would be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the

shutdown to the hammer operator via a radio.

The ACOE would adhere to the following observer qualifications:

(i) PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;

(ii) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

(iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

(iv) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and

(v) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

Additional recommended observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It

would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.*, impact driving) and for each pile or total number of strikes for each pile (impact driving).

- PSO locations during marine mammal monitoring.

- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; time of sighting; identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); estimated number of animals (min/max/best estimate); estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); animal's closest point of approach and estimated time spent within the harassment zone; description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones, by species; and,

- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report would constitute the final report. If comments are received, a final report addressing NMFS comments must be

submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Holder must report the incident to the Office of Protected Resources (OPR), NMFS and to the West Coast regional stranding network as soon as feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the activities until NMFS OPR 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 this IHA. The Holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and

context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in table 8, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensounded above the thresholds for Level A or Level B harassment identified above when these activities are underway.

Take by Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated or proposed for authorization given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Take by Level A harassment is only anticipated for harbor seals. The potential for harassment is minimized through the construction method (*i.e.*, use of direct pull removal or vibratory methods to the extent practical) and the implementation of the proposed mitigation measures (see Proposed Mitigation section).

Behavioral responses of marine mammals to pile driving and removal at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities or could become alert, avoid

the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the limited number of piles to be installed or extracted per day and that pile driving and removal would occur across a maximum of 12 days within the 12-month authorization period, any harassment would be temporary.

In addition to the expected effects resulting from Level B harassment, we anticipate that harbor seals may sustain some limited Level A harassment in the form of PTS. However, any PTS is expected to be of a small degree (*i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving (below 2 kHz)) because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS. If hearing impairment occurs, 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, as it would be minor and not in the region of greatest hearing sensitivity.

Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any PTS or TTS potentially incurred here would not be expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish or invertebrates to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities, the relatively small area of the habitat that may be affected, and the availability of nearby habitat of similar or higher value, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

A large portion of the west coast, including the mouth of the Columbia River, has been identified as a biologically important area (BIA) for gray whale feeding (Calambokidis *et al.* 2024). As described above, the presence

of gray whales in the project area is rare, and the area of overlap of the project with the feeding BIA affected is small compared to the overall size of the BIA. The gray whale feeding BIA is active from June through November while the proposed project is scheduled to occur between August and October, resulting in only three months of overlap with the project and 3 months when the BIA is active but ACOE would not be conducting work. Additionally, pile driving associated with the project is expected to take only 12 days, further reducing the temporal overlap with the BIA. Therefore, take of gray whales using this feeding BIA, given both the small footprint of the activity relative to the BIA, and the scope and nature of the anticipated impacts of pile driving exposure, is not anticipated to impact the reproduction or survival of any individuals.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed for authorization;
- Any take by Level A harassment (harbor seals, only) is anticipated to result in slight PTS within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all stocks, and does not overlap ESA-designated critical habitat. While impacts would occur within an area that is important for gray whale feeding, because of the small footprint of the activity relative to the feeding area, the limited temporal overlap of the activity and the feeding period, and the scope and nature of the anticipated impacts of pile driving exposure, we do not expect impacts to the reproduction or survival of any individuals; and
- ACOE would implement mitigation measures, such as soft-starts for impact pile driving and shut downs to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment, is at most, a small degree of PTS.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into

consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 8 demonstrates the number of animals that NMFS anticipates could be taken by Level A and Level B harassment for the proposed work. Our analysis shows that at most 2.4 percent of each affected stock could be taken by harassment. The numbers of animals proposed to be taken for these stocks would be considered small relative to the relevant stock's abundances, even if each estimated taking occurred to a new individual, which is an unlikely scenario.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take

for endangered or threatened species, in this case with the West Coast region.

NMFS is proposing to authorize take of Central America/Southern Mexico—CA/OR/WA and Mainland Mexico—CA/OR/WA humpback whales, which are listed under the ESA. The Permits and Conservation Division has requested initiation of section 7 consultation with the West Coast Region for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the ACOE for conducting pile installation and removal, in Baker Bay, between August 1, 2025 and July 31, 2026, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed action. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1-year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 22, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2024–16367 Filed 7–24–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Trademark Post Registration

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

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0055 (Trademark Post Registration). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before September 23, 2024.

ADDRESSES: Interested persons are invited to submit written comments by

any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- **Email:** InformationCollection@uspto.gov. Include “0651–0055 comment” in the subject line of the message.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>.
- **Mail:** Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Catherine Cain, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8946; or by email at Catherine.Cain@uspto.gov with “0651–0055 comment” in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act (Act), 15 U.S.C. 1501 *et seq.*, which provides for the federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO.

This information collection covers various communications submitted by individuals and businesses to the USPTO after the registration of a trademark. One type of communication is a request to amend a registration to delete goods or services that are no longer being used by the owner. Registered marks remain on the register for 10 years and can be renewed, but will be cancelled unless the owner files with the USPTO a declaration attesting to the continued use (or excusable non-use) of the mark in commerce, and a renewal application, with specific deadlines. Owners may also request to amend or divide a registration, respond to a post-registration office action, and surrender a registration.

The regulations implementing the Act are set forth in 37 CFR part 2. These regulations mandate that each register entry include the mark, the goods and/or services in connection with which

the mark is used, ownership information, dates of use, and certain other information. The information in this information collection is used to maintain the quality of the trademark register. The register may be accessed by an individual or by businesses to determine the availability of a mark. By keeping the register current and accurate, parties may reduce the possibility of initiating use of a mark previously adopted by another.

II. Method of Collection

Items in this information collection must be submitted electronically. In limited circumstances, registrants may also be permitted to submit the information in paper form by mail or hand delivery.

III. Data

OMB Control Number: 0651-0055.
Forms:

- PTO-1563 (Declaration of Use of Mark in Commerce Under Section 8)
 - PTO-1573 (Declaration of Incontestability of a Mark Under Section 15)
 - PTO-1583 (Combined Declaration of Use and Incontestability Under Sections 8 and 15)
 - PTO-1597 (Section 7 Request)
 - PTO-1963 (Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Sections 8 and 9)
 - PTO-2302 (Response to Office Action for Post-Registration Matters)
 - PTO-2309 (Surrender of Registration for Cancellation)
 - PTO-2310 (Request to Divide Registration)
 - PTO-2311 (Section 12(c) Affidavit)
- Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 271,793 respondents.

Estimated Number of Annual Responses: 271,793 responses.

Frequency: On occasion.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 12 minutes (0.20 hours) and 50 minutes (0.83 hours) to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 162,987 hours.

Estimated Total Annual Respondent Hourly Cost Burden: \$72,855,189.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

Item No.	Item	Estimated annual respondents	Responses per respondent	Estimated annual responses	Estimated time for response (hours)	Estimated burden (hour/year)	Rate ¹ (\$/hour)	Estimated annual respondent cost burden
		(a)	(b)	(a) × (b) = (c)	(d)	(c) × (d) = (e)	(f)	(e) × (f) = (g)
1	Declaration of Use of Mark in Commerce Under Section 8.	67,809	1	67,809	0.58 (35 minutes)	39,329	\$447	\$17,580,063
2	Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Sections 8 and 9.	94,584	1	94,584	0.58 (35 minutes)	54,859	447	24,521,973
3	Declaration of Incontestability of a Mark Under Section 15.	1,341	1	1,341	0.20 (12 minutes)	268	447	119,796
4	Combined Declaration of Use and Incontestability Under Sections 8 and 15.	75,796	1	75,796	0.58 (35 minutes)	43,962	447	19,651,014
5	Surrender of Registration for Cancellation.	600	1	600	0.20 (12 minutes)	120	447	53,640
6	Section 7 Request	6,500	1	6,500	0.67 (40 minutes)	4,355	447	1,946,685
7	Response to Office Action for Post-Registration Matters.	22,000	1	22,000	0.83 (50 minutes)	18,260	447	8,162,220
8	Request to Divide Registration.	3,161	1	3,161	0.58 (35 minutes)	1,833	447	819,351
9	Section 12(c) Affidavit	2	1	2	0.30 (18 minutes)	1	447	447
Totals	.....	271,793	.....	271,793	.....	162,987	.....	72,855,189

¹ 2023 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F-41. The USPTO uses the average billing rate for intellectual property work in all firms which is \$447 per hour (<https://www.aipla.org/home/news-publications/economic-survey>).

Estimated Total Annual Respondent Non-hourly Cost Burden: \$103,718,072.

There are no capital start-up, maintenance costs, or recordkeeping costs associated with this information collection. However, the USPTO estimates that the total annual non-hour

cost burden for this information collection, in the form of filing fees and postage, is \$103,718,072.

Filing Fees

Filing fees are charged per class of goods or services and can vary

depending on the number of classes. The filing fees shown here are based on the minimum fee of one class per document associated with this information collection.

TABLE 2—FILING FEES

Item No.	Fee code	Item	Estimated annual responses (a)	Filing fee (\$) (b)	Non-hourly cost burden (a) × (b) = (c)
1	7205	Declaration of Use of Mark in Commerce Under Section 8—Filed During the Statutory Period (electronic).	61,644	\$225	\$13,869,900
1	6205	Declaration of Use of Mark in Commerce Under Section 8—Filed During the Statutory Period (paper).	1	325	325
1	7205, 7206	Declaration of Use of Mark in Commerce Under Section 8—Filed During the Grace Period (electronic).	6,163	325	2,002,975
1	6205, 6206	Declaration of Use of Mark in Commerce Under Section 8—Filed During the Grace Period (paper).	1	525	525
2	7201, 7205	Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Sections 8 and 9—Filed During the Statutory Period (electronic).	85,984	525	45,141,600
2	6201, 6205	Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Sections 8 and 9—Filed During the Statutory Period (paper).	1	825	825
2	7201, 7203, 7205, 7206	Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Sections 8 and 9—Filed During the Grace Period (electronic).	8,598	725	6,233,550
2	6201, 6203, 6205, 6206	Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Sections 8 and 9—Filed During the Grace Period (paper).	1	1,225	1,225
2	7211	Issuing New Certificate of Registration (electronic)	97	100	9,700
2	6211	Issuing New Certificate of Registration (paper)	1	200	200
2	7212	Certificate of Correction, Registrant's Error (electronic)	6,421	100	642,100
2	6212	Certificate of Correction, Registrant's Error (paper)	1	200	200
3	7208	Declaration of Incontestability of a Mark Under Section 15 (electronic)	1,340	200	268,000
3	6208	Declaration of Incontestability of a Mark Under Section 15 (paper)	1	300	300
4	7205, 7208	Combined Declaration of Use and Incontestability Under Sections 8 and 15—Filed During the Statutory Period (electronic).	68,905	425	29,284,625
4	6205, 6208	Combined Declaration of Use and Incontestability Under Sections 8 and 15—Filed During the Statutory Period (paper).	1	625	625
4	7205, 7206, 7208	Combined Declaration of Use and Incontestability Under Sections 8 and 15—Filed During the Grace Period (electronic).	6,890	525	3,617,250
4	6205, 6206, 6208	Combined Declaration of Use and Incontestability Under Sections 8 and 15—Filed During the Grace Period (paper).	1	825	825
6	7012	Section 7 Request (electronic)	6,499	250	1,624,750
6	6012	Section 7 Request (paper)	1	350	350
7	7012	Deletion of Goods or Services after submission and prior to acceptance of a section 8 affidavit (electronic).	2,805	250	701,250
7	6012	Deletion of Goods or Services after submission and prior to acceptance of a section 8 affidavit (paper).	1	350	350
8	7006	Request to Divide Registration (electronic)	3,160	100	316,000
8	6006	Request to Divide Registration (paper)	1	200	200
9	7210	Section 12(c) Affidavit (electronic)	1	100	100
9	6210	Section 12(c) Affidavit (paper)	1	200	200
Totals			258,520		103,717,950

Postage Costs

In limited circumstances, applicants may be permitted to submit the information in paper form by mail or hand delivery. Applicants and registrants incur postage costs when submitting information to the USPTO by mail through the United States Postal Service (USPS). The USPTO estimates that 12 items will be submitted to the USPTO by mail. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail legal flat rate envelope, will be \$10.15. Therefore, the USPTO estimates the total mailing costs for this information collection at \$122.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper

performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. The USPTO will include or

summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, the USPTO cannot guarantee that it will be able to do so.

Lisa Lawn,

Director, Records and Information Compliance Program Office, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2024–16328 Filed 7–24–24; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION**Reopening; Applications for New Awards; Student Support Services Program**

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On May 1, 2024, we published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2025 Student Support Services (SSS) Program, Assistance Listing Number 84.042A. The NIA established a deadline date of July 15, 2024, for the transmittal of applications. For eligible applicants located in counties in Texas that are covered by a major disaster declaration issued by the President, this notice reopens the competition until July 30, 2024 and extends the date of intergovernmental review until September 30, 2024.

DATES:

Deadline for Transmittal of Applications: July 30, 2024.

Deadline for Intergovernmental Review: September 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Lavelle Wright. Telephone: (202) 987-1300. Email: Lavelle.Wright@ed.gov.

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

SUPPLEMENTARY INFORMATION: On May 1, 2024, we published the NIA in the **Federal Register** (89 FR 35080). Under the NIA, applications were due on July 15, 2024. We are reopening this competition to allow affected applicants (as defined under *Eligibility*) more time—until July 30, 2024—to prepare and submit their applications.

Eligibility: The extended application deadline applies only to eligible applicants under the FY 2025 SSS Program competition that are affected applicants. An eligible applicant for this competition is defined in the NIA. To qualify as an affected applicant, the applicant must have a mailing address that is located in the federally declared disaster area and must provide appropriate supporting documentation, if requested.

The applicable federally declared disaster area under this declaration is the area in which assistance to individuals or public assistance has been authorized under FEMA's disaster declaration for Texas Hurricane Beryl DR-4798-TX. See the disaster declaration available at <https://www.fema.gov/disaster/4798>.

Affected applicants that have already timely submitted applications under the FY 2025 SSS Program competition may resubmit applications on or before the extended application deadline of July 30, 2024, but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that is last submitted and timely received by 11:59:59 p.m., Eastern Time, on July 30, 2024.

Any application submitted by an affected applicant under the extended deadline must contain evidence (e.g., the applicant organization mailing address) that the applicant is located in the applicable federally declared disaster area and, if requested, the applicant must provide appropriate supporting documentation.

The application period is not reopened for all applicants. Applications from applicants that are not affected, as defined above, will not be accepted past the original July 15, 2024 deadline.

Note: All information in the NIA for this competition remains the same, except for the deadline for the transmittal of applications for affected applicants and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 1070a-11 and 20 U.S.C. 1070a-14.

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

Nasser Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024-16377 Filed 7-24-24; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION**Extension of the Application Deadline Date; Applications for New Awards; Centers of Excellence for Veteran Student Success Program**

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On May 28, 2024, we published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2024 Centers of Excellence for Veteran Student Success (CEVSS) Program, Assistance Listing Number 84.116G. The NIA established a deadline date of July 29, 2024, for the transmittal of applications. For eligible applicants located in counties in Texas that are covered by a major disaster declaration issued by the President, this notice extends the deadline date for transmittal of applications until Monday, August 5, 2024, and extends the date of intergovernmental review until October 4, 2024.

DATES:

Deadline for Transmittal of Applications: August 5, 2024.

Deadline for Intergovernmental Review: October 4, 2024.

FOR FURTHER INFORMATION CONTACT:

Kelly Harris. Telephone: (202) 453-7346. Email: Kelly.Harris@ed.gov.

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

SUPPLEMENTARY INFORMATION: On May 28, 2024, we published the NIA in the **Federal Register** (89 FR 46098). Under the NIA, applications are due on July 29, 2024. We are extending the deadline for transmittal of applications for affected applicants (as defined under *Eligibility*) to allow these applicants more time—until August 5, 2024—to prepare and submit their applications.

Eligibility: The application deadline extension applies only to eligible applicants under the FY 2024 CEVSS Program competition that are affected applicants. An eligible applicant for this competition is defined in the NIA. To qualify as an affected applicant, the applicant must have a mailing address that is located in the federally declared

disaster area and must provide appropriate supporting documentation, if requested.

The applicable federally declared disaster area under this declaration is the area in which assistance to individuals or public assistance has been authorized under FEMA's disaster declaration for Texas Hurricane Beryl DR-4798-TX. See the disaster declaration available at <https://www.fema.gov/disaster/4798>.

Affected applicants that have already timely submitted applications under the FY 2024 CEVSS Program competition may resubmit applications on or before the extended application deadline of August 5, 2024, but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that is last submitted and timely received by 11:59:59 p.m., Eastern Time, on August 5, 2024.

Any application submitted by an affected applicant under the extended deadline must contain evidence (e.g., the applicant organization mailing address) that the applicant is located in the applicable federally declared disaster area and, if requested, the applicant must provide appropriate supporting documentation.

The application period is not extended for all applicants. Applications from applicants that are not affected, as defined above, will not be accepted past the original July 29, 2024 deadline.

Note: All information in the NIA for this competition remains the same, except for the deadline for the transmittal of applications for affected applicants and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 1161t; 20 U.S.C. 1138-1138d; and the explanatory statement accompanying Division D of the Further Consolidated Appropriations Act, 2024 (Pub. L. 118-47).

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official

edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024-16376 Filed 7-24-24; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24-16-000]

Commission Information Collection Activities (Ferc-725y); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC-725Y, Mandatory Reliability Standard (Personnel Performance, Training, and Qualifications).

DATES: Comments on the collection of information are due September 23, 2024.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC24-16-000) by one of the following methods:

Electronic filing through <https://www.ferc.gov>, is preferred.

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

- For those unable to file electronically, comments may be filed by USPS mail or by other delivery methods:

- *Mail via U.S. Postal Service Only:* Federal Energy Regulatory Commission,

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

- *All other delivery services:* Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at DataClearance@FERC.gov, telephone at (202) 502-6362.

SUPPLEMENTARY INFORMATION:

Title: FERC-725Y, Mandatory Reliability Standard (Personnel Performance, Training, and Qualifications).

OMB Control No.: 1902-0279.

Type of Request: Three-year extension of the FERC-725Y information collection requirements with no changes to the reporting requirements.

Abstract: The FERC-725Y information collection is intended to help ensure the safe and reliable operation of the interconnected grid through the retention of suitably trained and qualified personnel in positions that can impact the reliable operation of the Bulk-Power System. The Commission uses the FERC-725Y to implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. FERC-725Y ensures that personnel performing or supporting real-time operations on the Bulk Electric System (BES) are trained using a systematic approach. The Reliability Standard requires entities to maintain records subject to review by the Commission and North American Electric Reliability Corporation (NERC) to ensure compliance with the Reliability Standard.

Reliability Standard PER-003-2 purpose is to ensure that System Operators performing the reliability-related tasks of the Reliability Coordinator, Balancing Authority and Transmission Operator are certified through the NERC System Operator Certification Program when filling a Realtime operating position responsible for control of the Bulk Electric System.

- R1. Each Reliability Coordinator shall staff its Real-time operating

positions performing Reliability Coordinator reliability-related tasks with System Operators who have demonstrated minimum competency in the areas listed by obtaining and maintaining a valid NERC Reliability Operator certificate.

- R2. Each Transmission Operator shall staff its Real-time operating positions performing Transmission Operator reliability-related tasks with System Operators who have demonstrated minimum competency in the areas listed by obtaining and maintaining one of the following valid NERC certificates.

- R3. Each Balancing Authority shall staff its Real-time operating positions performing Balancing Authority reliability-related tasks with System Operators who have demonstrated minimum competency in the areas listed by obtaining and maintaining one of the following valid NERC certificates.

Reliability Standard PER-005-2 requires entities to maintain records subject to review by the Commission and NERC to ensure compliance with the Reliability Standard. This Reliability Standard contains of six Requirements:

- R1 requires reliability coordinators, balancing authorities, and transmission operators to develop and implement a training program for system operators.

- R2 requires transmission owners to develop and implement a training program for system operators.

- R3 requires reliability coordinators, balancing authorities, transmission operators and transmission owners to verify the capabilities of their identified personnel.

- R4 requires reliability coordinators, balancing authorities, transmission operators and transmission owners to provide those personnel with emergency operations training using simulation technology.

- R5 requires reliability coordinators, balancing authorities, and transmission operators develop and implement training for system operators whose job functions can impact BES real-time reliability tasks.

- R6 requires applicable generator operators to develop and implement training for certain of their dispatch personnel at a centrally located dispatch center.

Reliability Standard PER-006-1 ensures that personnel are trained on specific topics essential to reliability to perform or support Real-Time operations of the Bulk Electric System.

- R1 identifies generator operator plant personnel responsible for Real-time control and carrying out Operating instructions are trained on the operational functionality of Protection

Systems and Remedial Action Schemes that affect the output of generating facility(ies) it operates.

Type of Respondents: Transmission owners and generator owners.

*Estimate of Annual Burden*¹: Our estimate below regarding the number of respondents is based on the NERC compliance registry as of April 16, 2024. In general, the number of respondents has increased from previous renewal as each entity may have multiple responsibilities under these standards and those responsibilities are counted separately.

When the original PER-003-0 was approved in Order No. 693 the associated manhours were part of the 83 NERC Reliability Standards approved at one time.² In the two revisions done PER-003-1 and PER-003-2 it was determined at that there was no change in burden specific to PER-003. To increase clarity, manhours associated with the original PER-003-0 are being moved from the 725A collection and being added into the 725Y collection. The next update to 725A (2024) will reflect the change in burden associated with PER-003 and moving manhours from 725A into 725Y.

The Commission estimates the additional annual reporting burden and cost as follows:

	Number and type of respondents ³	Annual number of responses per respondent	Total number of responses	Avg. burden & cost per response ⁴	Total annual burden hours & total annual cost (\$)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
FERC-725Y in Docket No. IC24-16-000 Reliability Standard PER-003-2						
Annual Review of Credentials.	12 (RC)	1	12	60 hrs. \$4,637.40 ..	720 hrs. \$55,648.80	\$4,637.40
	98 (BA)	1	98	60 hrs. \$4,637.40 ..	5,880 hrs. \$454,465.20	4,637.40
	165 (TOP)	1	165	60 hrs. \$4,637.40 ..	9,900 hrs. \$765,171.00	4,637.40
Record Retention	(RC, BA, TOP) 275	1	275	60 hrs. \$2,735.40 ..	16,500 hrs. \$752,235.00	2,735.40
Total .....	.....	.....	.....	.....	33,000 hrs. \$2,027,520.00 ..	.....
FERC-725Y (Reliability Standard PER-005-2)						
Annual Evaluation, Update of Training Program.	12 (RC)	1	12	14 hrs.; \$1,082.06 ..	168 hrs.; \$12,984.72	1,082.06
	98 (BA)	1	98	14 hrs.; \$1,082.06 ..	1,372 hrs.; \$106,041.88	1,082.06
	165 (TOP)	1	165	14 hrs.; \$1,082.06 ..	2,310 hrs.; \$178,539.90	1,082.06
	324 (TO)	1	324	14 hrs.; \$1,082.06 ..	4,536 hrs.; \$350,587.44	1,082.06
	1028 (GOP)	1	1028	14 hrs.; \$1,082.06 ..	14,392 hrs.; \$1,112,357.68	1,082.06
Annual Evaluation and Update of Training Program.	(RC, BA, TOP, TO, GOP) 1627	1	1627	8 hrs.; \$364.72	13,016 hrs.; \$593,399.44	364.72
Retention of Records	(RC, BA, TOP, TO, GOP) 1627	1	1627	10 hrs.; \$455.90	16,270 hrs.; \$741,749.30	455.90
Total .....	.....	.....	.....	.....	68,892 hrs.; \$3,095,660.36 .....	.....
FERC-725Y (Reliability Standard PER-006-1)						
GOP; Reporting, Record-keeping Req.	1028	1	1028	14 hrs.; \$1,082.06 ..	14,392 hrs.; \$1,112,357.68	1,082.06
GOP; Reporting Req. R1	1028	1	1028	5 hrs.; \$386.45	5,140 hrs.; \$397,270.60	386.45

¹ Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For further

explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

² Order No. 693 Mandatory Reliability Standards for the Bulk-Power System—approved March 16, 2007.

	Number and type of respondents ³	Annual number of responses per respondent	Total number of responses	Avg. burden & cost per response ⁴	Total annual burden hours & total annual cost (\$)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
GOP; Recordkeeping Req ...	⁵ 1028	1	1028	10 hrs.; \$455.90	10,280 hrs.; \$468,665.20	455.90
Total .....	.....	.....	.....	.....	29,812 hrs.; \$1,978,293.48	.....

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate 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.

Dated: July 19, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–16386 Filed 7–24–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3265–004]

New Hampshire Water Resource Board and Steels Pond Hydro, Inc., New Hampshire Water Resource Board and Steels Pond Hydro LLC; Notice of Partial Transfer of Exemption

1. By letter filed July 8, 2024, Steels Pond Hydro, Inc. and Steels Pond Hydro

³ For PER–003–2, PER–005–2 and PER–006–1: RC = Reliability Coordinator; BA = Balancing Authority; TOP = Transmission Operator; TO = Transmission Owner; GOP = Generator Operator. The NERC compliance registry table April 16, 2024, was used to perform analysis.

⁴ The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor Statistics (BLS), as of 2023. The estimates for cost per response are loaded hourly wage figure (includes benefits) based on two occupational categories for 2023 found on the Bureau of Labor Statistics website (http://www.bls.gov/oes/current/naics2_22.htm):

- Electrical Engineer (Occupation Code: 17–2071): \$77.29 (to calculate the reporting requirements).
- Office and Administrative Support (Occupation Code: 43–0000): \$45.59 (to calculate the recordkeeping requirements).

⁵ The number of US unique GOPs is 1028 taken from the NERC compliance registry information of April 16, 2024.

LLC informed the Commission that the exemption from licensing for the Steels Pond Project No. 3265, originally issued October 18, 1983,¹ has been partially transferred to Steels Pond Hydro LLC. The project is located on the North Branch of the Contoocook River in Hillsborough County, New Hampshire. The transfer of an exemption does not require Commission approval.

2. Steels Pond Hydro LLC, located at 230 Park Avenue, Suite 447, New York, New York 10169 is now the co-exemptee of the Steels Pond Project No. 3265 with the New Hampshire Water Resource Board.

Dated: July 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–16297 Filed 7–24–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–490–000]

EcoEléctrica, L.P.; Notice of Application and Establishing Intervention Deadline

Take notice that on July 5, 2024, EcoEléctrica, L.P. (EcoEléctrica), 641 Road 337, Km. 3.7, Bo. Tallaboa Poniente, Peñuelas, Puerto Rico 00624, filed an application under section 3(a) of the Natural Gas Act (NGA), and part 153 of the Commission's regulations to amend its authorization granted by the Commission on June 19, 2014, for its LNG Supply Pipeline Project. Specifically, EcoEléctrica seeks authorization to increase the sendout capacity on its LNG Supply Pipeline to the existing off-site liquefied natural gas (LNG) Truck Loading Facility from 250 gallons per minute (gpm) to 500 gpm during periods of simultaneous trailer loading. The Project is designed to meet the increasing demand for LNG from the Truck Loading Facility and its downstream users. EcoEléctrica states

¹ *New Hampshire Water Resource Board and Steels Pond Hydro, Inc.*, 25 FERC ¶ 62,055 (1983) (Order Granting Exemption from Licensing of a Small Hydroelectric Project of 5 Megawatts or Less).

that the requested capacity increase will only require minor modifications to the existing LNG facility at its LNG terminal, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

Any questions regarding the proposed project should be directed to Carlos A. Reyes, President & General Manager, EcoEléctrica, L.P., 641 Road 337, Km. 3.7, Bo. Tallaboa Poniente, Peñuelas, Puerto Rico 00624, by phone at (787) 759–0202 or by email at carlos.reyes@ecoelectrica.com.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,¹ within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS)

¹ 18 CFR 157.9.

or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on August 9, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)² and 385.211³ of the Commission's regulations under the NGA, any person⁴ may file a protest to the application. Protests must comply with the requirements specified in section 385.2001⁵ of the Commission's regulations. A protest may also serve as a motion to intervene so long as the

protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before August 9, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP24-490-000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP24-490-000).

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502-8258 or *FercOnlineSupport@ferc.gov*.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the

proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,⁶ has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁷ and the regulations under the NGA⁸ by the intervention deadline for the project, which is August 9, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP24-490-000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP24-490-000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

⁶ 18 CFR 385.102(d).

⁷ 18 CFR 385.214.

⁸ 18 CFR 157.10.

² 18 CFR 157.10(a)(4).

³ 18 CFR 385.211.

⁴ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁵ 18 CFR 385.2001.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail or email at: Carlos A. Reyes, President & General Manager, EcoEléctrica, L.P., 641 Road 337, Km. 3.7, Bo. Tallaboa Poniente, Peñuelas, Puerto Rico 00624 or by email at carlos.reyes@ecoelectrica.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed⁹ motions to intervene are automatically granted by operation of Rule 214(c)(1).¹⁰ Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.¹¹ A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the “eLibrary” link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings

by automatically providing you with notification of these filings, document summaries, and direct links to the documents.

For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Intervention Deadline: 5:00 p.m. Eastern Time on August 9, 2024.

Dated: July 19, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–16387 Filed 7–24–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7883–021]

Power House Systems, Inc., Power House Systems, LLC; Notice of Application of Transfer of License and Substitution of Applicant, and Soliciting Comments, Motions To Intervene, and Protests

On June 7, 2024, Power House Systems, Inc (transferor) and Power House Systems, LLC (transferee) filed an application for a transfer of license of the 540-kilowatt Weston Dam Hydroelectric Project No. 7883. The project is located on the Upper Ammonoosuc River in Coös County, New Hampshire and does not occupy Federal land.

Pursuant to 16 U.S.C. 801, the applicants seek Commission approval to transfer the license for the project from Power House Systems, Inc. to Power House Systems, LLC. The transferee will be required by the Commission to comply with all the requirements of the license as though it were the original licensee. The applicants also propose to substitute Power House Systems, Inc. with Power House Systems, LLC as the applicant for the license application filed on October 2, 2023.

Applicants Contacts: Ian Clark, Relevate Power, LLC, 230 Park Ave. Suite 447, New York, NY 10017, (518) 657–9012, ic@relevatepower.com; Joshua E. Adrian, Thompson Coburn, LLP, 1909 K Street NW, Suite 600, Washington DC, 20006 (202) 585–6922, jadrian@thompsoncoburn.com.

FERC Contact: Steven Sachs, Phone: (202) 502–8666, Email: Steven.Sachs@ferc.gov.

Deadline for filing comments, motions to intervene, and protests: August 19, 2024. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and

protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

In lieu of electronic filing, you may submit a paper copy. Submissions sent via U.S. Postal Service must be addressed to, Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to, Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–7883–021. Comments emailed to Commission staff are not considered part of the Commission record.

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: July 18, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–16293 Filed 7–24–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL24–122–000; EL24–36–000; EL24–123–000; EL24–39–000]

Chalk Point Power, LLC, Dickerson Power, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On July 19, 2024, the Commission issued an order in Docket Nos. EL24–122–000, EL24–36–000, EL24–123–000 and EL24–39–000, pursuant to section 206 of the Federal Power Act (FPA), 16

⁹ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

¹⁰ 18 CFR 385.214(c)(1).

¹¹ 18 CFR 385.214(b)(3) and (d).

U.S.C. 824e, instituting an investigation to determine whether Chalk Point Power, LLC's and Dickerson Power, LLC's Rate Schedules are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Chalk Point Power, LLC and Dickerson Power, LLC*, 188 FERC ¶ 61,047 (2024).

The refund effective date in Docket Nos. EL24–122–000, EL24–36–000, EL24–123–000 and EL24–39–000 established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket Nos. EL24–122–000 and EL24–123–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2023), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy

Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: July 19, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–16385 Filed 7–24–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11163–050]

Green Mountain Power Corporation; Notice of Application for a Non-Capacity Amendment of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for a Non-Capacity Amendment for Construction of Fish Passage Facilities Pursuant to License Articles 407 and 408.

b. *Project No:* 11163–050.

c. *Date Filed:* May 1, 2024.

d. *Applicant:* Green Mountain Power Corporation.

e. *Name of Project:* South Berwick Hydroelectric Project.

f. *Location:* The project is located on the Salmon Falls River in York County, Maine, and Stafford County, New Hampshire. The project does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* John Tedesco, Generation Project Coordinator, John.Tedesco@greenmountainpower.com, (802) 655–8753.

i. *FERC Contact:* Jason Krebill, (202) 502–8268, jason.krebill@ferc.gov.

j. *Cooperating Agencies:* With this notice, the Commission is inviting

Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for Filing Comments, Motions To Intervene, and Protests:* August 17, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P–11163–050. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The purpose of the proposed amendment is to allow for the construction of facilities necessary to support a fish trap and transport operation at the Project. Volitional fish passage for American shad and river herring is currently provided at the Project through a

combined upstream Denil fish ladder and downstream bypass facility that was installed in 2002. The construction of the proposed trap and transport facility is a condition contained in a Settlement Agreement between the Town of Rollinsford (licensee for the upstream Rollinsford Hydroelectric Project No. 3777), Green Mountain Power Corporation, and the U.S. Fish and Wildlife Service.

m. *Locations of the Application*: This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/subscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions To Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this

proceeding, in accordance with 18 CFR 385.2010.

q. 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: July 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-16298 Filed 7-24-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12-1470-016; ER10-3026-014; ER16-1833-011.

Applicants: Sempra Gas & Power Marketing, LLC, Termoelectrica U.S., LLC, Energia Sierra Juarez U.S., LLC.

Description: Notice of Non-Material Change in Status of Energia Sierra Juarez U.S., LLC, et al.

Filed Date: 7/17/24.

Accession Number: 20240717-5177.

Comment Date: 5 p.m. ET 8/7/24.

Docket Numbers: ER24-1792-001.

Applicants: Cald BESS LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 4/19/2024.

Filed Date: 7/17/24.

Accession Number: 20240717-5153.

Comment Date: 5 p.m. ET 8/7/24.

Docket Numbers: ER24-1914-003.

Applicants: Idaho Power Company.

Description: Tariff Amendment: Deficiency Filing re ER24-1914 to be effective 1/4/2024.

Filed Date: 7/18/24.

Accession Number: 20240718-5124.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24-1917-001.

Applicants: Idaho Power Company.

Description: Tariff Amendment: Deficiency Filing re ER24-1917 to be effective 1/29/2024.

Filed Date: 7/18/24.

Accession Number: 20240718-5127.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24-1918-001.

Applicants: Idaho Power Company.

Description: Tariff Amendment:

Deficiency Filing re ER24-1918 to be effective 2/1/2024.

Filed Date: 7/18/24.

Accession Number: 20240718-5129.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24-1919-001.

Applicants: Idaho Power Company.

Description: Tariff Amendment:

Deficiency Filing re ER24-1919 to be effective 3/7/2024.

Filed Date: 7/18/24.

Accession Number: 20240718-5133.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24-1922-001.

Applicants: Idaho Power Company.

Description: Tariff Amendment:

Deficiency Filing re ER24-1922 to be effective 3/13/2024.

Filed Date: 7/18/24.

Accession Number: 20240718-5137.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24-1923-001.

Applicants: Idaho Power Company.

Description: Tariff Amendment:

Deficiency Filing re ER24-1923 to be effective 4/4/2024.

Filed Date: 7/18/24.

Accession Number: 20240718-5140.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24-2183-000.

Applicants: Big Rock ESS Assets LLC.

Description: Report Filing: Big Rock ESS Asset Supplemental Filing to be effective N/A.

Filed Date: 7/17/24.

Accession Number: 20240717-5120.

Comment Date: 5 p.m. ET 7/29/24.

Docket Numbers: ER24-2540-000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amendment to ISA, SA No. 6571; Queue No. AE2-104/AF2-110 (amend) to be effective 9/17/2024.

Filed Date: 7/18/24.

Accession Number: 20240718-5033.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24-2541-000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii): MAIT submits one Construction Agreement SA No. 6625 to be effective 9/17/2024.

Filed Date: 7/18/24.

Accession Number: 20240718-5041.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24-2542-000.

Applicants: Arizona Public Service Company.

Description: 205(d) Rate Filing: Service Agreement No. 423, UES Grandview LLC E&P Agreement to be effective 6/21/2024.

Filed Date: 7/18/24.

Accession Number: 20240718–5088.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24–2543–000.

Applicants: Arizona Public Service Company.

Description: 205(d) Rate Filing: Service Agreement No. 422, LGIA w/ Elisabeth Solar to be effective 6/18/2024.

Filed Date: 7/18/24.

Accession Number: 20240718–5135.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24–2544–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Notice of Cancellation of ISA No. 5364, AB2–160 to be effective 9/17/2024.

Filed Date: 7/18/24.

Accession Number: 20240718–5142.

Comment Date: 5 p.m. ET 8/8/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: July 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–16295 Filed 7–24–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2459–285]

Lake Lynn Generation, LLC; Notice of Application for Temporary Variance Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Application Type:* Temporary Variance from Reservoir Elevation.
- b. *Project No.:* 2459–285.
- c. *Date Filed:* July 16, 2024.
- d. *Applicant:* Lake Lynn Generation, LLC.

- e. *Name of Project:* Lake Lynn Hydroelectric Project.

- f. *Location:* The Lake Lynn Hydroelectric Project is located on the Cheat River in Monongalia County, West Virginia, and Fayette County, Pennsylvania.

- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

- h. *Applicant Contact:* Joyce Foster, Director of Licensing and Compliance, 7315 Wisconsin Avenue, Ste. 1100W, Bethesda, MD 20814, (804) 338–5110.

- i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, zeena.aljibury@ferc.gov.

- j. *Cooperating Agencies:* With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

- k. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/>

[efiling.asp](http://www.ferc.gov/docs-filing/ecomment.asp). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P–2459–285. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

- l. *Description of Request:* The applicant requests Commission approval for a temporary variance from the reservoir elevation requirements at Lake Lynn. Due to lack of precipitation and low reservoir inflows, the applicant requests to reduce the seasonal minimum allowable reservoir elevation from 868 feet to 865 feet to increase spillway discharge in order to mitigate low tailrace dissolved oxygen levels (DO). When inflow to the reservoir is not equal to the discharge needed to maintain DO concentration in the project tailwater at the minimum standard (5.0 milligrams per liter), the applicant would increase project discharge in 25 cubic feet per second increments and subsequently lower the reservoir elevation below 868 feet but no less than 865 feet. If necessary to minimize the impact of lower reservoir elevations, the applicant proposes to open the winter boat launch at Cheat Lake Park, which allows boat access at lower reservoir elevations. Additionally, the applicant proposes to contact local marinas, post a notice on its public

information website, and provide information to Cheat Lake Environment and Recreation Association and Friends of the Cheat to inform recreation users and shoreline property owners of any expected lower reservoir elevations. The applicant requests the temporary variance to remain into effect until November 1, 2024.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. 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: July 18, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-16294 Filed 7-24-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP24-493-000.

Applicants: Texas Eastern Transmission, LP, NEXUS Gas Transmission, LLC.

Description: Texas Eastern Transmission, LP, et al. submit Abbreviated Joint Application for Amendment to Certificate of Public Convenience and Necessity and Authorization to Abandon by Lease.

Filed Date: 7/15/24.

Accession Number: 20240715-5231.

Comment Date: 5 p.m. ET 8/5/24.

Docket Numbers: PR24-87-000.

Applicants: Kansas Gas Service, A Division of ONE Gas, Inc.

Description: § 284.123(g) Rate Filing: KGS Revision to Statement of Operating Conditions to be effective 1/1/2024.

Filed Date: 7/17/24.

Accession Number: 20240717-5156.

Comment Date: 5 p.m. ET 8/6/24.

§ 284.123(g) Protest: 5 p.m. ET 9/16/24.

Docket Numbers: RP24-908-000.

Applicants: Gas Transmission Northwest LLC.

Description: § 4(d) Rate Filing: GTNXP Interim Agmts—Tourmaline, Cascade and IGI to be effective 7/17/2024.

Filed Date: 7/17/24.

Accession Number: 20240717-5113.

Comment Date: 5 p.m. ET 7/29/24.

Docket Numbers: RP24-909-000.

Applicants: White River Hub, LLC.

Description: § 4(d) Rate Filing:

Operational Sales and Purchases of Gas to be effective 7/18/2024.

Filed Date: 7/18/24.

Accession Number: 20240718-5100.

Comment Date: 5 p.m. ET 7/30/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP21-993-000.

Applicants: Cove Point LNG, LP.

Description: Report Filing: Cove Point—2024 Report of Operational Sales and Purchases of Gas to be effective N/A.

Filed Date: 7/17/24.

Accession Number: 20240717-5016.

Comment Date: 5 p.m. ET 7/29/24.

Docket Numbers: RP23-929-005.

Applicants: National Fuel Gas Supply Corporation.

Description: Compliance filing: Settlement Compliance Filing RP23-929 to be effective 2/1/2024.

Filed Date: 7/17/24.

Accession Number: 20240717-5014.

Comment Date: 5 p.m. ET 7/29/24.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as

interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: July 18, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-16292 Filed 7-24-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24-104-000.

Applicants: Berkshire Power Company, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Berkshire Power Company, LLC.

Filed Date: 7/19/24.

Accession Number: 20240719-5195.

Comment Date: 5 p.m. ET 8/9/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24-1832-001; ER24-1941-001.

Applicants: Liberty County Solar Project, LLC, North Fork Solar Project, LLC.

Description: Notice of Non-Material Change in Status of North Fork Solar Project, LLC, et al.

Filed Date: 7/18/24.

Accession Number: 20240718-5192.

Comment Date: 5 p.m. ET 8/8/24.

Docket Numbers: ER24-2545-000.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Termination of PG&E Redwood Valley ES UOG (SA No. 495) to be effective .9/18/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5000.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2546-000.

Applicants: Portland General Electric Company.

Description: 205(d) Rate Filing: PGE Northern Grid Funding Agreement Concurrence to be effective 1/1/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5001.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2547-000.

Applicants: Portland General Electric Company.

Description: Tariff Amendment: PGE Northern Grid Funding Agreement Cancellation to be effective 12/31/2023.

Filed Date: 7/19/24.

Accession Number: 20240719-5002.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2548-000.

Applicants: New York Independent System Operator, Inc., Power Authority of the State of New York.

Description: 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYISO-NYPA Joint 205: Amended MTFIA with CHPE SA2710 (CEII) to be effective 7/8/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5028.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2549-000.

Applicants: FirstEnergy Pennsylvania Electric Company, PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: FirstEnergy Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii): MAIT—FE submits Revised Interconnection Agreement, SA No. 6412 to be effective 9/18/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5043.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2550-000.

Applicants: Southern California Edison Company.

Description: 205(d) Rate Filing: First Amended LGIA Sloth TOT349 SA No. 192 to be effective 7/20/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5089.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2551-000.

Applicants: Tucson Electric Power Company.

Description: 205(d) Rate Filing: Service Agreement No. 546, Large Generator Interconnection Agreement to be effective 6/20/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5094.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2552-000.

Applicants: Basin Electric Power Cooperative.

Description: Initial rate filing: Submission of Service Agreement No. 120 to be effective 10/1/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5101.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2553-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2024-07-19 SA 4310 ITC Transmission-DTE Electric Belle River GIA (M1113) to be effective 7/10/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5116.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2554-000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Origis Holdings USA Subco (Villa Rica I Storage) LGIA Termination Filing to be effective 7/19/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5127.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2555-000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Origis Holdings USA Subco (Villa Rica II Storage) LGIA Termination Filing to be effective 7/19/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5128.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2556-000.

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): Tatum Pines Amended and Restated LGIA Filing to be effective 7/11/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5129.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2557-000.

Applicants: Henrietta BESS LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 7/20/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5171.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2558-000.

Applicants: Hanford BESS LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 7/20/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5173.

Comment Date: 5 p.m. ET 8/9/24.

Docket Numbers: ER24-2559-000.

Applicants: Malaga BESS LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 7/20/2024.

Filed Date: 7/19/24.

Accession Number: 20240719-5175.

Comment Date: 5 p.m. ET 8/9/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

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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.

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Dated: July 19, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-16384 Filed 7-24-24; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0445; FRL-11370-04-OCSP]

Pesticides; White Paper; Framework for Interagency Collaboration To Review Potential Antibacterial and Antifungal Resistance Risks Associated With Pesticide Use; Notice of Availability and Request for Comment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: In the *Federal Register* of July 2, 2024, EPA announced the availability of and solicited public comment on a framework for expanding interagency collaboration to improve the communication and knowledge base within the federal family to fully consider potential adverse impact of pesticides on efficacy of human and animal drugs. In particular, the use of antifungal and antibacterial pesticides,

that can potentially lead to resistance in human and animal pathogens and may compromise the effectiveness of medically important antibacterial and antifungal drugs. This document extends the comment period, which was scheduled to end on August 1, 2024, for 14 days.

DATES: The comment period for the document published on July 2, 2024, at 89 FR 54819 (FRL-11370-03-OCSP) is extended. Comments must be received on or before August 15, 2024.

ADDRESSES: Submit your comments, identified by ID number EPA-HQ-OPP-2023-0445, online at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Susan Jennings, Immediate Office (7501M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (706) 355-8574; email address: jennings.susan@epa.gov.

SUPPLEMENTARY INFORMATION: To give stakeholders additional time to review materials and prepare comments, EPA is hereby extending the comment period established in the *Federal Register* document of July 2, 2024, at 89 FR 54819 (FRL-11370-03-OCSP) for 14 days, from August 1, 2024, to August 15, 2024. More information on the action can be found in the *Federal Register* of July 2, 2024.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 22, 2024.

Michal Freedhoff,
Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024-16373 Filed 7-24-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12059-01-R3]

Clean Air Act Operating Permit Program; Order on Petition for Objection to State Operating Permit for Union Carbide Corporation, Union Carbide Institute Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an order dated May 24, 2024 granting a petition dated October 27, 2023 from People Concerned About Chemical Safety (PCACS) and Earthjustice. The petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the West Virginia Department of Environmental Protection's Division of Air Quality (WVDEP) to Union Carbide Institute Facility for its Logistics Unit and the Catalyst Plant located in Kanawha County, West Virginia.

FOR FURTHER INFORMATION CONTACT:

Joseph Whapham, EPA Region 3, (215) 814-2160, Whapham.Joseph@epa.gov. The final order and petition are available electronically at: www.epa.gov/title-v-operating-permits/title-v-petition-database.

SUPPLEMENTARY INFORMATION: The EPA received a petition from PCACS and Earthjustice dated October 27, 2023, requesting that the EPA object to the issuance of operating permit No. R30-03900005-2023, issued by WVDEP to Union Carbide Institute Facility in Kanawha County, West Virginia. On May 24, 2024, the EPA Administrator issued an order granting the petition. The order itself explains the basis for the EPA's decision.

Cristina Fernández,
Division Director, Region III.

[FR Doc. 2024-16355 Filed 7-24-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2024-0159; FRL-11684-05-OCSP]

Certain New Chemicals or Significant New Uses; Statements of Findings for May 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the *Federal Register* a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs)

submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from May 1, 2024, to May 31, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2024-0159, is available online at <https://www.regulations.gov> or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-1667; email address: edelstein.rebecca@epa.gov.

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

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the reporting period.

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

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make one of several specific findings pertaining to whether the substance may present unreasonable

risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA Section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of "not likely to present an unreasonable risk of injury to health or the environment" may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

The following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as CBI).

- P-21-0181, 1,3-Benzenedicarboxamide, N1,N3-bis(carbomonocyclic)-5-[[[(carbomonocyclic)amino]sulfonyl]- (Generic Name).

- P-22-0046, Fibroins; CASRN: 9007-76-5.

- P-22-0166, Dicarboxylic acid, calcium salt (Generic Name).

- P-23-0170, Ethanaminium, 2-[3-(2,5-dioxo-1-heteromonocyclic)propoxy]-N,N,N-trimethyl-, monopolyisobutylene derivs., Me ethanediolate (Generic Name).

- P-23-0187, Substituted benzenedicarboxylic acid, sodium salt, polymer with benzenedicarboxylic acids and 1,2-ethanediol (Generic Name).

To access EPA's decision document describing the basis of the "not likely to present an unreasonable risk" finding made by EPA under TSCA section 5(a)(3)(C), look up the specific case number at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/chemicals-determined-not-likely>.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 19, 2024.

Shari Z. Barash,

Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2024-16362 Filed 7-24-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT- 2023-0601; FRL-11581-03-OCSPF]

Proposed High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Toxic Substances Control Act (TSCA) and related implementing regulations, the Environmental Protection Agency (EPA or Agency) is proposing to designate acetaldehyde (CASRN 75-07-0), acrylonitrile (CASRN 107-13-1), benzenamine (CASRN 62-53-3), vinyl chloride (CASRN 75-01-4), and 4,4-methylene bis(2-chloroaniline) (MBOCA) (CASRN 101-14-4) as High-Priority Substances for risk evaluation. EPA is providing a 90-day comment period, during which interested persons may submit comments on the proposed designations of these chemicals as High-Priority Substances for risk evaluation.

DATES: Comments must be received on or before October 23, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number, through <https://www.regulations.gov>. Follow the online

instructions for submitting comments. For comments not related to a specific chemical, including general comments on Unit IV.A., use docket ID number EPA-HQ-OPPT-2023-0601; submit information on the candidates for which EPA is initiating the prioritization process to the applicable chemical-specific docket ID number identified in Unit V. 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:

For technical information: Sarah Au, Data Gathering, Management, and Policy Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-0398; email address: au.sarah@epa.gov.

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

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to entities that currently or may manufacture (including import) a chemical substance regulated under TSCA (e.g., entities identified under North American Industrial Classification System (NAICS) codes 325 and 324110). The action may also be of interest to chemical processors, distributors in commerce, users, non-profit organizations in the environmental and public health sectors, state and local government agencies, and members of the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action.

B. What action is the Agency taking?

EPA is proposing to designate five chemical substances as High-Priority Substances for risk evaluation pursuant to TSCA section 6(b), 15 U.S.C. 2605(b): acetaldehyde (CASRN 75-07-0), acrylonitrile (CASRN 107-13-1), benzenamine (CASRN 62-53-3), vinyl chloride (CASRN 75-01-4), and 4,4'-

methylene bis(2-chloroaniline) (MBOCA) (CASRN 101-14-4). This document includes a summary of the approach EPA used to support the proposed designation for each chemical substance and instructions on how to access the chemical-specific information, analysis, and basis EPA used to make the proposed designation for each chemical substance.

C. Why is the Agency taking this action?

TSCA section 6(b) and implementing regulations at 40 CFR part 702, subpart A require EPA to carry out the prioritization process for chemical substances that may be designated as High-Priority Substances for risk evaluation. Because EPA generally expects to complete five risk evaluations per year over the next several years, EPA is proposing the designation of five chemical substances as High-Priority Substances under TSCA section 6(b)(3)(C), which requires EPA to designate at least one chemical substance as a High-Priority Substance upon completion of each risk evaluation of a High-Priority Substance. By proposing the designation of these five chemical substances as High-Priority Substances, EPA continues to build a sustainable pipeline of existing chemical risk evaluations under TSCA section 6(b). The request for interested persons to submit comments on EPA's proposed designation of chemical substances as High-Priority Substances is required by TSCA section 6(b)(1)(C)(ii) and implementing regulations (40 CFR 702.9(g)).

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

This document is issued pursuant to authorities in TSCA section 6(b)(1) and TSCA section 6(b)(3)(C), and the EPA implementing regulations in 40 CFR part 702.

E. What are the estimated incremental impacts of this action?

This document identifies five chemical substances for proposed designation as High-Priority Substances for risk evaluation and provides a 90-day comment period for interested persons to submit comments on the proposed designations. This document does not establish requirements on persons or entities outside of the Agency. No incremental impacts are therefore anticipated, and consequently EPA did not estimate potential incremental impacts for this action.

F. What should I consider as I prepare my comments for EPA?

1. Submitting CBI.

Do not submit CBI to EPA through <https://www.regulations.gov> or email. If you wish to include CBI in your comment, please follow the applicable instructions at <https://www.epa.gov/dockets/commenting-epa-dockets#rules> and clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2 and/or 40 CFR part 703, as applicable.

2. Tips for preparing your comments.

When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Background

As required by TSCA section 6(b) and as described in 40 CFR 702.7, on December 18, 2023 (Ref. 1), EPA initiated the prioritization process for five chemical substances identified as candidates for High-Priority Substance designation. Under TSCA section 6(b)(1)(B) and its implementing regulations (40 CFR 702.3), a High-Priority Substance is defined as a chemical substance that EPA determines, without consideration of costs or other non-risk factors, may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use, including an unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant by EPA.

A proposed designation of a chemical substance as a High-Priority Substance is not a finding of unreasonable risk. Rather, when prioritization is complete, for those chemical substances designated as High-Priority Substances, the Agency will have evidence that each such substance may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use. Final designation of a chemical substance as a High-Priority Substance initiates the TSCA risk evaluation process (40 CFR 702.17), which culminates in a finding of whether the chemical substance presents an unreasonable risk under its conditions of use.

This document is intended to fulfill the TSCA section 6(b)(1)(C)(ii) requirement that EPA propose the designation of a chemical substance as

a High-Priority Substance for risk evaluation after conducting a screening review as required by TSCA section 6(b)(1)(A) (see also 40 CFR 702.9(a)). This document is also intended to fulfill the requirement in TSCA section 6(b)(1)(C)(ii) that EPA request public comments on proposed priority designations (see 40 CFR 702.9(g)).

EPA generally used reasonably available information to screen each of the five candidate chemical substances against the following criteria and considerations (see also 40 CFR 702.9(a)):

- The chemical substance's hazard and exposure potential;
- The chemical substance's persistence and bioaccumulation;
- Potentially exposed or susceptible subpopulations;
- Storage of the chemical substance near significant sources of drinking water;
- The chemical substance's conditions of use or significant changes in conditions of use;
- The chemical substance's production volume or significant changes in production volume; and
- Other risk-based criteria that EPA determines to be relevant to the designation of the chemical substance's priority.

As described in 40 CFR 702.9(b), in conducting the screening review during the prioritization process, EPA considered sources of information relevant to the screening review criteria as outlined in the statute (TSCA section 6(b)(1)(A)) and implementing regulations (40 CFR 702.9(a)) and consistent with the scientific standards of TSCA section 26(h), including, as appropriate, sources for hazard and exposure data listed in Appendices A and B of the TSCA Work Plan Chemicals: Methods Document (February 2012) (Ref. 2). In addition, as required by 40 CFR 702.9, EPA considered the hazard and exposure potential of the chemical substances and did not consider costs or other non-risk factors in making a proposed priority designation.

III. Information and Comments Received

The initiation of the prioritization process (Ref. 1) included a 90-day public comment period during which interested persons were able to submit relevant information on the five chemical substances identified as candidates for High-Priority Substance designation. EPA received over 9,000 submissions from commenters, including private citizens, potentially affected businesses, trade associations,

Tribes, environmental and public health advocacy groups, and academia. Comments addressed the overall prioritization process (e.g., the collection and consideration of relevant information); the review process (e.g., the use of data and approaches in risk evaluation); information specific to the candidate chemical substances (e.g., relevant studies, assessments, and conditions of use); and topics not germane to this prioritization process (e.g., scheduling future chemicals for prioritization and concerns about risk evaluation fees). To the extent that comments provided information on additional conditions of use for these candidate High-Priority Substances, those conditions of use are discussed in the proposed designation documents for each chemical substance. EPA will respond to those and any additional comments on the proposed designations when EPA issues the final priority designation of these chemical substances.

IV. Screening Review Criteria and Chemical Substances for Which EPA Is Proposing a High-Priority Designation

A. What information, analysis, and basis were used to support the proposed High-Priority Substance designations?

EPA used reasonably available information, including public comments received during the 90-day comment period following initiation of the prioritization process (Ref. 1), to analyze the candidate chemical substances against the criteria and considerations in TSCA section 6(b)(1)(A) and 40 CFR 702.9 (see Unit IV.). EPA developed a proposed designation document for each chemical substance that identifies the information, analysis, and basis used to support the proposed designation of each as a High-Priority Substance for risk evaluation. Additionally, EPA developed a systematic review support document titled "Updated Search Strategies Used to Identify Potentially Relevant Discipline-Specific Information" (Ref. 3) to further explain how potentially relevant data sources for various disciplines (e.g., physical and chemical properties, occupational exposure and environmental release, environmental and human health hazard), are identified from the larger set of data sources identified for each of the chemical substances currently being proposed as High-Priority Substances for risk evaluation. These documents are available in the docket for each chemical substance proposed for designation as a High-Priority Substance for risk evaluation.

Also included in each document is an explanation of the approach EPA used to conduct the review. Each document includes an overview of the requirements in TSCA section 6(b)(1)(A) and the regulatory section addressing the following review criteria and considerations (40 CFR 702.9):

1. Production volume or significant changes in production volume.

EPA considered the reasonably available information on the current production volume or significant changes in production volume of the chemical substance. EPA primarily used reported information from manufacturers (including importers) under EPA's Chemical Data Reporting (CDR) rule (40 CFR part 711). EPA assembled information reported to the Agency from 1986 through 2020 on the production volume under the Inventory Update Rule (IUR) and CDR. The most recent principal reporting year for which CDR data are available is 2019, for which information was reported in 2020.

2. Conditions of use or significant changes in conditions of use.

EPA considered the reasonably available information on conditions of use or significant changes in conditions of use of the chemical substances. TSCA section 3(4) defines the term "conditions of use" to mean the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of. EPA assembled information submitted by manufacturers (including importers) during the 2016 and 2020 CDR reporting cycles. CDR requires manufacturers (including importers) to report information on the chemical substances they produce domestically or import into the United States. The threshold for such reporting is generally production volume of more than 25,000 lbs per site. Based on the manufacturing information, industrial processing and use information, consumer and commercial use information reported under CDR during the 2016 and 2020 reporting cycles, EPA developed a list of conditions of use. In addition, EPA reviewed uses from other publicly available data sources such as the Toxics Release Inventory (TRI), Discharge Monitoring Reports (DMRs), National Emissions Inventory (NEI), Safety Data Sheets (SDS), Chemical Exposure Knowledgebase (ChemExpo), High Priority Chemicals Data System (HPCDS), chemical-specific information received from public commenters, and chemical-specific information from EPA's screening review of the

reasonably available information for each chemical substance. Should EPA make a final decision to designate a chemical substance as a High-Priority Substance for risk evaluation, further characterization of relevant TSCA conditions of use will be identified during the risk evaluation process as part of the Agency's scope document.

3. Potentially exposed or susceptible subpopulations.

In this review, EPA considered reasonably available information to identify potentially exposed or susceptible subpopulations. At this stage, EPA analyzed information about children, women of reproductive age, consumers, workers, and overburdened communities for the following scenarios:

- For children, EPA screened for each chemical substance's use in products and articles regulated under TSCA and intended for children, using CDR information reported during the 2016 and 2020 CDR cycles. EPA presented information regarding those commercial and consumer uses when the chemical substance was identified as being used in products intended for children and also indicated if use in children's products was identified in the High Priority Chemicals Data System (HPCDS). Additionally, EPA identified the potential for developmental hazards resulting from exposure to the chemical substance that may affect children.
- For women of reproductive age, EPA screened against the exposure and hazard information for the chemical substance that characterized potential for reproductive and/or developmental effects following exposure to the chemical substance.
- For consumers, EPA characterized the potential for consumer exposure based on consumer uses reported to CDR during the 2016 and 2020 reporting cycles, and reported consumer uses in the Chemical and Products database (CPDat), HPCDS, and public comment.
- For workers, EPA characterized the potential for occupational exposures to workers based on the conditions of use of each chemical.
- For overburdened communities, EPA described the considerations for overburdened communities that may experience disproportionate environmental harms, risks, or multiple burdens from chemical exposure.

4. Persistence and bioaccumulation.

EPA considered reasonably available information of the chemical substance and assessed physical and chemical properties used to determine persistence and bioaccumulation based on the best available science. In the proposed designation documents, EPA presents a

summary of the physical, chemical, environmental fate, and transport properties of each chemical substance.

5. Storage near significant sources of drinking water.

TSCA section 6(b)(1)(A) specifically requires the Agency to consider the chemical substance's storage near significant sources of drinking water. EPA reviewed reasonably available information, including certain existing regulations or protections in place for the proposed chemical substances, such as existing National Primary Drinking Water Regulations (40 CFR part 141) and other regulations under the Clean Water Act (CWA) (40 CFR 401.15). In addition, EPA considered the consolidated list of chemicals subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA) section 302 and section 313, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Clean Air Act (CAA) (section 112) (Regulated Chemicals for Accidental Release Prevention). Regulation under one or more of these authorities is an indication that a substance is a potential health or environmental hazard, which, if released near a significant source of drinking water, may present unreasonable risk to health or the environment. To identify storage of chemical substances near significant sources of drinking water, EPA also identified facilities reporting the chemical substances to the TRI in 2022 near potential sources of drinking water using public water systems data stored in EPA's Safe Drinking Water Information System Federal Data Warehouse. EPA determined whether TRI reporting facilities are located inside defined Source Water Protection Areas or within 4 miles of wellheads to identify potential storage of each chemical substance near sources of surface water and groundwater, respectively.

6. Hazard potential.

EPA considered reasonably available information to identify the potential hazards for each chemical substance. EPA surveyed information from previous assessments and databases and summarized the reasonably available information for potential human health and environmental hazards by endpoints of concern.

7. Exposure potential.

EPA considered reasonably available information to identify potential environmental, worker/occupational, consumer, and general population exposure for each chemical substances for the following scenarios:

- For environmental exposure, EPA considered the conditions of use and activities associated with those conditions of use and considered environmental monitoring data and fate properties of each chemical substance to anticipate its presence in different environmental media.

- For worker/occupational exposure, EPA identified the conditions of use likely to result in workers being exposed to the chemical substance, such as manufacturing, processing, industrial and commercial use, distribution in commerce, and disposal.

- For consumer exposure, EPA considered consumer uses using CDR information and information from CPDat. Additionally, EPA considered the potential use in children's products from the High Priority Chemicals Data System (HPCDS) and through public comments.

- For general population exposure, EPA considered releases from certain conditions of use as reported in TRI, such as manufacturing, that may result in general population exposure via pathways and routes such as drinking water ingestion and/or inhalation from releases to the atmosphere.

8. Other risk-based criteria EPA determined to be relevant to the designation of the chemical substance.

EPA did not identify other risk-based criteria relevant to the proposed designations of the candidate chemical substances as High-Priority Substances for risk evaluation.

EPA is including in the docket a technical support document titled "Updated Search Strategies Used to Identify Potentially Relevant Discipline-Specific Information" (Ref 3.), which provides information describing the Agency's search methods for publicly available peer-reviewed and gray literature. The document also provides information describing the processes and tools used to identify discipline-specific pools of information from EPA's search for publicly available peer-reviewed and gray literature.

B. What are the chemicals being proposed as High-Priority Substances for risk evaluation?

EPA is proposing to designate acetaldehyde (CASRN 75-07-0), acrylonitrile (CASRN 107-13-1), benzenamine (CASRN 62-53-3), vinyl chloride (CASRN 75-01-4), and 4,4'-methylene bis(2-chloroaniline) (MBOCA) (CASRN 101-14-4) as High-Priority Substances for risk evaluation. The proposed designations are based on the preliminary conclusion that each such chemical substance satisfies the definition of High-Priority Substance in

TSCA section 6(b)(1)(B) and 40 CFR 702.3. As mentioned previously, a proposed designation of a chemical substance as a High-Priority Substance is not a finding of unreasonable risk. Rather, when prioritization is complete, a final designation as a High-Priority Substance will initiate the risk evaluation for the chemical substance, which will culminate in a finding of whether the chemical substance presents an unreasonable risk to health or the environment under the conditions of use. Based on the information provided in the proposed designation documents, the Agency is proposing these five chemical substances as High-Priority Substances for risk evaluation. In each chemical substance's docket, EPA has included the chemical-specific designation document containing the information, analysis, and basis used to support the proposed designation.

V. Request for Comment

EPA is interested in comments that would inform the exposure and hazard assessments and the identification of conditions of use for the following chemicals:

- Acetaldehyde, CASRN 75-07-0, Docket ID number: EPA-HQ-OPPT-2018-0497,
- Acrylonitrile, CASRN 107-13-1, Docket ID number: EPA-HQ-OPPT-2018-0449,
- Benzenamine, CASRN 62-53-3, Docket ID number: EPA-HQ-OPPT-2018-0474,
- Vinyl chloride CASRN 75-01-4, Docket ID number: EPA-HQ-OPPT-2018-0448, and
- 4,4'-Methylene bis(2-chloroaniline) (MBOCA), CASRN 101-14-4, Docket ID number: EPA-HQ-OPPT-2018-0464.

VI. References

The following is a list of the documents specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents referenced within the documents included in the docket, even if the referenced documents are not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Initiation of Prioritization Under the Toxic Substances Control Act (TSCA). Notice (88 FR 87423, December 18, 2023 (FRL 11581-01-OCSP)).
2. EPA. TSCA Work Plan Chemicals; Methods Document. February 2012.
3. EPA. Updated Search Strategies Used to Identify Potentially Relevant Discipline-Specific Information. 2024.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 22, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024-16394 Filed 7-24-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Technical Release 23, Omnibus Technical Release Amendments 2024: Conforming Amendments to Technical Releases 10, 16, 20, and 21

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Technical Release 23 titled *Omnibus Technical Release Amendments: Conforming Amendments to Technical Releases 10, 16, 20, 21*.

ADDRESSES: Technical Release 23 is available on the FASAB website at <https://fasab.gov/accounting-standards/>. Copies can be obtained by contacting FASAB at (202) 512-7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512-7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001-1014.

Dated: July 22, 2024.

Monica R. Valentine,

Executive Director.

[FR Doc. 2024-16389 Filed 7-24-24; 8:45 am]

BILLING CODE 1610-02-P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 17-208; FR ID 233855]

Meeting of the Communications Equity and Diversity Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces the second meeting of the Federal Communications Commission's (FCC or Commission) re-chartered Communications Equity and Diversity Council (CEDC). The charter

for the CEDC was renewed for a two-year period beginning June 22, 2023.

DATES: Tuesday, August 13, 2024, from 10:00 a.m. to 2:00 p.m.

ADDRESSES: The CEDC meeting will be held in a hybrid manner. The public may attend the meeting in person at FCC headquarters at 45 L Street NE, Washington, DC. The meeting also will be available to the public for viewing via the internet at <https://www.fcc.gov/live>.

FOR FURTHER INFORMATION CONTACT:

Rodney McDonald, Designated Federal Officer (DFO) of the CEDC, (202) 418-7513, Rodney.McDonald@fcc.gov; Diana Coho, Deputy DFO of the CEDC, (717) 338-2848, Diana.Coho@fcc.gov; Jaime McCoy, Deputy DFO of the CEDC, (202) 418-2320, Jaime.McCoy@fcc.gov; or Sima Nilsson, Deputy DFO of the CEDC, (202) 418-2708, Sima.Nilsson@fcc.gov. More information about the CEDC is available at <https://www.fcc.gov/communications-equity-and-diversity-council>.

SUPPLEMENTARY INFORMATION: The CEDC meeting is accessible to the public on the internet via live feed from the FCC's web page at <https://www.fcc.gov/live>. Open captioning will be provided for this event. Other reasonable accommodations for persons with disabilities are available upon request. Requests for such accommodations should be submitted via email to fcc504@fcc.gov or by calling the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the Commission to contact the requester if more information is needed to fulfill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate. Members of the public may submit any questions during the meeting to livequestions@fcc.gov. Oral statements at the meeting by parties or entities not represented on the CEDC will be permitted to the extent time permits and at the discretion of the CEDC Chair and the DFO.

Members of the public also may submit comments to the CEDC using the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Comments to the CEDC should be filed in GN Docket No. 17-208.

Proposed Agenda: The agenda for the meeting will include introducing CEDC working group chairs, discussing working group plans going forward, and receiving information from the FCC Office of Communications Business

Opportunities. The agenda may be modified at the discretion of the CEDC Chair and the DFO. It is anticipated that any significant agenda modifications will be posted in advance on the CEDC web page. The Council's continuing mission is to make recommendations to the Commission on advancing equity in the provision of and access to digital communication services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability. It shall provide recommendations to the Commission on how to empower people of color and others who have been historically underserved, including persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality, to access, leverage, and benefit from the wide range of opportunities made possible by technology, communication services, and next-generation networks. The CEDC is organized under, and operates in accordance with, the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 10).

Federal Communications Commission.

Jodie May,

*Division Chief, Competition Policy Division,
Wireline Competition Bureau.*

[FR Doc. 2024-16287 Filed 7-24-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0950; FR ID 233873]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the

quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 23, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0950.

Title: Bidding Credits for Tribal Lands.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and State, local or Tribal government.

Number of Respondents: 5 respondents; 5 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 303(r), and 303(j)(3) and (4) of the Communications Act of 1934, as amended.

Total Annual Burden: 100 hours.

Total Annual Cost: \$270,000.

Needs and Uses: The Commission will be submitting this expiring information collection after this comment period to the Office of Management and Budget (OMB) for approval of an extension request.

From June 2000 to August 2004, the Commission adopted various

rulemakings in which a winning bidder seeking a bidding credit to serve a qualifying Tribal land within a particular market must:

- Indicate on the long-form application (FCC Form 601) that it intends to serve a qualifying Tribal land within that market;

- Within 180 days after the filing deadline for the long-form application, amend its long-form application to identify the Tribal land it intends to serve and attach a certification from the Tribal government stating that:

(a) The Tribal government authorizes the winning bidder to site facilities and provide service on its Tribal land;

(b) The Tribal area to be served by the winning bidder constitutes qualifying Tribal land;

(c) The Tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying Tribal land; and

(d) Provide certification of the telephone penetration rates demonstrating that the Tribal land has a penetration level at or below 85 percent.

The rulemakings also require what each winning bidder must do.

In addition, it also requires that a winning bidder seeking a credit in excess of the amount calculated under the Commission's bidding credit must submit certain information; and a final winning bidder receiving a higher credit must provide within 15 days of the third anniversary of the initial grant of its license, file a certification that the credit amount was spent on infrastructure to provide wireless coverage to qualifying Tribal lands, which also includes a final report prepared by an independent auditor verifying that the infrastructure costs are reasonable to comply with our build-out requirements.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024-16291 Filed 7-24-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to

the Secretary by email at *Secretary@fmc.gov*, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523-5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012108-009.

Agreement Name: World Liner Data Agreement.

Parties: Maersk A/S; CMA CGM S.A.; COSCO SHIPPING Lines Co., Ltd.; Hapag-Lloyd AG; Mediterranean Shipping Company S.A.; Orient Overseas Container Line Ltd.; Yang Ming Marine Transport Corp.; HMM Company Limited; Evergreen Line Joint Service Agreement; ZIM Integrated Shipping Services Limited; Swire Shipping Pte. Ltd.; Ocean Network Express Pte. Ltd.; Independent Container Line Ltd.; ANL Singapore PTE LTD; APL CO. PTE. LTD.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment updates the membership of the agreement. More specifically, it deletes Hamburg Südamerikanische Dampfschiffahrtsgesellschaft KG, Nile Dutch Africa Line B.V., and Westwood Shipping Lines as parties to the agreement. It adds Yang Ming Marine Transport Corp., Swire Shipping Pte. Ltd., and Ocean Network Express Pte. Ltd. as parties. It also updates the addresses of COSCO Shipping Lines Co., Ltd. and Mediterranean Shipping Company S.A.

Proposed Effective Date: 8/30/2024.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/362>.

Dated: July 19, 2024.

Alanna Beck,

Federal Register Alternate Liaison Officer.

[FR Doc. 2024-16307 Filed 7-24-24; 8:45 am]

BILLING CODE 6730-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Partnership Opportunity To Determine the Fit of Air Purifying Filtering Facepiece Respirators Worn Over Beard Bands for Workers With Facial Hair

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 National Institute for Occupational Safety and Health (NIOSH), of the Centers for Disease Control and Prevention (CDC), announces the opportunity for respirator manufacturers, NIOSH approval holders, and beard band manufacturers to participate, through a collaborative agreement, in a project titled "Fit Testing of Respirators on Those Wearing Beard Bands" to determine how well respirators provide protection to workers with facial hair when using a beard band.

DATES: Interested parties must submit a letter of intent, electronically or written, by September 23, 2024.

ADDRESSES: Submit your letter of intent to Jonisha Pollard, NIOSH National Personal Protective Technology Laboratory, 626 Cochran's Mill Road, Pittsburgh, PA 15236 or by email to *JNI3@cdc.gov*.

FOR FURTHER INFORMATION CONTACT: Jonisha Pollard, NIOSH National Personal Protective Technology Laboratory, 626 Cochran's Mill Road, Pittsburgh, PA 15236, 412-386-5220 (not a toll-free number), *JNI3@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Additional Information: The National Institute for Occupational Safety and Health (NIOSH) is seeking to identify respirator manufacturers, NIOSH approval holders, and beard band manufacturers who are interested in collaborating with NIOSH to conduct fit testing of NIOSH Approved® filtering facepiece respirators and particulate-only elastomeric half mask respirators for users having facial hair and using an elastic band (beard band) to secure their facial hair and provide a clean, smooth sealing surface for their respirator as part of their personal protective equipment (PPE).

This research endeavor grew from the need to advance equal access to employment and support worker populations with facial hair who need

respiratory protection. Individual fit testing of tight-fitting respirators is a component of Occupational Safety and Health Administration (OSHA) respiratory protection programs in workplaces to better ensure that the respirator selected and worn can achieve the expected fit factor (provide the expected level of protection). The OSHA Respiratory Protection Standard (29 CFR 1910.134(g)(1)(i)(A)) prohibits employees from wearing respirators with tight-fitting facepieces if there is any hair growth between the skin and facepiece sealing surface. Fit testing is not possible without a tight seal of the respirator to the face. Per the OSHA Respiratory Protection Standard, an OSHA-compliant fit test determines the level of tightness for this class of respirators to achieve a fit factor of 100 which is 10 times the assigned protection factor (APF) for this class of respirator (*i.e.*, APF of half facepiece respirator is 10). Organizations, interest groups, and entities representing workers with facial hair who cannot shave because of religious, cultural, medical, or other reasons approached NIOSH to conduct research on fit effectiveness of the respiratory protective device when a beard band is used to improve the seal of the respirator with the wearer's face.

This project aims to determine the fit of respirators when worn over beard bands for workers with facial hair using a government-private partnership development model. This study may help increase respiratory protective devices available to this population of wearers and advance national interests by expanding respirator use to workers with beards. This includes workers in vital fields such as healthcare and public safety.

Collaborative efforts may be made via a Cooperative Research and Development Agreement (CRADA) under the authority of the Federal Technology Transfer Act, 15 U.S.C. 3710a, or another appropriate agreement. No Federal funds will be provided to partners whose equipment is utilized under this project.

NIOSH may select one or more partnering candidates using the following criteria:

1. For partners interested in products, materials, or textiles to be used as a beard band, the product/material/textile should have the ability to:

- a. Be secured at the top of the head (*e.g.*, tied or hook-and-loop fasteners;
- b. Lay taut and flat across the skin without wrinkles;
- c. Be cut (lengthwise and widthwise) and tailored to fit various facial geometries; and

d. Be cleaned and decontaminated using common cleaning agents such as soap and water or cleaning wipes.

2. For partners interested in respirators, the respirator should have:

a. Current NIOSH approval for a filtering facepiece respirator, elastomeric half mask respirator offering particulate protection, or full facepiece respirators offering particulate protections;

b. Two strap head suspension with one strap that goes on the head of the wearer and the other on the neck. Novel head suspensions will not be accepted; and

c. Ability to fit multiple facial sizes.

3. For partners interested in participating in the study, participants must be able to travel to the Pittsburgh or Morgantown area to participate in the study at their own cost.

This announcement does not obligate HHS, CDC, or NIOSH to enter into a contractual or collaborative agreement with any respondents.

Background: The 2019 COVID-19 outbreak highlighted the ongoing need for effective respiratory protective devices for workers especially in healthcare. Fit testing of tight fitting respirators is a component of OSHA respiratory protection programs in workplaces. Respirators should be fit tested using any of the OSHA approved fit test methods before being used in workplaces. The OSHA Respiratory Protection standard, 29 CFR 1910.134(g)(1)(i)(A), states that tight-fitting respirators shall not be worn when facial hair comes between the sealing surface of the facepiece and the face or that interferes with valve function. In this project, an under-respirator cover (beard band) on people with facial hair will be evaluated. In the first phase of this study, respirator fit will be evaluated using the NIOSH Approved® filtering facepiece respirators selected to participate in the study when worn on persons with facial hair. Then respirator fit will be determined for the same individuals wearing a beard band under the respirator.

Follow-on phases of this study may include other types of tight-fitting respirators including particulate-only elastomeric half mask respirators (EHMRs) or full facepiece respirators.

This study may also evaluate the Simulated Workplace Protection Factor (SWPF) afforded by these respirators on users with facial hair. The SWPF refers to the ratio of the concentration of the contaminant in the ambient air to that inside a respirator under conditions that simulate the work environment or various work activities.

This project seeks to support the use of filtering facepiece respirators, EHMRs with particulate protections, or full facepiece elastomeric respirators for workers with facial hair. Results of this project may be used by NIOSH approval holders to seek NIOSH approval for the use of beard bands as part of an approved respirator configuration. The study will provide data useful to support OSHA and NIOSH policy regarding the appropriateness of using beard bands with filtering facepiece respirators and particulate EHMRs or full facepiece respirators. This study may lead to increased means for employers to conform with the OSHA respiratory protection requirements and possibly increase compliance with respiratory protection guidelines and standards among bearded workers in various industries.

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. 2024-16351 Filed 7-24-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10573]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance

the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *August 26, 2024*.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT:

William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Reform of Requirements for Long-Term Care Facilities; *Use:* The purpose of this package is to request Office of Management and Budget (OMB) approval of the collection of information requirements for the requirements of

participation for Long-Term Care (LTC) facilities that must be met in order to participate in the Medicare and Medicaid Programs. LTC facilities include skilled nursing facilities (SNFs) as defined in section 1819(a) of the Social Security Act in the Medicare program and nursing facilities (NFs) as defined in 1919(a) of the Act in the Medicaid program. SNFs and NFs provide skilled nursing care and related services for residents who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. In addition, NFs provide health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases. SNFs and NFs must care for their residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident and must provide to residents services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care, which describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met and is updated periodically.

The primary users of this information will be State agency surveyors, CMS, and the LTC facilities for the purposes of ensuring compliance with Medicare and Medicaid requirements as well as ensuring the quality of care provided to LTC facility residents. The ICs specified in the regulations may be used as a basis for determining whether a LTC is meeting the requirements to participate in the Medicare program. In addition, the information collected for purposes of ensuring compliance may be used to inform the data provided on CMS' Nursing Home Compare website and as such used by the public in considering nursing home selections for services.

We are revising this information collection request to include new requirements proposed at 42 CFR 483.35 and 483.71. The proposed requirements

were discussed in detail in the proposed rule that published September 6, 2023 (88 FR 61352). The discussion related to proposed requirements and the associated information collection burden begins on page 61391. Subsequent to publishing the 60-day **Federal Register** (89 FR 26892), the final rule (89 FR 40876) finalized the new requirements. Based upon our analysis of the public comments received on the proposed rule, we revised our burden estimates by adding a burden estimate for LTC facilities to solicit and consider any input received by residents, resident representatives, and family members. *Form Number:* CMS-10573 (OMB control number: 0938-1363); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 15,600; *Total Annual Responses:* 18,687,318 *Total Annual Hours:* 30,206,846. (For policy questions regarding this collection contact Diane Corning at 410-786-8486.)

William N. Parham, III
Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.
[FR Doc. 2024-16398 Filed 7-24-24; 8:45 am]
BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Services for Unaccompanied Children With Disabilities (New Collection)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services is inviting public comment on the proposed collection. The request consists of one form that will allow the Unaccompanied Children (UC) Bureau

to provide services to unaccompanied children identified as having a disability.

DATES: *Comments due September 23, 2024.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ORR UC Bureau is proposing a new form, the *Individualized Section 504 Service Plan* (Form S-25). The proposed information collection is necessary to allow the ORR UC Bureau to comply with a court order and improve service delivery for unaccompanied children identified as having a disability. On June 29, 2018, Plaintiffs filed their federal class action lawsuit in the Central District of California, western division, captioned *Lucas R. et al v. Becerra et al* (Case No. 2:18-CV-05741 DMG PLA), asserting claims under the Flores consent decree, the Trafficking Victims Protection Reauthorization Act, the Due Process clause, and the First Amendment. Plaintiffs allege violation of unaccompanied children rights in decisions regarding family reunification, placement in restrictive facilities, services for children with disabilities, administration of psychotropic medication, and access to legal assistance. On May 3, 2024, the Court granted final approval for the settlement agreements of the Plaintiffs' claims for disabilities, psychotropic medication, and legal assistance. As part of the settlement agreement for the disabilities claim, ORR is required to develop and implement individualized Section 504 service plans for any child identified as having a disability. The disabilities settlement agreement must be fully implemented by May 3, 2025.

Respondents: Care provider grantees and contractors

Annual Burden Estimates:

Form	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Individual Section 504 Service Plan (Form S-25)	300	7	3	6,300

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; 45 CFR 410; *Flores v. Reno* Settlement Agreement, No. CV85–4544–RJK (C.D. Cal. 1996); *Lucas R. et al v. Becerra et al* (Case No. 2:18–CV–05741 DMG PLA) Disabilities Settlement Agreement

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–16347 Filed 7–24–24; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2059]

Providing Over-the-Counter Monograph Submissions in Electronic Format; 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 final guidance for industry entitled “Providing Over-the-Counter Monograph Submissions in Electronic Format.” This guidance is intended to assist submitters by describing the electronic over-the-counter (OTC) monograph submissions requirement in the Federal Food, Drug, and Cosmetic Act (FD&C Act) and providing recommendations and other information on how to send such OTC monograph submissions to FDA in electronic format. This guidance finalizes the draft guidance of the same title issued on September 28, 2022.

DATES: The announcement of the guidance is published in the **Federal Register** on July 25, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2022–D–2059 for “Providing Over-the-Counter Monograph Submissions in Electronic Format.” 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 this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–402–7945, Trang.Tran@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled “Providing Over-the-Counter Monograph Submissions in Electronic Format.” This guidance provides information on providing electronic submissions to FDA under section 505G of the FD&C Act (21 U.S.C. 355h) (hereafter referred to as OTC monograph submissions). This guidance is intended to assist submitters by describing the electronic OTC monograph submissions requirement in section 505G(j) of the FD&C Act and providing recommendations and other information on how to send such OTC monograph submissions to FDA in electronic format.

Section 505G of the FD&C Act was added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, which was enacted on March 27, 2020. Section 505G(j) of the FD&C Act requires that all OTC monograph submissions must be in electronic format. Section 505G(l)(3) of the FD&C Act requires FDA to issue guidance that specifies the format of electronic submissions under section 505G. This guidance is being issued to fulfill this requirement.

In support of the CARES Act, FDA agreed to specific performance goals and procedures described in the document entitled “Over-the-Counter Monograph User Fee Program Performance Goals and Procedures—Fiscal Years 2018–2022,” commonly referred to as the OMUFA commitment letter (the document can be accessed at <https://www.fda.gov/media/106407/download>, and the document with updated goal dates for fiscal years 2021 to 2025 can be accessed at <https://www.fda.gov/media/146283/download>). In the OMUFA commitment letter, FDA committed to issuing this final guidance under specific timelines.

This guidance finalizes the draft guidance entitled “Providing Over-the-Counter Monograph Submissions in Electronic Format” issued on September 28, 2022 (87 FR 58802). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft guidance to the final guidance are primarily intended to clarify how to submit OTC monograph submissions through the CDER NextGen Portal. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Providing Over-the-Counter Monograph Submissions in

Electronic Format.” 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

Under section 505G(o) of the FD&C Act, the Paperwork Reduction Act of 1995 does not apply to collections of information made under section 505G of the FD&C Act. This guidance is being issued to implement the provisions of section 505G(l)(3) of the FD&C Act, which specifies the format of electronic submissions to FDA under section 505G of the FD&C Act. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: July 22, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–16403 Filed 7–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–2307]

Real-World Data: Assessing Electronic Health Records and Medical Claims Data To Support Regulatory Decision-Making for Drug and Biological Products; 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 final guidance for industry entitled “Real-World Data: Assessing Electronic Health Records and Medical Claims Data To Support Regulatory Decision-Making for Drug and Biological Products.” FDA is issuing this guidance as part of its Real-World Evidence (RWE) program and to satisfy, in part, the mandate under the Federal Food, Drug, and Cosmetic Act (FD&C Act) to issue guidance about the use of RWE in regulatory decision

making. This guidance is intended to provide sponsors and other interested parties with considerations when proposing to use electronic health records (EHRs) or medical claims data in clinical studies to support a regulatory decision for effectiveness or safety. This guidance finalizes the draft guidance of the same title issued on September 30, 2021.

DATES: The announcement of the guidance is published in the **Federal Register** on July 25, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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–2020–D–2307 for “Real-World Data:

Assessing Electronic Health Records and Medical Claims Data To Support Regulatory Decision-Making for Drug and Biological 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 this 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 guidance document.

FOR FURTHER INFORMATION CONTACT:

Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3226, Silver Spring, MD 20993–0002, 301–796–3161; or James Myers, 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 guidance for industry entitled “Real-World Data: Assessing Electronic Health Records and Medical Claims Data To Support Regulatory Decision-Making for Drug and Biological Products.” This guidance discusses the following topics related to the potential use of EHRs and medical claims in clinical studies to support regulatory decisions: selection of data sources that appropriately address the study question and sufficiently capture study populations, exposure, outcomes of interest, and key covariates; development and validation of definitions for study design elements (e.g., exposure, outcomes, covariates); and data traceability and quality during data accrual, data curation, and incorporation into the final study-specific dataset.

Section 3022 of the 21st Century Cures Act (Cures Act) of 2016 amended the FD&C Act to add section 505F, Utilizing Real World Evidence (21 U.S.C. 355g), which requires FDA to issue guidance about the use of RWE in regulatory decision making. In addition, under the Prescription Drug User Fee Amendments of 2017 (PDUFA VI), FDA committed to publish draft guidance on how RWE can contribute to the assessment of safety and effectiveness in regulatory submissions. In 2018, FDA created an RWE Framework and RWE Program to evaluate the potential use of RWE to help support the approval of a new indication for a drug already approved under the FD&C Act or to help support or satisfy postapproval study requirements. In late 2021, FDA utilized the program to issue draft guidances outlining considerations for the use of

real-world data and RWE in regulatory decision making to, among other things, help satisfy the Cures Act mandate and the PDUFA VI commitment.

This guidance finalizes the draft guidance of the same title issued on September 30, 2021 (86 FR 54219). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include: (1) clarifying that the selection of study variables for validation and the extent of effort required for validation depends on the necessary level of certainty and the implication of potential misclassification on study inference; (2) noting that choice of a reference standard for validation may vary by the study design and question, variable of interest, and the necessary level of certainty; (3) recommending the use of quantitative approaches, such as quantitative bias analyses, either a priori for feasibility assessment, or to facilitate interpretation of study results, or for both purposes, to demonstrate whether and how misclassification, if present, might impact study findings; and (4) removing defined terms that are generally understood and transferring other relevant definitions from a glossary to the text. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Real-World Data: Assessing Electronic Health Records and Medical Claims Data To Support Regulatory Decision-Making for Drug and Biological 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 (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 11 have been approved under OMB control number 0910–0303; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections

of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the 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: July 22, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–16338 Filed 7–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1584]

Authorization of Emergency Use of Certain Medical Devices During COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the issuance of Emergency Use Authorizations (EUAs) (the Authorizations) for certain medical devices related to Coronavirus Disease 2019 (COVID–19). FDA has issued the Authorizations listed in this document under the Federal Food, Drug, and Cosmetic Act (FD&C Act). These Authorizations contain, among other things, conditions on the emergency use of the authorized products. The Authorization follows the February 4, 2020, determination by the Secretary of Health and Human Services (HHS), as amended on March 15, 2023, that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad and that involves the virus that causes COVID–19, and the subsequent declarations on February 4, 2020, March 2, 2020, and March 24, 2020, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the virus that causes COVID–19, personal respiratory protective devices, and

medical devices, including alternative products used as medical devices, respectively, subject to the terms of any authorization issued under the FD&C Act. These Authorizations, which include an explanation of the reasons for issuance, are listed in this document, and can be accessed on FDA's website from the links indicated.

DATES: These Authorizations are effective on their date of issuance.

ADDRESSES: Submit written requests for single copies of an EUA to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization. **FOR FURTHER INFORMATION CONTACT:** Kim Sapsford-Medintz, Office of Product Evaluation and Quality, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3216, Silver Spring, MD 20993–0002, 301–796–0311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by a biological, chemical, radiological, or nuclear agent or agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a

determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50 of the U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents; or (B) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces;¹ (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Under section 564(h)(1) of the FD&C Act, revisions to an authorization shall be made available on the internet website of FDA. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under section 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, or 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally

¹ In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA² concludes: (1) that an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that (A) the product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied. No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act.

II. Electronic Access

An electronic version of this document and the full text of the Authorizations are available on the internet and can be accessed from <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>.

III. The Authorizations

Having concluded that the criteria for the issuance of the following

Authorizations under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of the following products for diagnosing, treating, or preventing COVID-19 subject to the terms of each Authorization. The Authorizations in their entirety, including any authorized fact sheets and other written materials, can be accessed from FDA's web page entitled "Emergency Use Authorization," available at <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>. The lists that follow include Authorizations issued from April 20, 2024, through July 10, 2024, and we have included explanations of the reasons for their issuance, as required by section 564(h)(1) of the FD&C Act. In addition, the EUAs that have been reissued can be accessed from FDA's web page: <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>.

FDA is hereby announcing the following Authorizations for multianalyte tests:

- iHealth Labs, Inc.'s iHealth COVID-19/Flu A&B Rapid Test Pro, issued on May 31, 2024.³
- Roche Molecular Systems, Inc.'s cobas liat SARS-CoV-2, Influenza A/B & RSV nucleic acid test, issued on June 07, 2024.⁴

³ As set forth in the EUA for this product, FDA has concluded that: (1) SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing COVID-19 through the simultaneous detection and differentiation of SARS-CoV-2, influenza A virus and/or influenza B virus protein antigens, and that the known and potential benefits of the product when used for diagnosing COVID-19, outweigh the known and potential risks of such product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

⁴ As set forth in the EUA for this product, FDA has concluded that: (1) SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing COVID-19 through the simultaneous qualitative detection and differentiation of SARS-CoV-2, influenza A virus, influenza B virus, and/or RSV RNA, and that the known and potential benefits of the product when used for diagnosing COVID-19, outweigh the known and potential risks of such product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

Dated: July 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-16358 Filed 7-24-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-1999-D-2955 (formerly 1999D-4071)]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Impurities: Residual Solvents in New Veterinary Medicinal Products, Active Substances and Excipients (Revision 2); 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 final guidance for industry (GFI) #100 (VICH GL 18(R2)) entitled "Impurities: Residual Solvents in New Veterinary Medicinal Products, Active Substances and Excipients (Revision 2)." This guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The objective of this guidance is to recommend acceptable amounts for residual solvents in pharmaceuticals for the safety of the target animal as well as for the safety of residues in products derived from treated food-producing animals. This revision updates the listings and classification of solvents.

DATES: The announcement of the guidance is published in the **Federal Register** on July 25, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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

² The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

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-1999-D-2955 (formerly 1999D-4071) for "Impurities: Residual Solvents in New Veterinary Medicinal Products, Active Substances and Excipients (Revision 2)." 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 this draft guidance to the Policy and Regulations Staff, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Mai Huynh, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-402-0669, mai.huynh@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final GFI #100 (VICH GL18(R2)) entitled "Impurities: Residual Solvents in New Veterinary Medicinal Products, Active Substances and Excipients (Revision 2)." Residual solvents in pharmaceuticals are defined in the guidance as organic volatile chemicals that are used or produced in the manufacture of active substances or excipients, or in the preparation of veterinary medicinal products. The solvents are not completely removed by practical manufacturing techniques. The objective of this guidance is to recommend acceptable amounts for residual solvents in pharmaceuticals for the safety of the target animal as well as

for the safety of residues in products derived from treated food-producing animals. The guidance recommends use of less toxic solvents and describes levels considered to be toxicologically acceptable for some residual solvents. This revision updates the listings and classification of solvents.

FDA has participated in efforts to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify, and then reduce, differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonization of Technical Requirements for Approval of Pharmaceuticals for Human Use to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission and European Medicines Agency; AnimalhealthEurope; FDA—Center for Veterinary Medicine and U.S. Department of Agriculture—Center for Veterinary Biologics; the U.S. Animal Health Institute; the Japanese Ministry of Agriculture, Forestry and Fisheries; and the Japanese Veterinary Products Association. There are 10 observers to the VICH Steering Committee: one representative from government and one representative from industry of Australia, New Zealand, Canada, South Africa, and the United Kingdom. The World Organisation for Animal Health is an associate member of the VICH. The VICH Secretariat, which coordinates the preparation of documentation, is provided by HealthforAnimals.

In the **Federal Register** of July 18, 2022 (87 FR 42728), FDA published the notice of availability for a draft guidance #100 (VICH GL18(R2)) entitled "Impurities: Residual Solvents in New Veterinary Medicinal Products, Active Substances and Excipients (Revision 2)" giving interested persons until September 16, 2022, to comment on the draft guidance. FDA and other VICH member regulatory agencies did not

receive comments on the draft guidance. The guidance announced in this notice finalizes the draft guidance dated July 2022.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on "Impurities: Residual Solvents in New Veterinary Medicinal Products, Active Substances and Excipients (Revision 2)." 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 section 512(n)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(n)(1)) have been approved under OMB control number 0910–0669; the collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain an electronic version of the draft guidance at <https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: July 22, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–16408 Filed 7–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0150]

Revocation of Authorization of Emergency Use of In Vitro Diagnostic Device for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Mesa Biotech Inc., (a legal entity of Thermo Fisher Scientific), for the Accula SARS–CoV–2 Test. FDA revoked the Authorization under the Federal Food, Drug, and Cosmetic Act (FD&C Act) as requested by the Authorization holder. The revocation, which includes an explanation of the reasons for revocation, is reprinted at the end of this document.

DATES: The revocation of the Authorization for the Mesa Biotech Inc.'s Accula SARS–CoV–2 Test is effective as of May 22, 2024.

ADDRESSES: Submit written requests for a single copy of the revocation to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT: Kim Sapsford-Medintz, Office of Product Evaluation and Quality, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3216, Silver Spring, MD 20993–0002, 301–796–0311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations.

On March 23, 2020, FDA issued the Authorization to Mesa Biotech Inc. (a legal entity of Thermo Fisher Scientific), for the Accula SARS–CoV–2 Test, subject to the terms of the Authorization. Notice of the issuance of

this Authorization was published in the **Federal Register** on June 5, 2020 (85 FR 34638), as required by section 564(h)(1) of the FD&C Act.

Subsequent updates to the Authorization were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. Authorization Revocation Request

In a request received by FDA on May 15, 2024, Mesa Biotech Inc. (a legal entity of Thermo Fisher Scientific), made by Thermo Fisher Scientific, Inc. on behalf of Mesa Biotech Inc., requested the revocation of, and on May 22, 2024, FDA revoked, the Authorization for the Mesa Biotech Inc.'s Accula SARS–CoV–2 Test. Because Mesa Biotech Inc., notified FDA that they discontinued the commercialization of the Accula SARS–CoV–2 Test and requested FDA revoke Mesa Biotech Inc.'s Accula SARS–CoV–2 Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at <https://www.regulations.gov/>.

IV. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA of Mesa Biotech Inc.'s Accula SARS–CoV–2 Test. The revocation in its entirety follows and provide an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.



May 22, 2024

Anita Targosz
Senior Director, Quality
Thermo Fisher Scientific
5823 Newton Drive
Carlsbad, CA, 92008
Re: Revocation of EUA200028

Dear Anita Targosz:

This letter is in response to the request from Mesa Biotech Inc. (a legal entity of Thermo Fisher Scientific), made by Thermo Fisher Scientific, Inc. on behalf of Mesa Biotech Inc. in a letter dated May 15, 2024, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Accula SARS-CoV-2 Test issued on March 23, 2020, amended on April 30, 2020 and August 30, 2020, reissued on January 7, 2021, amended on February 3, 2021 and September 23, 2021, and reissued on May 16, 2022, August 17, 2022 and March 15, 2023. Thermo Fisher Scientific Inc. indicated that they have discontinued commercialization and support of the authorized product and requested that the EUA be revoked. FDA understands that as of the date of this letter there are no viable Accula SARS-CoV-2 Test reagents remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Mesa Biotech Inc., through Thermo Fisher Scientific, Inc., has requested that FDA revoke the EUA for the Accula SARS-CoV-2 Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200028 for the Accula SARS-CoV-2 Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Accula SARS-CoV-2 Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

Dated: July 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-16345 Filed 7-24-24; 8:45 am]

BILLING CODE 4161-01-P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Food and Drug Administration****[Docket No. FDA-2024-N-2980]****Evaluating the Immunogenicity Risk of
Host Cell Proteins in Follow-On
Recombinant Peptide Products;
Establishment of a Public Docket;
Request for Information and
Comments****AGENCY:** Food and Drug Administration,
HHS.**ACTION:** Notice; establishment of a
public docket; request for information
and comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is establishing a public docket to collect information and comments on evaluating and mitigating the immunogenicity risk of host cell proteins (HCPs). For the purpose of this request, FDA is specifically interested in comments on suitable methods to detect, identify, and quantify HCPs, on achievable residual amounts of HCPs for recombinant peptide products, and on the use of in vitro, in silico immunogenicity assessment (IVISIA) of HCPs in a recombinant peptide (rPeptide) product. For the purpose of this request, a “follow-on” peptide product refers to the applications

currently evaluated through the 505(b)(2) pathway. Although follow-on recombinant peptide products can rely on FDA’s findings of safety and effectiveness for a listed drug that is a peptide product, differences in recombinant expression systems used during the peptide production could result in quality attribute differences, including in the HCP profile, which in turn, could contribute to differences in immunogenicity risks between a follow-on recombinant peptide product and the listed drug. The public comments collected will help FDA develop recommendations on how HCP control and characterization can support comparative immunogenicity risk assessment between a recombinant follow-on peptide and the listed product.

DATES: Although you can submit comments and information at any time, to ensure that the Agency considers your comment in our development of recommendations, submit either electronic or written information and comments by September 23, 2024.

ADDRESSES:

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-2024-N-2980 for "Evaluating the Immunogenicity Risk of Host Cell Proteins in Follow-On Recombinant Peptide Products; Establishment of a Public Docket; Request for Information and Comments." 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: Mohsen Rajabiabbari, Office of Clinical Pharmacology, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 240-402-2794.

SUPPLEMENTARY INFORMATION:

I. Background

FDA for purposes of this notice uses the term "peptide" to refer to alpha amino acid polymers composed of 40 or fewer amino acids.¹ Peptides can be isolated from natural sources or

produced synthetically or through recombinant expression in a host cell. Peptides that are isolated from recombinant (*i.e.*, genetically-modified) prokaryotic or eukaryotic host cells using cell culture/fermentation techniques are called recombinant peptides (rPeptides).

HCPs are process-related impurities derived from the host cell that may copurify with the recombinant peptide of interest and be present in the final drug product. HCPs are characterized and routinely well controlled during manufacturing of the peptide product. The types and amounts of HCPs in a product differ depending on many parameters, including differences in the expression cell substrate, culture conditions, the purification process, and amongst different facilities. Therefore, for a proposed follow-on rPeptide product, differences in HCP profiles between the follow-on product and the listed drug would be expected, and such differences have the potential to impact the safety and/or efficacy of the follow-on product by increasing that product's immunogenicity risk. Advances in technology may support the use of IVISIA methods to assess comparative immunogenicity risk.

II. Request for Information and Comments

Interested persons are invited to provide detailed information (including any supportive data) and comments on suitable methods to detect, identify, and quantify HCPs and the minimal residual amounts of HCPs achievable in commercial lots of rPeptide products. Specifically, to assess the potential impact of HCP differences, FDA is interested in responses to the following questions:

1. What is the lowest and routinely achievable level of total HCPs across your well-controlled rPeptide manufacturing process(es), and how are they calculated/established?

2. What are the challenges in reducing HCP levels?

3. What analytical methods are currently being used to detect, identify, and quantify HCPs in a rPeptide product? Do you conduct comparative assessments of HCPs, such as ELISA (enzyme-linked immunosorbent assay) vs LC/MS/MS (liquid chromatography tandem mass spectrometry), during manufacturing development? What is the sensitivity of these methods for detecting HCPs and their limits of quantification? Are you using a combination of orthogonal analytical methods (such as ELISA + LC/MS/MS) for HCP control during process development and manufacturing?

¹ See, *e.g.*, FDA Final Rule "Definition of the Term 'Biological Product'" (85 FR 10057, March 23, 2020).

4. What is the generally achievable percent coverage² of the HCP spectrum for your HCP quantification assay? What considerations, (e.g., percent coverage of HCPs, other coverage characteristics, etc.), are important in choosing methods to evaluate HCPs?

5. Are there any qualitative or quantitative characteristics of HCPs associated with a higher likelihood of adverse clinical sequelae?

6. What tools (in silico, in vitro or in vivo studies) do you currently use or plan to use to compare the potential immunogenicity risk of two products with different HCP profiles? What is your approach to risk assessment of HCPs based upon such data?

The public comments collected will help FDA develop recommendations on how HCP control and characterization can support comparative immunogenicity risk assessment between a recombinant follow-on peptide and the listed product.

III. Electronic Access

Persons with access to the internet may obtain relevant guidance at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/clinical-pharmacology-considerations-peptide-drug-products>.

Dated: July 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-16356 Filed 7-24-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-3228]

Biosimilar Product Development Guidance; Establishment of a Public Docket; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the establishment of a docket to obtain information and comments that will assist the Agency in assessing how best to advance the

development of new biosimilar biological products (biosimilars or biosimilar products), as part of the Biosimilar User Fee Amendments of 2022 (BsUFA III). As FDA continues to advance the development of biosimilars, we are seeking input from industry on whether biosimilar product development would be best served by focusing on product class-specific guidance documents that address common development issues that apply to a broad class of products, or by developing product-specific guidance documents, similar to the approach taken in the Generic Drug User Fee Amendments (GDUFA) program.

DATES: Submit either electronic or written comments, data, or information by October 23, 2024.

ADDRESSES: You may submit data, information, and 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 October 23, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-N-3228 "Biosimilar Product Development Guidance; Establishment of a Public Docket; Request for Information and Comments." 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

² HCP coverage is an estimate of the percentage of HCPs specific to a cell substrate detected or covered by the capture antibodies of the ELISA. This coverage analysis is often done using 2D techniques.

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:

Tiana Barnes, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6196, Silver Spring, MD 20993-0002, 301-796-2882, Tiana.Barnes@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Biosimilar User Fee Act reauthorization, known as BsUFA III,¹ authorizes FDA to assess and collect user fees for certain activities in connection with biosimilar product development and review of applications submitted under section 351(k) of the Public Health Service Act (PHS Act) (42 U.S.C. 262(k)). An application submitted under section 351(k) of the PHS Act must demonstrate, among other things, that a proposed biosimilar product is highly similar to, and has no clinically meaningful differences from, an FDA-licensed reference product. To date, FDA has issued a series of guidance documents to facilitate development of biosimilar products. Under section 351(k)(8)(D) of the PHS Act, if FDA issues product class-specific guidance with respect to the licensure of biosimilar products, the guidance must include a description of the criteria that FDA will use to determine whether a biological product is highly similar to a reference product in such product class and the criteria, if available, that FDA will use to determine whether a biological product meets the standards for interchangeability described in section 351(k)(4) of the PHS Act.

Under BsUFA III, FDA has committed to, among other things, the development of guidance documents focusing on formal meetings between FDA and sponsors or applicants of BsUFA products and topics related to interchangeable biosimilar biological products (interchangeable biosimilars or interchangeable biosimilar products) (see Biosimilar Biological Product Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027, available at <https://www.fda.gov/media/152279/download>). These guidance documents are not product-specific or product class-specific but rather apply across many products and product classes. In contrast, under the GDUFA science and research program,

FDA conducts research in support of various regulatory science initiatives, the results of which support development of both general and product-specific guidance for industry.

As part of the BsUFA III program, FDA has updated its biosimilar action plan² and is revisiting how best to advance the development of new biosimilar products. FDA guidance can enhance scientific and regulatory clarity for the biosimilar product development community and, when finalized, represents FDA's current thinking on the matter.

II. Issues for Consideration and Request for Information and Comments

FDA is seeking input from industry on whether product-specific guidance outlining the development program for a particular product would be valuable to the biosimilar product development community. A model for this approach is the GDUFA science and research program that, among other things, supports the issuance of product-specific guidance documents, of which there are currently over 2,000.³ Alternatively, FDA is seeking input on whether product class-specific guidance, which may apply more broadly to a class of products, would be valuable to the biosimilar product development community. Specifically, FDA is seeking input on the following questions:

1. Which would be more useful for accelerating biosimilar development: guidance documents that focus on a particular product (product-specific guidance), or guidance documents that are cross-cutting for a class of biosimilar products (product class-specific guidance) such as monoclonal antibodies?

2. Should FDA focus on development of guidance documents for biological products (or classes of biological products) for which there are no approved biosimilars? Or would it be useful for FDA to continue to develop guidance on biosimilar development programs even after one or more biosimilar products have been approved for that biological product or class of biological products?

Dated: July 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-16405 Filed 7-24-24; 8:45 am]

BILLING CODE 4164-01-P

² See <https://www.fda.gov/drugs/biosimilars/biosimilars-action-plan#clarity>.

³ See the Product-Specific Guidances for Generic Drug Development web page at <https://www.accessdata.fda.gov/scripts/cder/psg/index.cfm>.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 Advisory Council for Human Genome Research.

This is a hybrid meeting held in-person and virtually and is 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 will be videocast and can be accessed from <https://www.genome.gov/event-calendar/103rd-Meeting-of-National-Advisory-Council-for-Human-Genome-Research>.

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 Advisory Council for Human Genome Research.

Date: September 9–10, 2024.

Closed: September 09, 2024, 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700 Rockledge Drive, Suite 1100, Bethesda, MD 20892 (Hybrid Meeting).

Open: September 09, 2024, 10:00 a.m. to 6:00 p.m.

Agenda: Report of Institute Director and Institute Staff.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 1100, Bethesda, MD 20892 (Hybrid Meeting).

Closed: September 10, 2024, 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700 Rockledge Drive, Suite 1100, Bethesda, MD 20892 (Hybrid).

Contact Person: Jennifer L. Troyer, Ph.D., Director, Division of Extramural Operations, National Human Genome Research Institute, National Institutes of Health, NIH 6700 Rockledge Drive, Suite 3100, Bethesda, MD 20892, (301) 480-3565, troyerj@mail.nih.gov.

¹ See <https://www.fda.gov/industry/biosimilar-user-fee-amendments/bsufa-iii-fiscal-years-2023-2027>.

Information is also available on the Institute's/Center's home page: <http://www.genome.gov/council>, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 19, 2024.

David W. Freeman,
Supervisory Program Analyst, Office of
Federal Advisory Committee Policy.
[FR Doc. 2024-16327 Filed 7-24-24; 8:45 am]
BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Clinical Informatics and Data Analytics II.
Date: August 13, 2024.

Time: 10:00 a.m. to 4:00 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: Jessica Bellinger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, (301) 827-4446, bellingerjd@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Therapeutics.

Date: August 15, 2024.

Time: 1:00 p.m. to 4:30 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: 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.

(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: July 19, 2024.

David W. Freeman,
Supervisory Program Analyst, Office of
Federal Advisory Committee Policy.
[FR Doc. 2024-16325 Filed 7-24-24; 8:45 am]
BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Industrialization and Translation of Extracellular Vesicles for use in Regenerative Medicine (ITERM).

Date: October 24, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Rockville, MD 20850.

Contact Person: Alomit Ishai, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, MSC 9793, Rockville, MD 20892 (301) 496-9539, alomit.ishai@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 19, 2024.

David W. Freeman,
Supervisory Program Analyst, Office of
Federal Advisory Committee Policy.
[FR Doc. 2024-16323 Filed 7-24-24; 8:45 am]
BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2024-0619]

Great Lakes Pilotage Advisory Committee Meeting; September 2024 Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (Committee) will meet in Massena, New York, to discuss matters relating to Great Lakes Pilotage, including review of proposed Great Lakes Pilotage regulations and policies. The meeting will be open to the public.

DATES:

Meeting: The Committee will meet on Tuesday, September 10, 2024, from 8 a.m. to 5:30 p.m. Eastern Daylight Time (EDT). Please note that this meeting may adjourn early if the Committee has completed its business.

Comments and supporting documentations: To ensure your comments are received by Committee members prior to the meeting, submit your written comments no later than August 30, 2024.

ADDRESSES: The meeting will be held at the Saint Lawrence Seaway Visitor Center at Eisenhower Lock, 76 Barnhart Island Road, Massena, NY 13662.

Pre-registration Information: Pre-registration is not required for access to the meeting.

The Great Lakes Pilotage Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Mr. Francis Levesque at Francis.R.Levesque@uscg.mil or call (571) 308-4941 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting, but if you want Committee members to review your comment before the meeting, please submit your comments no later than August 30, 2024. We are particularly interested in comments on the topics in the "Agenda" section below. We

encourage you to submit comments through the Federal Decision Making Portal at: <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov> type USCG–2024–0619 in the search box and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2024–0619. Comments received will be posted without alteration at <https://www.regulations.gov> including any personal information provided. You may wish to view the Privacy and Security Notice found via link on the homepage of <https://www.regulations.gov> and DHS's eRulemaking System of Records notice (85FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comment, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Levesque, Alternate Designated Federal Officer of the Great Lakes Pilotage Advisory Committee, telephone (571) 308–4941 or email Francis.R.Levesque@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the *Federal Advisory Committee Act* (Pub. L. 117–286, 5 U.S.C. ch. 10). The Committee was established under the authority of 46 U.S.C. 9307 and makes recommendations to the Secretary of Homeland Security and the U.S. Coast Guard on matters relating to Great Lakes pilotage, including review of proposed Great Lakes pilotage regulations and policies.

Agenda

The Great Lakes Pilotage Advisory Committee will meet on Tuesday, September 10, 2024, to review, discuss, deliberate, and formulate recommendations, as appropriate on the following topics:

1. Ordering a Pilot & Prospecting.
2. Change Points/Double Pilotage/Daytime Navigation Restrictions.
3. 46 U.S.C. 401.320.

- Standard for utilizing limited pilot resources to inform staffing model.
- Dispatching—Logistics and Providing Pilotage Service/Optimizing limited Pilot resources.
- Car Service versus Pilots driving themselves between assignments.
- 4. Pilot availability.
- 5. Compensation practices.
- 6. Pilot's role in the supply chain.
- 7. Winter navigation.
- 8. Great Lakes Pilotage Memorandum of Understanding update.
- 9. Rate Making Methodology.
- Allowable Expenses.
- Working Capital Fund.
- Pilot Association Projects.
- 10. Seaway Vessel Identification System Project.
- 11. CohnReznick presentation regarding expense and revenue reports for annual rulemaking.
- 12. Tug usage at the SOO locks.
- 13. Public Comments.
- 14. Closing Remarks and Adjournment of Meeting.

A copy of all meeting documentation will be available at <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Marine-Transportation-Systems-CG-5PW/Office-of-Waterways-and-Ocean-Policy/Great-Lakes-Pilotage-Advisory-Committee/> by September 3, 2024. Alternatively, you may contact Mr. Francis Levesque as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meeting as the Committee discusses the issues and prior to deliberations and voting. There will also be a public comment period at the end of the meeting.

Speakers are requested to limit their comments to 5 minutes. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: July 22, 2024.

Michael D. Emerson,
Director, Marine Transportation Systems.
[FR Doc. 2024–16410 Filed 7–24–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0282]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0019

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0019, Alternative Compliance for International and Inland Navigation Rules; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before August 26, 2024.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at <https://www.regulations.gov>. Search for docket number [USCG–2024–0282]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>.

Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email hqs-dg-m-cg-61-pii@uscg.mil for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the

Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2024–0282, and must be received by August 26, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION**

CONTACT section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the <https://www.reginfo.gov>, comment-submission web page. OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR

will become available via a hyperlink in the OMB Control Number: 1625–0019.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (89 FR 25637, April 11, 2024) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Alternative Compliance for International and Inland Navigation Rules—33 CFR parts 81 through 89.

OMB Control Number: 1625–0019.

Summary: The information collected provides an opportunity for an owner, operator, builder, or agent of a unique vessel to present their reasons why the vessel cannot comply with existing International and Inland Navigation Rules and how alternative compliance can be achieved. If appropriate, a Certificate of Alternative Compliance is issued.

Need: Certain vessels cannot comply with the International Navigation Rules (see 33 U.S.C. 1601 through 1608; 28 U.S.T. 3459, and T.I.A.S. 8587) and Inland Navigation Rules (33 U.S.C. 2071). The Coast Guard thus provides an opportunity for alternative compliance. However, it is not possible to determine whether alternative compliance is appropriate, or what kind of alternative procedures might be necessary, without this collection.

Forms: None.

Respondents: Vessel owners, operators, builders, and agents.

Frequency: One-time application.

Hour Burden Estimate: The estimated burden has decreased from 180 hours to 171 hours a year due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.*, chapter 35, as amended.

Dated: July 1, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–16361 Filed 7–24–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2024–0030]

Notice of Federal Advisory Committee Meeting

AGENCY: Office of Partnership and Engagement (OPE), Department of Homeland Security (DHS).

ACTION: Notice of partially closed Federal Advisory Committee meeting.

SUMMARY: OPE is publishing this notice that the Homeland Security Advisory Council (HSAC) will meet virtually on Friday, July 26, 2024. This meeting will be partially closed to the public. This meeting will discuss security related threats and the DHS response focused on the election season.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5 p.m. Eastern Daylight Time (EDT) on Thursday, July 25, 2024. The meeting will take place from 1:00 p.m. ET to 2:00 p.m. ET on Friday, July 26, 2024. The meeting will be closed to the public from 1:20 p.m. ET to 2:00 p.m. ET. The meeting will be open to the public from 1:00 p.m. ET to 1:20 p.m. ET. The meeting may end early if the Council has completed its business.

ADDRESSES: The HSAC meeting will be held virtually. Members of the public interested in participating may do so via teleconference by following the process outlined below. For those attending the public session you will be in listen-only mode. Written comments must be submitted by 5:00 p.m. ET on July 25, 2024. Comments must be identified by Docket No. DHS–2024–0030 and may be submitted by one of the following methods:

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

- *Email:* HSAC@hq.dhs.gov. Include Docket No. DHS–2024–0030 in the subject line of the message.

- *Mail:* Rebecca Sternhell, Acting Executive Director of the Homeland Security Advisory Council, Office of Partnership and Engagement, Mailstop 0385, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20032.

Instructions: All submissions received must include the words “Department of Homeland Security” and “DHS–2024–0030”, the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of www.regulations.gov.

Docket: For access to the docket to read comments received by the Council, go to <http://www.regulations.gov>, search “DHS–2024–0030,” “Open Docket Folder” to view the comments.

FOR FURTHER INFORMATION CONTACT: Rebecca Sternhell, Acting Executive

Director, HSAC at 202–891–2876 or HSAC@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: An advisory committee meeting notice must be published in the **Federal Register** at least 15 calendar days before the meeting except in exceptional circumstances per 41 CFR 102–3.150. This notice is being provided with less than 15 days' notice due to exceptional circumstances of the assassination attempt on July 13. The meeting will focus on security related threats and the DHS response focused on the election season. Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. Ch. 10), which requires each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c).

The HSAC provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council consists of senior executives from government, the private sector, academia, law enforcement, and non-governmental organizations.

The Council will meet in an open session between 1:00 p.m. to 1:20 p.m. ET to hear from senior DHS leadership. For the open session, members of the public will be in listen-only mode. Meeting instructions for virtual and in person attendance. Members of the public may register to participate in this Council meeting via teleconference under the following procedures. Each individual must provide their full legal name and email address no later than 5:00 p.m. ET on Thursday, July 25, 2024, to Rebecca Sternhell, Acting Executive Director of the Homeland Security Advisory Council, via email to HSAC@hq.dhs.gov or via phone at 202–891–2876. Members of the public who have registered to participate will be provided the teleconference call-in number. For more information about the HSAC, please visit our website: <https://www.dhs.gov/homeland-securityadvisory-council>.

For information on services for individuals with disabilities, or to request special assistance, please email HSAC@hq.dhs.gov by 5:00 p.m. ET on Thursday, July 25, 2024 or call 202–891–2876. The HSAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable

accommodation due to a disability to fully participate, please contact Rebecca Sternhell at 202–891–2876 or HSAC@hq.dhs.gov as soon as possible.

The Council will meet in a closed session from 1:20 p.m. to 2:00 p.m. ET to participate in a sensitive discussion with DHS senior leaders regarding DHS operations.

Basis for Partial Closure: In accordance with Section 10(d) of FACA, the Secretary of Homeland Security has determined this meeting must be closed during this session as the disclosure of the information relayed would be detrimental to the public interest for the following reasons:

The Council will participate in a sensitive operational discussion containing For Official Use Only and Law Enforcement Sensitive information. This discussion will include information regarding threats facing the United States and how DHS plans to address those threats. The session is closed pursuant to 5 U.S.C. 552b(c)(9)(B) because the disclosure of this information could significantly frustrate implementation of proposed agency actions.

Dated: July 22, 2024.

Rebecca Sternhell,

Acting Executive Director, Homeland Security Advisory Council, Department of Homeland Security.

[FR Doc. 2024–16500 Filed 7–24–24; 8:45 am]

BILLING CODE 9112-FN-P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2024–0026]

Agency Information Collection Activities: DHS OBIM Biometric Technology Assessments, OMB Control No. 1601–NEW

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until September 23, 2024. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number Docket # DHS–2024–0026, at:

○ **Federal eRulemaking Portal:** <http://www.regulations.gov>. Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # DHS–2024–0026. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security's (DHS) Office of Biometric Identity Management (OBIM) provides biometric compare, store, share, and analyze services to DHS and mission partners. In order to serve its mission partners, OBIM is focused on delivering accurate, timely, and high assurance biometric identity information and analysis. To achieve OBIM's overall goals and priorities, OBIM continually works to improve biometric services by keeping up with advancing biometrics in terms of new modalities, capabilities, and safeguarding information. OBIM is constantly investigating new developments to keep up with the speed of relevance and to support DHS operational missions through the development of standards for interagency implementation of biometrics.

Because OBIM is congressionally mandated to manage the operation of the department's primary biometric repository and identification system that is used to identify and verify individuals crossing U.S. borders, it is mandatory for homeland security that the types of biometrics used, the technologies that capture them, and the way that OBIM safeguards them are advancing at a pace that keeps in front of bad actors. In the continuing appropriations act of 2013, OBIM was created from the former US–VISIT program to administer the DHS biometric database, as authorized by section 7208 of the Intelligence Reform And Terrorism Prevention Act of 2004 (8 U.S.C. 1365b). *See Consolidated And Further Continuing Appropriations Act of 2013, Public Law 113–6, 127 Stat. 198 (2013).* The Senate Explanatory Statement for the appropriation explains that “OBIM is the lead entity within DHS responsible for biometric identity management services through its management of the Automated Biometric Identification System, or IDENT. OBIM assumes the most significant and cross-cutting responsibility from what was known as

US-VISIT—namely to serve customers across DHS, at other Federal agencies, in State and local law enforcement, and overseas through storage of biometric identities, recurrent matching against derogatory information, and other biometric expertise and services.” The Consolidated Appropriations Act of 2017, Public Law 115–31, Division F, section 301, 131 Stat. 135, 418 (2017), mandated DHS to implement a facial recognition matching capability for IDENT, including the ability to search, store and match, that is independent of other biometric modalities but scalable for future needs. The 2017 Appropriations Act also called for DHS to “demonstrate new agile projects focused on the ability to fuse biographic intelligence information with biometric data.”

Thus, OBIM is constantly working through research and development efforts and standards development to improve biometric use, capture, and storage through investigation of the latest industry or academic advancements and how research findings can help improve performance of systems and policies that surround the use of the system. While continuing to improve its biometric services, OBIM has identified a need to understand the performance of new sensors and data emerging from these sensors. This understanding is crucial for advancing standards development and threshold guidance, as continuously evolving technologies impact the performance of the operational biometric matchers leveraged by the OBIM biometric repository. OBIM engages with performers, like John Hopkins University Applied Physics Laboratory (JHU APL), National Institute of Standards Technology (NIST), and DHS Science And Technology (S&T) to collaborate and leverage the subject matter expertise available at each entity on biometric sensor evaluation to assess the performance of emerging biometric technologies.

OBIM seeks an Office of Management and Budget (OMB) number to address the Paperwork Reduction Act requirements for OBIM’s studies of emerging biometric technology. These OBIM studies support relevant biometrics collection projects so that OBIM can collaborate with performers to take on various biometric collection projects that will help to understand biometric collection device performance in various operational settings. These performers include academic and other research centers to design and execute studies that involve collection of different biometrics depending on the need and/or research question. Since

OBIM operates and maintains the DHS biometric repository responsible for storing, sharing, and matching of different types of biometrics modalities (*i.e.*, face, finger, iris, and future biometrics) it is imperative that OBIM understand biometric collection device performance so that we are better able to do the sharing and comparing portion of our homeland security mission. Because authentication/identification accuracy depends on the reliability of the equipment used to capture data, OBIM is developing guidance on biometric capture quality, to enable the implementation of new capabilities that enhance national security and general public safety.

OBIM has tasked the performers to help in this effort based on their extensive experience with biometric image collection and analysis developed from previous studies. The performers anticipate conducting several small-scale human research studies to support OBIM program goals. OBIM is interested in gathering more information in the following biometric modalities: face, fingerprint, palm print, iris, and voice. The purpose of this analysis is (1) to evaluate the current state of the art in biometrics and biometric capture, and (2) to provide insights on likely future developments in biometrics and identity intelligence technologies for OBIM to continue advancing research and development efforts, interoperability standards, and threshold guidance. The goal is to aid in the elaboration of a multi-year strategy for both research and development for future technologies.

As OBIM is not an academic institution and does not engage in research studies; OBIM relies on academic and other research centers to design and execute studies that involve collection of different biometrics (depending on the need and/or research question). These performers develop research questions and protocols to solve questions and provide information and guidance for OBIM to better influence capture, share, match, and storage of biometrics.

OBIM aims to continue to improve biometric services within DHS and the necessary guidance associated with the implementation of these biometrics. The primary objective of the studies and use of information technology is to compare the performance of biometric sensors. Specifically, understanding the parameters that impact the quality of biometric image collection, which in turn, impacts the performance of downstream comparison algorithms.

OBIM will assess new sensors, as the technologies are continuously evolving, and the inherent impact on the

performance with the operational biometric matchers leveraged by the OBIM biometric repository. To perform these assessments, biometric collections will occur using emerging commercial off the shelf sensors (*e.g.*, finger, face, iris, scanner, using a platen, clamshell, mobile application, etc.). The assessment and potential future implementation of advancing biometric sensors aims to improve the biometric collection experience for the customer and the agent to ensure quality biometrics are collected in an easy to use and time efficient manner to reduce burden on the customer and agent involved in the collection while still providing quality biometric images to allow for accurate comparison for mission decision support.

Advancing technology will look to reduce burden by:

- Contactless modes of collection, reducing hygienic burden to individuals as a result of the current practices of touching the same surface.
- Simultaneous collection of multiple biometrics, reducing the burden to the customer and agent by eliminating multiple devices and thus decreasing the time for each additional biometric to be collected.
- Mobile collection sensors, reducing time burden of customer by eliminating the need to travel from site of encounter to a collection site.

If any small businesses will be involved in the collections, study, or testing that are conducted surrounding biometric devices or matching performances, OBIM will work to ensure that guidance is streamlined and clear for all participants and all the time limits put forth for collection and testing are limited. No requests of performers, vendors, or participants will be made that will be prohibitive to the participation of small businesses.

OBIM provides accurate, timely, and high assurance biometric identity services. As technology continues to advance at a rapid speed, new biometric collection devices and techniques continue to emerge. Variations in the technology leveraged in these new devices/sensors may impact the interoperability with the existing operational biometric comparison algorithms leveraged by DHS OBIM. Assessments of these technologies do not account for the impact on the legacy biometric information within the OBIM biometric repository and provides skewed performance results on emerging technology. Less frequent collections will impact the ability to identify issues related to the performance of the operational comparison algorithms with emerging

biometric collection technologies. This will hinder advancements of research and development, drafting updates to interoperability standards, and inform comparison algorithm threshold guidance to optimize biometric comparison results for mission decision points.

There are no confidentiality assurances associated with this collection. However, coverage for the collection of this information is provided under DHS/ALL-041 External Biometric Records (EBR) System of Records, April 24, 2018, 83 FR 17829; DHS/NPPD/US-VISIT-0004-IDENT SORN, 72 FR 31080 (Jun. 5, 2007); DHS/ALL-043 Enterprise Biometric Administrative Records (EBAR) System of Records, March 16, 2020, 85 FR 14955.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security (DHS).

Title: DHS OBIM Biometric Technology Assessments.

OMB Number: 1601-NEW.

Frequency: Annually.

Affected Public: Direct Service Providers, Educational Institutions, etc.

Number of Respondents: 1,000.

Estimated Time per Respondent: 1.5 hours.

Total Burden Hours: 1,500 hours.

Robert Dorr,

Executive Director, Business Management Directorate.

[FR Doc. 2024-16341 Filed 7-24-24; 8:45 am]

BILLING CODE 9112-FL-P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24EN05ESK0000]

Agency Information Collection Activities; The Impact and Potential of "Co-Production" in Addressing Climate Adaptation Across the Pacific Islands

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 23, 2024.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to gs-info_collections@usgs.gov. Please reference OMB Control Number 1028-NEW CASC Co-Production Assessment.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mari-Vaughn Johnson by email at mvjohnson@usgs.gov or by telephone at 808-208-3142. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and

provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not 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 the agency might 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 response.

Comments that you submit in response to this notice are a matter of public record. 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 can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Project A

Abstract: The Pacific Islands Climate Adaptation Science Center (PI-CASC) involves a partnership between U.S. Geological Survey (USGS) and a university consortium including the University of Hawai'i at Mānoa, the University of Hawai'i at Hilo, and the University of Guam. PI-CASC aims to support a portfolio of research projects that foster long-lasting partnerships between researchers, natural and cultural resource stewards and managers, and community leaders. While building local capacities, PI-CASC endeavors to co-develop the science/knowledge bases informing our current understanding of climate change and its impacts, as well as how we might take steps to adapt to those impacts across the Pacific Islands. PI-CASC is seeking to conduct surveys and interviews with project leaders, collaborators, and community members to better understand the state of co-production across the portfolio and how such cooperative efforts may be improved moving forward. The proposed survey and interviews will collect the following information:

- The state of collaborative relationships between project partners, the community, and others since project completion.

- Status of products developed via PICASC funding (e.g., new grant awards, research articles, presentations, workshops, visualization tools, assessments, guidance documents, etc.).

- PI-CASC experience's influence on approaches taken in other projects.

The information collected in this effort will be used to improve the approach to developing climate adaptation science/knowledge production and concomitant management/stewardship plans in future PI-CASC work.

Title of Collection: The Impact and Potential of "Co-Production" in Addressing Climate Adaptation across the Pacific Islands.

OMB Control Number: 1028-NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public:

Respondents will include PI-CASC funded projects' principal investigators, co-investigators, and collaborators; graduate scholars and postdocs; and community members. These include individuals from Federal organizations, state organizations (including academic institutions), NGOs, and tribal entities.

Total Estimated Number of Annual Respondents: PI-CASC expects to request surveys from a maximum of 330 respondents (Approximately 85 Federal employees, 20 State or local government employees, 150 University/College researchers, 45 NGO leaders, and 30 international respondents that have been involved and/or impacted by PI-CASC project work). Of these 330 requests, we hope to have a response rate near half, to get an estimated 150 survey responses. We also plan to request interviews with 50 participants from a subset of PI-CASC project case studies. There is likely to be overlap in the participants that complete the surveys and are requested for interviews.

Total Estimated Number of Annual Responses: An estimated 150 surveys and 50 interviews are expected.

Estimated Completion Time per Response: Each survey is expected to take a respondent approximately 10 minutes to complete. For those that agree to an interview, an additional 1 hour is expected to be used per interview.

Total Estimated Number of Annual Burden Hours: An estimated 75 burden hours per year is expected $(10 \text{ min} \times 150) + (60 \text{ min} \times 50) = 4500 \text{ min} \rightarrow 75 \text{ hours}$. However, if all survey respondents completed our surveys, we

could reach a maximum of 105 hours per year $(10 \text{ min} \times 330) + (60 \text{ min} \times 50) = 6300 \text{ min} \rightarrow 105 \text{ hours}$.

Respondent's Obligation: Voluntary.

Frequency of Collection: The information collection needed to reach the described 150–330 surveys and 50 interviews may take place over multiple years (splitting up the described annual burden hours), and the overall collection process may be potentially repeated per every 5 years to gather information about changes over time.

Total Estimated Annual Nonhour Burden Cost: None.

Project B

Abstract: The USGS PI-CASC and USFWS support the coordinator of the Pacific Regional Invasive Species and Climate Change Management Network (Pacific RISC), a Community of Practice that includes partnerships with PI-CASC, USGS, USFWS, the University of Hawaii at Mānoa, the State of Hawaii Department of Land and Natural Resources, Division of Forestry & Wildlife, the Coordinating Group on Alien Pest Species, and representatives from all of the U.S. Affiliated Pacific Islands. Pacific RISC aims to support research and management efforts addressing the individual and interacting impacts of climate change and invasive species in the U.S. Pacific, with the goal of increasing the effectiveness of management and reducing the impacts of climate change and invasive species. Pacific RISC would like to assess the effectiveness of hosted workshops by surveying attendees. The proposed surveys and interviews will collect the following types of information:

- Demographic characteristics of workshop attendees (field, role/position, location, etc.).
- Pacific RISC events, products, communications, or tools that are most used by and/of interest to attendees.
- Outstanding invasive species and climate change related challenges and associated research needs.
- Response to workshop in terms of topical relevance, effectiveness, accessibility, and capacity building in a regional context.

The information collected in this effort will be used to better align the future goals and objectives of Pacific RISC, including future workshops, with the needs of respondents across the Pacific RISC region.

Respondents/Affected Public:

Respondents will include individuals from county, state, and Federal organizations, including land management agencies and academic institutions, individuals from non-

profits and NGOs, students, and community members.

Total Estimated Number of Annual Respondents: Pacific RISC expects to request annual survey completion via the Pacific RISC Listserv from a maximum of 460 respondents (approximately 100 Federal employees, 40 state or local government employees, 180 university/college researchers (including students), 50 NGO leaders, 85 community members, and 5 international respondents. Additionally, Pacific RISC expects to request post-workshop surveys twice a year from a maximum of 75 respondents per workshop (affiliations will depend on who signs up, but will likely include Federal, state, and county agency resource managers and scientists from state and Federal institutions).

Total Estimated Number of Annual Responses: An estimated 460 surveys and 12 interviews are expected to be completed from the annual listserv inquiry, and an additional 150 post-workshop survey responses are expected to be returned (610 surveys total). This estimate is based on 100% response rate (actual response rate will likely be much lower).

Estimated Completion Time per Response: Each survey is expected to take a respondent approximately 10 minutes to complete. For those that agree to a follow up interview, an additional 1 hour is expected to be taken per interview.

Total Estimated Number of Annual Burden Hours: An estimated 90 hours are expected to be taken for annual listserv surveys and interviews, and an estimated 25 hours are expected to be taken for the two post-workshop surveys. The total maximum estimated burden hours is 115 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Information will be collected annually.

Total Estimated Annual Nonhour Burden Cost: None.

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 authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Mari-Vaughn Johnson,

Regional Administrator, PI-CASC, USGS.

[FR Doc. 2024–16407 Filed 7–24–24; 8:45 am]

BILLING CODE 4388–11–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[BLM_AZ_FRN; AZAZ106335207]****Notice of Withdrawal Application and Public Meeting for Oak Creek Canyon, Arizona****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior withdraw 10,024.30 acres of National Forest System (NFS) lands located within the Coconino National Forest from location and entry under the U.S. mining laws, but not from leasing under the mineral leasing laws or geothermal leasing laws or disposal under the Mineral Materials Act of 1947, for a 20-year term, subject to valid existing rights. The purpose of the requested withdrawal is to protect Oak Creek Canyon, located in Coconino County, Arizona, from potential adverse impacts from mining. Publication of this notice temporarily segregates the lands for up to two years, initiates a 90-day public comment period, and announces to the public an opportunity to comment and participate in a public meeting on the USFS' withdrawal application.

DATES: Comments must be received by October 22, 2024. In addition, the USFS and BLM will host a virtual public meeting on Wednesday, October 16, 2024, at 6 p.m. mountain standard time to address the requested withdrawal and associated environmental review process. Instructions for the public meeting are listed in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: All comments should be sent to the BLM Arizona State Office, 1 North Central Avenue, Suite 800, Phoenix, AZ 85004; faxed to (602) 417-9452; or sent by email to BLM_AZ-Withdrawal_Comments@blm.gov. The BLM will not consider comments via telephone calls. Information on how to access the online public meeting will be published 30 days prior to the meeting in the Arizona Daily Sun and also on the below Coconino National Forest website: <https://www.fs.usda.gov/detail/coconino/landmanagement/resourcemanagement/?cid=fseprd1156330>.

FOR FURTHER INFORMATION CONTACT: Michael Ouellett, Realty Specialist, BLM Arizona State Office, telephone (602) 417-9561, email at mouellett@blm.gov

[blm.gov](https://www.blm.gov); or you may contact the BLM office at the address noted above. 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 will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The USFS requests the 20-year term withdrawal to protect Oak Creek Canyon located on NFS lands. The subject lands are located within the Coconino National Forest. This request is for a new withdrawal encompassing 10,024.30 acres of NFS lands previously withdrawn by Public Land Order (PLO) No. 7387 (expired May 2, 2019).

The following described NFS lands are the subject of the USFS' withdrawal application:

Gila and Salt River Meridian, Arizona

- T. 17 N., R. 6 E.,
 Sec. 2, lots 3 thru 6, lots 11 thru 14, and lots 19 and 20;
 Sec. 3, all;
 Sec. 4, all;
 Sec. 5, lots 1 thru 5, S1/2NE1/4, S1/2NW1/4, NE1/4SW1/4, N1/2NE1/4NW1/4SW1/4, N1/2NW1/4NW1/4SW1/4, N1/2SE1/4SW1/4, N1/2SE1/4, and SE1/4SE1/4;
 Sec. 8, NE1/4, S1/2NE1/4NE1/4NE1/4NW1/4, SE1/4NE1/4NE1/4NW1/4, SE1/4NE1/4NW1/4, E1/2SE1/4NW1/4, E1/2SW1/4SE1/4NW1/4, SW1/4SW1/4SE1/4NW1/4, E1/2NE1/4SW1/4, N1/2SE1/4SW1/4, N1/2SE1/4, N1/2SW1/4SE1/4, and N1/2SE1/4SE1/4;
 Sec. 9, lots 1 thru 9, and NW1/4;
 Sec. 10, N1/2, N1/2NE1/4SW1/4, N1/2NW1/4SW1/4, NW1/4NE1/4SE1/4, and N1/2NW1/4SE1/4;
 Sec. 11, lots 3 and 4.
 T. 18 N., R. 6 E.,
 Sec. 4, lots 2 and 5, SE1/4NW1/4, and SW1/4;
 Sec. 5, lot 1, S1/2NE1/4, and SE1/4, excepting H.E.S. No. 579;
 Sec. 8, E1/2, E1/2NE1/4NW1/4, E1/2SE1/4NW1/4, E1/2NE1/4SW1/4, E1/2SE1/4SW1/4, excepting H.E.S. Nos. 369 and 579, and Small Tracts Act Survey Case No. 0038, recorded December 5, 2000, Book 16, Page 100, Coconino County, Arizona;
 Sec. 9, W1/2NW1/4;
 Sec. 16, W1/2NW1/4, SW1/4, and SW1/4SE1/4, excepting H.E.S. No. 368; Sec. 17, E1/2, excepting H.E.S. No. 368;

- Sec. 20, E1/2NE1/4NE1/4;
 Sec. 21, NE1/4, N1/2NW1/4, E1/2SW1/4NW1/4, SE1/4NW1/4, N1/2NE1/4SW1/4, SE1/4NE1/4SW1/4, and SE1/4, excepting H.E.S. No. 367;
 Sec. 22, W1/2SW1/4;
 Sec. 23, SE1/4SW1/4SW1/4, NE1/4SE1/4SW1/4, S1/2SE1/4SW1/4, S1/2NE1/4SE1/4, SE1/4NW1/4SE1/4, and S1/2SE1/4;
 Sec. 24, S1/2SW1/4NE1/4, S1/2SE1/4NE1/4, and S1/2;
 Sec. 25, N1/2NE1/4NE1/4, SE1/4NE1/4NE1/4, N1/2NW1/4NE1/4, N1/2NE1/4NW1/4, SW1/4NE1/4NW1/4, and NW1/4NW1/4;
 Sec. 26, N1/2, N1/2SW1/4, N1/2SW1/4SW1/4, SW1/4SW1/4SW1/4, N1/2SE1/4SW1/4, and N1/2NW1/4SE1/4;
 Sec. 27, lots 2 thru 4, N1/2, E1/2SE1/4, N1/2NW1/4SE1/4, S1/2SW1/4NW1/4SE1/4, NE1/4SE1/4NW1/4SE1/4, S1/2SE1/4NW1/4SE1/4, and SW1/4SE1/4, excepting H.E.S. No. 94;
 Sec. 28, E1/2NE1/4, E1/2NW1/4NE1/4, E1/2SW1/4NE1/4, E1/2NE1/4SE1/4, and E1/2SE1/4SE1/4, excepting H.E.S. No. 94;
 Sec. 33, lots 1 and 2, and lots 6 thru 11, E1/2NE1/4NE1/4, SE1/4SW1/4NE1/4, NE1/4SE1/4NE1/4, SW1/4SE1/4NE1/4, and W1/2SE1/4SE1/4NE1/4, excepting those portions of lot 1 described in Patent No. 731068;
 Sec. 34, lot 1, lots 3 thru 5, and lots 9 and 10, NE1/4, SE1/4NW1/4, NE1/4SW1/4, and N1/2SE1/4;
 Sec. 35, lots 3 and 4.
 T. 19 N., R. 6 E.,
 Sec. 14, lot 8, and lots 16 thru 19;
 Sec. 15, E1/2SE1/4;
 Sec. 22, lots 2 thru 4, and lots 11, 12, 15, 16, 23, and 24;
 Sec. 27, lots 1 thru 3, lots 10 thru 15, and lots 21 thru 25, excepting H.E.S. No. 95;
 Sec. 34, lots 2 thru 4, and lots 9, 17, 18, and 25.
 T. 18 N., R. 7 E.,
 Sec. 20, lots 6, 7, and 12;
 Sec. 29, lot 1.

The areas described aggregate approximately 10,024 acres.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection of the specified lands.

No additional water rights are needed to fulfill the purpose of this requested withdrawal.

There are no suitable alternative sites since the requested withdrawal area is for the protection of the natural, recreational, and cultural resource values unique to Oak Creek Canyon.

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.

Notice is hereby given for a public meeting in connection with the requested withdrawal. The BLM and USFS will host the public meeting online and by telephone. The public meeting is scheduled for Wednesday, October 16, 2024, at 6 p.m. mountain standard time. Information on how to access the online public meeting will be published 30 days prior to the meeting in the *Arizona Daily Sun* and also on the below Coconino National Forest website: <https://www.fs.usda.gov/detail/coconino/landmanagement/resourcemanagement/?cid=fseprd1156330>.

For a period of 2 years from the date of publication in the **Federal Register**, the lands are temporarily segregated from location and entry under the U.S. mining laws, but not from leasing under the mineral leasing laws or geothermal leasing laws or disposal under the Mineral Materials Act of 1947, unless the application is denied or canceled, or the withdrawal is approved prior to that date.

This application will be processed in accordance with the regulations at 43 CFR part 2300.

(Authority: 43 U.S.C. 1714(b)(1) and 43 CFR 2310.3–1)

Raymond Suazo,
State Director.

[FR Doc. 2024–16248 Filed 7–24–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–ONAA–37867; PPWODIRETO; PPMRSCR1Y.CT0000]

Notice of Availability and Request for Comments on Draft Director's Order #71C Concerning Consultation With Indian and Alaska Native Tribes

AGENCY: National Park Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Park Service (NPS) has prepared Director's Order #71C to set forth its policies and

procedures regarding consultation with Indian and Alaska Native Tribes. Once adopted, the policies and procedures in Director's Order #71C and its accompanying Reference Manual will supersede and replace any conflicting policies and procedures.

DATES: Written comments will be accepted until August 26, 2024.

ADDRESSES: Draft Director's Order #71C, together with a Comment Form, is available online at <https://www.nps.gov/subjects/policy/new.htm>. You may submit written comments with the Comment Form.

FOR FURTHER INFORMATION CONTACT:

Dorothy FireCloud, Native American Affairs Liaison, Office of Native American Affairs, National Park Service, at dorothy_firecloud@nps.gov, or by telephone at 202–354–2126.

SUPPLEMENTARY INFORMATION: The NPS is updating its current system of internal written instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, they are first made available for public review and comment before being adopted. Director's Order #71C and a reference manual (subsequent to the Director's Order) will be issued. The draft Director's Order provides direction to NPS managers and employees with Tribal consultation responsibilities. Both the Presidential Memorandum of April 29, 1994 and Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) direct executive departments and agencies to engage in regular and meaningful consultation in good faith with Tribal officials on Federal policies and actions with Tribal implications. The draft Director's Order applies only to consultation with Indian and Alaska Native Tribes. Separate Director's Orders on consultation with the Native Hawaiian Community and Alaska Native entities will be issued subsequently.

Public Disclosure of Comments:

Before including your address, telephone 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.

Authority: 54 U.S.C. 100101(a) *et seq.*

Alma Rippis,

Chief, Office of Policy.

[FR Doc. 2024–16368 Filed 7–24–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–38205; PPNEGATEB0, PPMVSCS1Z.Y00000]

Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, as amended, the National Park Service (NPS) is hereby giving notice that the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (Committee) will meet as indicated below.

DATES: The Committee will meet in-person and via teleconference on Thursday, October 31, 2024. The meeting will begin at 9:00 a.m. until 2:00 p.m., with a public comment period at 11:30 a.m. to 12:00 p.m. (EASTERN), with advance registration required. Individuals that wish to participate must contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 7 days before the meeting to receive instructions for accessing the meeting.

ADDRESSES: The meeting will be held at 1 Kings Highway, Middletown, New Jersey 07748.

FOR FURTHER INFORMATION CONTACT:

Anyone interested in attending—in person or virtually—should contact Daphne Yun, Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, by telephone (718) 815–3651, or by email daphne_yun@nps.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Committee was established on April 18, 2012, by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906(a) and is regulated by the Federal Advisory Committee Act. The

Committee provides advice to the Secretary, through the Director of the NPS, on matters relating to the Fort Hancock Historic District of Gateway National Recreation Area. All meetings are open to the public. Interested persons may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments will be accepted prior to, during, or after the meeting. Members of the public may submit written comments by mailing them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Purpose of the Meeting: The Gateway National Recreation Area will discuss a leasing update and general park updates. The final agenda will be posted on the Committee's website at <https://www.forthancock21.org>. The website includes meeting minutes from all prior meetings.

Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to no more than three minutes per speaker. All comments will be made part of the public record and will be electronically distributed to all Committee members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Request for Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, 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.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Ch. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2024-16278 Filed 7-24-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-BSO-CONC—NPS0037751; PPWOBSDCO PPMVSCS1Y.Y00000; OMB Control Number 1024-NEW]

Agency Information Collection Activities; Customer Satisfaction Survey of NPS Concessioner Visitor Services

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 we, the National Park Service (NPS) are proposing a new information collection. **DATES:** Interested persons are invited to submit comments on or before September 23, 2024.

ADDRESSES: Written comments on this information collection request (ICR) can be sent to the NPS Information Collection Clearance Officer (ADIR-ICCO), 13461 Sunrise Valley Drive, (MS 244) Herndon, VA 20171 (mail); or phadrea_ponds@nps.gov (email). Please reference Office of Management and Budget (OMB) Control Number "1024-NEW (Concessioner's Performance Feedback)" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Katy Canetta, Concession Specialist, WASO Commercial Services Program, Contract Management Branch, at katy.canetta@nps.gov (email) or (307) 250-6535 (telephone). Please reference OMB Control Number 1024-NEW (Concessioner's Performance Feedback) in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other

Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary for the proper functions of the NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use 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 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: Authorized by the NPS Concessions Management Improvement Act of 1998 (54 U.S.C. 101911 *et seq.*), the NPS Commercial Services Program (CSP) is requesting to survey park visitors who use concessioner-run services and facilities, to monitor customer satisfaction. The NPS CSP proposes to integrate new park-specific survey questions into existing concessioner hospitality customer satisfaction surveys. Data from the new questions will be transmitted from concessioners to the NPS. The information collected will be used to evaluate the performance and quality of concessioner-provided services.

Title of Collection: Customer Satisfaction Survey of NPS Concessioner Visitor Services.

OMB Control Number: 1024-NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 70,000.

Estimated Completion Time per Response: 5 Mins.

Total Estimated Number of Annual Burden Hours: 5,833 hrs.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once.

Total Estimated Annual Nonhour

Burden Cost: None.

An agency may not conduct or sponsor nor is a person 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.*).

Phadrea Ponds,

*Information Collection Clearance Officer,
National Park Service.*

[FR Doc. 2024–16388 Filed 7–24–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–38104;
PPWOCRADN0–PCU00RP16.R50000]

Native American Graves Protection and Repatriation Review Committee Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service is hereby giving notice that the Native American Graves Protection and Repatriation Review Committee (Committee) will hold a virtual meeting as indicated below.

DATES: The Committee will meet via teleconference on Monday, September 23, 2024, from 2:00 p.m. until approximately 6:00 p.m. (Eastern). All meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Designated Federal Officer, National Native American Graves Protection and Repatriation Act Program (2253), National Park Service, telephone (202) 354–2201, or email nagpra_info@nps.gov.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Committee was established in section 8 of the Native American Graves Protection and Repatriation Act of 1990

(NAGPRA). Information about NAGPRA, the Committee, and Committee meetings is available on the National NAGPRA Program website at <https://www.nps.gov/subjects/nagpra/review-committee.htm>.

The Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian Tribes and Native Hawaiian organizations and museums on matters affecting such Tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Committee's work is carried out during the course of meetings that are open to the public. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

The agenda for the meeting may include a report from the National NAGPRA Program; the discussion of the Review Committee Report to Congress; subcommittee reports and discussion; and other topics related to the Committee's responsibilities under section 8 of NAGPRA. In addition, the agenda may include presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, associations, and individuals, and public comment. The agenda and materials for this meeting will be posted on or before September 6, 2024, at <https://www.nps.gov/orgs/1335/events.htm>.

To submit a request or comment, see **FOR FURTHER INFORMATION CONTACT**. Information on joining the meeting by internet or telephone will be available on the National NAGPRA Program website at <https://www.nps.gov/orgs/1335/events.htm>.

Requests for Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, 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.

Public Disclosure of Comments:

Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10; 25 U.S.C. 3006.

Alma Rippes,

Chief, Office of Policy.

[FR Doc. 2024–16279 Filed 7–24–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–38366;
PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before July 13, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by August 9, 2024.

ADDRESSES: Comments are encouraged to be submitted electronically to National_Register_Submissions@nps.gov with the subject line “Public Comment on <property or proposed district name, (County) State>.” If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, sherry_frear@nps.gov, 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being

considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 13, 2024. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

ILLINOIS

Alexander County

Ward Chapel AME Church, 420 17th Street, Cairo, SG100010699

Cook County

The Rockwell House, 20841 Oak Lane Dr., Olympia Fields, SG100010711

Jackson County

Murphysboro Masonic Lodge No. 498 A.F. & A.M., 1115 Chestnut St., Murphysboro, SG100010700

Rock Island County

Skelly Service Station, 820 5th Ave, Moline, SG100010701

United States Housing Corporation (U.S.H.C.) Historic District, Unit 1: Roughly bounded by 16th Avenue on the north, 31st Street on the west, 18th Avenue on the south, and 33rd Street on the east. Unit 2: Roughly bounded by 14th Avenue on the north, 39th Street on the west, 18th Avenue on the south, and 1st Street on Rock Island, SG100010709

KENTUCKY

Campbell County

Stevens, John, House, 2150 Wagoner Road, California, SG100010707
Highland Country Club, 931 Alexandria Pike, Fort Thomas, SG100010708

Franklin County

Capital Plaza Hotel, 405 Wilkinson Boulevard, Frankfort, SG100010696

MARYLAND

Charles County

Pomonkey Historic District, Livingston and Metropolitan Church Roads, Pomonkey, SG100010690

MISSOURI

Scott County

Lincoln School, 229 Westgate, Sikeston, SG100010695

MONTANA

Gallatin County

Westgate Village Shopping Center, 1003, 1005, 1007, 1009, 1011 West College Street, Bozeman, SG100010714

NEBRASKA

Lancaster County

War and Victory, (New Deal Work Relief Projects in Nebraska MPS), 3200 Veterans Memorial Drive, Lincoln, MP100010716

NEW YORK

Bronx County

Boston Road Plaza, 2440 Boston Road, Bronx, SG100010703

Middletown Plaza, 3033 Middletown Road, Bronx, SG100010704

Boston-Secor Houses, 3475, 3550, 3555 Bivona Street, 2175–2185 Reed's Mill Lane, Bronx, SG100010705

Erie County

Commercial Row at Broadway and Michigan Avenue, 163–167 Broadway (Route 130), Buffalo, SG100010706

OHIO

Cuyahoga County

Buckeye Commercial Historic District, 11132–12814 Buckeye Road, 2871, 2884 E 116th Street; 2846 E 118th Street, Cleveland, SG100010698

Cedar Branch Young Men's Christian Association (YMCA), 7515 Cedar Avenue, Cleveland, SG100010710

Lucas County

Sumner Street Bridge, 150 Segur Ave., Toledo, SG100010713

Ross County

Elmdale Grange Hall 2162 and Watson One-Room School, Address Restricted, Chillicothe vicinity, SG100010717

VIRGINIA

Campbell County

Dixon Cemetery, Address Restricted, Concord vicinity, SG100010692

Chesterfield County

Fuqua Farm (Boundary Decrease), 8700 Bethia Rd., Chesterfield, BC100010721

Pittsylvania County

Oak Hill, 5981 Berry Hill Road/U.S. 311, Danville vicinity, SG100010693

Virginia Beach INDEPENDENT CITY

Beach Carousel Motel, (Virginia Beach Oceanfront Resort Motels and Hotels, 1955–1970 MPS), 1300 Pacific Avenue, Virginia Beach, MP100010720

WASHINGTON

Skagit County

Burrows Island Light Station, Far western shore of Burrows Island, Anacortes vicinity, SG100010694

WYOMING

Sublette County

Dunham Place, -285 Dunham Road, Big Piney, SG100010712

Additional documentation has been received for the following resource(s):

MARYLAND

Carroll County

Westminster Historic District (Additional Documentation), MD 32 and MD 97, Westminster, AD80001804

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2024–16395 Filed 7–24–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1359]

Certain Portable Battery Jump Starters and Components Thereof (II); Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on July 5, 2024, the presiding administrative law judge (“ALJ”) issued an Initial Determination on Violation of Section 337. On July 19, 2024, the ALJ issued a Recommended Determination on Remedy and Bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT: Namo Kim, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3459. 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: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to certain portable battery jump starters and components thereof imported, sold for importation, and/or sold after importation by respondents ADC Solutions Auto, LLC (d/b/a Type S) ("ADC"), Shenzhen Carku Technology Co., Ltd., Metasee LLC ("Metasee"), Ace Farmer LLC, Shenzhen Gooloo Ecommerce Co., Ltd. and Gooloo Technologies LLC (collectively, "Gooloo"), Hulkman LLC, Shenzhen Konghui Trading Co., Ltd. ("Konghui"), Shenzhenshi Xinmeitemuxiangbao Zhuangyouxiangongsi ("Xinmeite"), Aukey Technology Co., Ltd., Shenzhenshi Shoudiankejijouxiangongsi ("Shoudian"), ChangShaHongMaoKai KeJiYouXianGongSi ("HongMaoKai"), and Shenzhenshi Daosishangmao Youxiangongsi ("Daosi"); and cease and desist orders directed to ADC, Metasee, Gooloo, Konghui, Xinmeite, Shoudian, HongMaoKai, and Daosi. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this

investigation on July 19, 2024. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and
- (v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on Friday, August 23, 2024.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1359") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be

treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of 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: July 22, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-16402 Filed 7-24-24; 8:45 am]

BILLING CODE 7020-02-P

NATIONAL TRANSPORTATION SAFETY BOARD

Investigative Hearing

A recent Alaska Airlines accident in Portland, Oregon, has motivated this investigative hearing.

On January 5, 2024, about 1714 Pacific standard time, Alaska Airlines flight 1282, a Boeing 737-9, N704AL, returned to Portland International Airport (PDX), Portland, Oregon, after the left mid exit door (MED) plug departed the airplane leading to a rapid decompression. The airplane landed on runway 28L at PDX without further incident, and all occupants (2 flight crewmembers, 4 cabin crewmembers, and 171 passengers) deplaned at the

gate. Seven passengers and one flight attendant received minor injuries. The flight was operated under title 14 Code of Federal Regulations (CFR) part 121 as a scheduled domestic passenger flight from PDX to Ontario, California (ONT).

The investigative hearing will discuss the following issue areas:

- Overview of B737–9 Manufacturing and Inspection
- Circumstances that Led to Opening MED Plug
- Safety Management Systems, Quality Management Systems
- FAA Oversight of Boeing and Spirit AeroSystems

Parties to the hearing are the Air Line Pilots Association; Alaska Airlines; Association of Flight Attendants; Federal Aviation Administration; International Association of Machinists and Aerospace Workers; and Spirit AeroSystems.

Order of Proceedings

1. Opening Statement by the Chair of the Board of Inquiry
2. Introduction of the Board of Inquiry and Technical Panel
3. Introduction of the Parties to the Hearing
4. Introduction of Exhibits by Hearing Officer
5. Overview of the incident and the investigation by Investigator-In-Charge
6. Calling of Witnesses by Hearing Officer and Examination of Witnesses by Board of Inquiry, Technical Panel, and Parties
7. Closing Statement by the Chair of the Board of Inquiry

The investigative hearing will be held at the NTSB Boardroom and Conference Center, 429 L'Enfant Plaza East SW, Washington, DC 20594 on Tuesday, August 6, 2024, 9 a.m. to 7 p.m. eastern daylight time (EDT), and Wednesday, August 7, 2024, 9 a.m. to 7 p.m. EDT.

Media planning to cover the investigative hearing are asked to contact Peter Knudson at (202) 314–6100 or mediarelations@ntsb.gov.

The investigative hearing will be transmitted live via the NTSB's YouTube channel at <https://www.youtube.com/user/NTSBgov>. An archival video of the hearing will be available via the website for 30 days after the hearing.

Individuals requiring reasonable accommodation and/or wheelchair access directions should contact Doug Brazy at (202) 314–6563 or by email at AS1282Hearing@ntsb.gov. NTSB Investigative Hearing Officer: Doug Brazy—AS1282Hearing@ntsb.gov.

The National Transportation Safety Board is holding this public hearing

pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and as authorized by 49 CFR 845.2.

LaSean R. McCray,

Alternate Federal Register Liaison Officer.

[FR Doc. 2024–16334 Filed 7–24–24; 8:45 am]

BILLING CODE 7533–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023–45; CP2024–25; MC2024–439 and CP2024–446; MC2024–440 and CP2024–447; MC2024–441 and CP2024–448; MC2024–442 and CP2024–449]

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:* July 29, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- 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):* CP2023–45; *Filing Title:* USPS Notice of Amendment to Priority Mail, First-Class Package Service & Parcel Select Contract 4, Filed Under Seal; *Filing Acceptance Date:* July 19, 2024; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* July 29, 2024.

2. *Docket No(s):* CP2024–25; *Filing Title:* USPS Notice of Amendment to Priority Mail, USPS Ground Advantage & Parcel Select Contract 1 Filed Under Seal; *Filing Acceptance Date:* July 19, 2024; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 29, 2024.

3. *Docket No(s):* MC2024–439 and CP2024–446; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 170 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 19, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* July 29, 2024.

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).

4. *Docket No(s)*: MC2024–440 and CP2024–447; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 171 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Kenneth R. Moeller; *Comments Due*: July 29, 2024.

5. *Docket No(s)*: MC2024–441 and CP2024–448; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 172 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: July 29, 2024.

6. *Docket No(s)*: MC2024–442 and CP2024–449; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 173 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Alireza Motameni; *Comments Due*: July 29, 2024.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Primary Certifying Official.

[FR Doc. 2024–16370 Filed 7–24–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[**Docket Nos.** CP2024–190; MC2024–433 and CP2024–440; MC2024–434 and CP2024–441; MC2024–434 and CP2024–442; MC2024–435 and CP2024–443; MC2024–436 and CP2024–443; MC2024–437 and CP2024–444; MC2024–438 and CP2024–445]

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:* July 26, 2024.

ADDRESSES: Submit comments electronically via the Commission’s

Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- 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,

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).

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)*: CP2024–190; *Filing Title*: USPS Notice of Amendment to Priority Mail, USPS Ground Advantage & Parcel Select Contract 5 Filed Under Seal; *Filing Acceptance Date*: July 18, 2024; *Filing Authority*: 39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: July 26, 2024.

2. *Docket No(s)*: MC2024–433 and CP2024–440; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 166 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: July 26, 2024.

3. *Docket No(s)*: MC2024–434 and CP2024–441; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 167 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: July 26, 2024.

4. *Docket No(s)*: MC2024–435 and CP2024–442; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 168 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory Stanton; *Comments Due*: July 26, 2024.

5. *Docket No(s)*: MC2024–436 and CP2024–443; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 286 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: July 26, 2024.

6. *Docket No(s)*: MC2024–437 and CP2024–444; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 287 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 18, 2024; *Filing Authority*: 39

U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory Stanton; *Comments Due*: July 26, 2024.

7. *Docket No(s)*: MC2024–438 and CP2024–445; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 169 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory Stanton; *Comments Due*: July 26, 2024.

This Notice will be published in the **Federal Register**.

Mallory S. Richards,
Federal Register Liaison.

[FR Doc. 2024–16289 Filed 7–24–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 169 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–438, CP2024–445.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–16318 Filed 7–24–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 163 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–429, CP2024–436.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–16310 Filed 7–24–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 171 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024–440, CP2024–447.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–16320 Filed 7–24–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 170 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–439, CP2024–446.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–16319 Filed 7–24–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 286 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–436, CP2024–443.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–16309 Filed 7–24–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.
DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 173 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–442, CP2024–449.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–16322 Filed 7–24–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 163 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–429, CP2024–436.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–16316 Filed 7–24–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 163 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–429, CP2024–436.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–16317 Filed 7–24–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 165 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–431, CP2024–438.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–16314 Filed 7–24–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 285 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024–432, CP2024–439.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16308 Filed 7–24–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 163 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–429, CP2024–436.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16312 Filed 7–24–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 166 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–433, CP2024–440.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16315 Filed 7–24–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 162 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–428, CP2024–435.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16311 Filed 7–24–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 172 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–441, CP2024–448.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16321 Filed 7–24–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 25, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 164 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–430, CP2024–437.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16313 Filed 7–24–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100564; File No. SR–MRX–2024–23]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

July 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 5, 2024, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand its co-location services.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, 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 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 expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.

The Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11–4”) in response to demand for power and cabinets. NY11–4 is not a new or distinct co-location facility. Instead, NY11–4 is simply an expansion of the existing NY11 data center,³ and the Exchange intends to operate it generally in the same manner as existing aspects of NY11.⁴ Client connections to the matching engine will be equal across the board, within and among NY11 and NY11–4.

The Exchange submits this filing to propose offering new services in NY11–4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11–4 data hall, the Exchange will submit additional filings with the Commission.

NY11–4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11–4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The

³ NY11–4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11–2, NY11–3, and NY11–4.

⁴ One aspect of the data center that will be treated differently in NY11–4 as compared to NY11 at its outset is telecommunications access and inter-client connectivity. In NY11–4, connections between colocated client cabinets and the carrier cage will be of equal length. Inter-client connectivity will also be equalized in NY11–4. The Exchange believes that equalizing telecommunications access and inter-client connectivity in NY11–4 will provide a fair solution and avoid market disruption by avoiding both a race for real estate adjacent to NY11–4 and for particular space in NY11–4. The Exchange believes that these actions would facilitate a fair and orderly market and protect investors and the public interest, consistent with its obligations under the Act.

⁵ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

Ultra High Density Cabinet option would only be offered in NY11–4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11–4, the Super High Density Cabinet in NY11–4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11–4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11–4 will include certain features, including but not limited to: uniform, wider cabinets⁶ (32” W x 48” D x 91” H), cable management, and a rear split door and combo lock.

NY11–4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2x20 amp 110 volt, 2x30 amp 110 volt, 2x20 amp 208 volt, 2x30 amp 208 volt, Phase 3 2x 20 amp 208 volt, Phase 3 2x 30 amp 208 volt, 2x60 amp 208 volt, Phase 3 2x 40 amp 208 volt, Phase 3 2x 50 amp 208 volt, Phase 3 2x 60 amp 208 volt, and 2x30 amp 48 volt DC. For NY11–4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11–4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that these cabinet power options are specific to NY11–4 and that one of these options must be selected for cabinets in NY11–4. Although different cabinet power options will be offered in NY11 and NY11–4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power

⁶ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11–4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

distribution.⁷ Due to higher voltage options being offered in NY11–4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units (“PDUs”) ⁸ in NY11–4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange wishes to simplify and standardize its PDU offering in NY11–4 by offering Phase 1 and Phase 3 ⁹ power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11–4 Exchange access on October 21, 2024 and providing customers access to the space on or after August 5, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11–4, which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services

described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today, the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act because the Exchange’s expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act ¹⁴ because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11–4 because of different power configurations in NY11–4 as compared to NY11, NY11–4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11–4 (and across the data center broadly) on the same terms as any other customer.

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.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. As part of its colocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange’s colocation services, including those proposed herein, are available to any customer and customers that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services based on the requirements of its business operations.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act ¹⁵ and subparagraph (f)(6) of Rule 19b–4 thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

⁷ Customers in NY11–4 will receive comparable power draw/consumption as compared to NY11. Any differences between efficiencies in the customer equipment are negligible.

⁸ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11–4.

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ *Id.*

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2024-23 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-MRX-2024-23. 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. 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-MRX-2024-23 and should be submitted on or before August 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-16300 Filed 7-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100565; File No. SR-NYSEARCA-2024-06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Exchange Rule 5.3-O To Permit the Listing and Trading of Options on Commodity-Based Trust Shares

July 19, 2024.

On January 16, 2024, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Arca Rule 5.3-O(g) to permit the listing and trading of options on Commodity-Based Trust Shares.³ The proposed rule change was published for comment in the **Federal Register** on January 25, 2024.⁴ The Commission received comment letters regarding the proposed rule change.⁵ On March 6, 2024, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁷ On April 24, 2024, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁸ to determine

whether to approve or disapprove the proposed rule change.⁹

Section 19(b)(2) of the Act¹⁰ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on January 25, 2024. July 23, 2024, is 180 days from that date. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days. The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹¹ designates September 21, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSEARCA-2024-06).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-16301 Filed 7-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35280; File No. 812-15491]

Andalusian Credit Company, LLC, et al.

July 19, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").
ACTION: Notice.

Notice of application for an order ("Order") under sections 17(d) and 57(i) of the Investment Company Act of 1940

⁹ See Securities Exchange Act Release No. 100023, 89 FR 34295 (Apr. 30, 2024).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ *Id.*

¹² 17 CFR 200.30-3(a)(57).

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See NYSE Arca Rule 8.201-E(c)(1).

⁴ See Securities Exchange Act Release No. 99398 (Jan. 19, 2024), 89 FR 5029.

⁵ Comment letters on the proposed rule change are available at <https://www.sec.gov/comments/sr-nysearca-2024-06/srnysearca202406.htm>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 99683, 89 FR 17888 (Mar. 12, 2024). The Commission designated April 24, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁸ 15 U.S.C. 78s(b)(2)(B).

(the “Act”) and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (“BDCs”) and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Andalusian Credit Company, LLC, Andalusian Senior Credit Fund I, LP, and Andalusian Credit Partners, LLC.

FILING DATES: The application was filed on July 28, 2023, and amended on January 29, 2024 and April 17, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at *Secretaries-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on August 13, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary at *Secretaries-Office@sec.gov*.

ADDRESSES: The Commission: *Secretaries-Office@sec.gov*. Applicants: Terrence W. Olson, Andalusian Credit Company, LLC, at *terry@andalusiancredit.com*; and Richard Horowitz, Esq., Dechert LLP, at *richard.horowitz@dechert.com*.

FOR FURTHER INFORMATION CONTACT: Matthew Cook, Senior Counsel, or Kyle R. Ahlgren, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ second amended and restated application, dated April 17, 2024, which may be obtained via the Commission’s website by searching for

the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC’s EDGAR system. The SEC’s EDGAR system may be searched at <http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC’s Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–16276 Filed 7–24–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100561; File No. SR–FINRA–2023–016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend FINRA Rule 2210 (Communications with the Public) To Permit Projections of Performance in Institutional Communications and Specified Communications to Qualified Purchasers and Knowledgeable Employees

July 19, 2024.

I. Introduction

On November 13, 2023, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to amend FINRA Rule 2210 (Communications with the Public) (hereinafter, the “proposed rule change” unless otherwise specified). The proposed rule change, as subsequently amended by Amendment No. 1, would allow a member firm to project performance ³ or provide a targeted

return ⁴ with respect to a security, asset allocation, or other investment strategy in limited circumstances and subject to certain conditions. Specifically, the proposed rule change would permit a member firm to project performance or provide a targeted return in: (1) an institutional communication; ⁵ or (2) a communication that is distributed or made available only to: (A) persons meeting the definition of “qualified purchaser” (“QP”) under the Investment Company Act of 1940 (“Investment Company Act”), ⁶ and is a communication that promotes or recommends a member firm’s own unregistered securities or those of a control entity that is exempt from the requirements of FINRA Rule 5122 (Private Placements of Securities Issued by Members) pursuant to FINRA Rule 5122(c)(1)(B) (“Member Private

⁴ “Targeted returns reflect the aspirational performance goals for an investment or investment strategy.” Notice at 82482 n.3.

⁵ An “institutional communication” means “any written (including electronic) communication that is distributed or made available only to institutional investors[] but does not include a member’s internal communications.” FINRA Rule 2210(a)(3). An “institutional investor” means any: “(A) person described in [FINRA] Rule 4512(c), regardless of whether the person has an account with a member; (B) governmental entity or subdivision thereof; (C) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans; (D) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans; (E) member or registered person of such a member; and (F) person acting solely on behalf of any such institutional investor.” FINRA Rule 2210(a)(4). FINRA Rule 4512(c) states that for purposes of Rule 4512, the term “institutional account” shall mean the account of: “(1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.”

⁶ Section 2(a)(51)(A) of the Investment Company Act defines the term “qualified purchaser” as: (i) any natural person who owns not less than \$5 million in investments (as defined by the SEC); (ii) a family-owned company that owns not less than \$5 million in investments; (iii) a trust not formed for the purpose of acquiring the securities offered, as to which each trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clauses (i), (ii), or (iv); and (iv) any other person, acting for its own account or the account of other QPs, who in the aggregate owns and invests on a discretionary basis not less than \$25 million in investments. See 15 U.S.C. 80a–2(a)(51)(A).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ “Projections of performance reflect an estimate of the future performance of an investment or investment strategy, which is often based on historical data and assumptions. Projections of performance are commonly established through mathematical modeling.” See Exchange Act Release No. 98977 (Nov. 17, 2023), 88 FR 82482, 82482 n.3 (Nov. 24, 2023), File No. SR–FINRA–2023–016 (“Notice”), <https://www.govinfo.gov/content/pkg/FR-2023-11-24/pdf/2023-25881.pdf>.

Offerings”);⁷ or (B) QPs or persons meeting the definition of “knowledgeable employee” under Investment Company Act Rule 3c–5 (a “knowledgeable employee”),⁸ and is a communication that promotes or recommends a private placement that is exempt from the requirements of FINRA Rule 5123 (Private Placements of Securities) pursuant to FINRA Rule 5123(b)(1)(B) or FINRA Rule 5123(b)(1)(H), respectively (“Exempted Private Placement”).⁹ The investors who would be eligible to receive communications that include such performance projections or targeted returns under the proposed rule change are hereinafter collectively referred to as “Projection-Eligible Investors.” The proposed rule change also would impose conditions to help ensure that such performance projections or targeted returns have a reasonable basis, are accompanied by certain disclosures, and that member firms communicating such information have written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of their audience.¹⁰

The proposed rule change was published for public comment in the **Federal Register** on November 24, 2023.¹¹ The comment period closed on

December 15, 2023. The Commission received comment letters in response to the Notice.¹² On January 5, 2024, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to February 22, 2024.¹³ On February 22, 2024, FINRA responded to the comment letters received in response to the Notice and filed an amendment to modify the proposed rule change (“Amendment No. 1”).¹⁴ Also on February 22, 2024, the Commission published a notice of filing of Amendment No. 1 and an order instituting proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.¹⁵ The Commission received additional comment letters in response to the OIP.¹⁶ On May 17, 2024, FINRA consented to an extension of the time period in which the Commission must approve or disapprove the proposed rule change to July 21, 2024.¹⁷ On July 17, 2024, FINRA responded to the comment letters received in response to the OIP.¹⁸ This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

FINRA Rule 2210 generally prohibits a member firm’s communications from predicting or projecting performance, implying that past performance will recur, or making any exaggerated or

unwarranted claim, opinion, or forecast.¹⁹ As discussed below, there are three exceptions to this general prohibition; the proposed rule change would create a fourth exception to permit the communication of projected performance or targeted returns in certain narrowly-defined circumstances.²⁰ After summarizing the current regulatory framework, the Commission describes the proposed rule change.

A. Background

1. FINRA Rule 2210 (Communications With the Public)

FINRA Rule 2210 imposes obligations related to, among other things, the approval, review, recordkeeping, filing, and content of member firms’ communications with the public.²¹ FINRA Rule 2210(d)(1) imposes six general standards for the content of a member firm’s communications with the public.²² For example, member firms’ communications must “be based on principles of fair dealing and good faith, . . . be fair and balanced, and . . . provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.”²³ Member firms may not “omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.”²⁴ The standards prohibit “any false, exaggerated, unwarranted, promissory[,] or misleading statement or claim in any communication.”²⁵ Member firms also must consider “the nature of the audience to which the communication will be directed” and provide “details and explanations appropriate to the audience.”²⁶

These standards also include a general prohibition on “predict[ing] or project[ing] performance, imply[ing] that past performance will recur[,] or mak[ing] any exaggerated or unwarranted claim, opinion[,] or forecast.”²⁷ This general prohibition does not apply to three types of communications: hypothetical illustrations of mathematical

⁷ A “member private offering” means “a private placement of unregistered securities issued by a member or a control entity.” FINRA Rule 5122(a)(1). FINRA Rule 5122 (Private Placements of Securities Issued by Members) governs, among other things, the disclosure and filing requirements applicable to member private offerings. FINRA Rule 5122(c)(1)(B) states that member private offerings sold solely to QPs, as defined in Section 2(a)(51)(A) of the Investment Company Act, are exempt from the requirements of FINRA Rule 5122.

⁸ For purposes of the proposed rule change, a “knowledgeable employee” includes any natural person who is an executive officer, director, trustee, general partner, advisory board member, or person serving in similar capacity of the fund excluded from the definition of “investment company” pursuant to Investment Company Act Section 3(c)(7) or certain of its affiliates, and other employees, under certain conditions, who participate in the investment activities of the fund or certain of the fund’s affiliates. See Exchange Act Release No. 99588 (Feb. 22, 2024), 89 FR 14728, 14729 n.26 (Feb. 28, 2024), File No. SR-FINRA-2023-016, <https://www.govinfo.gov/content/pkg/FR-2024-02-28/pdf/2024-04072.pdf> (citing Investment Company Act Rule 3c–5 (17 CFR 270.3c–5(a)(2), (4)) (“OIP”).

⁹ See Notice; OIP. FINRA Rule 5123 governs, among other things, the filing requirements applicable to members that sell a security in a non-public offering in reliance on an available exemption from registration under the Securities Act (“private placement”). FINRA Rule 5123(b)(1)(B) exempts private placements sold solely to QPs from the requirements of FINRA Rule 5123. FINRA Rule 5123(b)(1)(H) exempts private placements sold solely to knowledgeable employees from the requirements of FINRA Rule 5123.

¹⁰ See Notice; OIP.

¹¹ See Notice.

¹² The comment letters received in response to the Notice are available at <https://www.sec.gov/comments/sr-finra-2023-016/srfinra2023016.htm>.

¹³ See letter from Meredith Cordisco, Associate General Counsel, Office of General Counsel, FINRA, to Craig Slivka, Division of Trading and Markets, Commission, dated Jan. 5, 2024, <https://www.finra.org/sites/default/files/2024-01/SR-FINRA-2023-016-extension1.pdf>.

¹⁴ See letter from Meredith Cordisco, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated Feb. 22, 2024, <https://www.sec.gov/comments/sr-finra-2023-016/srfinra2023016-433139-1075042.pdf> (“FINRA Response Letter I”); Amendment No. 1.

¹⁵ See OIP.

¹⁶ The comment letters received in response to the OIP are available at <https://www.sec.gov/comments/sr-finra-2023-016/srfinra2023016.htm>.

¹⁷ See letter from Meredith Cordisco, Associate General Counsel, Office of General Counsel, FINRA, to Craig Slivka, Division of Trading and Markets, Commission, dated May 17, 2024, <https://www.finra.org/sites/default/files/2024-05/FINRA-2023-016-Extension-2.pdf>.

¹⁸ See letter from Meredith Cordisco, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated July 17, 2024 (“FINRA Response Letter II”), <https://www.sec.gov/comments/sr-finra-2023-016/srfinra2023016.htm>.

¹⁹ FINRA Rule 2210(d)(1)(F); see Notice at 82482.

²⁰ Notice at 82483.

²¹ See FINRA Rule 2210.

²² FINRA Rule 2210(d)(1).

²³ FINRA Rule 2210(d)(1)(A).

²⁴ *Id.*

²⁵ FINRA Rule 2210(d)(1)(B) (“No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.”).

²⁶ FINRA Rule 2210(d)(1)(E).

²⁷ FINRA Rule 2210(d)(1)(F).

principles;²⁸ investment analysis tools;²⁹ and price targets in research reports on debt or equity securities.³⁰ Unless one of these three exceptions applies, member communications may not predict or project performance.³¹

2. FINRA's Stated Reasons for the Proposed Rule Change

As stated above, the proposed rule change would permit the presentation of projected performance or targeted returns in institutional communications about a security, asset allocation, or other investment strategy or in communications to QPs and knowledgeable employees about certain private placements. The proposed rule change also would impose conditions to help ensure that such performance projections or targeted returns have a reasonable basis, are accompanied by certain disclosures, and require member firms communicating such information have written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of their audience.

FINRA stated that some of its member firms' customers, especially institutional investors, request projected performance or targeted returns concerning investment opportunities to help them make informed investment

decisions.³² FINRA explained that institutional investors and QPs "often test their own opinions against performance projections they receive from other sources, including issuers and investment advisers."³³ FINRA stated that for this reason projected performance information "may be useful for [investors] that either have the financial expertise to evaluate investments and to understand the assumptions and limitations associated with such projections, or that have resources that provide them with access to financial professionals who possess this expertise."³⁴ However, because FINRA Rule 2210 "generally precludes a member from providing projected performance or targeted returns in marketing communications distributed to institutional investors and QPs, these investors cannot obtain a member's potentially different and valuable perspective."³⁵

Under these circumstances, FINRA stated that FINRA Rule 2210's general prohibition "creates an incentive for issuers to avoid the registered broker-dealer channel to offer securities and instead either use an unregistered firm[] or market securities directly to potential investors."³⁶ FINRA explained that the proposed rule change "would allow members to provide the same or similar information regarding projected performance or targeted returns that investors are receiving from issuers or other unregistered intermediaries" but would impose on the member firm "substantial requirements that enhance investor protections."³⁷ FINRA also stated that member firms dually registered as investment advisers or those that employ dually registered persons already may provide performance projections to their customers.³⁸

FINRA stated that any proposal to permit the use of projected performance or targeted returns in member firms' communications "must not increase the risk of potential harm to retail

investors."³⁹ For that reason, according to FINRA, the proposed rule change would "create a new, narrowly tailored[] exception" to FINRA Rule 2210's general prohibition applicable only to institutional communications and to communications to QPs and knowledgeable employees about certain private placements.⁴⁰ FINRA explained that, in its experience with broker-dealer communications, institutional investors, QPs, and knowledgeable employees are more likely to understand the risks and limitations of projections or targeted returns.⁴¹ Indeed, according to FINRA, the proposed rule change "would not alter the current prohibitions on including projections of performance or targeted returns in most types of retail communications."⁴² In addition, FINRA stated that "no member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to a retail investor."⁴³

FINRA also stated that the proposed rule change is "in many respects consistent with" the Commission's Investment Adviser Marketing Rule⁴⁴ ("IA Marketing Rule").⁴⁵ That rule makes it unlawful for any SEC-registered investment adviser to disseminate any advertisement⁴⁶ that violates the rule's specified general prohibitions.⁴⁷ The IA Marketing Rule's provisions address, among other things, the inclusion of performance in an

²⁸ A member firm may communicate a "hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy." FINRA Rule 2210(d)(1)(F)(i). This exception "applies to tools that serve the function of a calculator that computes the mathematical outcome of certain assumed variables without predicting the likelihood of either the assumed variables or the outcome. For example, this exception applies to a calculator that computes a net amount of savings that an investor would earn over an assumed period of time with assumed variables of rates of returns, frequency of compounding, and tax rates." Notice at 82482.

²⁹ A member firm may publish "[a]n investment analysis tool, or a written report produced by an investment analysis tool, that includes projections of performance provided it meets the requirements of FINRA Rule 2214 [(Requirements for the Use of Investment Analysis Tools)]." FINRA Rule 2210(d)(1)(F)(ii). An "investment analysis tool" is "an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices." Notice at 82482–83 (citing FINRA Rule 2214(b)).

³⁰ A member firm may communicate "[a] price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target." FINRA Rule 2210(d)(1)(F)(iii).

³¹ See FINRA Rule 2210(d)(1)(F).

³² See Notice at 82483.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 82488.

³⁷ *Id.*

³⁸ See *id.* at 82489 ("Some of these members may have Projection-Eligible Investor customers that already have access to or are receiving projections-related communications from a member that is dually registered, a member's advisory affiliate, or an investment adviser owned by an associated person of the member, as part of the clients' investment advisory relationship. For example, some dually registered members and dually registered representatives communicate information regarding projected performance to their investment advisory clients already.").

³⁹ *Id.* at 82483.

⁴⁰ *Id.*; OIP at 14729.

⁴¹ FINRA Response Letter I at 5–6.

⁴² Notice at 82483.

⁴³ *Id.* at 82483 n.18 (citing FINRA Rule 2210(a)(4)).

⁴⁴ See Investment Advisers Act Release No. 5653 (Dec. 22, 2020), 86 FR 13024 (Mar. 5, 2021) (hereinafter, "IA Marketing Rule Adopting Release"), <https://www.govinfo.gov/content/pkg/FR-2021-03-05/pdf/2020-28868.pdf>; SEC Staff, Investment Adviser Marketing: A Small Entity Compliance Guide, <https://www.sec.gov/investment/investment-adviser-marketing>.

⁴⁵ Notice at 82487, 82490.

⁴⁶ For purposes of the IA Marketing Rule, an "advertisement" includes "[a]ny direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a private fund advised by the investment adviser or offers new investment advisory services with regard to securities to current clients or investors in a private fund advised by the investment adviser." 17 CFR 275.206(4)–(e)(1)(i). This general definition is subject to three exceptions, 17 CFR 275.206(4)–(e)(i)(A)–(C), and "advertisement" also includes certain endorsements and testimonials, 17 CFR 275.206(4)–(e)(1)(i).

⁴⁷ 17 CFR 275.206(4)–1.

advertisement, including a general prohibition on the presentation of hypothetical performance information unless certain conditions are met.⁴⁸ These conditions are “designed to address the potential for hypothetical performance to mislead investors.”⁴⁹ These conditions require investment advisers to: (1) adopt policies and procedures reasonably designed to ensure the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience; (2) provide sufficient information to enable the investor to understand the criteria and assumptions made in calculating such hypothetical performance; and (3) provide (or, if the intended audience is an investor in a private fund, provides, or offers to provide promptly) sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions.⁵⁰

B. The Proposed Rule Change

The proposed rule change would create a fourth exception to FINRA Rule 2210’s general prohibition on the communication of projected performance or targeted returns. As stated above, this proposed exception would permit the presentation of such information in: (1) institutional communications; and (2) communications to QPs and knowledgeable employees about certain private placements.⁵¹ This exception would be available for these communications so long as the member

firm: (1) adopts and implements written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the audience; (2) has a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return; and (3) provides certain disclosures.⁵² The Commission describes each aspect of the proposed rule change in turn.

1. Scope Limited to Institutional and Certain Private-Placement Communications

The proposed rule change, as modified by Amendment No. 1, would permit a member firm to project performance or provide a targeted return with respect to a security, asset allocation, or other investment strategy in: (1) an institutional communication; or (2) a communication that is distributed or made available only to (A) QPs and is a communication that promotes or recommends a Member Private Offering, or (B) QPs or knowledgeable employees and is a communication that promotes or recommends an Exempted Private Placement.⁵³

FINRA explained that the proposed rule change “must not increase the risk of potential harm to retail investors,” so it limited Projection-Eligible Investors to those who it believes are more likely to have the expertise or resources to understand the risks and limitations of projected performance or targeted returns.⁵⁴ FINRA stated that Projection-Eligible Investors are “well-established categories of persons that have been previously determined to be financially sophisticated or able to engage expertise for purposes of the securities laws.”⁵⁵ These categories of investors, FINRA stated, “are more likely to understand the risks and limitations of projections or targeted returns.”⁵⁶

2. Written Policies and Procedures

The proposed rule change would require any member firm that communicates projected performance or targeted returns to Projection-Eligible Investors to “adopt[] and implement[] written policies and procedures

reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the investor receiving the communication and to ensure compliance with all applicable requirements and obligations.”⁵⁷ To meet this obligation, FINRA urged member firms to consider including in their written policies and procedures “content that requires the member to consider the audience that receives a communication presenting projected performance or a targeted return.”⁵⁸ FINRA stated that communications pursuant to this proposed rule change “should only be distributed where the member reasonably believes the investors have access to resources to independently analyze this information or have the financial expertise to understand the risks and limitations of such presentations.”⁵⁹

FINRA explained that these written policies and procedures could permit a member firm to “rely[] on its past experiences with particular types” of investors and consider whether particular investors have previously expressed interest or invested in similar securities.⁶⁰ However, FINRA stated that “the mere fact that an investor would be interested in high returns” would not—standing alone—mean that the projected performance or targeted returns “is relevant to the likely financial situation and investment objectives of the intended audience.”⁶¹

3. Reasonable Basis Requirement

The proposed rule change would require any member firm that communicates projected performance or targeted returns pursuant to this exception to have “a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and retain[] written records supporting the basis for such criteria and assumptions.”⁶² FINRA stated that this

⁴⁸ 17 CFR 275.206(4)–(d)(6). For purposes of the IA Marketing Rule, “hypothetical performance” means “performance results that were not actually achieved by any portfolio of the investment adviser.” 17 CFR 275.206(4)–(e)(8). It includes, but is not limited to, performance derived from model portfolios, performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods, and targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement. 17 CFR 275.206(4)–(e)(8)(i). However, “hypothetical performance” does not include certain interactive analysis tools or predecessor performance. 17 CFR 275.206(4)–(e)(8)(ii).

⁴⁹ IA Marketing Rule Adopting Release at 13083.

⁵⁰ 17 CFR 275.206(4)–(d)(6). Collectively, these conditions help to ensure that: (1) advertisements with hypothetical performance information are distributed only to “investors who have access to the resources to independently analyze this information and who have the financial expertise to understand the risk and limitations of these types of presentations;” and (2) the intended audience receives “tailored” information that is sufficient for the intended audience “to understand the criteria, assumptions, risks, and limitations” of the hypothetical performance information. IA Marketing Rule Adopting Release at 13078.

⁵¹ Proposed Rule 2210(d)(1)(F)(iv).

⁵² *Id.*; see Notice at 82483.

⁵³ Proposed Rule 2210(d)(1)(F)(iv)(a).

⁵⁴ See Notice at 82483; see also FINRA Response Letter I at 6.

⁵⁵ Notice at 82483; see Amendment No. 1 at 5 (“FINRA believes that knowledgeable employees typically have intimate knowledge of the operations of private funds, and thus are less likely not to understand the risks and limitations of projections or targeted returns associated with such funds.”).

⁵⁶ OIP at 14729.

⁵⁷ Proposed Rule 2210(d)(1)(F)(iv)(b).

⁵⁸ Notice at 82484.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 82484 n.22.

⁶² Proposed Rule 2210(d)(1)(F)(iv)(c). Because “targeted returns are aspirational and may be used as a benchmark or to describe an investment strategy or objective to measure the success of a strategy,” FINRA acknowledged that they “may not involve all (or any) of the assumptions and criteria applied to generate a projection.” Notice at 82484 n.21. However, FINRA “does not believe that the difference between targeted returns and projections of performance is always readily apparent to the recipient of a communication,” so “the presentation of both projections of performance and targeted returns would be subject to the same conditions, including that both must have a reasonable basis.” Notice at 82484 n.21.

proposed obligation “follows well-established precedents.”⁶³ Specifically, FINRA stated that FINRA Rules 2210 and 2241 (Research Analysts and Research Reports) require a price target in a research report to have a “reasonable basis,”⁶⁴ and SEC rules require certain projections of future economic performance “to be based on good faith and have a reasonable basis.”⁶⁵

FINRA stated that it “believes that it is important for members to consider appropriate factors in forming a reasonable basis for the criteria used and assumptions made in calculating projected performance or targeted returns.”⁶⁶ Accordingly, to help guide member firms’ reasonable basis determination, the proposed rule change also would include a non-exhaustive list of factors that “members should consider” when meeting this obligation.⁶⁷ These factors—no one of which is determinative—include: (1) global, regional, and country macroeconomic conditions; (2) documented fact-based assumptions concerning the future performance of capital markets; (3) in the case of a single security issued by an operating company, the issuing company’s operating and financial history; (4) the industry’s and sector’s current market conditions and the state of the business cycle; (5) if available, reliable multi-factor financial models based on macroeconomic, fundamental, quantitative, or statistical inputs, taking into account the assumptions and potential limitations of such models, including the source and time horizon of data inputs; (6) the quality of the assets included in a securitization; (7) the appropriateness of selected peer-group comparisons; (8) the reliability of research sources; (9) the historical performance and performance volatility of the same or similar asset classes; (10) for managed accounts or funds, the past performance of other accounts or funds managed by the same investment adviser or sub-adviser, provided such accounts or funds had substantially similar investment objectives, policies, and strategies as the account or fund for which the projected performance or targeted returns are shown; (11) for fixed income investments and holdings, the average weighted duration and maturity; (12) the impact of fees, costs,

and taxes; and (13) expected contribution and withdrawal rates by investors.⁶⁸ FINRA explained that these factors “incorporate[] some of the relevant factors that members of the financial research and analysis industry use when considering the basis for a recommendation to a customer.”⁶⁹

The proposed rule change also would prohibit member firms from basing projected performance or targeted returns upon: (1) “hypothetical, back-tested performance;” or (2) “the prior performance of a portfolio or model that was created solely for the purpose of establishing a track record.”⁷⁰ FINRA explained that “back[-]tested performance may pose an increased risk for misleading investors, as it allows hypothetical investment decisions to be optimized by hindsight.”⁷¹

4. Disclosure Requirements

The proposed rule change would impose three disclosure requirements on member firms that communicate projected performance or targeted returns pursuant to this exception. First, any communication of projected performance or targeted returns to a Projection-Eligible Investor must “prominently disclose[] that the projected performance or targeted return is hypothetical in nature and that there is no guarantee that the projected or targeted performance will be achieved.”⁷²

Second, the proposed rule change would require any member firm communicating projected performance or targeted returns to a Projection-Eligible Investor to “provide[] sufficient information to enable the investor to understand . . . the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses.”⁷³ FINRA explained that this requirement “is not intended to prescribe any particular methodology or calculation of such performance,” and it does not “expect a firm to disclose proprietary or confidential information regarding the firm’s methodology and criteria.”⁷⁴ FINRA stated, however, that firms “would be expected . . . to provide a general description of the methodology used sufficient to enable the investors to

understand the basis of the methodology, as well as the assumptions underlying the projection or targeted return.”⁷⁵ Absent these required disclosures, FINRA explained, “it is more likely that a projection or targeted return would mislead a potential investor.”⁷⁶

Third, the proposed rule change would require any member firm communicating projected performance or targeted returns to a Projection-Eligible Investor to “provide[] sufficient information to enable the investor to understand . . . the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.”⁷⁷ FINRA explained that this requirement “is intended to help ensure that such investors do not unreasonably rely on a projection or targeted return given its uncertainty and risks.”⁷⁸

III. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA’s response to the comments, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.⁷⁹ Specifically, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.⁸⁰

Specifically, the proposed rule change would create a reasonably tailored exception from FINRA Rule 2210’s general prohibition on the dissemination of performance projections or targeted returns in a member firm’s communications. The proposed rule change would allow member firms to provide the same or similar information regarding projected

⁶³ *Id.* at 82484.

⁶⁴ *Id.* (citing FINRA Rules 2210(d)(1)(F)(iii), 2241(c)(1)(B)).

⁶⁵ *Id.* (citing Securities Act Regulation S–K, 17 CFR 229.10(b)).

⁶⁶ *Id.*

⁶⁷ Proposed Rule 2210.01(a).

⁶⁸ *Id.*

⁶⁹ Notice at 82485 (citing CFA Institute, Standards of Practice Handbook, 155–56 (11th ed. 2014)).

⁷⁰ Proposed Rule 2210.01(b).

⁷¹ FINRA Response Letter I at 14.

⁷² Proposed Rule 2210(d)(1)(F)(iv)(d).

⁷³ Proposed Rule 2210(d)(1)(F)(iv)(e).

⁷⁴ Notice at 82485.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Proposed Rule 2210(d)(1)(F)(iv)(e).

⁷⁸ Notice at 82485.

⁷⁹ In approving this rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸⁰ 15 U.S.C. 78o–3(b)(6).

performance or targeted returns that are provided to investors by issuers and other intermediaries, subject to requirements reasonably designed to protect investors and the public interest. It would limit the scope of the permissible audience to certain categories of investors that FINRA believes have the expertise or resources necessary to understand the risks and limitations of projected performance or targeted returns. It also would permit communication of projected performance or targeted returns only where the member firm complies with certain conditions reasonably designed to protect investors. In particular, the proposed rule change would require member firms to: (1) adopt and implement written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the audience; (2) have a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return; and (3) provide certain disclosures. Accordingly, and as explained in more detail below, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act. The Commission addresses the proposed rule change's specific provisions, and any related comments, in turn.

A. Scope of the Exception

As originally proposed in the Notice, the proposed rule change would have permitted a member firm to project performance or provide a targeted return with respect to a security, asset allocation, or other investment strategy in: (1) an institutional communication; or (2) a communication that is distributed or made available only to QPs, and is a communication that promotes or recommends a Member Private Offering or a private placement that is exempt from the requirements of FINRA Rule 5123 pursuant to FINRA Rule 5123(b)(1)(B).⁸¹ In response to commenters, and as discussed below, Amendment No. 1 would also permit knowledgeable employees to receive performance projections or targeted returns about Exempted Private Placements (that is, specified private placements that are sold solely to QPs and knowledgeable employees).⁸²

Multiple commenters asked that FINRA expand the scope of the proposed rule change to include a broader set of investors, a broader set of

investments, and a broader set of performance information.⁸³ One commenter took no position on the proposed rule change but urged caution in the implementation and enforcement of the proposed rule change.⁸⁴ Another commenter, on the other hand, opposed the provision of projected performance or targeted returns to any investor.⁸⁵ The Commission addresses each of these issues in turn.

1. Scope of Permissible Investors

Many commenters requested that the proposed rule change be expanded to permit the communication of projected performance to: all investors;⁸⁶ accredited investors;⁸⁷ or knowledgeable employees.⁸⁸ One commenter opposed the communication of projected performance or targeted returns altogether.⁸⁹

With respect to expanding the scope of the exclusion to all investors, and not just a subset of investors, one commenter stated that broker-dealers should be permitted to communicate projected performance and targeted returns equally to all investors, "subject to the same conditions as the IA

Marketing Rule, which requires investment advisers to consider the intended audience for the communications."⁹⁰ A second commenter stated that the protections provided by Regulation Best Interest and FINRA Rule 2210's general content standards justify the extension of the proposed rule change's scope to retail communications.⁹¹ This commenter stated that, in lieu of limitations on the scope of Projection-Eligible Investors, FINRA could protect retail investors by publishing guidance, similar to that provided by the Commission in the IA Marketing Rule release, that it "intend[s] for advertisements including hypothetical performance information to only be distributed to investors who have access to the resources to independently analyze this information and who have the financial expertise to understand the risks and limitations of these types of presentations."⁹²

With respect to expanding to accredited investors, one commenter stated that accredited investors "are also likely to have the sophistication and resources to assess performance projections and targeted returns properly."⁹³ A second commenter requested that the proposed rule change extend to accredited investors under Regulation D where the broker-dealer recommends (and does not merely promote) private placements offered only to accredited investors, in light of the obligations that apply under Regulation Best Interest, the regulatory filing and review procedures of FINRA Rules 5122 and 5123,⁹⁴ and the due diligence requirements of Regulation D.⁹⁵ A third commenter, however, urged caution about extending the communication of projected

⁸³ See, e.g., letters from Bernard Canepa, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated Dec. 15, 2023, at 2–3, <https://www.sec.gov/comments/sr-fina-2023-016/sr-fina-2023016-314759-820242.pdf> ("SIFMA Letter"); Dorothy Donohue, Deputy General Counsel, and Matthew Thornton, Associate General Counsel, Investment Company Institute, dated Dec. 15, 2023, at 5–7, <https://www.sec.gov/comments/sr-fina-2023-016/sr-fina-2023016-314280-819322.pdf> ("ICI Letter I"); Anya Covernan, President and CEO, Institute for Portfolio Alternatives, dated Dec. 15, 2023, at 5, <https://www.sec.gov/comments/sr-fina-2023-016/sr-fina-2023016-314439-819782.pdf> ("IPA Letter"); Jack O'Brien, Morgan, Lewis & Bockius LLP, dated Mar. 25, 2024, at 3, <https://www.sec.gov/comments/sr-fina-2023-016/sr-fina-2023016-450559-1152522.pdf> ("Morgan Lewis Letter"); Dechert LLP, dated Dec. 15, 2023, at 2–8, <https://www.sec.gov/comments/sr-fina-2023-016/sr-fina-2023016-314499-819902.pdf> ("Dechert Letter"); Jay Knight, Federal Regulation of Securities Committee, ABA Business Law Section, dated Jan. 8, 2024, at 3, <https://www.sec.gov/comments/sr-fina-2023-016/sr-fina-2023016-368259-893862.pdf> ("ABA Letter"); Molly Diggins, Partner & General Counsel, Monument Group, Inc., dated Jan. 31, 2024, at 3, <https://www.sec.gov/comments/sr-fina-2023-016/sr-fina-2023016-418839-996922.pdf> ("Monument Group Letter II").

⁸⁴ See letter from Joseph Peiffer, President, Public Investors Advocate Bar Associations, dated Dec. 15, 2023, <https://www.sec.gov/comments/sr-fina-2023-016/sr-fina-2023016-313899-818504.pdf> ("PIABA Letter").

⁸⁵ See letter from the Center for American Progress, dated Apr. 12, 2024, <https://www.sec.gov/comments/sr-fina-2023-016/sr-fina-2023016-458213-1173034.pdf> ("CAP Letter").

⁸⁶ See SIFMA Letter at 2; ICI Letter I at 5–6.

⁸⁷ See SIFMA Letter at 2–3; IPA Letter at 5; Morgan Lewis Letter at 3.

⁸⁸ See, e.g., SIFMA Letter at 2–3; Dechert Letter at 8.

⁸⁹ CAP Letter.

⁹⁰ SIFMA Letter at 2.

⁹¹ See ICI Letter I at 5–6.

⁹² ICI Letter I at 6. Indicating that the IA Marketing Rule does not restrict the scope of investors eligible to receive hypothetical performance, a third commenter stated that FINRA should eliminate any such restrictions from the proposed rule change. Morgan Lewis Letter at 2–3. This commenter explained that this asymmetry would result in a lack of "any meaningful harmonization between the [IA] Marketing Rule and FINRA Rule 2210 with respect to hypothetical performance and will only enhance information asymmetries that already exist in the market." *Id.* at 2.

⁹³ SIFMA Letter at 2–3; see Morgan Lewis Letter at 3 (asserting that FINRA should expand the scope of Projection-Eligible Investors to include accredited investors if FINRA insisted on limiting the scope to certain investors).

⁹⁴ This commenter explained that FINRA's Corporate Financing Department reviews private placement memoranda and retail communications under FINRA Rules 5122 and 5123 and considers "whether the member [firm] appears to have conducted a reasonable investigation of the issuer." IPA Letter at 5–6.

⁹⁵ See IPA Letter at 5–6.

⁸¹ Notice at 82483–84; proposed Rule 2210(d)(1)(F)(iv)(a).

⁸² Proposed Rule 2210(d)(1)(F)(iv)(a).

performance and targeted returns to accredited investors, explaining that the number of accredited investors has substantially increased since the Commission first established the category in 1982 and expressing concern that it “contains an increasing amount of investors [who] do not have the sophistication or financial wherewithal to adequately ascertain the risks” associated with projected performance and targeted returns.⁹⁶

With respect to expanding to knowledgeable employees, one commenter requested that the proposed rule change extend to knowledgeable employees of private funds that are excluded from the definition of investment company pursuant to Investment Company Act Section 3(c)(1) and 3(c)(7) (referred to as Section 3(c)(1) or Section 3(c)(7) funds, respectively),⁹⁷ explaining that such employees “are also likely to have the sophistication and resources to assess performance projections and targeted returns properly.”⁹⁸ A second commenter requested that the proposed rule change extend to knowledgeable employees of Section 3(c)(7) funds because Section 3(c)(7) permits the sale of those funds’ securities to both QPs and knowledgeable employees who are not QPs.⁹⁹ This commenter explained that “executive officers and investment professionals with intimate knowledge of the operations of private funds marketed in member communications to the public” are not the intended beneficiaries of the proposed rule change’s investor-protection conditions.¹⁰⁰

⁹⁶ PIABA Letter at 2. PIABA indicated that the number of investors who qualified as “accredited” rose from approximately 1.8% of U.S. households in 1983 to approximately 9.9% of U.S. households in 2013. *Id.* (citing Commissioner Luis Aguilar, Statement on Revisiting “Accredited Investor” Definition to Better Protect Investors, n.3 (Dec. 17, 2014), <https://www.sec.gov/news/statement/spch121714laa> (figures not adjusted for inflation)).

⁹⁷ Investment Company Act Rule 3c–5 generally defines a “knowledgeable employee” as certain persons associated with private funds that would be investment companies but for the exclusions provided in Section 3(c)(1) or (c)(7) funds. *See* Investment Company Act Rule 3c–5 (17 CFR 270.3c–5(a)(2), (a)(4)–(6)). Investment Company Act Section 3(c)(1) generally excludes from the definition of “investment company” “[a]ny issuer whose outstanding securities . . . are beneficially owned by not more than one hundred persons . . . and which is not making and does not presently propose to make a public offering of its securities,” and Section 3(c)(7) generally excludes “[a]ny issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are [QPs], and which is not making and does not at that time propose to make a public offering of such securities.” 15 U.S.C. 80a–3(c)(1) and (c)(7).

⁹⁸ SIFMA Letter at 2–3.

⁹⁹ Dechert Letter at 8.

¹⁰⁰ *Id.*

Another commenter, however, urged the Commission to disapprove the proposed rule change.¹⁰¹ This commenter stated that FINRA Rule 2210 provides the only “meaningful protection” to investors—regardless of their expertise and resources—in securities exempted from registration and the public disclosure framework.¹⁰² Without registration and public disclosures, the commenter stated, it is difficult to reliably project performance or provide targeted returns for these investments.¹⁰³

FINRA disagreed with the commenter opposing the proposed rule change, stating that the proposed rule change “will benefit investors without sacrificing investor protection, similar to the benefits that the Commission outlined in its adoption of the IA Marketing Rule related to investment advisers’ presentation of hypothetical

¹⁰¹ *See* CAP Letter; *see also* PIABA Letter at 2 (urging FINRA to “be mindful of the challenges accompanying this proposal and devote adequate resources to policing all communications,” keeping in mind that any weakening of communication standards “will only serve to harm individual investors.”). CAP stated that—as a general matter—FINRA has failed to articulate the basis for the proposed rule change. *See* CAP Letter at 3, 6. FINRA disagreed, explaining that its stakeholder engagement led to repeated requests for more permissive use of projected performance and targeted returns and greater regulatory harmonization with the IA Marketing Rule. FINRA Response Letter II at 11–14. Through this engagement, FINRA also learned that institutional investors often request this information from broker-dealers and that “institutional investors and QPs often test their own opinions against performance projections they receive from other sources, including from issuers and investment advisers.” *Id.* at 13–14. As discussed in this order, FINRA reasonably articulated a basis for approval of the proposed rule change consistent with the Exchange Act. The proposed rule change would permit the communication of projected performance or targeted returns only in narrow circumstances and when certain conditions reasonably designed to protect investors are met.

¹⁰² CAP Letter at 3–4 (explaining that investors of any level may be “misled by cherry-picked or inaccurate information and dubious projections or predictions”).

¹⁰³ *See id.* (citing Tyler Gellasch et al., “How Exemptions From Securities Laws Put Investors and the Economy at Risk,” Center for American Progress (Mar. 22, 2023), <https://www.americanprogress.org/article/how-exemptions-from-securities-laws-put-investors-and-the-economy-at-risk/>). CAP also stated that the proposed rule change would be inconsistent with the Commission’s recently finalized Private Fund Advisers rule’s “express purpose” to promote the standardization of information disclosures. CAP Letter at 6 (citing Investment Advisers Act Release No. 6383 (Aug. 23, 2023), 88 FR 63206 (Sep. 14, 2023)). In early June 2024, the Fifth Circuit issued a ruling that vacated the Private Fund Advisers rules. *See Nat’l Ass’n of Priv. Fund Managers v. SEC*, No. 23–60471, 2024 U.S. App. LEXIS 13645 (5th Cir. June 5, 2024). In any event, as FINRA explained, the proposed rule change serves a different purpose from and is not inconsistent with the Private Fund Advisers rules. *See* FINRA Response Letter II at 16.

performance.”¹⁰⁴ Further, FINRA reiterated that “broker-dealers are generally prohibited from using projections of performance and targeted returns in their communications” and that the proposed rule change would allow such projections and targeted returns “under narrow circumstances and only when the safeguarding conditions are met.”¹⁰⁵ Importantly, FINRA stated that one such condition is the requirement that the member firm have a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return.¹⁰⁶ What is more, FINRA stated that FINRA Rule 2210’s general content standards would continue to apply, and projected performance and targeted returns that are “misleading or lack a sound basis will continue to be prohibited” under the proposed rule change.¹⁰⁷

FINRA also disagreed with the commenter’s assertion that the absence of public disclosure obligations makes it practically impossible to reliably project performance for private placements.¹⁰⁸ FINRA stated that even without public disclosure obligations, private placements are subject to antifraud provisions of the federal securities laws, they typically do provide disclosures,¹⁰⁹ and there are generally accepted methods to assess private company valuation¹¹⁰ and forecasts.¹¹¹ In any event, FINRA stated that the proposed rule change would prohibit the communication of projected performance or targeted returns where the member firm “is not satisfied that it can form a reasonable basis [for such information] because of what it perceives as unreliable or unsubstantiated information on the issuer.”¹¹²

¹⁰⁴ FINRA Response Letter II at 11. FINRA explained that investors may benefit from projected performance and targeted returns “when presented in a context that helps investors to better understand the information.” *Id.* Toward this end, FINRA noted that the proposed rule change imposes multiple disclosure-related obligations. *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 15.

¹⁰⁷ *Id.* at 14–15.

¹⁰⁸ *Id.* at 15–16.

¹⁰⁹ *Id.* (citing Andrew N. Vollmer, *Evidence of the Use of Disclosure Documents in Private Securities Offerings to Accredited Investors*, Mercatus Working Paper, Mercatus Center at George Mason University (Oct. 2020)).

¹¹⁰ *Id.* at 16 (citing CFA Institute, Private Company Valuation, <https://www.cfainstitute.org/en/membership/professional-development/refresher-readings/private-company-valuation>).

¹¹¹ *Id.* (citing CFA Institute, Company Analysis, Forecasting, <https://www.cfainstitute.org/en/membership/professional-development/refresher-readings/Company-Analysis-Forecasting>).

¹¹² *Id.* at 15.

FINRA acknowledged that the proposed rule change would impose restrictions not present in the IA Marketing Rule, but it stated that the proposed rule change was an incremental amendment that “would nevertheless be beneficial in furthering regulatory harmonization.”¹¹³ With this in mind, FINRA also declined to amend the proposed rule change to permit the use of projected performance or targeted returns in communications with any investor or more narrowly to accredited investors, as requested by some commenters.¹¹⁴ FINRA stated that FINRA Rule 2210’s general prohibition against performance projections “is intended to protect investors who may lack the capacity to understand the risks and limitations of using projected performance in making investment decisions.”¹¹⁵ FINRA stated that it is appropriate to limit the scope of Projection-Eligible Investors to “specified, well-established categories of persons that have been previously determined to be financially sophisticated or able to engage expertise for purposes of the securities laws” because they “are most capable to understand the risks and limitations of using projected performance.”¹¹⁶ More specifically, with respect to accredited investors, FINRA stated that the percentage of U.S. households that qualified as “accredited investors” has increased from approximately 1.8% in 1983 to approximately 18.5% in 2022.¹¹⁷ Unlike the Projection-Eligible Investors covered by the proposed rule change, FINRA stated that accredited investors—as a class—“may not possess the same level of financial expertise to evaluate investments and to understand the assumptions and limitations associated with such projections and targeted returns (or have resources that provide them with access to financial professionals who possess this expertise).”¹¹⁸ FINRA further stated that it “anticipates monitoring how projections of performance and targeted returns are used for the limited categories of investors, as well as the SEC’s experience with hypothetical performance in its recently adopted IA Marketing Rule, in considering whether to further expand the use of projections and targeted returns in the future.”¹¹⁹

However, in response to comments requesting expansion to include knowledgeable employees, FINRA expanded the proposed rule change to permit the communication of projected performance or targeted returns about Exempted Private Placements to knowledgeable employees.¹²⁰ FINRA explained that knowledgeable employees, such as executive officers, directors, trustees, general partners, and advisory board members, “typically have intimate knowledge of the operations of private funds, and thus are less likely not to understand the risks and limitations of projections or targeted returns associated with such funds.”¹²¹ FINRA also concluded that this amendment would appropriately align the scope of Projection-Eligible Investors with the scope of investors permitted to invest in Section 3(c)(7) funds: both QPs and knowledgeable employees who are not QPs.¹²² FINRA explained that the proposed rule change’s limitation to Projection-Eligible Investors would render it “highly unlikely” that a knowledgeable employee of a Section 3(c)(1) or 3(c)(5) fund would be eligible to receive projected performance or targeted returns.¹²³ Although “it is theoretically possible” that a member firm could sell

¹²⁰ *Id.* at 6; see proposed Rule 2210(d)(1)(F)(iv)(a).

¹²¹ FINRA Response Letter I at 6.

¹²² See *id.* Section 3(c)(7) of the Investment Company Act excludes from the definition of “investment company” any issuer whose outstanding securities “are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers.” 15 U.S.C. 80a–3(c)(7)(A). For purposes of determining its eligibility for the exclusion provided by Section 3(c)(7), a private fund need not consider any securities beneficially owned by a knowledgeable employee. Investment Company Act Rule 3c–5 (17 CFR 270.3c–5(b)). Notwithstanding this eligibility rule, the proposed rule change—as originally proposed—would not have permitted communications of projected performance or targeted returns to QPs about a Section 3(c)(7) fund if that fund was sold to both QPs and knowledgeable employees.

¹²³ FINRA Response Letter II at 6 n.17 (citing FINRA Response Letter I at n.30). Section 3(c)(5) of the Investment Company Act excludes from the definition of investment company “[a]ny person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interest in real estate.” 15 U.S.C. 80a–3(c)(5). Unlike securities offerings made pursuant to Sections 3(c)(1) and 3(c)(7) which are required to be made privately, offerings pursuant to Section 3(c)(5) may be made either publicly (either listed on an exchange or unlisted) or privately.

shares of a Section 3(c)(1) or 3(c)(5) fund only to QPs or knowledgeable employees, FINRA reasoned that such a circumstance would be unlikely because those funds are structured “to allow sales to a wider range of investors.”¹²⁴ In limiting the use of projected performance or targeted returns to QPs and knowledgeable employees in communications that relate to offerings that are sold solely to these types of sophisticated investors, FINRA stated that it “may be limiting the risk that communications that contain projections or targeted returns would be provided erroneously to less sophisticated investors, including retail investors, in contravention of the rule.”¹²⁵

One commenter offered “no objection” to Partial Amendment No. 1.¹²⁶

The scope of the proposed rule change is reasonably limited to communications with Projection-Eligible Investors.¹²⁷ Because FINRA Rule 2210’s general prohibition of projected performance is designed to protect investors who may lack the expertise or resources to understand its risks and limitations, it is reasonable for FINRA to limit the proposed rule change to certain categories of investors. Moreover, the purpose of the proposed rule change is not furthering regulatory harmonization, but incrementally expanding FINRA Rule 2210’s exceptions to the general prohibition against member firms’ communicating projected performance or targeted returns.¹²⁸

FINRA further reasonably determined to decline requests to extend the scope of the proposed rule change to include any accredited investor. A person may qualify as an accredited investor by falling within one of 13 separate qualification categories.¹²⁹ These categories include a broader range of investors than QPs, including “[a]ny natural person whose individual net worth, or joint net worth with that person’s spouse or spousal equivalent, exceeds \$1,000,000”¹³⁰ and “[a]ny natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint

¹²⁴ FINRA Response Letter II at 6 n.17 (citing FINRA Response Letter I at n.30).

¹²⁵ *Id.* at 7.

¹²⁶ Letter from Dorothy Donohue, Deputy General Counsel, and Matthew Thornton, Associate General Counsel, Investment Company Institute, dated Mar. 15, 2024, at 2, <https://www.sec.gov/comments/sr-fina-2023-016/srfinra2023016-447019-1142723.pdf> (“ICI Letter II”).

¹²⁷ FINRA Response Letter I at 8.

¹²⁸ FINRA Response Letter II at 7, 12.

¹²⁹ 17 CFR 230.501(a).

¹³⁰ 17 CFR 230.501(a)(5).

¹¹³ *Id.* at 12.

¹¹⁴ FINRA Response Letter I at 5–7.

¹¹⁵ *Id.* at 5–6.

¹¹⁶ *Id.* at 5.

¹¹⁷ *Id.* at 7 n.28 (citing SEC Staff, Review of the “Accredited Investor” Definition (Dec. 14, 2023), <https://www.sec.gov/files/review-definition-accredited-investor-2023.pdf>).

¹¹⁸ *Id.* at 7.

¹¹⁹ *Id.* at 8.

income with that person's spouse or spousal equivalent in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year."¹³¹ SEC Staff indicated in 2023 that "[l]imited information is available on the financial sophistication of accredited investors, which makes it challenging to assess the effectiveness of the definition's financial thresholds as a proxy for such sophistication."¹³² For these reasons, it is reasonable for FINRA to decline requests to extend the scope of the proposed rule change to include any accredited investor.

The potential application of Regulation Best Interest does not justify an extension of the proposed rule change to accredited investors or, more broadly, to all investors. Regulation Best Interest would provide additional protections to retail customers where a member firm's communication of projected performance or targeted returns involves a recommendation. The proposed rule change, however, would permit the communication of projected performance or targeted returns to Projection-Eligible Investors in communications that do not involve recommendations (and thus do not trigger Regulation Best Interest's protections).¹³³ Moreover, Regulation Best Interest and the proposed rule change serve different ends—Regulation Best Interest regulates the conduct of member firms and their associated persons in making recommendations to retail customers,¹³⁴ whereas the proposed rule change is designed, among other things, to help equip Projection-Eligible Investors with the information necessary to understand the risks and limitations of projected performance and targeted returns.¹³⁵

For these same reasons, the proposed rule change reasonably expands the scope of Projection-Eligible Investors to cover knowledgeable employees receiving projected performance or targeted returns about Exempted Private Placements. As stated above, FINRA

originally limited the proposed rule change to institutional communications and communications promoting Member Private Offerings and Exempted Private Placements that are sold only to QPs.¹³⁶ However, so-called "knowledgeable employees," such as executive officers, directors, trustees, general partners, and advisory board members of private funds, should have—because of their positions—knowledge that would equip them to understand the risks and limitations of projected performance or targeted returns.¹³⁷ Indeed, FINRA recognized that "knowledgeable employees typically have intimate knowledge of the operations of private funds, and thus are less likely" to misunderstand "the risk and limitations of projections or targeted returns associated with such funds."¹³⁸ Based on the nature of knowledgeable employees' positions, Amendment No. 1's extension of Projection-Eligible Investors to include such knowledgeable employees is reasonable and may also limit the risk of inadvertent disclosure of projections or targeted returns to investors who may lack the resources to understand the risks limitations of such projection information.

2. Scope of Permissible Investments

The proposed rule change would permit the communication of projected performance and targeted returns to QPs so long as the communication promotes or recommends a Member Private Offering or an Exempted Private Placement.¹³⁹ The proposed rule change also would permit the communication of projected performance and targeted returns to knowledgeable employees so long as the communication promotes or recommends an Exempted Private

Placement.¹⁴⁰ Member Private Offerings are private placements sold solely to QPs,¹⁴¹ and Exempted Private Placements are private placements sold solely to QPs or knowledgeable employees.¹⁴²

Three commenters stated that the proposed rule change should permit the communication of projected performance and targeted returns to QPs, regardless of the type of investment.¹⁴³ For example, one of these commenters asked that the proposed rule change be "product agnostic," allowing QPs to receive projected performance and targeted returns for private funds that are exempt from the definition of investment company under Investment Company Act Sections 3(c)(1) and 3(c)(5) (and other non-3(c)(7) funds) even where those funds are available to non-QPs.¹⁴⁴ This commenter explained that FINRA could mitigate the risk of indirect distribution of projected performance or targeted returns to non-QP investors by labeling covered materials as "for QPs only" or instructing QP recipients not to disseminate the material to non-QPs.¹⁴⁵ Two other commenters stated that QP-status alone—regardless of the type of investment—should be sufficient for eligibility to receive projected performance and targeted returns.¹⁴⁶

¹⁴⁰ Proposed Rule 2210(d)(1)(F)(iv)(a).

¹⁴¹ *Id.* ("that promotes or recommends a Member Private Offering that is exempt from the requirements of Rule 5122 pursuant to Rule 5122(c)(1)(B)"); FINRA Rule 5122(c)(1)(B) (exempting private placements "sold solely to . . . qualified purchasers").

¹⁴² Proposed Rule 2210(d)(1)(F)(iv)(a) ("that promotes or recommends a private placement that is exempt from the requirements of Rule 5123 pursuant to Rule 5123(b)(1)(B) or Rule 5123(b)(1)(H), respectively."); FINRA Rule 5123(b)(1)(B) (exempting "offerings sold by the member or person associated with the member solely to . . . qualified purchasers"); 5123(b)(1)(H) (exempting "offerings sold by the member or person associated with the member solely to . . . knowledgeable employees").

¹⁴³ See SIFMA Letter at 3; ICI Letter I at 6–7; ABA Letter at 3.

¹⁴⁴ SIFMA Letter at 3.

¹⁴⁵ *Id.*

¹⁴⁶ ICI Letter I at 6–7 ("If QP status is meant to be a proxy for financial sophistication and resources, it makes no sense to prohibit QPs from receiving performance projections or targets for more highly regulated investments available to retail investors (e.g., mutual funds and ETFs) when they would be permitted for private placements."); ABA Letter at 3 ("[T]he Committee believes that QPs can generally be expected to have the requisite degree of sophistication and resources available to them to benefit, rather than be susceptible to harm, from receiving targeted returns and projections. The Committee believes that this is the case regardless of whether the relevant broker-dealer communication is in relation to an offering in which only QPs can invest (e.g., a 3(c)(7) Fund offering) or an offering in which non-QPs can also invest (e.g., a fund offering that is exempt from

Continued

¹³¹ 17 CFR 230.501(a)(6); see also FINRA Response Letter I at 7 n.25 (noting these categories of accredited investors).

¹³² Review of the "Accredited Investor" Definition at 35, *supra* note 117. This is a report by the staff of the U.S. Securities and Exchange Commission. The Commission has expressed no view regarding the analysis, findings, or recommendations contained herein.

¹³³ See FINRA Response Letter I at 12 ("FINRA Rule 2210 is broader and governs any communications that a member distributes or makes available to investors, regardless of whether the communications contain a recommendation that would also trigger Rule 2111 or Regulation Best Interest." (emphasis in original)).

¹³⁴ See 17 CFR 240.15l–1.

¹³⁵ See Notice at 82488.

¹³⁶ FINRA Response Letter I at 5–6.

¹³⁷ See Notice at 82483; FINRA Response Letter I at 7; Amendment No. 1 at 5 ("FINRA believes that knowledgeable employees typically have intimate knowledge of the operations of private funds, and thus are less likely not to understand the risks and limitations of projections or targeted returns associated with such funds.").

¹³⁸ FINRA Response Letter I at 6.

¹³⁹ Proposed Rule 2210(d)(1)(F)(iv)(a). As noted above, as originally proposed, the proposed rule change would have permitted the communication of projected performance and targeted returns to QPs so long as the communication promotes or recommends a Member Private Offering or a private placement that is exempt from the requirements of FINRA Rule 5123 pursuant to Rule 5123(b)(1)(B) (that is, a private placement sold solely to QPs). As a result of Amendment No. 1, the proposed rule change would permit such communications to QPs so long as the communication promotes or recommends: (1) a Member Private Offering; or (2) a private placement that is exempt from the requirements of FINRA Rule 5123 pursuant to FINRA Rules 5123(b)(1)(B) or 5123(b)(1)(H) (as noted, referred to herein as an "Exempted Private Placement").

In response, FINRA declined to amend the proposed rule change to permit communication of projected performance or targeted returns of any type of investment to QPs.¹⁴⁷ FINRA explained that—by limiting the use of projected performance and targeted returns to certain private placements available only to Projection-Eligible Investors—it may limit the risk that the performance information erroneously reaches “less sophisticated investors, including retail investors, in contravention of the rule.”¹⁴⁸

The proposed rule change reasonably limits the scope of investments eligible for projected performance and targeted returns in communications with QPs and knowledgeable employees. As discussed above, the proposed rule change is intended to restrict the audience of communications including such performance information to certain categories of investors who FINRA believes have the expertise or resources to understand their risks and limitations. This limitation in scope is reasonably designed to further that goal. Because communications to QPs that include projected performance or targeted returns would only relate to certain private placements made available only to QPs and knowledgeable employees, the proposed rule change may reduce the risk that the inadvertent disclosure of such communications would harm a wider range of investors. In this way, the proposed rule change is reasonably designed to protect investors and the public interest.

Furthermore, the proposed rule change incrementally expands the exceptions to the general prohibition against member firms’ communicating projected performance or targeted returns to investors. It builds upon FINRA’s regulatory experience with rules addressing communications with the public and registration exemptions.

3. Scope of Performance Information

The proposed rule change would prohibit member firms from basing projected performance or a targeted return upon: (1) hypothetical, back-tested performance (herein, “back-tested performance”); or (2) the prior performance of a portfolio or model that was created solely for the purpose of establishing a track record (herein, “prior performance of a seed account”).¹⁴⁹

registration pursuant to Section 3(c)(1) of the 1940 Act or a registered offering.”).

¹⁴⁷ FINRA Response Letter I at 8.

¹⁴⁸ FINRA Response Letter II at 7.

¹⁴⁹ Proposed Rule 2210.01(b). The proposed rule change leaves undisturbed pre-existing guidance on

Two commenters requested that FINRA permit the use of back-tested performance or the prior performance of a seed account to generate performance projections or targeted returns, stating that not doing so would limit the utility of the proposed rule change.¹⁵⁰ Both commenters criticized FINRA’s divergence from the IA Marketing Rule, asserting that the IA Marketing Rule permits the use of such information. To address any concern that a member firm would misrepresent hypothetical, back-tested performance as actual performance, one of these commenters recommended that FINRA require “prominent identification of targets and projections based on back[-]tests and disclosures regarding the reliability of such information.”¹⁵¹

In response, FINRA declined to permit member firms to base projected performance or targeted returns upon back-tested performance or the prior performance of a seed account.¹⁵² FINRA expressed its belief that they “are not sound bases” for projected performance or targeted returns.¹⁵³ In addition, FINRA stated that, based on its experience, “back[-]tested performance may pose an increased risk for misleading investors, as it allows hypothetical investment decisions to be optimized by hindsight.”¹⁵⁴ Accordingly, FINRA has interpreted FINRA Rule 2210(d) to prohibit the presentation of hypothetical back-tested performance in communications used with retail investors.¹⁵⁵ This existing

the use of extracted performance, which constitutes performance results of a subset of investments extracted from a portfolio. FINRA, *Frequently Asked Questions About Advertising Regulation*, FAQ D.6.2, D.6.3 (Sept. 30, 2021), <https://www.finra.org/rules-guidance/guidance/faqs/advertising-regulation>. One commenter asked FINRA to rescind and replace this guidance, asserting that it is inconsistent with the Commission’s IA Marketing Rule. Dechert Letter at 6–7. In response, FINRA stated that the proposed rule change does not address extracted performance, and it declined to modify pre-existing guidance that is peripheral to the proposed rule change. FINRA Response Letter II at 10. The Commission does not address this issue, as it agrees that it is outside the scope of the proposed rule change.

¹⁵⁰ Dechert Letter at 2–4; Monument Group Letter II at 3.

¹⁵¹ Dechert Letter at 4.

¹⁵² FINRA Response Letter I at 13–14.

¹⁵³ FINRA Response Letter II at 10 (citing Joel M. Dickson, Sachin Padmawar & Sarah Hammer, *Joined at the hip: ETF and index development*, Vanguard Research, at 6 (July 2012); Carl Ackerman & Tim Loughran, *Mutual Fund Incubation and the Role of the Securities and Exchange Commission*, 70 *Journal of Business Ethics* 33–37 (2007)).

¹⁵⁴ FINRA Response Letter I at 14.

¹⁵⁵ *Id.* at 13 n.48; FINRA, Interpretive Letter to Meredith F. Henning, Foreside (Jan. 31, 2019), <https://www.finra.org/rules-guidance/guidance/interpretive-letters/interpretive-letter-meredith-f-henning-foreside>; Interpretive Letter to Bradley J.

interpretation remains unchanged, and FINRA stated that it “sees little difference between allowing members to use back[-]tested performance as a basis for a projection or targeted return and allowing members to present back[-]tested performance on its own.”¹⁵⁶

With respect to comments requesting alignment with the IA Marketing Rule’s treatment of back-tested performance, FINRA stated that the proposed rule change was not intended to be identical to that rule.¹⁵⁷ FINRA recognized that commenters “continue to advocate for greater regulatory harmony” with the IA Marketing Rule, but it stated that the proposed rule change “is nevertheless a step towards regulatory harmonization.”¹⁵⁸

The proposed rule change reasonably maintains the prohibition on the use of back-tested performance and the prior performance of a seed account in projected performance or targeted returns. Citing studies of back-tested performance and the prior performance of seed accounts,¹⁵⁹ FINRA explained its belief that such information is not a sound basis for projected performance or targeted returns under the proposed rule change. This is a reasonable interpretation that is consistent with FINRA’s position that the presentation of hypothetical back-tested performance may pose a heightened risk of misleading brokerage customers and would violate the content standards in FINRA Rule 2210(d).¹⁶⁰ For these reasons, FINRA reasonably chose to continue the prohibition on the use of back-tested performance and the prior performance of a seed account in projected performance or targeted returns.

B. Written Policies and Procedures

The proposed rule change would require any member firm that communicates projected performance or targeted returns to “adopt[] and implement[] written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the investor receiving the communication and to ensure compliance with all applicable requirements and obligations.”¹⁶¹

Swenson, ALPS Distributors, Inc. (Apr. 22, 2013), <https://www.finra.org/rules-guidance/guidance/interpretive-letters/bradley-j-swenson-alps-distributors-inc>.

¹⁵⁶ FINRA Response Letter I at 13.

¹⁵⁷ *Id.* at 14.

¹⁵⁸ FINRA Response Letter II at 13.

¹⁵⁹ See *supra* note 153.

¹⁶⁰ See FINRA Response Letter II at 10.

¹⁶¹ Proposed Rule 2210(d)(1)(F)(iv)(b).

One commenter asked FINRA to clarify that broker-dealers “can consider the category of investor, rather than an investor’s individual characteristics, when ensuring that the communication is relevant to the investor.”¹⁶² This commenter explained that such an interpretation would “better align” this obligation with that of the IA Marketing Rule, which requires that the communication be relevant to the intended audience, not the individual investor.¹⁶³

Other commenters asked FINRA to eliminate or modify this proposed condition, asserting that it is unnecessary or redundant.¹⁶⁴ Two commenters stated that the separate determination that the performance is relevant to the intended audience is redundant because the proposed rule change—as originally proposed—already would limit the communication of projected performance and targeted returns to institutional investors and QPs.¹⁶⁵ In addition, two commenters stated that member firms’ independent obligations under FINRA Rule 2111(b)¹⁶⁶ and Regulation Best Interest also render this condition redundant.¹⁶⁷

In response, FINRA declined to amend or eliminate this provision. FINRA explained that the provision is

important, as it would help to ensure that member firms focus on the relevance of their communications to their intended audience, and not simply whether or not the audience is a Projection-Eligible Investor.¹⁶⁸ In addition, FINRA stated that FINRA Rules 2210 and 2111 are “distinct rules with different scopes and objectives,” and it stated FINRA Rule 2111 and Regulation Best Interest only apply when a broker-dealer makes a recommendation of a security or investment strategy.¹⁶⁹ FINRA Rule 2210, on the other hand, “is broader and governs *any* communications that a member distributes or makes available to retail customers, regardless of whether the communications contain a *recommendation* that would also trigger [FINRA] Rule 2111 or Regulation Best Interest.”¹⁷⁰ Therefore, in response to requests for guidance on whether the proposed rule change would require member firms to limit the use of performance projections and targeted returns to prospective fund investors who pass the suitability requirements of FINRA Rule 2111 or the standards set forth in Regulation Best Interest, FINRA stated that the proposed rule change would not require member firms to assess their audience under a suitability or Regulation Best Interest standard to determine whether the projected performance or targeted return is relevant to the audience’s likely financial situation and investment objectives.¹⁷¹

However, FINRA clarified that it would interpret this condition “consistently with the substantially similar provision in the IA Marketing Rule.”¹⁷² Because the proposed rule change requires the adoption and implementation of written policies and procedures reasonably designed to ensure that the communication is relevant to the *likely* financial situation and investment objectives of the investor receiving the communication, FINRA explained that a member firm “is not required to know the actual financial situation or investment objectives of each investor that receives the communication.”¹⁷³ Instead, the proposed rule change “permits members to comply with this condition by grouping investors into categories or types.”¹⁷⁴

FINRA reasonably determined to require member firms communicating projected performance or targeted returns to Projection-Eligible Investors to “adopt[] and implement[] written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the investor receiving the communication and to ensure compliance with all applicable requirements and obligations.”¹⁷⁵ The adoption and implementation of such written policies and procedures would help ensure that member firms focus not only on whether the intended audience is a Projection-Eligible Investor but also that the communication is relevant to that audience’s likely financial situation and investment objectives. FINRA also reasonably determined to permit member firms to comply with this obligation by relying upon the member firms’ past experiences with specific investors or types of investors to group them into categories of investors, as appropriate.¹⁷⁶ Moreover, this proposed condition is not redundant of preexisting obligations under FINRA Rule 2111 and Regulation Best Interest, as the proposed rule change applies more broadly to any communications of projected performance or targeted returns, whether or not they contain recommendations.¹⁷⁷ Finally, FINRA Rule 2111, Regulation Best Interest, and the proposed rule change serve different ends. FINRA Rule 2111 and Regulation Best Interest regulate the conduct of member firms and their associated persons in making recommendations to retail investors, whereas this provision of the proposed rule change would require policies and procedures reasonably designed to help ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience. Consequently, as FINRA has clarified, the proposed rule change would not require a separate assessment under the suitability or Regulation Best Interest standard.

C. Reasonable Basis Requirement

As stated above, the proposed rule change would require any member firm that communicates projected performance or targeted returns to Projection-Eligible Investors to have “a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted

¹⁶² SIFMA Letter at 3–4.

¹⁶³ *Id.* at 3.

¹⁶⁴ See Monument Group Letter II at 5; Dechert Letter at 4–5; ABA Letter at 4–5. In the alternative, the ABA’s Federal Regulation of Securities Committee requested that FINRA issue guidance “that explains what broker-dealers acting as placement agents should do in circumstances where they determine that projections or targeted returns are appropriate for some potential investors in the prescribed nonpublic offerings, but not others, including whether broker-dealers should limit the use of projection and targeted return information to prospective fund investors who pass the independent suitability requirements of FINRA Rule 2111 and Regulation Best Interest.” ABA Letter at 4–5.

¹⁶⁵ Dechert Letter at 4–5 (acknowledging that the separate requirement “that FINRA members develop policies and procedures that are reasonably designed to ensure compliance with [FINRA] Rule 2210 . . . is reasonable”); ABA Letter at 4–5.

¹⁶⁶ FINRA Rule 2111(b) addresses a member firm’s “customer-specific suitability obligation for an institutional account.”

¹⁶⁷ ABA Letter at 4; see Monument Group Letter II at 5. Monument Group indicated that proposed Rule 2210(d)(1)(F)(iv)(b) would impose an affirmative obligation upon any member firm communicating projected performance or targeted returns to a Projection-Eligible Investor “to collect information concerning the financial objectives/financial situation of institutional investors—solely for the purpose of providing marketing material containing investment projections and targets.” Monument Group Letter II at 5 n.3. In response, FINRA explained that the proposed rule change would not impose an “express document or data collection requirement and would not require firms to assess individual investors” under suitability or Regulation Best Interest standards. FINRA Response Letter II at 9.

¹⁶⁸ FINRA Response Letter II at 9.

¹⁶⁹ FINRA Response Letter I at 12.

¹⁷⁰ *Id.*

¹⁷¹ FINRA Response Letter II at 9.

¹⁷² See FINRA Response Letter I at 12–13.

¹⁷³ *Id.* at 13.

¹⁷⁴ *Id.*

¹⁷⁵ Proposed Rule 2210(d)(1)(F)(iv)(b).

¹⁷⁶ See Notice at 82484; FINRA Response Letter I at 13.

¹⁷⁷ See *supra* Part III(A)(1).

return[] and retain[] written records supporting the basis for such criteria and assumptions.”¹⁷⁸ The proposed rule change states that “members should consider multiple factors, with no one factor being determinative,” in forming a reasonable basis for the criteria used and assumptions made in calculating projected performance or a targeted return.¹⁷⁹ Proposed Supplementary Material .01 includes a non-exhaustive list of factors that member firms may consider in forming a reasonable basis.¹⁸⁰

One commenter stressed the importance of this provision—and compliance with it—to FINRA’s stated goal of helping to ensure that the proposed rule change would not increase risk to retail investors.¹⁸¹ A second commenter suggested removal of this provision to align with the IA Marketing Rule, “which imposes no such requirement.”¹⁸²

Commenters also identified compliance challenges associated with a member firm’s use of third-party information to comply with the reasonable basis requirement.¹⁸³ Specifically, one commenter asked whether the proposed rule change would require member firms to make their own reasonable-basis determinations about third-party projections.¹⁸⁴ Other commenters stated that member firms may struggle to comply with this condition—especially its document-retention requirement—as it relates to third-party projections or targeted returns because firms are usually uninvolved in their creation and lack access to the underlying materials.¹⁸⁵ One of these commenters also questioned the investor-protection benefit associated with a member firm’s retention of third-party records about a third-party projection or targeted return.¹⁸⁶

In light of these compliance challenges, one commenter asked FINRA to clarify (if it declines to remove the condition) what it expects with respect to third-party performance projections and targeted returns.¹⁸⁷ This

commenter stated that member firms should be able to “rely upon the certification or representations of the sponsor, manager[,] or party calculating this information (who has far greater access to information than the broker-dealer does), absent information to the contrary.”¹⁸⁸ Another commenter suggested further streamlining of the condition to “avoid potentially overlapping, ambiguous, and onerous requirements.”¹⁸⁹

As an alternative to FINRA’s proposed condition, another commenter recommended that member firms be required to establish a reasonable basis to believe that the criteria used and assumptions made in calculating targeted returns or projected performance are appropriate and not misleading, and to retain records supporting that determination.¹⁹⁰ This commenter explained that this alternative approach would better address the use of third-party projections, as it would require the retention of records demonstrating the member firms’ testing processes.¹⁹¹

One commenter recognized the potential utility of the factors enumerated in the proposed Supplementary Material in making a reasonable basis determination, but asked that FINRA clarify that the consideration of any such factors would depend on the facts and circumstances.¹⁹² Another commenter, however, stated that the factors could “create potentially overlapping, ambiguous[,] and onerous requirements” that might dissuade member firms from using projected performance or targeted returns.¹⁹³ Another commenter asked FINRA to confirm that a member firm could include projected performance or

provide a targeted return relevant to the time horizon of an investment.¹⁹⁴

In response, FINRA declined to modify the proposed rule change to eliminate or otherwise amend a member firm’s obligation to form a reasonable basis for either its own or a third-party generated projected performance or targeted returns.¹⁹⁵ Absent this condition, FINRA stated that projected performance or targeted returns “could be based on guesswork, dubious presumptions, and wildly inaccurate or inherently misleading reasoning.”¹⁹⁶ This requirement, FINRA stated, would help to ensure that member firms act “with reasonable diligence and good faith” when communicating performance information pursuant to this proposed rule change.¹⁹⁷

FINRA stated that the proposed rule change “does not prescribe the manner in which the member forms its reasonable basis” and member firms retain the “flexibility to determine what is reasonable based upon the particular facts and circumstances.”¹⁹⁸ Further, FINRA stated that the factors it identified in the proposed Supplementary Material “are meant to be a helpful guide” and “not all factors may be relevant” in every instance. FINRA further stated that it would monitor the implementation of this proposed condition and issue guidance, as necessary, “once FINRA and members have experience with these factors over time.”

With regard to concerns about its interactions with other requirements, FINRA stated the condition’s consistency with other requirements.¹⁹⁹ For example, FINRA Rules 2210 and 2241 (Research Analysts and Research Reports) require price targets in research reports to have a reasonable basis.²⁰⁰ In addition, FINRA stated that SEC rules require issuers to have a good faith and reasonable basis for performance projections contained in certain documents,²⁰¹ and that the IA

¹⁸⁸ *Id.*

¹⁸⁹ ICI Letter I at 7 (“For instance, if registered fund materials are created by the fund (or its distributor) and a third-party broker wishes to use them, it could be difficult for the third-party broker to establish that it “has a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return” and “retain . . . written records supporting the basis for such criteria and assumptions.”).

¹⁹⁰ See Dechert Letter at 7–8.

¹⁹¹ *Id.* at 8.

¹⁹² ICI Letter I at 7.

¹⁹³ Monument Group Letter II at 4. In a subsequent letter, Monument Group stated that FINRA Rule 2210 already has general content standards, and proposed Rule 2210.01(a)’s guidelines “would overlap with those of private fund managers.” See letter from Molly Diggins, Partner & General Counsel, Monument Group, Inc., dated Mar. 29, 2024, at 2–3, <https://www.sec.gov/comments/sr-firna-2023-016/srfinra2023016-452579-1160882.pdf> (“Monument Group Letter III”).

¹⁹⁴ See SIFMA Letter at 4.

¹⁹⁵ FINRA Response Letter I at 10–11.

¹⁹⁶ FINRA Response Letter II at 4.

¹⁹⁷ *Id.*

¹⁹⁸ FINRA Response Letter I at 10.

¹⁹⁹ *Id.* (indicating that the reasonable-basis requirement “follows well-established precedents”).

²⁰⁰ *Id.*

²⁰¹ *Id.* (citing Securities Act Regulation S–K, 17 CFR 229.10(b)). Regulation S–K’s “policy on projections” provides guidelines on the factors to be considered in formulating and disclosing certain projections. It states “that management must have the option to present . . . its good faith assessment of a registrant’s future performance” in documents specified in Securities Act Rule 175 (17 CFR 230.175) and Exchange Act Rule 3b–6 (17 CFR 240.3b–6). 17 CFR 229.10(b), (b)(1). Any such projection, however, must have a reasonable basis.

¹⁷⁸ Proposed Rule 2210(d)(1)(F)(iv)(c).

¹⁷⁹ Proposed Rule 2210.01(a).

¹⁸⁰ *Id.*

¹⁸¹ PIABA Letter at 2 (“PIABA strongly believes the ‘sound basis’ requirement should be strictly adhered to and not just be window dressing to further a more liberal standard for communications.”).

¹⁸² SIFMA Letter at 2.

¹⁸³ See Monument Group Letter II at 4; ICI Letter I at 7; SIFMA Letter at 3; Dechert Letter at 7.

¹⁸⁴ Monument Group Letter II at 4.

¹⁸⁵ ICI Letter I at 7; SIFMA Letter at 3; Dechert Letter at 7; Monument Group Letter II at 4.

¹⁸⁶ Dechert Letter at 7.

¹⁸⁷ SIFMA Letter at 3.

Marketing Rule's general prohibitions would have the effect of prohibiting the advertisement of hypothetical performance for which the adviser lacks a reasonable basis.²⁰²

Moreover, FINRA explained that FINRA Rule 2210's content standards apply to all member communications "distributed or made available" to investors, whether or not the firm "created the communication."²⁰³ For that reason, FINRA Rule 2210 and the proposed rule change would apply to a member firm's communication of third-party generated projected performance or targeted returns.²⁰⁴ Accordingly, FINRA explained that a member wishing to use a third-party projection or targeted return would need to "obtain enough information to form a reasonable basis as to the issuer's assumptions and the underlying criteria."²⁰⁵ If the member firm is unable to secure that information, FINRA stated "it should refrain from using the communications."²⁰⁶ FINRA concluded that modifying this condition for third-party projections would "increase[] the risk that "unreasonable, issuer-created projections would be distributed to investors, which is contrary to the public interest."²⁰⁷

Finally, with respect to the comment requesting whether a member could provide a performance projection or targeted return based on a time horizon of investment, FINRA stated that this determination will always depend on the facts and circumstances of the projection or targeted return, which may or may not be consistent with an investment's time horizon, or in the case of a debt security, its maturity date.²⁰⁸ In addition, FINRA explained that an investment's time horizon may be an unreliable criterion for calculating a projection or targeted return of the investment because it is often uncertain at the time a security is issued and may change due to subsequent events.²⁰⁹ FINRA also explained that "a time

horizon could be of such a length that it would be unreasonable" to project performance or provide a targeted return for that same period of time.²¹⁰ For these reasons, FINRA stated that there should not be an exception from the reasonable-basis requirement "based solely on an investment's estimated time horizon."²¹¹

The proposed rule change reasonably requires member firms to have a reasonable basis for the criteria used and assumptions made and to retain relevant records. Projected performance and targeted returns about private placements often rely on unique criteria and assumptions, including the time horizon of the investment.²¹² Under these circumstances, the proposed rule change reasonably requires member firms to have a reasonable basis for such projections and returns; the substance and reasonableness of this determination will depend on the facts and circumstances of the projection or targeted return. Further, in response to concerns that the factors identified in the proposed Supplementary Material would create onerous, ambiguous, and overlapping requirements, the proposed rule change does not mandate the consideration of each factor in every instance, and it only indicates that a member firm should consider multiple factors in its reasonable-basis determination. In light of this flexibility, the proposed rule change would aid member firms in identifying relevant factors for consideration in making the reasonable-basis determination, which should assist firms in compliance.

To eliminate this reasonable basis requirement would allow a member firm to disseminate information without forming a view as to its content. This result would be inconsistent with FINRA Rule 2210's general content standards, which apply broadly to any of a firm's communications with investors, regardless of the source of information in the communication, and would risk—as FINRA states—communications of projected performance or targeted returns "based on guesswork, dubious presumptions, and wildly inaccurate or inherently misleading reasoning."²¹³

With regard to third-party information, the reasonable-basis

condition also contemplates a principles-based approach and does not mandate a specific method for establishing that the member firm has a reasonable basis for the criteria used and assumptions made regarding such information. Indeed, as FINRA emphasizes, member firms retain the flexibility to determine whether, depending on the facts and circumstances, they have received sufficient information from a third-party to conclude that its projected performance or targeted returns has a reasonable basis; this flexibility should alleviate some of the compliance challenges identified by commenters regarding third-party information.²¹⁴ By extending the reasonable basis obligation to a member firm's use of third-party projected performance or targeted returns, FINRA has reasonably sought to extend the proposed rule change's investor protection benefits to all communications with investors, regardless of the source of information, and to ensure consistency with FINRA Rule 2210, whose general content standards apply broadly to any of a firm's communications with investors, regardless of the source of information in the communication.

In support of this principles-based approach, the proposed rule change requires member firms to "retain[] written records supporting" their reasonable-basis determination and does not per se mandate that the firm obtain and maintain third-party records.²¹⁵ Although the records supporting a member firm's determination may, in some circumstances, be third-party records, member firms retain the flexibility to determine whether the circumstances of a particular performance projection or targeted return would require the acquisition and retention of third-party records to support its determination. As a result, the proposed rule change's document-retention provision reasonably helps to ensure that firms substantiate their reasonable basis determinations while simultaneously providing them with the flexibility to determine what the circumstances of a particular case would require. In this way, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices.

D. Disclosure Requirements

The proposed rule change would impose three disclosure-related

¹⁷ CFR 229.10(b)(1). The documents specified in this policy include documents filed with the Commission, Part I of quarterly reports on Form 10-Q, and certain annual reports to security holders. See 17 CFR 230.175(b)(1); 17 CFR 240.3b-6(b)(1).

²⁰² FINRA Response Letter I at 10.

²⁰³ *Id.* at 11.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 10–11.

²⁰⁶ *Id.* at 11. FINRA stated that the proposed rule change would not require member firms to "obtain trade secrets from third parties," but it would require member firms to consider whether the information at its disposal is sufficient to form a reasonable basis for the projected performance or targeted returns. FINRA Response Letter II at 4; see FINRA Response Letter I at 10–11.

²⁰⁷ FINRA Response Letter I at 11.

²⁰⁸ FINRA Response Letter II at 9.

²⁰⁹ FINRA Response Letter I at 16.

²¹⁰ FINRA Response Letter II at 9.

²¹¹ See FINRA Response Letter I at 16.

²¹² SIFMA Letter at 4; FINRA Response Letter I at 16.

²¹³ FINRA Response Letter II at 4. Moreover, as FINRA notes, the IA Marketing Rule's general prohibitions would prohibit the advertisement of hypothetical performance for which the adviser lacks a reasonable basis, even if that rule lacks a requirement identical to that of the proposed rule change. FINRA Response Letter I at 10.

²¹⁴ *Id.* at 10–11.

²¹⁵ Proposed Rule 2210(d)(1)(F)(iv)(c); see FINRA Response Letter II at 4 ("there is no requirement to obtain trade secrets from third parties").

requirements on any member firm communicating projected performance or targeted returns to a Projection-Eligible Investor. First, a communication would be required to “prominently disclose[] that the projected performance or targeted return is hypothetical in nature and that there is no guarantee that the projected or targeted performance will be achieved.”²¹⁶ Second, member firms would be required to “provide[] sufficient information to enable the investor to understand . . . the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses.”²¹⁷ Third, member firms would be required to “provide[] sufficient information to enable the investor to understand . . . the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.”²¹⁸

No commenter offered a substantive comment related to these disclosure provisions.

The proposed rule change’s disclosure provisions are reasonably designed to provide investors with information that will help them to understand the assumptions, methodologies, risks, and limitations associated with the projected performance or targeted returns.²¹⁹ The disclosures would help to inform Projection-Eligible Investors that projected performance and targeted returns are hypothetical in nature. The disclosures also provide information to Projection-Eligible Investors regarding the criteria and assumptions associated with the calculation of the projected performance or targeted returns. The disclosures would emphasize to Projection-Eligible Investors that such information has inherent risks and limitations. In sum, the disclosure-related provisions are reasonably designed to help Projection-Eligible Investors understand the risks and limitations of relying on projected performance or targeted returns.

²¹⁶ Proposed Rule 2210(d)(1)(F)(iv)(d).

²¹⁷ Proposed Rule 2210(d)(1)(F)(iv)(e).

²¹⁸ *Id.*

²¹⁹ See Notice at 82485 (absent the disclosure of criteria and assumptions, “it is more likely that a projection or targeted return would mislead a potential investor”; disclosures about risks and limitations help ensure that investors “do not unreasonably rely on a projection or targeted return given its uncertainty and risks”).

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.²²⁰

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act²²¹ that the proposed rule change (SR–FINRA–2023–016), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²²

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–16304 Filed 7–24–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100562; File No. SR–GEMX–2024–21]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

July 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 5, 2024, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand its co-location services.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/>

²²⁰ 15 U.S.C. 78o–3(b)(6).

²²¹ 15 U.S.C. 78s(b)(2).

²²² 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

rulebook/gemx/rules, 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 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 expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.

The Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11–4”) in response to demand for power and cabinets. NY11–4 is not a new or distinct co-location facility. Instead, NY11–4 is simply an expansion of the existing NY11 data center,³ and the Exchange intends to operate it generally in the same manner as existing aspects of NY11.⁴ Client connections to the matching engine will be equal across the board, within and among NY11 and NY11–4.

The Exchange submits this filing to propose offering new services in NY11–4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11–4 data hall, the Exchange will submit additional filings with the Commission.

³ NY11–4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11–2, NY11–3, and NY11–4.

⁴ One aspect of the data center that will be treated differently in NY11–4 as compared to NY11 at its outset is telecommunications access and inter-client connectivity. In NY11–4, connections between colocated client cabinets and the carrier cage will be of equal length. Inter-client connectivity will also be equalized in NY11–4. The Exchange believes that equalizing telecommunications access and inter-client connectivity in NY11–4 will provide a fair solution and avoid market disruption by avoiding both a race for real estate adjacent to NY11–4 and for particular space in NY11–4. The Exchange believes that these actions would facilitate a fair and orderly market and protect investors and the public interest, consistent with its obligations under the Act.

NY11-4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11-4 will include certain features, including but not limited to: uniform, wider cabinets⁶ (32" W × 48" D × 91" H), cable management, and a rear split door and combo lock.

NY11-4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2 × 20 amp 110 volt, 2×30

amp 110 volt, 2×20 amp 208 volt, 2×30 amp 208 volt, Phase 3 2×20 amp 208 volt, Phase 3 2×30 amp 208 volt, 2×60 amp 208 volt, Phase 3 2×40 amp 208 volt, Phase 3 2×50 amp 208 volt, Phase 3 2×60 amp 208 volt, and 2×30 amp 48 volt DC. For NY11-4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11-4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that these cabinet power options are specific to NY11-4 and that one of these options must be selected for cabinets in NY11-4. Although different cabinet power options will be offered in NY11 and NY11-4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution.⁷ Due to higher voltage options being offered in NY11-4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units ("PDUs")⁸ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange wishes to simplify and standardize its PDU offering in NY11-4 by offering Phase 1 and Phase 3⁹ power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange also proposes to offer a switch

monitored PDU add on in NY11-4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11-4 Exchange access on October 21, 2024 and providing customers access to the space on or after August 5, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11-4, which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today, the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act because the Exchange's expansion of the

⁷ Customers in NY11-4 will receive comparable power draw/consumption as compared to NY11. Any differences between efficiencies in the customer equipment are negligible.

⁸ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

⁵ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁶ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11-4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act¹⁴ because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11-4 because of different power configurations in NY11-4 as compared to NY11, NY11-4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11-4 (and across the data center broadly) on the same terms as any other customer.

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.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer collocation services as a means to facilitate the trading and other market activities of those market participants who believe that collocation enhances the efficiency of their operations. As part of its collocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's collocation services, including those proposed herein, are available to any customer and customers that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any collocation service is completely voluntary, and each market participant is able to determine whether to use collocation services based on the requirements of its business operations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2024-21 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-GEMX-2024-21. 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/>

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[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-GEMX-2024-21 and should be submitted on or before August 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-16305 Filed 7-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100566; File No. SR-CboeEDGA-2024-027]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Related to Transaction Fee Tiers

July 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 10, 2024, Cboe EDGA Exchange, Inc. ("Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁴ *Id.*

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 EDGA Exchange, Inc. (the "Exchange" or "EDGA") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGA Equities") by modifying the criteria associated with certain Add Volume Tiers. The Exchange proposes to implement these changes effective July 1, 2024.³

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the "Act"), to which market participants may direct

their order flow. Based on publicly available information,⁴ no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a "Taker-Maker" model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.0014 per share for orders that remove liquidity and assesses a fee of \$0.0030 per share for orders that add liquidity.⁵ For orders in securities priced below \$1.00, the Exchange does not assess any fees or provide any rebates for orders that add or remove liquidity.⁶ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Add/Remove Volume Tiers

Under footnote 7 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers four Add/Remove Volume Tiers that each provide a reduced fee for Members' qualifying orders yielding fee codes 3,⁷ 4,⁸ B,⁹ V,¹⁰ and Y¹¹ where a Member reaches certain add or remove volume-based criteria. The Exchange now proposes to modify the criteria associated with Add/Remove Volume

Tiers 2–4. The current criteria for Add/Remove Volume Tiers 2–4 is as follows:

- Add Volume Tier 2 provides a reduced fee of \$0.0016 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes 3, 4, B, V, or Y) where a Member adds or removes an ADV¹² $\geq 0.60\%$ of the TCV.¹³
- Add Volume Tier 3 provides a reduced fee of \$0.0015 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes 3, 4, B, V, or Y) where a Member adds or removes an ADV $\geq 0.75\%$ of the TCV or Member adds or removes an ADV $\geq 80,000,000$.
- Add Volume Tier 4 provides a reduced fee of \$0.0014 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes 3, 4, B, V, or Y) where a Member adds or removes an ADV $\geq 0.90\%$ of the TCV or Member adds or removes an ADV $\geq 100,000,000$.

The proposed criteria for Add/Remove Volume Tiers 2–4 is as follows:

- Add Volume Tier 2 provides a reduced fee of \$0.0016 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes 3, 4, B, V, or Y) where a Member adds or removes an ADV $\geq 0.50\%$ of the TCV or Member adds or removes an ADV $\geq 52,000,000$.
- Add Volume Tier 3 provides a reduced fee of \$0.0015 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes 3, 4, B, V, or Y) where a Member adds or removes an ADV $\geq 0.65\%$ of the TCV or Member adds or removes an ADV $\geq 67,000,000$.
- Add Volume Tier 4 provides a reduced fee of \$0.0014 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes 3, 4, B, V, or Y) where a Member adds or removes an ADV $\geq 0.80\%$ of the TCV or Member adds or removes an ADV $\geq 82,000,000$.

The Exchange believes that the proposed modification to Add/Remove Volume Tiers 2–4 will incentivize Members to add volume to and remove volume from the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange. While the proposed criteria is slightly easier to achieve than the current criteria, the Exchange believes that the criteria continues to be commensurate with the reduced fees offered by the Exchange, is a reflection

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 24, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

⁵ See EDGA Equities Fee Schedule, Standard Rates.

⁶ *Id.*

⁷ Fee code 3 is appended to orders that add liquidity to EDGA in the pre and post market in Tape A or Tape C securities.

⁸ Fee code 4 is appended to orders that add liquidity to EDGA in the pre and post market in Tape B securities.

⁹ Fee code B is appended to orders that add liquidity to EDGA in Tape B securities.

¹⁰ Fee code V is appended to orders that add liquidity to EDGA in Tape A securities.

¹¹ Fee code Y is appended to orders that add liquidity to EDGA in Tape C securities.

³ The Exchange initially filed the proposed fee change on July 1, 2024 (SR-CboeEDGA-2024-026). On July 10, 2024, the Exchange withdrew that filing and submitted this proposal.

¹² ADV means . . .

¹³ TCV means . . .

of current market trends, and will continue to encourage Members to submit order flow to the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)¹⁷ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to modify Add/Remove Volume Tiers 2–4 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Specifically, the Exchange's proposal to modify Add/Remove Volume Tiers 2–4 is not a significant departure from existing criteria, is reasonably correlated to the reduced fees offered by the Exchange and other competing exchanges,¹⁸ and will continue to incentivize Members to submit order

flow to the Exchange. The criteria proposed by the Exchange is intended to reflect current market trends while continuing to encourage Members to submit order flow to the Exchange. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹⁹ including the Exchange,²⁰ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to modify Add/Remove Volume Tiers 2–4 is reasonable because the tiers will be available to all Members and provide all Members with an opportunity to receive a reduced fee. The Exchange further believes that modified Add/Remove Volume Tiers 2–4 will provide a reasonable means to encourage adding liquidity to and removing liquidity from the Exchange and to incentivize Members to continue to provide volume to the Exchange by offering them an additional opportunity to receive a reduced fee on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes the proposed modified Add/Remove Volume Tiers 2–4 are reasonable as they do not represent a significant departure from the criteria currently offered in the fee schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the revised tiers and have the opportunity to meet the tiers' criteria and receive the corresponding reduced fee if such criteria are met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no

way of knowing whether these proposed rule changes would definitely result in any Members qualifying for the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior month's volume, the Exchange does not anticipate that at any Member will be able to satisfy proposed Add/Remove Volume Tier 2, at least two Members will be able to satisfy proposed Add/Remove Volume Tier 3, and no Members will be able to satisfy proposed Add/Remove Volume Tier 4. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding reduced fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to Add/Remove Volume Tiers 2–4 will apply to all Members equally in that all Members are eligible for the tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the reduced fee on their qualifying orders if such criteria are met. The Exchange does not believe the proposed changes burden competition, but rather, enhances competition as they are intended to increase the competitiveness of EDGA by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ *Id.*

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ See NYSE National, Inc., Schedule of Fees and Rebates, Rates for Adding Liquidity (Per Share), available at https://www.nyse.com/publicdocs/nyse/regulation/nyse/_National_Schedule_of_Fees.pdf.

¹⁹ See e.g., BYX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²⁰ See e.g., EDGA Equities Fee Schedule, Footnote 7, Add/Remove Volume Tiers.

opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule changes do not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.²¹ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²² The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in

the execution of order flow from broker dealers’”²³ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁴ and paragraph (f) of Rule 19b-4²⁵ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2024-027 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-CboeEDGA-2024-027. This file number should be included on the

²³ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f).

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-CboeEDGA-2024-027 and should be submitted on or before August 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-16302 Filed 7-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100563; File No. SR-ISE-2024-28]

[Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand its Co-Location Services]

DATES: July 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 5, 2024, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²¹ *Supra* note 2.

²² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand its co-location services.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, 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 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 expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.

The Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11-4”) in response to demand for power and cabinets. NY11-4 is not a new or distinct co-location facility. Instead, NY11-4 is simply an expansion of the existing NY11 data center,³ and the Exchange intends to operate it generally in the same manner as existing aspects of NY11.⁴ Client

connections to the matching engine will be equal across the board, within and among NY11 and NY11-4.

The Exchange submits this filing to propose offering new services in NY11-4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11-4 data hall, the Exchange will submit additional filings with the Commission.

NY11-4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11-4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11-4 will include certain

features, including but not limited to: uniform, wider cabinets⁶ (32” W x 48” D x 91” H), cable management, and a rear split door and combo lock.

NY11-4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2x20 amp 110 volt, 2x30 amp 110 volt, 2x20 amp 208 volt, 2x30 amp 208 volt, Phase 3 2x 20 amp 208 volt, Phase 3 2x 30 amp 208 volt, 2x60 amp 208 volt, Phase 3 2x 40 amp 208 volt, Phase 3 2x 50 amp 208 volt, Phase 3 2x 60 amp 208 volt, and 2x30 amp 48 volt DC. For NY11-4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11-4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that these cabinet power options are specific to NY11-4 and that one of these options must be selected for cabinets in NY11-4. Although different cabinet power options will be offered in NY11 and NY11-4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution.⁷ Due to higher voltage options being offered in NY11-4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units (“PDUs”) ⁸ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11,

⁶In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11-4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁷Customers in NY11-4 will receive comparable power draw/consumption as compared to NY11. Any differences between efficiencies in the customer equipment are negligible.

⁸PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

³NY11-4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11-2, NY11-3, and NY11-4.

⁴One aspect of the data center that will be treated differently in NY11-4 as compared to NY11 at its outset is telecommunications access and inter-client connectivity. In NY11-4, connections between colocated client cabinets and the carrier cage will be of equal length. Inter-client connectivity will also be equalized in NY11-4. The Exchange believes that equalizing telecommunications access

and inter-client connectivity in NY11-4 will provide a fair solution and avoid market disruption by avoiding both a race for real estate adjacent to NY11-4 and for particular space in NY11-4. The Exchange believes that these actions would facilitate a fair and orderly market and protect investors and the public interest, consistent with its obligations under the Act.

⁵Half cabinets are not available to new subscribers. See General 8, Section 1(a).

the Exchange wishes to simplify and standardize its PDU offering in NY11–4 by offering Phase 1 and Phase 3⁹ power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11–4 Exchange access on October 21, 2024 and providing customers access to the space on or after August 5, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11–4, which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today,

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act because the Exchange's expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act¹⁴ because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11–4 because of different power configurations in NY11–4 as compared to NY11, NY11–4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11–4 (and across the data center broadly) on the same terms as any other customer.

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.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. As part of its colocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's colocation services, including those proposed herein, are available to any customer and customers

that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services based on the requirements of its business operations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b–4 thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–ISE–2024–28 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ *Id.*

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-ISE-2024-28. 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-ISE-2024-28 and should be submitted on or before August 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-16299 Filed 7-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100567; File Nos. SR-BOX-2024-07; SR-CBOE-2024-005; SR-ISE-2024-03; SR-ISE-2024-14; SR-MIAX-2024-03; SR-NYSEAMER-2024-10; SR-PEARL-2024-03]

Self-Regulatory Organizations; BOX Exchange LLC; Cboe Exchange, Inc.; MIAX International Securities Exchange LLC; MIAX PEARL LLC; Nasdaq ISE, LLC; NYSE American LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Permit the Listing and Trading of Options on Trusts That Hold Bitcoin

July 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) ¹ and Rule 19b-4 thereunder,² BOX Exchange LLC (“BOX”); Cboe Exchange, Inc. (“Cboe Options”); MIAX International Securities Exchange LLC (“MIAX”); MIAX PEARL LLC (“MIAX Pearl”); Nasdaq ISE, LLC (“ISE”); and NYSE American LLC (“NYSE American”) filed with the Securities and Exchange Commission (“Commission”) proposed rule changes to list and trade options on exchange-traded product shares that represent interests in either a specified bitcoin trust or in any trust that holds bitcoin, as described below (each, a “Proposal” and collectively, the “Proposals”). Specifically, ISE proposed to list and trade options on shares that represent interests in the iShares Bitcoin Trust.³ BOX, Cboe Options, MIAX, MIAX Pearl and, in a second filing, ISE, proposed to list and trade options on shares that represent interests in a trust that holds bitcoin.⁴ NYSE American

proposed to list and trade options on shares that represent interests in the Bitwise Bitcoin ETF, the Grayscale Bitcoin Trust, and on any trust that holds bitcoin.⁵

On January 25, 2024, the Cboe Options Proposal,⁶ the ISE iShares Proposal,⁷ the MIAX Proposal,⁸ and the MIAX Pearl Proposal⁹ were published for comment in the **Federal Register**. On March 6, 2024, pursuant to Section 19(b)(2) of the Act,¹⁰ the Commission designated a longer period within which to approve these proposals, disapprove the proposals, or institute proceedings to determine whether to disapprove the proposals.¹¹ The NYSE American Proposal was published for comment in the **Federal Register** on February 29, 2024.¹² On April 8, 2024, pursuant to Section 19(b)(2) of the Act,¹³ the Commission designated a longer period within which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to disapprove the NYSE American Proposal.¹⁴ On March 25, 2024, the BOX Proposal¹⁵ and the ISE Trust Proposal¹⁶ were published for comment in the **Federal Register**. The Commission received comments addressing the BOX Proposal,¹⁷ the Cboe Options

filed Jan. 12, 2024; SR-PEARL-2024-03 (“MIAX Pearl Proposal”), filed Jan. 12, 2024.

⁵ See File No. SR-NYSEAMER-2024-10 (“NYSE American Proposal”), filed Feb. 9, 2024.

⁶ See Securities Exchange Act Release Nos. 99395 (Jan. 19, 2024), 89 FR 5075.

⁷ See Securities Exchange Act Release No. 99396 (Jan. 19, 2024), 89 FR 5047.

⁸ See Securities Exchange Act Release No. 99397 (Jan. 19, 2024), 89 FR 5079.

⁹ See Securities Exchange Act Release No. 99394 (Jan. 19, 2024), 89 FR 5058.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ See Securities Exchange Act Release Nos. 99680 (Mar. 6, 2024), 89 FR 17887 (Mar. 12, 2024) (Cboe Options Proposal); 99682 (Mar. 6, 2024), 89 FR 17887 (Mar. 12, 2024) (MIAX Pearl Proposal); 99684 (Mar. 6, 2024), 89 FR 17887 (Mar. 12, 2024) (MIAX Proposal); 99681 (Mar. 6, 2024), 89 FR 17886 (Mar. 12, 2024) (ISE iShares Proposal). The Commission designated April 24, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule changes.

¹² See Securities Exchange Act Release No. 99593 (Feb. 23, 2024), 89 FR 14911.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ See Securities Exchange Act Release No. 99921 (Apr. 8, 2024), 89 FR 25908 (Apr. 12, 2024).

¹⁵ See Securities Exchange Act Release No. 99777 (Mar. 19, 2024), 89 FR 20712.

¹⁶ See Securities Exchange Act Release No. 99776 (Mar. 19, 2024), 89 FR 20717.

¹⁷ Comment letters on the proposed rule change are available at <https://www.sec.gov/comments/sr-box-2024-07/srbox202407.htm>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See File No. SR-ISE-2024-03 (“ISE iShares Proposal”), filed Jan. 9, 2024. On January 10, 2024, the Commission approved proposals by NYSE Arca, Inc., The Nasdaq Stock Market LLC, and Cboe BZX Exchange, Inc. to list and trade the shares of 11 bitcoin-based commodity-based trust shares and trust units, including the iShares Bitcoin Trust, the Grayscale Bitcoin Trust, and the Bitwise Bitcoin ETF. See Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (order approving File Nos. SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072).

⁴ See File Nos. SR-BOX-2024-07 (“BOX Proposal”), filed Mar. 11, 2024; SR-CBOE-2024-005 (“Cboe Options Proposal”), filed Jan. 5, 2024; SR-ISE-2024-14 (“ISE Trust Proposal”), filed Mar. 19, 2024; SR-MIAX-2024-03 (“MIAX Proposal”),

¹⁷ 17 CFR 200.30-3(a)(12).

Proposal,¹⁸ the ISE iShares Proposal,¹⁹ the ISE Trust Proposal,²⁰ the MIAx Proposal,²¹ the MIAx Pearl Proposal,²² and the NYSE American Proposal.²³ On April 24, 2024, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act²⁴ to determine whether to approve or disapprove the proposed rule changes.²⁵

Section 19(b)(2) of the Act²⁶ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The Cboe Options Proposal, the ISE iShares Proposal, the MIAx Proposal, and the MIAx Pearl Proposal were published for notice and comment in the **Federal Register** on January 25, 2024. July 23, 2024, is 180 days from that date. The NYSE American Proposal was published for notice and comment in the **Federal Register** on February 29, 2024. August 27, 2024, is 180 days from that date. The BOX Proposal and the ISE Trust Proposal were published for notice and comment in the **Federal Register** on March 25, 2024. September 21, 2024, is 180 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order(s) approving or disapproving the Proposals so that it has sufficient time to consider the Proposals and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,²⁷ designates September 21, 2024, as the

date by which the Commission shall either approve or disapprove the Cboe Options Proposal, the ISE iShares Proposal, the MIAx Proposal, and the MIAx Pearl Proposal (File Nos. SR-CBOE-2024-005; SR-ISE-2024-03; SR-MIAx-2024-03; and SR-PEARL-2024-03); October 26, 2024, as the date by which the Commission shall either approve or disapprove the NYSE American Proposal (File No. SR-NYSEAMER-2024-10); and November 20, 2024, as the date by which the Commission shall either approve or disapprove the BOX Proposal and the ISE Trust Proposal (File Nos. SR-BOX-2024-07 and ISE-2024-14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-16303 Filed 7-24-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20476 and #20477;
IOWA Disaster Number IA-20008]**

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of IOWA (FEMA-4779-DR), dated 07/19/2024.

Incident: Severe Storms and Tornadoes.

Incident Period: 04/26/2024 through 04/27/2024.

DATES: Issued on 07/19/2024.

Physical Loan Application Deadline Date: 09/17/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 04/21/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/19/2024, Private Non-Profit

organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clarke, Crawford, Harrison, Pottawattamie, Ringgold, Shelby, Union.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 20476C and for economic injury is 204770.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-16339 Filed 7-24-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20474 and #20475;
MONTANA Disaster Number MT-20007]**

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Montana

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Montana (FEMA-4801-DR), dated 07/18/2024.

Incident: Severe Winter Storm and Flooding.

Incident Period: 05/06/2024 through 05/09/2024.

DATES: Issued on 07/18/2024.

Physical Loan Application Deadline Date: 09/16/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 04/18/2025.

¹⁸ Comment letters on the proposed rule change are available at <https://www.sec.gov/comments/sr-cboe-2024-005/sr-cboe2024005.htm>.

¹⁹ Comment letters on the proposed rule change are available at <https://www.sec.gov/comments/sr-ise-2024-03/sr-ise202403.htm>.

²⁰ Comment letters on the proposed rule change are available at <https://www.sec.gov/comments/sr-ise-2024-14/sr-ise202414.htm>.

²¹ Comment letters on the proposed rule change are available at <https://www.sec.gov/comments/sr-miax-2024-03/sr-miax202403.htm>.

²² Comment letters on the proposed rule change are available at <https://www.sec.gov/comments/sr-pearl-2024-03/sr-pearl202403.htm>.

²³ Comment letters on the proposed rule change are available at <https://www.sec.gov/comments/sr-nyseamer-2024-10/sr-nyseamer202410.htm>.

²⁴ 15 U.S.C. 78s(b)(2)(B).

²⁵ See Securities Exchange Act Release No. 100024, 89 FR 34290 (Apr. 30, 2024).

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ *Id.*

²⁸ 17 CFR 200.30-3(a)(57).

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:
Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President’s major disaster declaration on 07/18/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Blaine, Chouteau, Fergus, Hill, Judith Basin, Petroleum, Pondera, Teton, Toole, Wheatland, the Rocky Boy’s Indian Reservation and the Fort Belknap Indian Community.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 204746 and for economic injury is 204750.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster Recovery & Resilience.
[FR Doc. 2024–16397 Filed 7–24–24; 8:45 am]
BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20358 and #20359; TEXAS Disaster Number TX–20013]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4781–DR), dated 05/23/2024.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 04/26/2024 through 06/05/2024.

DATES: Issued on 07/18/2024.

Physical Loan Application Deadline Date: 07/22/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 02/24/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:
Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President’s major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 05/23/2024, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bailey

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–16332 Filed 7–24–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20358 and #20359; TEXAS Disaster Number TX–20013]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for Public Assistance Only for the State of Texas (FEMA–4781–DR), dated 05/23/2024.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 04/26/2024 through 06/05/2024.

DATES: Issued on 07/15/2024.

Physical Loan Application Deadline Date: 07/22/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 02/24/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:
Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President’s major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 05/23/2024, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Blanco, Cass, Cherokee, Dallas, Gonzales, Hopkins, McCulloch, Morris, Rains, Sabine, Titus

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–16330 Filed 7–24–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20403 and #20404; FLORIDA Disaster Number FL–20006]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4794–DR), dated 06/17/2024.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 05/10/2024.

DATES: Issued on 07/16/2024.

Physical Loan Application Deadline Date: 08/16/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 03/17/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 06/17/2024, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Columbia.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-16331 Filed 7-24-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20415 and #20416; IOWA Disaster Number IA-20005]

Presidential Declaration Amendment of a Major Disaster for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA-4796-DR), dated 06/24/2024.

Incident: Severe Storms, Flooding, Straight-line Winds, and Tornadoes.

Incident Period: 06/16/2024 and continuing.

DATES: Issued on 07/18/2024.

Physical Loan Application Deadline Date: 08/23/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 03/24/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Iowa, dated 06/24/2024, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Dickinson, Humboldt, Palo Alto

Contiguous Counties (Economic Injury Loans Only):

Iowa: Calhoun, Hancock, Webster, Wright

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-16333 Filed 7-24-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20395 and #20396; OKLAHOMA Disaster Number OK-20005]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA-4791-DR), dated 06/14/2024.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 05/19/2024 through 05/28/2024.

DATES: Issued on 07/16/2024.

Physical Loan Application Deadline Date: 08/13/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 03/14/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oklahoma, dated 06/14/2024, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Caddo, Custer, Jackson, Roger Mills, Woods

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-16329 Filed 7-24-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0265]

Agency Information Collection Activities; Approval of an Information Collection Request: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. Foreign (Mexico-based) for-hire and private motor carriers are required to file an application Form OP-2 if they wish to register to transport property within municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities. The Certificate of Registration only permits the holder to operate in the United States within these areas. A holder of a Certificate of Registration who operates a vehicle beyond these areas is subject to applicable penalties and out-of-service orders.

DATES: Comments on this notice must be received on or before August 26, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey L. Secrist, Office of Registration, Chief, Registration Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC

20590; (202) 385-2367; jeff.secrist@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.

OMB Control Number: 2126-0019.

Type of Request: Renewal of a currently approved ICR.

Respondents: Foreign motor carriers.

Estimated Number of Respondents: 585.

Estimated Time per Response: 1.5 hours.

Expiration Date: October 31, 2024.

Frequency of Response: Other (as needed).

Estimated Total Annual Burden: 878.

Background

Title 49 U.S.C. 13902(c) contains basic licensing procedures for registering foreign (Mexico-based) motor carriers to operate across the U.S.-Mexico international border into the United States. The regulations that require foreign (Mexico-based) motor carriers to apply to FMCSA for a Certificate of Registration to provide interstate transportation in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities as defined in 49 U.S.C. 13902(c)(4)(A) are found at 49 CFR part 368. FMCSA carries out this registration program under authority delegated by the Secretary of Transportation.

Foreign (Mexico-based) motor carriers with existing Certificates of Registration may continue to use Form OP-2 to update their registration information with FMCSA. The form requests information on the foreign motor carrier's name, address, U.S. DOT number, form of business (*e.g.*, corporation, sole proprietorship, partnership), locations where the applicant plans to operate, types of registration requested (*e.g.*, for-hire motor carrier, household goods carrier, motor private carrier), insurance, safety certifications, household goods arbitration certifications, and compliance certifications.

Changes From Previous Estimates

The currently approved version of this ICR estimated the average annual burden to be 47 annual burden hours, with 31 total annual respondents. For this renewal, the estimated average annual burden is 878 hours, and 585 average annual respondents, based on an estimated burden of 1.5 hours per respondent. The estimated annual burden hour increase of 831 hours is due primarily to the increase in the

number of updated OP-2 forms filed from 2020 through 2022. The average number of entities which filed updated OP-2 forms in the three-year period 2020 through 2022 increased by 95 percent compared to the number that registered from 2017 through 2019.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2024-16349 Filed 7-24-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0201]

Parts and Accessories Necessary for Safe Operation; Safe Fleet Bus and Rail Application for an Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant a limited 5-year exemption to Safe Fleet Bus and Rail (Safe Fleet) to allow motor carriers to operate commercial motor vehicles (CMVs) with the company's "MirrorLESS" camera monitor system (CMS) installed as an alternative to the two rear-vision mirrors required by the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency has determined that granting the exemption would likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: This exemption is effective July 30, 2024 and ending July 25, 2029.

FOR FURTHER INFORMATION CONTACT: Mr. David Sutula, Chief, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, 1200 New Jersey Avenue SE,

Washington, DC 20590-0001; (202) 366-9209; MCPSV@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

Docket: For access to the docket to read background documents or comments submitted in response to the notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

I. Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain parts of the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

II. Safe Fleet's Application for Exemption

Safe Fleet applied for an exemption from 49 CFR 393.80(a) to allow motor carriers to operate CMVs equipped with the company's MirrorLESS CMS installed as an alternative to the two rear-vision mirrors required by the FMCSRs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.80(a) of the FMCSRs requires that each bus, truck, and truck-tractor be equipped with two rear-vision mirrors, one at each side. The mirrors must be positioned to reflect to the driver a view of the highway to the rear and the area along both sides of the CMV. Section 393.80(a) cross-references the National Highway Traffic Safety Administration's (NHTSA) standards for mirrors on motor vehicles (49 CFR 571.111, Federal Motor Vehicle Safety Standard [FMVSS] No. 111, "Rear Visibility"). Paragraph S7.1 of FMVSS No. 111 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a gross vehicle weight rating (GVWR) greater than 4,536 kg and less than 11,340 kg and each bus, other than a school bus, with a GVWR of more than 4,536 kg. Paragraph S8.1 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a GVWR of 11,340 kg or more.

The Safe Fleet CMS consists of three cameras, each with a specific field of view (FOV), firmly mounted close to the vehicle's drip rail location *i.e.*, a metal or rubber strip installed along the top edge of the vehicle's doors, enclosed in an aerodynamic package that provides environmental protection for the cameras. Each camera presents a clear image to the driver by means of an internal monitor firmly mounted to the left and right A-pillar of the CMV, *i.e.*, the structural member between the windshield and door of the cab. The installation of the monitors on the A-pillars creates no additional visual obstruction, while eliminating the substantial blind spots created by conventional mirrors. Safe Fleet states that its MirrorLESS CMS meets and/or exceeds the visibility requirements provided in FMVSS No. 111 based on the following factors:

- Cameras are firmly mounted to the exterior body structure to ensure vibration does not adversely affect the field of vision.
- The left and right video channels are processed independently so that failure of one does not impact operation of the other.
- The system reduces glare from ambient light, keeping the screen clear and visible during high light operations.
- The system provides enhanced vision at night or in low light conditions, with the cameras automatically adjusting along with the monitors to provide enhanced vision over traditional mirrors.
- The system is equipped with a built-in heater, air nozzle, and hydrophobic lens, preventing the accumulation of ice, snow, and rain,

ensuring the driver maintains unobstructed views.

- FOV improvement of approximately 25% compared to standard ISO Class II & Class IV mirrors.

In addition, Safe Fleet stated that the Agency's reasoning supporting the grant of previous exemptions is equally applicable to the Safe Fleet's MirrorLESS CMS.

Safe Fleet believes that mounting the system as described would maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

III. Summary of Comments

FMCSA published a notice of the application in the **Federal Register** on November 16, 2023, requesting public comment (88 FR 78809). The Agency received comments from two individuals, one opposing the application and one supporting it, subject to conditions.

The commenter who opposed the exemption generally discourages the use of cameras to replace mirrors. The other commenter suggested that the cameras be used in conjunction with standard rearview mirrors, rather than replacing them, due to concerns that an unsafe operating condition would exist in the event of a camera failure.

Separate, but related, FMCSA has received numerous comments in support of other, similar camera-based mirror system exemptions, such as in Stoneridge, Inc. "MirrorEye Camera Monitor System" (84 FR 5557, February 21, 2019); Vision Systems North America "SmartVision System" (85 FR 2486, January 15, 2020); Robert Bosch, LLC and Mekra Lang North America, LLC (Bosch) "Digital Mirror System" (85 FR 58106, September 17, 2020); and Rosco Vision, Inc. "Commercial Vehicle Digital Camera Monitor System" (87 FR 73386, December 4, 2022). Seventeen motor carriers, associations, and individuals supported the Stoneridge application, specifically noting the following benefits: (1) superior total FOV around a CMV, including reduction/elimination of blind spots (2) increased visibility when driving at night and during inclement weather, (3) enhanced vehicle maneuverability in backing, turning, and lane changes through use of trailer scanning, (4) and reduced driver fatigue.

Vision Systems North America's application was supported by 5 motor carriers, associations, and individuals. These commenters specifically noted the following benefits of the camera-based mirror system proposed: (1) improved FOV around a CMV, including reduction/elimination glare

and blind spots (2) increased visibility when driving at night and during inclement weather, and (3) reduced driver fatigue.

The American Bus Association (ABA) commented in support of the Bosch Digital Mirror System. The ABA noted that the Bosch system provided the following visibility benefits: (1) anti-glare, (2) improved visibility at night and during adverse weather conditions, and (3) elimination of blind spots by providing a broader field of vision around the vehicle.

In addition to the positive comments received relating to other CMS systems, the Agency has not received any reports of accidents or other safety concerns relating to the previously granted CMS exemption applications.

IV. FMCSA Decision Granting Exemption

FMCSA evaluated Safe Fleet's application for exemption and the comments received. For the reasons discussed below, FMCSA is granting the exemption to allow motor carriers to install and operate CMVs with the company's MirrorLESS CMS as an alternative to the two rear-vision mirrors required by the FMCSRs. FMCSA believes that the MirrorLESS CMS is likely to achieve a level of safety equivalent to or greater than the level of safety achieved by the regulation.

A. Equivalent Level of Safety Analysis

Section 393.80 cross references FMVSS No. 111 which requires CMVs with a GVWR of 11,340 kg (25,000 pounds) or more to be equipped with a rearview mirror size of unit magnification of no less than 323 cm² (50 in²) on each side of the vehicle. In its comments to a 2019 NHTSA Advance Notice of Proposed Rulemaking on rear visibility, the Engine Manufacturers Association¹ (EMA) noted that manufacturers are equipping CMVs with mirrors that are more than twice the minimum size required for each side of the vehicle, as well as adding convex mirrors to provide the driver a still greater FOV. The manufacturers install these larger, less aerodynamic mirrors to provide the driver the enhanced visibility that is crucial to the safe operation of a large truck. Similarly, CMS like Safe Fleet's MirrorLESS CMS are capable of providing an enhanced FOV that exceeds the requirements of FMVSS No.

¹ Engine Manufacturers Association (EMA) comments to NHTSA ANPRM Federal Motor Vehicle Safety Standard No. 111, Rear Visibility (84 FR 54533, October 10, 2019), <https://www.regulations.gov/comment/NHTSA-2018-0021-0493>.

111 and the current rear-vision mirrors installed on CMVs.

FMCSA notes that CMS are authorized for use in a number of European countries as a legal alternative to the traditional rear-vision mirrors under the requirements of United Nations Economic Commission for Europe (UNECE) R46 which specifies minimum safety, ergonomic, and performance requirements for CMS in place of mandatory inside and outside rearview mirrors for road vehicles. This regulation references ISO (International Organization for Standardization) standard 16505 Rev 2019 which addresses CMS definitions and required performance for use in road vehicles. The specifications for CMS systems in ISO 16505 exceed the FOV requirements in FMVSS No. 111.

FMCSA has reviewed Safe Fleet's CMS submission and has determined that its MirrorLESS system exceeds both the FOV required by FMVSS No. 111 and the rear-vision mirrors currently installed by manufacturers.

FMCSA acknowledges the concerns of the two individual commenters regarding potential system failure of the MirrorLESS CMS. FMCSA notes that the MirrorLESS CMS is designed with redundancy in the event of camera failure, such that if one of the cameras within the camera assembly were to fail, the system would automatically adjust the view of the interior monitor for that side to a full screen view of the remaining working camera. Furthermore, if the entire camera assembly on one side were to fail, the functionality of the other side would remain unaffected.

In the event of camera or monitor failure, the CMV would not be subject to an out-of-service (OOS) order because it is not a critical inspection item under CVSA's OOS criteria,² in the same way conventional mirrors do not trigger an OOS order if cracked or damaged while in operation. Instead, the CMV would be subject to the requirements of 49 CFR 396.11 which would require a driver to complete a driver vehicle inspection report at the end of the workday and the motor carrier to correct any identified safety defects before permitting or

requiring a driver to operate the CMV again.

Additionally, under 49 CFR 392.7(a), CMV drivers must satisfy themselves that a vehicle is in safe condition before operating the vehicle. This obligation would include ensuring that both rear-vision mirrors (or in this case, all components of the MirrorLESS CMS including all external cameras and both internal monitors) are in good working order. CMVs are also subject to the periodic inspection requirements under 49 CFR 396.17, which would include an inspection of the MirrorLESS CMS. To further ensure that the MirrorLESS CMS system is properly maintained, the terms and conditions of the exemption specify that motor carriers and drivers operating CMVs under this exemption must inspect the MirrorLESS CMS before operation of the CMV.

FMCSA believes that the MirrorLESS CMS is likely to achieve a level of safety equivalent to or greater than the level of safety achieved by standard rear-view mirrors because it provides a greater FOV, eliminates the blind spots created by mirrors on both sides of the vehicle, provides a monitor with low light sensitivity feature, and includes a camera heating system, all of which exceed the current requirements of 49 CFR 393.80. The FMCSRs impose several operational controls that will help ensure that the MirrorLESS CMS is functioning properly. Before driving a vehicle, a driver must be satisfied that the vehicle is in safe operating condition, and that any system failures reported have been corrected prior to vehicle re-dispatch. Additionally, the driver must complete a driver vehicle inspection report at the completion of the workday, noting any system defects or failures that occurred during operation of the vehicle.

B. Duration of Exemption

The Agency grants the exemption for a 5-year period, beginning July 30, 2024 and ending July 25, 2029 unless rescinded earlier by FMCSA. During the exemption period, motor carriers operating CMVs may install and utilize the Safe Fleet's MirrorLESS CMS in lieu of the two rear-vision mirrors required by section 393.80 of the FMCSRs. The Agency encourages drivers operating CMVs under this exemption to carry a copy of the exemption in the vehicle.

C. Conditions of Exemption

1. This exemption is limited to the Safe Fleet's MirrorLESS CMS installed on CMVs and does not apply to any other camera-based mirror replacement system/technology.

2. Drivers operating CMVs under this exemption must inspect the MirrorLESS CMS each time before operating the CMV and ensure that it is in proper working order.

3. Drivers operating CMVs under this exemption must inspect the equipment at the end of each day and note any defects in the equipment. The motor carrier must repair any defects noted by the driver before it operates the CMV.

4. The motor carrier must, in addition to existing periodic inspections required by 49 CFR 396.17, periodically inspect the MirrorLESS CMS.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Termination

FMCSA does not believe the motor carrier, the drivers, and CMVs covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption without prior notice. The exemption will be rescinded if: (1) motor carriers and/or CMV drivers fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) or 31315(b).

Interested parties possessing information that would demonstrate that motor carriers operating CMVs utilizing the Safe Fleet's MirrorLESS CMS installed as an alternative to two rear-vision mirrors are not achieving the requisite statutory level of safety should immediately notify FMCSA by email at MCPSV@DOT.GOV. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Sue Lawless,

Acting Deputy Administrator.

[FR Doc. 2024-16340 Filed 7-24-24; 8:45 am]

BILLING CODE 4910-EX-P

² The CVSA OOSC states that any motor vehicle which by reason of its mechanical condition or loading that would be likely to cause an accident or breakdown is considered "Out-of-Service." Violations, other than Out-of-Service conditions, detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach. See <https://www.cvsa.org/inspections/out-of-service-criteria/>.

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****[Docket No. PHMSA–2024–0043]****Pipeline Safety: 2024 Risk Modeling Public Workshop**

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of public workshop and request for comments and abstracts.

SUMMARY: This notice announces a public workshop on risk modeling methodologies and tools for the evaluation of gas, carbon dioxide (CO₂), and hazardous liquid pipelines. The notice also requests comment on the topic, including submission of supporting abstracts of relevant engineering and technical modeling considerations to support improvement and advancement in pipeline risk management, such as modeling methods that follow PHMSA's report on Pipeline Risk Modeling, Overview of Methods, and Tools for Improved Implementation, issued in February 2020.

DATES: The public workshop will be held on October 23 and 24, 2024 (time to be determined). Public comments for consideration at the workshop can be submitted to the docket until October 9, 2024. Abstracts must be submitted to the docket by August 16, 2024. All comments and abstracts must be submitted to Docket No. PHMSA–2024–0043. Anyone who would like to attend the public workshop must register by October 1, 2024. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, should notify Janice Morgan by phone at 202–815–4507 or by email at Janice.Morgan@dot.gov no later than October 1, 2024. For additional information, see the **ADDRESSES** section of this notice.

ADDRESSES: The 2024 Risk Modeling Public Workshop will be held in person in Houston, Texas (exact location and website address to be determined). The location, instructions, and final agenda will be posted to Docket No. PHMSA–2024–0043 once they are finalized.

Presentations: Presentations will be available on the workshop website and on the E-gov website at www.regulations.gov at Docket No. PHMSA–2024–0043, no later than 30 days following the workshop.

Submitting Comments: Members of the public may submit written

comments either before or after the workshop. Comments should reference Docket No. PHMSA–2024–0043 and may be submitted by any of the following ways:

- **E-Gov Web:** www.regulations.gov.

This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

- **Mail:** Docket Management System, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- **Hand Delivery:** DOT Docket Management System, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9:00 a.m. and 5:00 p.m. EST, Monday through Friday, except federal holidays.

- **Fax:** 202–493–2251.

Instructions: Identify the docket number at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at www.regulations.gov.

Confidential Business Information: 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 (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments in response to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to provide confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as “Confidential;” (2) send PHMSA a copy of the original document with the CBI deleted along with the original, unaltered document; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Kandilara Barakat, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket.

Privacy Act: DOT may solicit comments from the public regarding

certain general notices. Comments, including any personal information provided, are posted without changes or edits to <https://www.regulations.gov>. DOT posts these comments as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. Follow the online instructions for accessing the dockets. Alternatively, you may review the documents in person at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Lee Cooper, Engineering Operations Supervisor, Engineering and Research Division, by phone at 202–913–3171 or by email at Lee.Cooper@dot.gov.

SUPPLEMENTARY INFORMATION:**Background**

Pipeline risk models are foundational to the assessment of operational pipeline risk. federal pipeline safety integrity management (IM) regulations require pipeline operators to use risk assessments. PHMSA's integrity management regulations (49 CFR part 192, subpart O and subpart P; 49 CFR 195.452) require the continual evaluation of threats to pipelines, and evaluation of methods to minimize the likelihood of a release as well as address the consequences of potential releases. Risk models are a primary tool pipeline operators use as part of this evaluation process and are generally referred to as a “risk analysis” or “risk assessment.” A risk model is a set of algorithms or rules that use available information and data relationships to perform a risk assessment. The risk model is a simplified representation of a pipeline system and represents the relation of important risk factors.

To meet integrity management standards, a risk modeling approach must be able to adequately characterize all pipeline integrity threats and consequences concurrently, as well as be able to evaluate the impact of various measures on reducing risk.

In September 2015, PHMSA hosted a public workshop on risk modeling where various comments were presented and discussed with interested stakeholders. Information regarding the previous public workshop can be found at Docket No. PHMSA–2015–0139. Following the public workshop, PHMSA organized a risk modeling work group (RMWG) to gather information regarding state-of-the-art pipeline risk modeling methods and tools; the use of those methods and tools; and the

resulting data in operator IM programs. In February 2020, PHMSA issued the resulting report, "Pipeline Risk Modeling, Overview of Methods and Tools for Improved Implementation," which presented several conclusions:

- The overriding principle in employing any type of risk model/assessment is that it supports risk management decisions to reduce risks.
- While different risk model types have different capabilities for evaluating risk reduction actions, the quantitative system model or probabilistic models are more versatile and provide greater capabilities to provide risk insights and support decision making. Such models are not necessarily more complex nor need more data than other types of risk models.
- Pipeline operators should take ongoing actions to improve and update data quality and completeness over time. However, the type of risk model to employ in pipeline risk analyses should not depend primarily on the perceived initial quality and completeness of input data because all models utilize the available data. Instead, operators should select the best model approach and then populate the model with the best information currently available on risk factors or threats for each pipeline segment and improve that data over time.
- It is important for risk models to include modeling of incorrect operations, which includes human interactions and human performance, that are significant to the likelihood of failure or have a significant effect on consequences of a failure (e.g., inappropriate controller restart of pumps, realistic emergency response time scenarios, design, and construction human errors, etc.).
- It is important for pipeline risk models to include the potential effects of how threats interact in ways that can increase risk. Therefore, when a risk analysis involves multiple threats, the effects of "interactive threats" or dependencies on likelihood of failure should be clearly evaluated.
- Varying levels of sophistication are possible in the analysis of the consequences of a failure. However, it is important to consider an applicable range of scenarios (even if they do not have a high probability of occurrence) to capture the full spectrum of possible consequences.
- The characteristics of pipeline facilities that affect risk may be significantly different than those of line pipe, but the same basic risk assessment principles apply and the same types of models may be applied.

In addition, section 119 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020 directed PHMSA to commission a study to assess regulatory standards and criteria for deciding when automatic and remote-control shutoff valves should be installed on existing hazardous liquid and gas transmission pipelines in high consequence areas (HCAs). The National Academies of Sciences, Engineering, and Medicine (NASEM) conducted the study of potential methodologies for the installation of automatic or remote-controlled shut-off valves and released its findings in February 2024. The study included several recommendations, one of which suggested PHMSA "further the pipeline industry's use of quantitative models for IM risk analysis as well as sound and consistent methods for establishing the benefits of safety measure." The recommendation specifically includes recommendations to:

- Require the use of quantitative risk modeling by all pipeline operators for their IM programs, except when an operator can make a compelling justification for the use of another risk assessment method.
- Provide the pipeline industry with practitioner-oriented technical guidance for conducting state-of-the-art pipeline risk analyses using quantitative models and for estimating the benefits of alternative risk reduction measures, including public safety benefits and interests.
- Encourage recognized standard-setting organizations, such as the American Society of Mechanical Engineers and American Petroleum Institute, to enhance their standards for hazardous liquid and gas transmission pipelines by including more technical guidance for using quantitative risk models and for obtaining the data needed to develop them.

The 2024 Risk Modeling Public Workshop will provide an opportunity to discuss advances in risk modeling approaches and methodologies for pipeline and non-pipeline systems, as well as practical ways that pipeline operators have adopted and/or adapted methodologies to enhance the risk analyses of their systems.

PHMSA believes that risk models need to evolve in such a way as to be more versatile, thus leading to improved implementation to further reduce the risk of pipeline integrity threats to the public, property, and the environment. PHMSA is particularly interested in improvements to pipeline risk models, and what operators have adopted and/

or adapted to risk models as part of the risk analyses of their systems.

Public Workshop and Request for Comments

To this end, PHMSA will hold the 2024 Risk Modeling Public Workshop to discuss and receive public feedback on recent advancements and improvements in risk analyses and risk models. PHMSA invites the public to comment and submit research abstracts on engineering and technical modeling considerations related to advancements in pipeline risk models, as well as risk modeling methodologies used in non-pipeline applications, and practical ways that operators can adopt and/or adapt such methods to the risk analyses of their systems. PHMSA will review all submitted abstracts and may choose to select abstracts for presentation during the workshop.

To be considered for presentation, authors must submit abstracts of 250 words or less to Docket No. PHMSA-2024-0043 by July 30, 2024. If selected, PHMSA will notify the author of their selection by August 30, 2024. Each author of a selected abstract will then provide a short presentation to be used during the workshop. This will be due by September 30, 2024.

Specific examples of applications are encouraged. PHMSA is interested in engineering and technical modeling considerations, including, but not limited to, the following:

- Quantitative system and probabilistic risk approaches;
- Treatment of human performance, including both likelihood and consequence aspects;
- Consideration of threats and their interactions in risk assessments;
- Modeling challenges associated with the transportation of hydrogen, hydrogen blends, or carbon dioxide;
- Identification, evaluation, and comparison of preventive measures and mitigative measures;
- Cost/benefit analysis for risk reduction options; and
- Continual evaluation of integrity and general risk management decision making.

PHMSA is not always able to publish a notice in the **Federal Register** quickly enough to provide timely notification of last-minute changes that impact scheduled workshops. Therefore, individuals should check the workshop website listed in the **ADDRESSES** section of this notice or contact Lee Cooper by phone at 202-913-3171 or by email at Lee.Cooper@dot.gov, regarding any possible changes. PHMSA invites public participation and public comment on the topics addressed in this public

workshop. Please review the **ADDRESSES** section of this notice for information on how to submit written comments.

Issued in Washington, DC, on July 22, 2024, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2024–16414 Filed 7–24–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2024–0041]

Notice To Renew the Transforming Transportation Advisory Committee (TTAC)

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of the charter renewal of the Transforming Transportation Advisory Committee (TTAC), and TTAC Membership Balance Plan.

SUMMARY: The Office of the Secretary of Transportation (OST) issues this notice to clarify its renewal of the charter for TTAC.

DATES: The TTAC Charter will be effective for two years after date of publication of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT:

TTAC Designated Federal Officer, c/o Benjamin Ross Levine, Director of Strategic Initiatives, Office of the Assistant Secretary for Research and Technology, Office of the Secretary of Transportation, ttac@dot.gov, (202) 941–6180.

SUPPLEMENTARY INFORMATION: Certain content published on July 12, 2024 in the Notice To Renew the Transforming Transportation Advisory Committee (TTAC) should be disregarded. The sections of that notice titled “Current Charter of the Transforming Transportation Advisory Committee” and “Redline Comparison of Changes Made to the Charter of the Transforming Transportation Advisory Committee” were included in error. The current charter of the Transforming Transportation Advisory Committee is available at <https://www.transportation.gov/ttac>. All other information in the notice remains valid.

Issued in Washington, DC, on July 19, 2024, under authority delegated at 49 CFR 1.25a.

Benjamin Ross Levine,

Director of Strategic Initiatives.

[FR Doc. 2024–16324 Filed 7–24–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Credit Risk Retention

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, “Credit Risk Retention.” The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by August 26, 2024.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel’s Office,

Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0249, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include “OCC” as the agency name and “1557–0249” in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be

sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. You can find this information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the “Information Collection Review” tab and click on “Information Collection Review” from the drop-down menu. From the “Currently under Review” drop-down menu, select “Department of Treasury” and then click “submit.” This information collection can be located by searching OMB control number “1557–0249” or “Credit Risk Retention.” Upon finding the appropriate information collection, click on the related “ICR Reference Number.” On the next screen, select “View Supporting Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT:

Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel’s Office, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks the OMB to extend its approval of the collection in this notice.

Title: Credit Risk Retention.

OMB Control No.: 1557–0249.

Description: This information collection request relates to 12 CFR part 43, which implemented section 941(b) of the Dodd-Frank Act.¹ Section 941(b) of the Dodd-Frank Act required the OCC, Board of Governors of the Federal

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010)).

Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission (SEC), and, in the case of the securitization of any residential mortgage asset, the Federal Housing Finance Agency (FHFA), and the Department of Housing and Urban Development (HUD) (collectively, the agencies) to issue rules that, subject to certain exemptions: require a securitizer to retain not less than 5% of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party; and prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under the statute and implementing regulations.

Part 43 sets forth permissible forms of risk retention for securitizations that involve the issuance of asset-backed securities. Section 15G of the Exchange Act also exempts certain types of securitization transactions from these risk retention requirements and authorizes the agencies to exempt or establish a lower risk retention requirement for other types of securitization transactions. Section 15G also states that the agencies must permit a securitizer to retain less than five percent of the credit risk of commercial mortgages, commercial loans, and automobile loans that are transferred, sold, or conveyed through the issuance of ABS by the securitizer if the loans meet underwriting standards established by the Federal banking agencies.²

Part 43 sets forth permissible forms of risk retention for securitizations that involve issuance of asset-backed securities, as well as exemptions from the risk retention requirements, and contains requirements subject to the PRA.

Section 43.4 sets forth the conditions that must be met by sponsors electing to use the standard risk retention option, which may consist of an eligible vertical interest or an eligible horizontal residual interest, or any combination thereof. Sections 43.4(c)(1) and 43.4(c)(2) specify the disclosures required with respect to eligible horizontal residual interests and eligible vertical interests, respectively.

A sponsor retaining any eligible horizontal residual interest (or funding a horizontal cash reserve account) is required to disclose: the fair value (or a range of fair values and the method used to determine such range) of the eligible horizontal residual interest that the sponsor expects to retain at the closing

of the securitization transaction (§ 43.4(c)(1)(i)(A)); the material terms of the eligible horizontal residual interest (§ 43.4(c)(1)(i)(B)); the methodology used to calculate the fair value (or range of fair values) of all classes of ABS interests (§ 43.4(c)(1)(i)(C)); the key inputs and assumptions used in measuring the estimated total fair value (or range of fair values) of all classes of ABS interests (§ 43.4(c)(1)(i)(D)); the reference data set or other historical information used to develop the key inputs and assumptions (§ 43.4(c)(1)(i)(G)); the fair value of the eligible horizontal residual interest retained by the sponsor (§ 43.4(c)(1)(ii)(A)); the fair value of the eligible horizontal residual interest required to be retained by the sponsor (§ 43.4(c)(1)(ii)(B)); a description of any material differences between the methodology used in calculating the fair value disclosed prior to sale and the methodology used to calculate the fair value at the time of closing (§ 43.4(c)(1)(ii)(C)); and if the sponsor retains risk through the funding of an eligible horizontal cash reserve account, the amount placed by the sponsor in the horizontal cash reserve account at closing, the fair value of the eligible horizontal residual interest that the sponsor is required to fund through such account, and a description of such account (§ 43.4(c)(1)(iii)).

For eligible vertical interests, the sponsor is required to disclose: the form of the eligible vertical interest (§ 43.4(c)(2)(i)(A)); the percentage that the sponsor is required to retain as a vertical interest (§ 43.4(c)(2)(i)(B)); a description of the material terms of the vertical interest and the amount the sponsor expects to retain at closing (§ 43.4(c)(2)(i)(C)); and the amount of vertical interest retained by the sponsor at closing, if that amount is materially different from the amount disclosed (§ 43.4(c)(2)(ii)).

Section 43.4(d) requires a sponsor to retain the certifications and disclosures required in paragraphs (a) and (c) of this section in its records and must provide the disclosure upon request to the Commission and the sponsor's appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding.

Section 43.5(k) requires sponsors relying on the master trust (or revolving pool securitization) risk retention option to disclose: the material terms of the seller's interest and the percentage of the seller's interest that the sponsor expects to retain at the closing of the transaction (§ 43.5(k)(1)(i)); the amount of the seller's interest that the sponsor retained at closing, if that amount is

materially different from the amount disclosed (§ 43.5(k)(1)(ii)); the material terms of any horizontal residual interests offsetting the seller's interest under § 43.5(g), § 43.5(h) and § 43.5(i) (§ 43.5(k)(1)(iii)); and the fair value of any horizontal residual interests retained by the sponsor (§ 43.5(k)(1)(iv)). Additionally, a sponsor must retain the disclosures required in § 43.5(k)(1) in its records and must provide the disclosure upon request to the Commission and the sponsor's appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding (§ 43.5(k)(3)).

Section 43.6 addresses the requirements for sponsors utilizing the eligible ABCP conduit risk retention option. The requirements for the eligible ABCP conduit risk retention option include disclosure to each purchaser of ABCP and periodically to each holder of commercial paper issued by the ABCP conduit of the name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the material terms of such liquidity coverage, and notice of any failure to fund; and with respect to each ABS interest held by the ABCP conduit, the asset class or brief description of the underlying securitized assets, the standard industrial category code for each originator-seller that retains an interest in the securitization transaction, and a description of the percentage amount and form of interest retained by each originator-seller (§ 43.6(d)(1)). An ABCP conduit sponsor relying upon this section shall provide, upon request, to the Commission and the sponsor's appropriate Federal banking agency, if any, the information required under § 43.6(d)(1), in addition to the name and form of organization of each originator-seller that retains an interest in the securitization transaction (§ 43.6(d)(2)).

A sponsor relying on the eligible ABCP conduit risk retention option shall maintain and adhere to policies and procedures to monitor compliance by each originator-seller which is satisfying a risk retention obligation in respect to ABS interests acquired by an eligible ABCP conduit (§ 43.6(f)(2)(i)). If the ABCP conduit sponsor determines that an originator-seller is no longer in compliance, the sponsor must promptly notify the holders of the ABCP, and upon request, the Commission and the sponsor's appropriate Federal banking agency, in writing of the name and form of organization of any originator-seller that fails to retain, and the amount of ABS interests issued by an intermediate SPV of such originator-seller and held

² 15 U.S.C. 78o–11(c)(1)(B)(ii) and (2).

by the ABCP conduit (§ 43.6(f)(2)(ii)(A)(1)); the name and form of organization of any originator-seller that hedges, directly or indirectly through an intermediate SPV, its risk retention in violation of the rule, and the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit (§ 43.6(f)(2)(ii)(A)(2)); and any remedial actions taken by the ABCP conduit sponsor or other party with respect to such ABS interests (§ 43.6(f)(2)(ii)(A)(3)).

Section 43.7 sets forth the requirements for sponsors relying on the commercial mortgage-backed securities risk retention option, and includes disclosures of: the name and form of organization of each initial third-party purchaser (§ 43.7(b)(7)(i)); each initial third-party purchaser's experience in investing in commercial mortgage-backed securities (§ 43.7(b)(7)(ii)); other material information (§ 43.7(b)(7)(iii)); the fair value and purchase price of the eligible horizontal residual interest retained by each initial third-party purchaser, and the fair value of the eligible horizontal residual interest that the sponsor would have retained if the sponsor had relied on retaining an eligible horizontal residual interest under the standard risk retention option (§ 43.7(b)(7)(iv) and (v)); a description of the material terms of the eligible horizontal residual interest retained by each initial third-party purchaser, including the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to § 43.4 (§ 43.7(b)(7)(vi)); the material terms of the applicable transaction documents with respect to the Operating Advisor (§ 43.7(b)(7)(vii)); and representations and warranties concerning the securitized assets, a schedule of any securitized assets that are determined not to comply with such representations and warranties, and the factors used to determine that such securitized assets should be included in the pool notwithstanding that they did not comply with the representations and warranties (§ 43.7(b)(7)(viii)). A sponsor relying on the commercial mortgage-backed securities risk retention option is also required to provide in the underlying securitization transaction documents certain provisions related to the Operating Advisor (§ 43.7(b)(6)), to maintain and adhere to policies and procedures to monitor compliance by third-party purchasers with regulatory requirements (§ 43.7(c)(2)(i)), and to notify the holders of the ABS interests in the event of noncompliance by a

third-party purchaser with such regulatory requirements (§ 43.7(c)(2)(ii)).

Section 43.8 requires that a sponsor relying on the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation risk retention option must disclose a description of the manner in which it has met the credit risk retention requirements (§ 43.8(c)).

Section 43.9 sets forth the requirements for sponsors relying on the open market CLO risk retention option, and includes disclosures of a complete list of, and certain information related to, every asset held by an open market CLO (§ 43.9(d)(1)), and the full legal name and form of organization of the CLO manager (§ 43.9(d)(2)).

Section 43.10 sets forth the requirements for sponsors relying on the qualified tender option bond risk retention option, and includes disclosures of the name and form of organization of the qualified tender option bond entity, a description of the form and subordination features of the retained interest in accordance with the disclosure obligations in section 43.4(c), the fair value of any portion of the retained interest that is claimed by the sponsor as an eligible horizontal residual interest, and the percentage of ABS interests issued that is represented by any portion of the retained interest that is claimed by the sponsor as an eligible vertical interest (§ 43.10(e)(1)–(4)). In addition, to the extent any portion of the retained interest claimed by the sponsor is a municipal security held outside of the qualified tender option bond entity, the sponsor must disclose the name and form of organization of the qualified tender option bond entity, the identity of the issuer of the municipal securities, the face value of the municipal securities deposited into the qualified tender option bond entity, and the face value of the municipal securities retained outside of the qualified tender option bond entity by the sponsor or its majority-owned affiliates (§ 43.10(e)(5)).

Section 43.11 sets forth the conditions that apply when the sponsor of a securitization allocates to originators of securitized assets a portion of the credit risk the sponsor is required to retain, including disclosure of the name and form of organization of any originator that acquires and retains an interest in the transaction, a description of the form, amount and nature of such interest, and the method of payment for such interest (§ 43.11(a)(2)). A sponsor relying on this section is required to maintain and adhere to policies and procedures that are reasonably designed to monitor originator compliance with

retention amount and hedging, transferring and pledging requirements (§ 43.11(b)(2)(i)), and to promptly notify the holders of the ABS interests in the transaction in the event of originator non-compliance with such regulatory requirements (§ 43.11(b)(2)(ii)).

Sections 43.13 and 43.19(g) provide exemptions from the risk retention requirements for qualified residential mortgages and qualifying 3-to-4 unit residential mortgage loans that meet certain specified criteria, including that the depositor with respect to the securitization transaction certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that the controls are effective (§§ 43.13(b)(4)(i) and 43.19(g)(2)), and that the sponsor provide a copy of the certification to potential investors prior to sale of asset-backed securities in the issuing entity (§§ 43.13(b)(4)(iii) and 43.19(g)(2)). In addition, §§ 43.13(c)(3) and 43.19(g)(3) provide that a sponsor that has relied upon the exemptions will not lose the exemptions if, after closing of the transaction, it is determined that one or more of the residential mortgage loans does not meet all of the criteria; provided that the depositor complies with certain specified requirements, including prompt notice to the holders of the asset-backed securities of any loan that is required to be repurchased by the sponsor, the amount of such repurchased loan, and the cause for such repurchase.

Section 43.15 provides exemptions from the risk retention requirements for qualifying commercial loans that meet the criteria specified in § 43.16, qualifying CRE loans that meet the criteria specified in § 43.17, and qualifying automobile loans that meet the criteria specified in § 43.18. Section 43.15 also requires the sponsor to disclose a description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans with 0 percent risk retention (§ 43.15(a)(4)). In addition, the sponsor is required to disclose descriptions of the qualifying commercial loans, qualifying CRE loans, and qualifying automobile loans ("qualifying assets"), and descriptions of the assets that are not qualifying assets, and the material differences between the group of qualifying assets and the group of assets that are not qualifying assets with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral

(§ 43.15(b)(3)). Additionally, a sponsor must retain the disclosures required in §§ 43.15(a) and (b) in its records and must provide the disclosure upon request to the Commission and the sponsor's appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding (§ 43.15(d)).

Sections 43.16, 43.17 and 43.18 each require that: the depositor of the asset-backed security certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that its internal supervisory controls are effective (§§ 43.16(a)(8)(i), 43.17(a)(10)(i), and 43.18(a)(8)(i)); the sponsor is required to provide a copy of the certification to potential investors prior to the sale of asset-backed securities in the issuing entity (§§ 43.16(a)(8)(iii), 43.17(a)(10)(iii), and 43.18(a)(8)(iii)); and the sponsor must promptly notify the holders of the asset-backed securities of any loan included in the transaction that is required to be cured or repurchased by the sponsor, including the principal amount of such loan and the cause for such cure or repurchase (§§ 43.16(b)(3), 43.17(b)(3), and 43.18(b)(3)). Additionally, a sponsor must retain the disclosures required in §§ 43.16(a)(8), 43.17(a)(10) and 43.18(a)(8) in its records and must provide the disclosure upon request to the Commission and the sponsor's appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding (§ 43.15(d)).

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Frequency of Response: On occasion.

Estimated Number of Respondents: 35.

Estimated Total Annual Burden: 2,835 hours.

Comments: On May 20, 2024, the OCC published a 60-day notice for this information collection, (89 FR 43976). No comments were received.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2024-16364 Filed 7-24-24; 8:45 am]

BILLING CODE 4810-33-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 two individuals that have been placed on OFAC's Specially Designated Nationals and Blocked Persons 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 individuals are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley T. Smith, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Compliance, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://ofac.treasury.gov/>).

Notice of OFAC Action

On July 19, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following individuals are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810-AL-P

Individuals

1. DEGTYARENKO, Denis Olegovich (Cyrillic: ДЕГТЯРЕНКО, Денис Олегович) (a.k.a. “Dena”), 130 Lenina Avenue, Novy Gorod microdistrict, Orsk, Orenburg Region, Russia; DOB 09 Oct 1989; nationality Russia; citizen Russia; Gender Male; Passport 5309876581 (Russia) (individual) [CYBER2].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13694 of April 1, 2015, “Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,” 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, “Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities,” 82 FR 1, 3 CFR., 2016 Comp., p. 659 (“E.O. 13694, as amended”) for being responsible for or complicit in, or to have engaged in, directly or indirectly, cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States that are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States and that have the purpose or effect of harming, or otherwise significant compromising the provision of services by, a computer or network of computers that support one or more entities in a critical infrastructure sector.

2. PANKRATOVA, Yuliya Vladimirovna (Cyrillic: ПАНКРАТОВА, Юлия Владимировна) (a.k.a. “YAROSLAVA, Yulina”; a.k.a. “YULiYA”; a.k.a. “ZHURALEVA, Yulina Vladimirovna”), Russia; DOB 06 Apr 1984; nationality Russia; citizen Russia; Gender Female (individual) [CYBER2].Designated pursuant to section 1(a)(ii)(A) of E.O. 13694, as amended for being responsible for or complicit in, or to have engaged in, directly or indirectly, cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States that are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States and that have the purpose or effect of harming, or otherwise significant compromising the provision of services by, a computer or network of computers that support one or more entities in a critical infrastructure sector.

Dated: July 19, 2024.
Bradley T. Smith,
Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.
[FR Doc. 2024–16343 Filed 7–24–24; 8:45 am]
BILLING CODE 4810–AL–C

DEPARTMENT OF VETERANS AFFAIRS
Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch.

10., that the Advisory Committee on Former Prisoners of War (Committee) will conduct a hybrid meeting (in-person and virtual) on August 28–29, 2024 at the VA Central Office, 810 Vermont Avenue, Sonny Montgomery Conference Room 230, Washington, DC 20420. Public participation will commence as follows:

Date	Time	Location	Open session
August 28, 2024	8:00 a.m.–4:00 p.m. Eastern Standard Time (EST).	VA Central Office, 810 Vermont Ave./Webex Link and Call-in Information Below.	Yes.
August 29, 2024	9:00 a.m.–5:00 p.m. (EST)	VA Central Office, 810 Vermont Ave./Webex Link and Call-in Information Below.	Yes.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38 U.S.C., for Veterans who are former prisoners of war (FPOW), and the needs of these Veterans, in the areas

of compensation, health care, and rehabilitation.

On Wednesday, August 28th, the Committee will assemble in open session for discussions and briefings from VA Central Office, Veterans Benefits Administration and Veterans Health Administration officials.

On Thursday, August 29th, the Committee will assemble in open session for discussions and briefings on benefits and services that available to FPOWs and surviving spouses.

FPOWs who wish to speak at the public forum are invited to submit a 1–2-page commentary for inclusion in official meeting records. Any member of the public may also submit a 1–2-page commentary for the Committee’s review.

Any member of the public wishing to attend the meeting or seeking additional information should contact, Julian Wright, Designated Federal Officer,

Department of Veterans Affairs, Advisory Committee on Former Prisoners of War at *Julian.Wright2@va.gov* no later than August 1, 2024. Any member of the public who wishes to participate in the virtual meeting may use the following Microsoft Teams Meeting Link:

Join on Your Computer or Mobile App

Day 1

<https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m2e84c6b57cd813346d65f3c91d44b67b>.

Webinar Number: 2826 524 4971.

Join by video system:

Dial 28265244971@

veteransaffairs.webex.com.

You can also dial 207.182.190.20 and enter your webinar number.

Join by phone:

14043971596 USA Toll Number.

Access code: 2826 524 4971.

Day 2

<https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m2e84c6b57cd813346d65f3c91d44b67b>.

Webinar Number: 2818 034 0600.

Join by video system:

Dial 28180340600@

veteransaffairs.webex.com.

You can also dial 207.182.190.20 and enter your webinar number.

Join by phone:

14043971596 USA Toll Number.

Access code: 2818 034 0600.

Dated: July 22, 2024.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–16359 Filed 7–24–24; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 89

Thursday,

No. 143

July 25, 2024

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

Endangered and Threatened Wildlife and Plants; Proposed Listing

Determinations for Ten Species of Giant Clams Under the Endangered
Species Act; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 240626–0177; RTID 0648–XF174]

Endangered and Threatened Wildlife and Plants; Proposed Listing Determinations for Ten Species of Giant Clams Under the Endangered Species Act

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

ACTION: Proposed rule; availability of status review; request for comments.

SUMMARY: We, NMFS, have completed a comprehensive status review of seven species of giant clams (*Hippopus hippopus*, *H. porcellanus*, *Tridacna derasa*, *T. gigas*, *T. mbalavuana*, *T. squamosa*, and *T. squamosina*) in response to a petition to list these species as threatened or endangered under the Endangered Species Act (ESA). Based on the best scientific and commercial data available, including the Status Review Report, and after taking into account efforts being made to protect these species, we have determined that *H. porcellanus*, *T. mbalavuana*, and *T. squamosina* are in danger of extinction throughout the entirety of their respective ranges, *T. derasa* and *T. gigas* are in danger of extinction in a significant portion of their respective ranges, and *H. hippopus* is likely to become an endangered species within the foreseeable future throughout a significant portion of its range. Therefore, we propose to list *H. porcellanus*, *T. mbalavuana*, *T. squamosina*, *T. derasa*, and *T. gigas* as endangered species and *H. hippopus* as a threatened species under the ESA. We have determined that the fluted clam, *T. squamosa*, is not currently in danger of extinction throughout all or a significant portion of its range and is not likely to become so within the foreseeable future. Therefore, we find that *T. squamosa* does not meet the definition of a threatened or an endangered species under section 4(a) of the ESA. Further, we propose to exercise the discretionary authority of section 4(d) to extend the prohibitions of section 9 of the ESA to the proposed threatened species, *H. hippopus*. At this time, we do not propose to designate critical habitat for the three species proposed to be listed that occur within U.S. jurisdiction (*H. hippopus*, *T. derasa*, and *T. gigas*)

because critical habitat for these species is not yet determinable. Using the authority of section 4(e) of the ESA, we also propose to list *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* as threatened species due to the similarity of appearance of products derived from these species (e.g., meat, worked shell products, and pearls) to those derived from the six aforementioned species proposed to be listed based on their extinction risk. We propose a special rule to define activities that would and would not be prohibited with respect to these four species in order to mitigate the substantial enforcement challenge associated with this similarity of appearance concern. We solicit information to inform the final listing determination and to inform a future proposal for any determinable critical habitat.

DATES: Comments must be received by October 23, 2024.

Public informational meetings and public hearings: In-person and virtual public hearings on this proposed rule will be held during the public comment period at dates, times, and locations to be announced in a forthcoming **Federal Register** notice.

ADDRESSES: You may submit data, information, or written comments on this document, identified by NOAA–NMFS–2017–0029, by either of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2017–0029 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Endangered Species Division, Office of Protected Resources (F/PR3), National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, USA, Attn: Giant Clams Species Listing Proposed Rule.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personally identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required

fields if you wish to remain anonymous).

The Status Review Report associated with this determination, its references, and the petition can be accessed electronically at: <https://www.fisheries.noaa.gov/action/proposed-rule-10-species-giant-clams-under-endangered-species-act>. The peer review plan, associated charge statement, and peer review report can be accessed electronically at: <https://www.noaa.gov/information-technology/status-review-report-of-7-giant-clam-species-petitioned-under-us-endangered-species-act-hippopus>. The draft Environmental Assessment and Initial Regulatory Flexibility Analysis associated with the proposed ESA section 4(d) regulation for *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* can be accessed electronically via the Federal e-Rulemaking Portal by navigating to <https://www.regulations.gov> and entering NOAA–NMFS–2017–0029 in the Search box.

FOR FURTHER INFORMATION CONTACT: John Rippe, NMFS Office of Protected Resources, (301) 427–8467, john.rippe@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2016, we received a petition from Dwayne Meadows to list 10 species of giant clams (Cardiidae: Tridacninae) as threatened or endangered under the ESA throughout their respective ranges. The petitioner also requested that critical habitat be designated in waters subject to U.S. jurisdiction concurrently with listing under the ESA. On June 26, 2017, we published a 90-day finding (82 FR 28946) announcing that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted for 7 of the 10 species listed in the petition: *Hippopus hippopus* (horse’s hoof, bear paw, or strawberry clam), *Hippopus porcellanus* (porcelain or China clam), *Tridacna derasa* (smooth giant clam), *Tridacna gigas* (true giant clam), *Tridacna mbalavuana* (syn. *T. tevoroa*; devil or tevoru clam), *Tridacna squamosa* (fluted or scaly clam), and *Tridacna squamosina* (syn. *T. costata*; Red Sea giant clam), but that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the other 3 species (*T. crocea*, *T. maxima*, or *T. noae*). We also announced the initiation of a status review of the seven aforementioned giant clam species, as required by

section 4(b)(3)(A) of the ESA, and requested information to inform the agency's decision on whether these species warrant listing as endangered or threatened under the ESA. We received information from the public in response to the 90-day finding and incorporated the information into both the Status Review Report (Rippe *et al.*, 2023) and this proposed rule. This information complemented our thorough review of the best available scientific and commercial data for these species (see *Status Review* below).

Listing Determinations Under the Endangered Species Act

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To be considered for listing under the ESA, a group of organisms must constitute a "species," which is defined in section 3 of the ESA to include any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a DPS of a taxonomic species ("DPS Policy," 61 FR 4722). The joint DPS Policy identifies two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the taxon to which it belongs; and (2) the significance of the population segment to the remainder of the taxon to which it belongs. Because giant clams are invertebrates they cannot be listed as DPSs, and the DPS Policy does not apply here.

Section 3 of the ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thus, we interpret an "endangered species" to be one that is presently in danger of extinction. A "threatened species," on the other hand, is not presently in danger of extinction, but is likely to become so within the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species is in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

Under section 4(a)(1) of the ESA, we must determine whether any species is endangered or threatened as a result of any one or a combination of any of the following factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence (16 U.S.C. 1533(a)(1)); 50 CFR 424.11(c). We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts, if any, being made by any State or foreign nation (or subdivision thereof) to protect the species (16 U.S.C. 1533(b)(1)(A)).

On July 5, 2022, the U.S. District Court for the Northern District of California issued an order vacating the ESA section 4 implementing regulations that were revised or added to 50 CFR part 424 in 2019 ("2019 regulations," see 84 FR 45020, August 27, 2019) without making a finding on the merits. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order. On November 14, 2022, the Northern District of California issued an order granting the government's request for voluntary remand without vacating the 2019 regulations. On April 5, 2024, the Services published a final rule revising the section 4 implementing regulations (89 FR 24300). Because the 2024 revised regulations became effective on May 6, 2024, we considered them during the development of this proposed rule. For purposes of this determination and in an abundance of caution, we considered whether the analysis or its conclusions would be any different under the pre-2019 regulations. We have determined that our analysis and conclusions presented here would not be any different.

Status Review

To determine whether each of the seven giant clam species warrants listing under the ESA, we completed a Status Review Report, which summarizes information on each species' taxonomy, distribution, abundance, life history, and biology; identifies threats or stressors affecting the status of each species; and assesses the species' current and future extinction risk. We appointed a biologist in the Office of Protected Resources Endangered Species Conservation Division to compile and complete a

scientific review of the best scientific and commercial data available on the giant clam species, including information received in response to our request for information (82 FR 28946, June 26, 2017).

The Status Review Report was subject to independent peer review pursuant to the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M-05-03; December 16, 2004). It was peer reviewed by four independent specialists selected from the academic and scientific community with expertise in giant clam biology, conservation, and management. The peer reviewers were asked to evaluate the adequacy, appropriateness, and application of data used in the Status Review Report, as well as the findings made in the "Assessment of Extinction Risk" section of the report. All peer reviewer comments were addressed prior to finalizing the Status Review Report and publication of this finding.

We subsequently reviewed the Status Review Report, its cited references, and peer review comments, and conclude that it synthesizes the best available scientific and commercial data related to the seven giant clam species considered here. In making our determinations, we have applied the statutory provisions of the ESA, our regulations regarding listing determinations, and relevant policies identified herein.

The Status Review Report and the peer review report are available on our website (see **ADDRESSES** section). Below is a summary of the information from the Status Review Report and our analysis of the status of the seven giant clam species.

Biological Review

Taxonomy and Species Descriptions

Giant clams are a small but conspicuous group of the planet's largest and fastest growing marine bivalves. They fall within the order Veneroida, family Cardiidae, and subfamily Tridacninae (Schneider, 1998). For many years, giant clams were considered to occupy their own family (Tridacnidae) sister to Cardiidae until molecular phylogenetics (Maruyama *et al.*, 1998; Schneider & Foighil, 1999) and comparison of sperm ultrastructure (Keys & Healy, 2000) supported reclassifying the group as a subfamily within Cardiidae. This is the current, most widely accepted classification; however, Neo *et al.* (2017) note that others continue to argue that Tridacnidae should be retained as a full family based on its highly distinct

morphology (Huber & Eschner, 2011; Penny & Willan, 2014).

Colloquially described as having ‘upside down’ orientation (Penny & Willan, 2014), giant clams lie with the hinge of their shell facing downwards, allowing their byssus (*i.e.*, filamentous threads) to attach the organism to the substrate while orienting their enlarged mantle upwards toward the sunlight (Soo & Todd, 2014). Additionally, most giant clam species have an epifaunal lifestyle (*i.e.*, situated on top of the substrate) in contrast to the largely infaunal lifestyle of their cardiid ancestors.

There are two extant genera of giant clams, *Hippopus* and *Tridacna*, which are distinguished by several shell and mantle characteristics. In *Hippopus*, a very narrow byssal orifice is bordered by interlocking teeth, while *Tridacna* exhibits a well-defined byssal gape without teeth. Additionally, when the clam is completely open, the mantle of *Tridacna* extends laterally beyond the margin of the shell, whereas the mantle of *Hippopus* does not (Lucas, 1988). A result of this difference is that *Hippopus* species tend to gape their valves further apart than *Tridacna* species, thus exposing more mantle surface area (Lucas, 1994).

There are currently 12 species of giant clams recognized in the literature, though this number changes often as advances in molecular phylogenetics resolve evolutionary relationships (including cryptic speciation) that had been overlooked by traditional morphology-based taxonomies. Joseph Rosewater’s seminal work in 1965 is widely cited as the authoritative material for early descriptions of giant clam species and includes six current species that remain valid to date: *H. hippopus* (Linnaeus, 1758), *T. gigas* (Linnaeus, 1758), *T. derasa* (Röding, 1798), *T. maxima* (Röding, 1798), *T. squamosa* (Lamarck, 1819), and *T. crocea* (Lamarck, 1819). He later added *H. porcellanus* to this list after re-examining its classification (Rosewater, 1982).

At the time of the 1965 report, *T. mbalavuana* had only been formally described from fossils on Viti Levu, Fiji. However, Fijians had long known of this species occurring in local waters as ‘tevoru’, or devil clam. Thus, when Lucas *et al.* (1991) re-discovered the species in 1991, they described it as the new species *T. tevorua*. It was not until 2000 that *T. mbalavuana* and *T. tevorua* were re-classified as synonymous based on morphological similarities (Newman & Gomez, 2000). As in the Status Review Report, we refer to this species by its lectotype (*i.e.*, its original

classification), *T. mbalavuana*.

Additionally, Richter *et al.* (2008) described a new species, *T. costata*, in 2008, but upon further analysis, it too was found to be synonymous with a previously described species, *T. squamosina*, first discovered by Rudolf Sturany (1899) during the early Austro-Hungarian expeditions of the Red Sea (Huber & Eschner, 2011). As in the Status Review Report, we refer to this species by its lectotype, *T. squamosina*.

Based on the best available scientific and commercial data summarized above, we find that all seven species of giant clams (*H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, *T. squamosa*, and *T. squamosina*) are currently considered taxonomically-distinct species and, therefore, meet the definition of “species” pursuant to section 3 of the ESA. Distinguishing features of each species are summarized below.

Hippopus Hippopus

Commonly referred to as the horse’s hoof, bear paw, or strawberry clam, *H. hippopus* has a heavy, thick shell that features prominent reddish blotches in irregular concentric bands (Rosewater, 1965). The shell interior is porcellaneous white, frequently flushed with yellowish orange on the ventral margin (Kinch & Teitelbaum 2010; Rosewater, 1965). Primary radial sculpture consists of 13 or 14 moderately convex rib-like folds over the surface of the valve, extending towards the ventral slope where they become obsolete (Rosewater, 1965). The mantle usually exhibits mottled patterns in green, yellow-brown or grey, and the incumbent siphon lacks guard tentacles (Neo *et al.*, 2017). Juveniles and young, smaller adults are usually attached to coral rubble by their byssus, whereas older (larger, heavier) individuals are typically found unattached on the substratum being held in place by their weight (Rosewater, 1965; Neo *et al.*, 2017). The largest reported shell length for *H. hippopus* is 50 cm, which was documented at the Bolinao Marine Laboratory in the Philippines (Neo *et al.*, 2017).

Hippopus Porcellanus

Commonly referred to as the China clam, *H. porcellanus* grows to a maximum size of 40 cm, but is most commonly found at shell lengths of around 20 cm (Kinch & Teitelbaum, 2010). The shell exterior is off-white, occasionally with scattered weak reddish blotches. The shell interior is porcellaneous white, often flushed with orange on the ventral margin, and the mantle ranges from a yellowish-brown

to a dull green or grey (Kinch & Teitelbaum, 2010). This species is distinguished from its congener, *H. hippopus*, by its smoother and thinner valves and presence of fringing tentacles at the incumbent siphon (Neo, Eckman, *et al.*, 2015).

Tridacna Derasa

T. derasa, or the smooth giant clam, is the second largest giant clam species, with a maximum size of around 60 cm (Neo *et al.*, 2017). *T. derasa* has a heavy, plain-colored shell and can be distinguished from other species by its low primary and secondary radial sculpture. Primary radial sculpture consists of 7–12 broad, shallow rib-like folds (usually 6–7 main folds), and the shells are often greatly thickened at the umbos (*i.e.*, the oldest, most prominent point of the shell near the ventral margin) (Rosewater, 1965). The mantle is often characterized by elongate patterns of brilliant greens and blues, and the incumbent siphon is equipped with inconspicuous guard tentacles (Neo *et al.*, 2017).

Tridacna Gigas

T. gigas is known as the true giant clam and is the largest of all the giant clam species, growing to a maximum shell length of 137 cm and maximum weight in excess of 225 kg (Beckvar, 1981; Rosewater, 1965). The shell of *T. gigas* is thick and heavy, equivalent (having valves of the same size), and equilateral (symmetrical front-to-back) (Hernawan, 2012). The shell exterior is off-white, and is often covered with marine growths (*e.g.*, vermetids, annelid tubes, coral, *etc.*) (Kinch & Teitelbaum, 2010; Rosewater, 1965). For the most part, the shell lacks scales except near the byssal orifice where small scales may be present. The shell interior is porcellaneous white, dull in the area within the pallial line, and shiny above the pallial line to the dorsal end of the shell (Rosewater, 1965). Often, the mantle is yellowish-brown to olive-green and is a darker shade along the mantle’s edge and around the clam’s siphons (Rosewater, 1965). Numerous, small, brilliant blue-green rings are dispersed across the mantle, each enclosing one or several hyaline organs. These rings are especially prevalent along the lateral edges of the mantle and around the siphonal openings (Rosewater, 1965). Smaller specimens (*i.e.*, 150–200 mm) may be more uniformly colored, lacking a darker shade along the edge of the mantle and with fewer colored rings (Rosewater, 1965).

T. gigas is readily identified by many characteristics, most notably its large

size. The species can also be identified by four to six unique deep radial folds that give way to elongate, triangular projections at the upper margins of its shells (Hernawan, 2012; Lucas, 1988), a complete outer demibranch (the V-shaped structure of gills common to bivalves; Rosewater, 1965), the lack of tentacles on the inhalant siphon (Hernawan, 2012), and the lack of byssal attachment (*i.e.*, they are free-living; Rosewater, 1965).

Tridacna Mbalavuana

Before it was formally classified taxonomically, Fijians had long referred to *T. mbalavuana* as 'tevoru,' or devil clam, based on its thin, sharply-edged valves and warty brownish grey mantle. *T. mbalavuana* has been hypothesized to be a transitional species between the *Hippopus* and *Tridacna* genera due to overlapping characteristics (Lucas *et al.*, 1991; Schneider & Foighil, 1999). It has *Hippopus*-like features including the absence of a byssal gape, a mantle that does not extend over the shells, and the absence of hyaline organs (Lucas *et al.*, 1991); however, *T. mbalavuana* looks most like *T. derasa* in appearance (Lewis & Ledua, 1988). It can be distinguished from *T. derasa* by its rugose mantle, prominent guard tentacles on the incurrent siphon, thinner valves, and colored patches on the shell ribbing (Neo, Eckman, *et al.*, 2015). The shell exterior is off-white, often partly encrusted with marine growths. It can grow to just over 50 cm long (Lewis & Ledua, 1988; Neo, Eckman, *et al.*, 2015) with the largest specimen recorded at 56 cm (Lucas *et al.*, 1991).

Tridacna Squamosa

Commonly known as the fluted or scaly giant clam due to the characteristic leaf-like projections on its valves, *T. squamosa* is one of the most widely distributed species of giant clams. The exterior of its shell is greyish white in color, often with various hues of orange, yellow, or pink/mauve (Rosewater, 1965). The primary radial sculpture consists of 4–12 strongly convex, rib-like folds. The concentric sculpture consists of “undulate lines of growth which produce widely spaced, broadly leaf-like, projecting scales on primary folds” (Rosewater, 1965). The prominent scales on the shell commonly feature different shades or colors (Kinch & Teitelbaum, 2010). The shell interior is porcellaneous white, with an occasional hint of orange (Kinch & Teitelbaum, 2010). Rosewater (1965) describes the mantle as having a main ground color of greyish purple with a row of light blue rhomboidal spots along

the outer mantle margin and multicolored irregularly-circular spots toward the center. The outer periphery of the spots is pale yellow, inside of which is a band of dark yellow, and the entire center is nearest to light blue. Generally, *T. squamosa* reaches a maximum shell length of ~40 cm (Neo *et al.*, 2017).

Tridacna Squamosina

T. squamosina, or the Red Sea giant clam, exhibits a strong resemblance to *T. squamosa*, but can be distinguished by its asymmetrical shells, crowded scutes, wider byssal orifice, and five to seven deep triangular radial folds (Roa-Quiaoit, 2005; Richter *et al.*, 2008). Additionally, the mantle is most commonly a subdued brown mottled pattern with a green margin that features prominent “wart-like” protrusions and pale markings following the mantle contour (Richter *et al.*, 2008). These are the main diagnostic features separating *T. squamosina* from its sympatric congeners and are conservatively present even in small clams <10 cm shell length (Richter *et al.*, 2008). *T. squamosina* can reach at least 32 cm in shell length (Neo, Eckman, *et al.*, 2015)—the largest specimen recorded was found in the southern Red Sea at Kamaran Island, off the coast of Yemen (Huber & Eschner, 2011).

Range, Distribution, and Habitat Use

H. Hippopus

H. hippopus is widely distributed throughout the Indo-Pacific (*i.e.*, the tropical and subtropical waters of the Indian Ocean, the western and central Pacific Ocean, and the seas connecting the two in the general area of Indonesia), occurring from the Andaman and Nicobar Islands in the west to the Republic of Kiribati in the east, and from New Caledonia in the south to the southern islands of Japan in the north (Neo *et al.*, 2017).

According to Munro (1993a), *H. hippopus* occurs in the widest range of habitat types of all the giant clam species. Most often, it is found in shallow, nearshore patches of reef, sandy areas and seagrass beds that can be exposed during low tides, but it can also be found on reefs as deep as 10 m (S. Andréfouët, pers. obs. cited in Neo *et al.*, 2017). Based on a recent survey in New Caledonia, Purcell *et al.* (2020) found that *H. hippopus* “strongly preferred” lagoonal reefs. The authors hypothesized that the species may either prefer the siltier sediments and more turbid water of lagoon reef flats or alternatively may have low tolerance to the wave exposure of barrier reefs.

H. Porcellanus

H. porcellanus has one of the most restricted geographic ranges of the giant clams, centered in the Coral Triangle region. The species is mostly known from the Sulu Archipelago and Palawan region in the Philippines, but it has also been reported in Palau, the Milne Bay Province (Papua New Guinea), Sabah (Malaysia), and Sulawesi and Raja Ampat (Indonesia) (S. Wells, 1997; Neo *et al.*, 2017).

There is very little information specifying the habitat preferences of *H. porcellanus*, but according to Calumpong (1992), the species is commonly found in shallow, nearshore sandy areas adjoining coral reefs. Juvenile or young *H. porcellanus* are frequently found byssally attached to coral heads, whereas larger mature *H. porcellanus* can be found on sandy bottoms unattached to substrate (Rosewater, 1982; Kinch & Teitelbaum, 2010).

T. Derasa

The geographic range of *T. derasa* primarily encompasses the Coral Triangle region, although it extends east to Tonga and as far west as the Cocos (Keeling) Islands in the eastern Indian Ocean (Rosewater, 1965). Adams *et al.* (1988) described *T. derasa* as having a patchy distribution, being rare in many places throughout its range and abundant in others. Notably, *T. derasa* has been one of the most widely cultured species of giant clam and has been introduced to a number of countries and territories throughout the central and western Pacific Ocean. This includes the Federated States of Micronesia (FSM), Marshall Islands, Tuvalu, Cook Islands, Samoa, and American Samoa.

T. derasa preferentially inhabits clear offshore waters distant from areas of significant freshwater run-off (Munro, 1993a). According to Calumpong (1992), the species appears to favor oceanic environments (*i.e.*, small islands and atolls) more than fringing reefs adjacent to large island masses. The species is known to occur at depths of 4–25 m (Lewis *et al.*, 1988; Neo *et al.*, 2017), and is usually found weakly attached to the tops and sides of coral outcrops as juveniles, but may become detached upon reaching a larger size (Adams, 1988).

T. Gigas

The natural range of *T. gigas* spans the shallow waters of the Indo-Pacific and the Great Barrier Reef, from Myanmar in the west to the Republic of Kiribati in the east, and from the Ryukyu Islands

of southern Japan in the north to Queensland, Australia in the south (bin Othman *et al.*, 2010; Neo *et al.*, 2017). Cultured specimens of *T. gigas* have been introduced in American Samoa, the Cook Islands, Hawaii, and Samoa (Neo *et al.*, 2017). Like most other giant clam species, *T. gigas* is typically associated with coral reefs and can be found in many habitats, including high- and low-islands, atoll lagoons, and fringing reefs (Munro, 1993a). In a broad survey of *T. gigas* distribution throughout the Great Barrier Reef, Braley (1987a) found that the species was most common on inshore reefs potentially influenced by seasonal fluctuations in salinity and turbidity and was rare south of 19° S. The observed distribution was essentially opposite of that for *T. derasa*, which was found primarily on offshore reefs and was common in the Swain Reefs at 21–22° S. These contrasting distributions led Braley (1987b) to the conclusion that temperature may limit the distribution of young *T. gigas*, while *T. derasa* may be more sensitive to salinity and/or turbidity. *T. gigas* is typically found between the depths of 2 to 20 m and is often found among *Acropora* spp. or other hard coral communities, hard reef substrata, or on bare sand (Braley, 1987b; Kinch & Teitelbaum 2010; Rosewater, 1965).

T. Mbalavuana

T. mbalavuana has one of the most restricted distributions of all the giant clam species. For many years, it had only been observed in Fiji and Tonga, but recent reports indicate that this species may be found in low numbers outside of these two locations. According to Kinch and Teitelbaum (2010), *T. mbalavuana* had been observed in the Loyalty Islands in New Caledonia, a report later supported by Tiavouane and Fauvelot (2016), who encountered two individuals on the northeastern barrier reef of New Caledonia after “exhaustive searches” (Neo *et al.*, 2017). Single individuals were also reportedly observed on Lihou Reef in the Coral Sea (Ceccarelli *et al.*, 2009) and in the Raja Ampat region of West Papua, Indonesia (Wakum *et al.*, 2017), but neither of these reports have been further corroborated.

In Fiji, individuals are most often observed along outer slopes of leeward reefs in the eastern Lau Islands, in very clear, oceanic water (Ledua *et al.*, 1993). In Tonga, they are found in the northern Vava'u and Ha'apai islands. *T. mbalavuana* has a deeper depth distribution than most other giant clam species. In one study on spawning and larval culture of *T. mbalavuana*,

individuals were collected from waters of Fiji and Tonga (Ledua *et al.*, 1993). The mean depth of clams collected in Fiji was 27.4 m, with samples collected from depths ranging from 20 to 33 m, and all specimens were found on the leeward side of reefs and islands. Many of the clams found in Tonga were next to the edge of a sand patch and cradled against rocky outcrops, rubble or bare rock with steep slopes (Ledua *et al.*, 1993).

T. Squamosa

T. squamosa is the second-most widely distributed giant clam species, with a broad geographic range that extends from the Red Sea and eastern Africa in the west to the Pitcairn Islands in the east, and from the Great Barrier Reef in the south to southern Japan in the north (bin Othman *et al.*, 2010; Neo *et al.*, 2017). The species has also been introduced in Hawaii and Guam (CITES, 2004b).

T. squamosa is usually found on coral reefs or on adjacent sandy areas (Neo *et al.*, 2017). Juveniles are often attached to the substrate by a “weak but copious byssus,” while adults can be found either attached or free-living (Neo *et al.*, 2017; Rosewater, 1965). *T. squamosa* occurs across a broad depth range, which includes shallow reef flats, patch reefs, and reef slopes, both inside and outside of lagoons. Individuals have been observed as deep as 42 m in the Red Sea (Jantzen *et al.*, 2008). *T. squamosa* is typically more common on shelving fringing reefs than reef flats (Govan *et al.*, 1988) and seems to prefer sheltered environments (Kinch & Teitelbaum, 2010; Munro, 1993a). Comparing the distribution of *T. squamosa* and *T. maxima* in Mauritius, Ramah *et al.* (2017) found that *T. squamosa* were most often attached to flat substrata, such as dead plate corals or rubble. Hardy and Hardy (1969) reported that *T. squamosa* and *H. hippopus* occupied much the same habitat in Palau, both being widely distributed in relatively shallow water in the lagoon and on the barrier and fringing reefs; although, *T. squamosa* was reportedly more commonly associated with coral areas of *Acropora* spp. than adjacent sandy areas. In New Caledonia, Purcell *et al.* (2020) interpreted the relatively high abundance of *T. squamosa* on barrier reef sites compared to lagoonal reefs as indication that the species may prefer cleaner waters, as opposed to the siltier sediments and more turbid seawater of lagoon reef flats. However, Lewis *et al.* (1988) note that the species is more tolerant of turbid water than *T. derasa*. Paulay (1987) reported that all

observations of *T. squamosa* in the Cook Islands were from the outer reef slope, occasionally to depths of 30 m or more.

T. Squamosina

T. squamosina is endemic to the Red Sea, with its past and present distribution including the northeastern Gulf of Aqaba, the Sinai coast, and eastern coast of the Red Sea down to Yemen (Huber & Eschner, 2011; Lim *et al.*, 2021; Richter *et al.*, 2008; Rossbach *et al.*, 2021). There have also been several anecdotal accounts of the species in Mozambique; however, later evidence of genetic divergence between specimens in the Red Sea and Mozambique (Moreels, 2018), as well as the significant geographic distance from its central range, suggests that the reported sightings may be of its recently-resurrected sister species, *T. elongatissima*, with which it shares a close phylogenetic history (Fauvelot *et al.*, 2020; Tan *et al.*, 2021). For this reason, without more information to verify these anecdotal sightings, we do not include the Western Indian Ocean in the natural range of *T. squamosina*.

In a survey of giant clams in the Red Sea, Richter *et al.* (2008) noted that live specimens of *T. squamosina* were found exclusively in very shallow water habitats (e.g., reef flats, rocky and sandy-rubble flats, seagrass beds, or under branching corals or coral heads shallower than 2m). Thus, unlike the other two Red Sea species (*T. maxima* and *T. squamosa*), which have broad depth distributions, *T. squamosina* is restricted to the reef top and is usually weakly attached to the substrate (Richter *et al.*, 2008).

Diet and Feeding

During the earliest stages of larval development, giant clams initially rely on nutrients stored in the egg yolk. Upon formation of the velum and hollow intestines within the first 2–3 days after fertilization, veliger larvae transition to planktivory and are able to actively ingest flagellates (~5 µm in diameter), zooxanthellae and dissolved organic nutrients from the seawater via the mouth (Fitt *et al.*, 1984; Soo & Todd, 2014). Like most bivalves, giant clams retain the ability to filter feed into adulthood by pumping water into their mantle cavities via an inhalant siphon, filtering plankton through ciliated gills, and passing the filtered water back out via an excurrent siphon (Hardy & Hardy, 1969).

However, a defining characteristic of giant clams is their mutualistic relationship with dinoflagellates of the family Symbiodiniaceae, known commonly as zooxanthellae, which

provide the primary source of nutrition to adult clams. Giant clams strictly acquire symbiotic algae from the seawater during larval development and therefore do not inherit symbionts via parental oocytes (Fitt & Trench, 1981; Hartmann *et al.*, 2017). Furthermore, zooxanthellae are housed extracellularly within a diverticular extension of the digestive tract (Norton *et al.*, 1992). This ‘tubular system’ extends throughout the upper levels of the mantle and is arranged as a dense network of tertiary canals branching off of secondary structures with no direct connection to the haemolymph of the clam (Norton *et al.*, 1992). Detailed scanning electron microscope images have shown that zooxanthellae are often stacked in pillars within these canals and are co-located with light-scattering iridocyte cells that enhance photosynthesis (L. Rehm, unpub.) and protect the algal cells from damaging UV radiation (Rossbach, Overmans, *et al.*, 2020; Rossbach, Subedi, *et al.*, 2020).

Symbiosis is thought to be established during metamorphosis from pediveliger to the juvenile clam. At this point, zooxanthellae can be observed migrating from the stomach to the tubular system (Fitt *et al.*, 1986; Norton *et al.*, 1992). Although, more recent studies have shown that genes known to be associated with symbiosis and glycerol synthesis are expressed in giant clam larvae, suggesting that symbiotic activity may be initiated earlier during larval development (Mies *et al.*, 2016; Mies, Voolstra, *et al.*, 2017).

Giant clams receive the majority of their metabolic carbon requirements via symbiotic autotrophy. They provide dissolved inorganic nutrients to support photosynthesis (*e.g.*, NH_4^+ , NO_3^- , PO_4^{3-}) via direct absorption from the seawater and as an excretory byproduct of respiration (Hawkins & Klumpp, 1995; Toonen *et al.*, 2011). In return, zooxanthellae transfer photosynthetic carbon to the host in the form of glucose, glycerol, oligosaccharides and amino acids (Griffiths & Streamer, 1988; Ishikura *et al.*, 1999; Mies *et al.*, 2016).

Under natural conditions, the contribution of autotrophy to giant clam nutrition tends to increase with body size and has been shown to vary between species (Klumpp & Griffiths, 1994; Klumpp & Lucas, 1994; Hawkins & Klumpp, 1995). This may in part be related to differences in their characteristic habitats. For example, *T. derasa* and *T. mbalavuana*, two species which occur predominantly in clear, oceanic environments, derive most (*T. mbalavuana*: 70 percent at 28 m, 105 percent at 15 m), if not all (*T. derasa*), of the carbon required for growth and

respiration from autotrophy (Klumpp & Lucas, 1994). Notably, only *T. mbalavuana*, which is the deepest-occurring species of giant clam, increased its photosynthetic efficiency in the lowest light conditions (Klumpp & Lucas, 1994). *H. hippopus* and *T. gigas* exhibit a different strategy altogether, reflecting their natural occurrence in shallower intertidal and subtidal habitats, where there is often a higher concentration of suspended organics in the water column. Klumpp *et al.* (1992) showed that *T. gigas* is an efficient filter-feeder and that heterotrophic carbon supplied significant amounts of the total carbon necessary for its respiration and growth (65 percent in ~43 mm individuals and 34 percent in ~167 mm individuals). In a follow-up study, Klumpp and Griffiths (1994) similarly found that ingested carbon provided 61 to 113 percent of total needs in 40 to 80 mm *T. gigas* and 36 to 44 percent in *H. hippopus*. Some have hypothesized that differences in energy acquisition and expenditure may in part explain the growth and size differences among giant clam species, and in particular the enormous size of *T. gigas*. At this point, however, no clear nutritional basis for these differences has been resolved (Klumpp & Griffiths, 1994).

Giant clams associate with several Symbiodiniaceae genera, which can vary by geographic location (Fitt *et al.*, 1986). In the central Red Sea, for example, all sampled species (*T. maxima*, *T. squamosa*, *T. squamosina*) were found to exclusively harbor strains of *Symbiodinium* (formerly known as clade A) (Pappas *et al.*, 2017). In Okinawa, Japan, *T. squamosa* hosted varying communities of *Symbiodinium*, *Cladocopium* (formerly clade C), and *Durisdinium* (formerly clade D) (Ikeda *et al.*, 2017). Similarly, populations of *T. squamosa*, *T. maxima*, and *T. crocea* in eastern Indonesia were found to associate with mixed communities of these three genera (DeBoer *et al.*, 2012). While certain symbiont genera have been shown to confer physiological benefits to coral hosts (*e.g.*, greater tolerance to thermal stress or enhanced growth rate), there is no consistent evidence that these patterns translate directly to giant clams (reviewed in DeBoer *et al.*, 2012).

Growth and Reproduction

Giant clams are protandrous hermaphrodites, meaning they mature first as males and later develop ovaries to function as both male and female simultaneously (Wada, 1952; Rosewater, 1965). Size and age at maturity vary by species and geographic location, but

generally, giant clams are known to reach male phase maturity at around 2–3 years of age (Heslinga *et al.*, 1984; Shelley, 1989) and female phase maturity as early as 3–5 years (Heslinga *et al.*, 1984; Isamu, 2008). In larger species, such as *T. gigas*, female maturity typically occurs later at around 8–9 years of age (Gomez & Mingoa-Licuanan, 2006). Giant clams reproduce via broadcast spawning, in which sperm and eggs are released into the water column where external fertilization takes place (Wada, 1954). Sperm is released first, followed by eggs after a short interval (Munro, 1993a).

Giant clams are exceptionally fecund, with individuals producing by many estimates tens to hundreds of millions of eggs during a single spawning event (Lucas, 1988). This number varies by species; for example, estimates suggest that *H. porcellanus* can release around 5 million eggs (Alcázar *et al.*, 1987), *H. hippopus* can release 25–60 million eggs (Jameson, 1976; Alcalá *et al.*, 1986), and *T. gigas* can release up to 500 million eggs (Crawford *et al.* 1986). However, despite their high fecundity, giant clams experience very high rates of mortality during early development (Jameson, 1976; Beckvar, 1981), resulting in very low levels of natural recruitment (Munro, 1993a). Reports suggest that less than 1 percent of all giant clam fertilized eggs survive larval development and progress to the juvenile phase in the wild (Jameson, 1976; Fitt *et al.*, 1984; Crawford *et al.*, 1986). As Lucas (1994) describes, “the extreme example is *T. gigas*, which being at or near the pinnacle of fecundity, must have near the lowest level of survival of potential recruits in the animal kingdom.”

Many have described giant clam recruitment as “erratic” (McKoy *et al.*, 1980; Adams *et al.*, 1988; Lucas, 1994; Guest *et al.*, 2008). For example, Braley (1988) observed “extremely low” average recruitment on the Great Barrier Reef, punctuated by a major recruitment event in 1987, which yielded the largest population of *T. gigas* that had been recorded at the time. This pattern aligns with the concept of ‘sweepstakes’ reproduction, which is the chance matching of reproductive activity with oceanographic conditions conducive to spawning, fertilization, dispersal, and successful recruitment (Hedgecock, 1994). This can lead to sporadic waves of recruitment depending on the prevailing oceanographic conditions facilitating fertilization and carrying a successful cohort of ‘sweepstakes’ larvae to a suitable settlement location. Importantly, for broadcast spawning organisms like giant clams, which

primarily rely on the mixing of gametes with neighboring individuals, this reproductive strategy can be especially sensitive to changes in population density. In particular, low abundance and low population density severely reduces the likelihood of such sweepstakes success by minimizing the chance of fertilization.

There is considerable variation in the frequency and seasonality of spawning events among giant clam species. There is no evidence of reproductive seasonality in the central tropics, with some populations possessing ripe gametes year-round (Heslinga *et al.*, 1984; Munro, 1993a; Lindsay *et al.*, 2004). At higher latitudes, spawning is most often associated with late spring and summer months and can occur once per year (Shelley & Southgate, 1988) or in some cases periodically over the course of several months (Fitt & Trench, 1981; Heslinga *et al.*, 1984; Roa-Quiaoit, 2005). The environmental cues that initiate gamete release are not fully understood, but there is evidence that the lunar cycle may play a critical role. In Palau, for example, 76 percent and 24 percent of 55 observed spawning events by *T. gigas* occurred during the second and fourth quarter of the lunar cycle, respectively (Heslinga *et al.*, 1984). Unlike many other broadcast spawning organisms, there is little evidence that temperature is important for the induction of spawning (Wada, 1954; Fitt & Trench, 1981).

Once one or more clams have begun to spawn, chemical cues associated with egg release have been shown to play a role in triggering the spawning of nearby individuals, which then release sperm for fertilization (Munro, 1993a). While a maximum distance between spawning individuals has not been quantified (Neo *et al.*, 2015), in situ observations by Braley (1984) showed that 70 percent of the nearest spawning neighbors were within 9 m of one another, while only 13 percent were between 20–30 m of one another. Through laboratory trials, Neo *et al.* (2015) found that gametes of *T. squamosa* remained viable for up to 8 hours, but that viability decreased significantly with time. Because of these factors, maintaining sufficient population densities to facilitate fertilization among neighboring individuals is vital to the persistence of giant clam populations.

Importantly, there is also some evidence that giant clams are able to self-fertilize with varying fitness consequences among different species. After observing that the end of sperm release occasionally overlaps with the beginning of egg release in certain giant clam species (see also Kurihara *et al.*

(2010)), Murakoshi and Hirata (1993) experimentally induced self-fertilization in four species of giant clams (*H. hippopus*, *T. crocea*, *T. maxima*, and *T. squamosa*) by removing the gonads and mixing gametes. They found that all four species are capable of self-fertilization, but that larval development of *H. hippopus* was significantly altered, and no *T. maxima* juveniles metamorphosed completely to the normal pediveliger stage. Juvenile *T. crocea* and *T. squamosa* survived up to a year post-fertilization, but the study was not long enough to evaluate possible effects on reproductive maturity or later-phase development. More recently, Zhang *et al.* (2020) evaluated the fitness effects of self-fertilization in three species of giant clams (*T. crocea*, *T. derasa*, and *T. squamosa*) after 1 year of development. They found that there was no effect of self-fertilization on the fertilization rate or zygotic fertility in any species. Larval survival and growth rate was significantly reduced in *T. crocea* and *T. squamosa*, but not *T. derasa*. However, while self-fertilization may be possible in some species, numerous accounts of spawning in culture and in situ suggest that sperm and eggs are released successively without an overlap in timing in the vast majority of spawning events (LaBarbera, 1975; McKoy, 1980; Wada, 1954). It is likely that this limits the occurrence of self-fertilization in nature and minimizes its role in giant clam productivity.

Once an egg is fertilized, the life cycle of giant clams is typical of bivalve molluscs (Lucas, 1994; Soo & Todd, 2014). Fertilized eggs are approximately 90–130 μm in diameter (Jameson, 1976) and have a slight negative buoyancy. They usually develop into swimming trochophores within 12–24 hours, at which time they are able to alter their depth distribution and begin searching for an eventual settlement site (Ellis, 1997; Neo *et al.*, 2015). Shell production in molluscs begins at this early phase of development, following a thickening of epithelial cells that will define the future shell field (Gazeau *et al.*, 2013). Within 36–48 hours after fertilization, larvae develop into shelled, swimming veligers, which use a ciliated velum for locomotion and feeding (Soo & Todd, 2014). The veligers are highly motile and begin feeding on microalgae of up to 10 μm in diameter (Munro, 1993a). Over the course of several days, the velum begins to degenerate and a foot develops as the larvae transition into the pediveliger stage (Soo & Todd, 2014). At this point, larvae alternate between swimming and crawling on the

substrate, using their foot for sensing and feeding (Lucas, 1988; Soo & Todd, 2014). Pediveligers generally develop 6–14 days post-fertilization; however, Fitt and Trench (1981) noted considerable variation in the timing of this transition, where most took place by day 10 but others were observed up to 29 days post-fertilization.

Larvae metamorphose into juvenile clams at an approximate size of 200 μm (LaBarbera, 1975; Lucas, 1988; Soo & Todd, 2014). Juvenile clams remain mobile and are able to crawl both horizontally and vertically using their foot as they search for a settlement location (Soo & Todd, 2014). Giant clam larvae tend to settle on substrates that offer shelter in the form of grooves and crevices, highlighting the importance of habitat rugosity during this stage of development (Soo & Todd, 2014). Additionally, juveniles have been observed to move non-randomly and clump towards conspecifics, which some hypothesize may be a behavioral adaptation to enhance reproduction and predator defense (Huang *et al.*, 2007; Neo, 2020). Juvenile clams eventually attach themselves to the substrate by use of byssal threads, which in some species will remain in place throughout their lifetime. Larger species typically lose the byssal threads after reaching adulthood and are held in place by their size and weight (Lucas, 1988).

Growth rates vary among species, with larger species exhibiting more rapid growth than smaller species (Munro & Heslinga, 1983; Lucas, 1988). Growth rates after settlement generally follow a sigmoid (“S” shaped) curve, beginning slowly, then accelerating after approximately 1 year and slowing again as the animals approach sexual maturity (Lucas, 1988; Ellis, 1997). Lucas (1994) provides examples of maximum rates of monthly shell growth for several species as recorded under culture conditions in the Philippines: *H. hippopus*—5.3 mm, *T. squamosa*—4.5 mm, *T. derasa*—5.6 mm, and *T. gigas*—9.1 mm (Calumpong, 1992; Gomez & Mingoa, 1993). Shell growth continues throughout the clam’s lifespan (Lucas, 1994).

The maximum lifespan of giant clams is not known, but the oldest reliably aged individual was a large *T. gigas* determined to be 63 years old (Lucas, 1994). Similar aging studies based on the analysis of growth rings in the shell estimated a 43 cm-long *T. squamosa* to be around 22 years old (Basker, 1991), a ~20 cm-long *T. maxima* to be around 28 years old (Romanek *et al.*, 1987), and a 93 cm-long *T. gigas* to be around 60 years old (Watanabe *et al.*, 2004). Using growth and mortality estimates, Dolorosa *et al.* (2014) predicted a

lifespan of more than 20 years for *H. porcellaneus*.

Population Structure

Current literature indicates several consistent features of giant clam population genetics throughout their range. The first is significant genetic differentiation between giant clam populations of the central Pacific region, including Kiribati, Marshall Islands, Tuvalu and Cook Islands, and the western Pacific region, including the Great Barrier Reef, Philippines, Solomon Islands and Fiji (Benzie & Williams, 1995, 1997). The pattern is consistent across *T. gigas* and *T. maxima*, although there is some variability in the inferred level of connectivity between the Great Barrier Reef and Philippines in *T. derasa* (Macaranas *et al.*, 1992). Interestingly, the patterns of genetic connectivity do not reflect oceanic currents as would be expected for a passively-dispersing organism like giant clams. Hence, Benzie and Williams (1997) hypothesize that “other mechanisms dominate present-day dispersal, or that [the observed patterns] reflect past connectivity which present-day dispersal along major surface currents has not altered over thousands of years.”

Other studies describe a relatively consistent pattern of genetic structure within the Indo-Pacific region, often highlighting four or five genetic clusters distinguishing populations of the Red Sea, Western Indian Ocean, Eastern Indian Ocean, Indo-Malay Archipelago, and Western Pacific. In every case, populations of *T. squamosa* and *T. maxima* in the Red Sea are found to be highly divergent from all other populations in their range (Nuryanto & Kochzius, 2009; Huelsken *et al.*, 2013; Hui *et al.*, 2016; Pappas *et al.*, 2017; Lim *et al.*, 2018). The same is true of Western Indian Ocean populations, though to a slightly lesser extent (Hui *et al.*, 2016; Lim *et al.*, 2018). Additionally, there is a uniform pattern of differentiation between giant clam populations in the Indo-Malay Archipelago and those in the eastern Indian Ocean and Java Sea (Kochzius & Nuryanto, 2008; Nuryanto & Kochzius, 2009; Huelsken *et al.*, 2013; Hui *et al.*, 2016). This pattern is largely consistent across *T. squamosa*, *T. maxima*, and *T. crocea*, although some studies note variability between species with respect to certain genetic breaks identified in the Java Sea and in Chendewasih Bay (Nuryanto & Kochzius, 2009; Huelsken *et al.*, 2013). Population genetic data from *T. maxima* and *T. crocea* (species which are not subject to this rulemaking) suggest that

there may also be genetic breaks between the western Pacific islands and Indo-Malay Archipelago (Nuryanto & Kochzius, 2009; Huelsken *et al.*, 2013; Hui *et al.*, 2016). However, similar data are not available for any of the seven species considered here.

On a smaller scale, giant clam populations within the northern and central Great Barrier Reef exhibit high genetic connectivity (Benzie & Williams, 1992, 1995, 1997). Evans and Jerry (2006) found tenuous evidence of isolation-by-distance in this region, which would suggest that populations may be connected by the prevailing southward flow of the East Australian Current. In contrast, Kittiwattanawong *et al.* (2001) found that *T. squamosa* in the Andaman Sea are genetically distinct from those in the Gulf of Thailand, likely due to the physical barrier of the Malay Peninsula minimizing dispersal between these populations.

Current and Historical Distribution and Population Abundance

There are no current or historical estimates of global abundance for any of the seven giant clam species considered here. Therefore, we rely on the best available scientific and commercial data, including formal and informal survey data, qualitative descriptions of abundance or population trends, and anecdotal reports from specific sites, to evaluate the status of each species in each country, territory, or region throughout its range.

Much of the information used to determine the status of each species is derived from Table 4 of Neo *et al.* (2017), which we have supplemented or revised based on more recent survey data or reports. We have also adjusted the criteria used to define each qualitative abundance category, which Neo *et al.* (2017) had previously defined as follows: Abundant: >100 individuals (ind) ha⁻¹, Frequent: 1–10 ind ha⁻¹, Rare: <0.1 ind ha⁻¹. In doing so, we considered the reproductive ecology of giant clams, and in particular, the observations of Braley (1984) regarding the distance between nearest-spawning *T. gigas* during a natural spawning event. Braley (1984) measured that 70 percent of nearest-spawning individuals were within 9 m of one another, while only 13 percent were between 20–30 m of one another, suggesting that spawning synchrony decreases with distance. As broadcast spawning organisms, giant clams rely on sufficient population density in order to facilitate successful external fertilization of their gametes. Based on the distances above, we determined the minimum

population density in a 1-hectare (10,000 m²) square grid in which individuals could be evenly spaced at 9 and 30 m apart. Respectively, these distances represent populations that we consider to be “Abundant,” where we expect relatively high reproductive success, and “Frequent,” where we expect lower but moderate reproductive success. A “Rare” population in which individuals are spaced farther than 30 m apart on average is likely to have infrequent, sporadic reproductive success. This approach led to the following criteria: Abundant: >100 ind ha⁻¹ (9-m distance), Frequent: 10–100 ind ha⁻¹ (30-m distance), and Rare: <10 ind ha⁻¹ (>30-m distance).

Importantly, precise quantitative assessments of abundance are not possible in most instances, as many regions lack current or comprehensive survey data (see the accompanying Status Review Report for all reported estimates of population density from specific surveys). Thus, where survey data are limited to only a few sites or where recent survey data are not available, we also take into account other available information, including qualitative descriptions of abundance or population trends, to reach a determination on the likely status of the species throughout each country, territory, or region in its entirety. In other words, although survey data from a single site may indicate a relatively abundant population, if the species is considered absent from all other areas, the species may be considered “frequent” or “rare” on average in that location. This methodology generally follows the approach used by Neo *et al.* (2017).

Additionally, it is important to note that, in the interest of simplicity, these qualitative abundance categories are based on an assumption of uniform spacing between individuals. However, a number of studies report that giant clams often occur in a clumped distribution, where individuals are concentrated in a number of small, distantly-separated groups. In these cases, the abundance categories may underestimate the productivity of the respective population. In other words, if survey data indicate that a species occurs in some location at low abundance on average, reproductive success is more likely if the individuals are clustered in a few small groups, minimizing the distance between neighboring individuals, than if they are spread uniformly across the seafloor.

In table 1 below, we summarize the status of each species in each of the locations where it has been observed. Full narrative descriptions of the data

and scientific studies that informed the following abundance assessments can be found in the accompanying Status Review Report (Rippe *et al.*, 2023).

TABLE 1—SUMMARY OF THE POPULATION STATUS FOR EACH OF THE SEVEN GIANT CLAM SPECIES IN ALL COUNTRIES, TERRITORIES, AND REGIONS WHERE THEY HAVE BEEN OBSERVED (ADAPTED FROM NEO *et al.*, 2017 AND SUPPLEMENTED WITH MORE RECENT INFORMATION WHERE AVAILABLE)

Location	HH ¹	HP ¹	TD ¹	TG ¹	TMB ¹	TS ¹	TSI ¹
Red Sea:							
Djibouti .....	.....	.....	.....	.....	.....	+	
Egypt .....	.....	.....	.....	.....	.....	++	+
Israel .....	.....	.....	.....	.....	.....	dd	
Jordan .....	.....	.....	.....	.....	.....	++	+
Saudi Arabia .....	.....	.....	.....	.....	.....	+++	+
Somalia .....	.....	.....	.....	.....	.....	+	
Sudan .....	.....	.....	.....	.....	.....	++	
Yemen .....	.....	.....	.....	.....	.....	++	dd
Southeast Africa:							
Cargados Carajos Archipelago .....	.....	.....	.....	.....	.....	+	
Comoros .....	.....	.....	.....	.....	.....	++	
Kenya .....	.....	.....	.....	.....	.....	+	
Madagascar .....	.....	.....	.....	.....	.....	++	
Mauritius .....	.....	.....	.....	.....	.....	+	
Mayotte .....	.....	.....	.....	.....	.....	dd	
Mozambique .....	.....	.....	.....	.....	.....	+	dd
La Réunion .....	.....	.....	.....	.....	.....	dd	
Seychelles .....	.....	.....	.....	.....	.....	+	
South Africa .....	.....	.....	.....	.....	.....	dd	
Tanzania .....	.....	.....	.....	.....	.....	+	
Indian Ocean:							
India .....	+	.....	.....	+	.....	+	
Australia (NW Islands) .....	++	.....	++	+	.....	+	
Christmas Island .....	.....	.....	+	—	.....	+	
Cocos (Keeling) Islands .....	.....	.....	+	—	.....	—	
Chagos .....	.....	.....	.....	.....	.....	dd	
Maldives .....	.....	.....	.....	.....	.....	+	
Sri Lanka .....	.....	.....	.....	.....	.....	dd	
East Asia:							
Japan .....	+	.....	.....	+	.....	+	
Taiwan .....	—	.....	—	—	.....	+	
China .....	.....	.....	.....	—	.....	+	
South China Sea .....	+	.....	+	+	.....	++	
South Asia:							
Indonesia .....	+	+	+	+	.....	+++	
Malaysia .....	+	+	+	+	.....	+++	
Myanmar (Burma)	dd	.....	.....	dd	.....	dd	
Cambodia .....	.....	.....	.....	dd	.....	++	
Brunei .....	.....	.....	.....	.....	.....	dd	
Philippines .....	+	+	+	+	.....	++	
Singapore .....	—	.....	.....	—	.....	+	
Thailand .....	.....	.....	.....	—	.....	+	
Vietnam .....	.....	.....	.....	dd	.....	++	
East Timor .....	.....	.....	.....	dd	.....	.....	
Pacific Ocean:							
Australia (Great Barrier Reef) .....	++	.....	++	++	dd	++	
Fiji	REIN	.....	+	REIN	+	++	
New Caledonia .....	+	.....	+	—	.....	+	
Papua New Guinea .....	+	+	+	+	.....	+	
Solomon Islands .....	+	.....	+	+	.....	+++	
Vanuatu .....	++	.....	REIN	REIN	.....	+	
FSM .....	+	.....	INT	REIN	.....	+	
Guam	REIN	.....	REIN	REIN	.....	+	
Republic of Kiribati .....	+	.....	.....	+	.....	+	
Marshall Islands .....	++	.....	INT	+	.....	++	
CNMI	REIN	.....	REIN	REIN	.....	—	
Palau .....	++	+	++	+	.....	++	
American Samoa	REIN	.....	INT	INT	.....	+	
Cook Islands .....	.....	.....	INT	INT	.....	+	
French Polynesia .....	.....	.....	.....	.....	.....	+	
Pitcairn Islands .....	.....	.....	.....	.....	.....	++	
Niue .....	.....	.....	.....	.....	.....	+	
Samoa	REIN	.....	INT	INT	.....	+	
Tokelau .....	.....	.....	.....	.....	.....	+	
Tonga	REIN	.....	+	REIN	+	+	

TABLE 1—SUMMARY OF THE POPULATION STATUS FOR EACH OF THE SEVEN GIANT CLAM SPECIES IN ALL COUNTRIES, TERRITORIES, AND REGIONS WHERE THEY HAVE BEEN OBSERVED (ADAPTED FROM NEO *et al.*, 2017 AND SUPPLEMENTED WITH MORE RECENT INFORMATION WHERE AVAILABLE)—Continued

Location	HH ¹	HP ¹	TD ¹	TG ¹	TMB ¹	TS ¹	TSI ¹
Tuvalu	dd .....	.....	INT .....	— .....	.....	+ .....	.....
United States (Hawaii)				INT .....	.....	INT .....	.....
United States (Johnston Atoll)				dd .....	.....	.....	.....
United States (Kingman Reef)						+	
United States (Wake Atoll) ...				dd .....	.....	dd .....	.....
Wallis and Futuna Islands						+++	

Note: Species abundance categories are as follows. +++: Abundant (>100 ind ha⁻¹), ++: Frequent (10–100 ind ha⁻¹), +: Rare (<10 ind ha⁻¹), –: Locally extinct, INT: Introduced to non-native location; REIN: Reintroduced (cultured specimens) to locations where the species had previously been extirpated; dd: Data Deficient (*i.e.*, reports of species presence are not confirmed). Empty cells indicate locations where a species has not been observed.

¹Species names are abbreviated as follows: HH: *H. hippopus*, HP: *H. porcellanus*, TD: *T. derasa*, TG: *T. gigas*, TMB: *T. mbalavuna*, TS: *T. squamosa*, TSI: *T. squamosina*.

Extinction Risk Analysis

Methods

In determining the extinction risk of each species, it is important to consider both the demographic risks facing the species, as well as current and potential threats that may affect the species' status. To this end, the status review synthesized the best available scientific and commercial data regarding the five threat categories listed in section 4(a)(1) of the ESA. These are: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Second, we conducted a demographic risk analysis following the Viable Population (VP) approach derived from McElhany *et al.* (2000), which addresses four biological descriptors of species status: abundance, productivity (*i.e.*, population growth rate), spatial distribution, and diversity. The VP approach reflects concepts that are well-founded in conservation biology and considers demographic factors that individually and collectively provide strong indicators of extinction risk. It is designed to both capture the biological symptoms of past threats that have contributed to the species' current status and provide insight into how the species may respond to present and future threats.

With respect to each threat and each demographic risk factor, we assigned a qualitative score from 1 to 5 representing its estimated contribution to the species' extinction risk ("very low," "low," "moderate," "high," or "very high" risk). Detailed definitions of these risk levels can be found in the

accompanying Status Review Report. We also assigned a confidence rating from 0 to 3, reflecting the quantity and quality of information used to assign the score, as follows: 0 = No confidence (*i.e.*, no available information); 1 = Low confidence (*i.e.*, very limited available information); 2 = Medium confidence (*i.e.*, some reliable information available, but reasonable inference and extrapolation is required); 3 = High confidence (*i.e.*, reliable information with little or no extrapolation or inference required).

Lastly, all information from the threats assessment and demographic risk analysis was synthesized to estimate the overall risk of extinction for each species. For this analysis, we used three reference levels of extinction risk ("low," "moderate," and "high"), which are consistent with those used in prior ESA status reviews. "Low" risk indicates a species that is not at a moderate or high level of extinction risk (see "Moderate" and "High" risk below). A species may be at a low risk of extinction if it is not facing threats that result in declining trends in abundance, productivity, spatial structure, or diversity. A species at low risk of extinction is likely to show stable or increasing trends in abundance and productivity with connected, diverse populations. "Moderate" risk indicates a species that is on a trajectory that puts it at a high level of extinction risk in the foreseeable future (see "High" risk below). A species may be at moderate risk of extinction due to projected threats or declining trends in abundance, productivity, spatial structure, or diversity. "High" risk indicates a species that is at or near a level of abundance, productivity, spatial structure, and/or diversity that places its continued persistence in question. The demographics of a species at such a high

level of risk may be highly uncertain and strongly influenced by stochastic or depensatory processes. Similarly, a species may be at high risk of extinction if it faces clear and present threats (*e.g.*, confinement to a small geographic area; imminent destruction, modification, or curtailment of its habitat; or disease epidemic) that are likely to create present and substantial demographic risks.

Importantly, these extinction risk categories are not meant to be a direct translation of the final listing determination for the species, as listing determinations must also consider ongoing conservation efforts of any State, foreign nation, or political subdivision thereof (16 U.S.C. 1533(b)(1)(A)) to determine whether the species meets the ESA's definition of an "endangered species" or "threatened species." Rather, the extinction risk assessment in the Status Review Report represents the scientific conclusion about the overall risk of extinction faced by the species under present conditions and in the foreseeable future based on an evaluation of the species' demographic risks and assessment of threats.

Defining the "Foreseeable Future"

The appropriate time horizon for evaluating whether a species is more likely than not to be at a high level of risk in the "foreseeable future" varies on a case-by-case basis. For example, the time horizon may reflect certain life history characteristics (*e.g.*, long generation time or late age-at-maturity) and the time scale over which identified threats are likely to impact the biological status of the species. In other words, the foreseeable future represents the period of time over which we can reasonably determine that both future threats and the species' response to

those threats are likely. *See generally* 50 CFR 424.11(d). It does not necessarily need to be limited to the period that the species' status can be quantitatively modeled or predicted within predetermined limits of statistical confidence. Reliable projections may be qualitative in nature.

With these criteria in mind, we determined that the “foreseeable future” for the following extinction risk analyses spans approximately ~50–60 years. Based on what is known about the life history traits of giant clams, with longevity estimated to be at least 50 years (up to 60 years for *T. gigas*), maturity ranges from 3 to 9 years, and exceedingly low recruitment, it would likely take at least this amount of time (*i.e.*, multiple generations) for the effects of any management actions to be realized and reflected in population abundance indices. Similarly, the impact of present threats to the species would be realized in the form of noticeable population declines within this timeframe, as has been demonstrated in the available literature. As the primary operative threats to giant clams are overutilization for subsistence and commercial harvest, this timeframe would allow for reliable predictions regarding the impact of current levels of harvest-related mortality on the biological status of all the species.

One important exception to this timeframe is in regard to the future impacts and threats related to climate change. Based on the current standard for climate projections, under which most available models are extended to the end of the century, we use the same timeframe (*i.e.*, present day–2100) to define the “foreseeable future” in assessing the likely future threat of climate-related habitat degradation and climate-related impacts to giant clam fitness.

Threats Assessment

Below, we describe the natural and anthropogenic threats to each of the seven giant clam species within the framework of the five threat categories outlined in section 4(a)(1) of the ESA. Because a number of species occupy overlapping ranges and often co-occur in similar habitats, certain threats may apply to more than one species. In each section, we highlight the severity of the threat to each of the species affected and provide additional species-specific information where appropriate. Additional details may be found in the Status Review Report (Rippe *et al.*, 2023).

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

As is mentioned in the species descriptions above, giant clams are often closely associated with coral reefs, inhabiting all types of shallow-water reef ecosystems (*i.e.*, fringing, barrier and atoll reefs), as well as various reef-adjacent habitats. However, there is no conclusive evidence that giant clams directly rely on live, pristine corals for their survival. Certain species are habitat generalists (*e.g.*, *T. squamosa*, *T. gigas*)—they are often observed among live corals but can also be found in other habitats, which are not pristine coral reef (*e.g.*, sand, rock, dead coral rubble, seagrass beds, macroalgae zones). Others are more specialized—*T. mbalavuana* is found exclusively at depth on reef slopes, *T. derasa* is found predominantly in offshore coral reef areas, while *H. hippopus*, *H. porcellanus* and *T. squamosina* tend to prefer sandy areas, shallow lagoon flats and seagrass beds adjacent to coral reefs.

Available research on larval settlement preference offers some clues as to what may be driving the association with coral reefs. Several studies show that *T. squamosa* larvae prefer to settle on substrates of relatively high rugosity and are drawn to crustose coralline algae (CCA), but actively avoid settling on live coral (Courtois de Vicose, 2000; Calumpong *et al.*, 2003; Neo *et al.*, 2009). Additionally, the small giant clam (*T. maxima*) has shown an ability to discriminate between “favorable” and “unfavorable” habitats, preferring to settle near the effluent of conspecifics and near the effluent of live coral and CCA, rather than cyanobacteria and sponges (Dumas *et al.*, 2014). However, this information is limited to only one of the seven species being analyzed in connection with this proposed rule, and there are no such data for species that are predominantly found in sand flats and seagrass beds, where rugosity is especially low and settlement cues might differ.

Based on the known features of giant clam biology and larval development, Lucas *et al.* (1989) hypothesized that the proximity of giant clams to coral reefs is, to some extent, a result of two environmental requirements, which are maximized in shallow reef habitats: (1) high light conditions to support the photosynthetic nutrition that giant clams derive from their algal symbionts, and (2) substrate rugosity to provide cryptic settlement locations for vulnerable recruits and juveniles. While we cannot conclude that these factors are equally important to all species of

giant clams, it is within the context of these two habitat requirements that we discuss the following threats to coral reef ecosystems and their potential impacts to giant clams.

Climate Change Impacts to Coral Reefs

Reef-building corals typically occur in waters that range between 25 °C–30 °C and are highly sensitive to temperature excursions outside of this range (Brainard *et al.*, 2011). Prolonged exposure to high temperature anomalies can lead to coral bleaching, where the coral host expels its symbiotic zooxanthellae, leaving the tissue translucent and revealing its white skeleton underneath. Bleaching-associated mortality is quite variable and can depend on the duration and intensity of elevated temperatures, geographic location, bleaching history, species present, and other factors (Pandolfi *et al.*, 2011; Putnam & Edmunds, 2011; van Hooidonk & Huber, 2012). Mild to moderate bleaching does not always lead to death; however, repeated and prolonged bleaching can cause widespread coral mortality on regional or global scales. Extreme summer temperature anomalies associated with strong El Niño events have led to three recognized global bleaching events in 1997–98, 2009–10 and 2014–17 (Hughes, Kerry, *et al.*, 2017; Lough *et al.*, 2018; Eakin *et al.*, 2019). The latest (2014–17) was the longest and most severe global bleaching event in recorded history. It affected every major coral reef region and led to the mortality of one third of the Great Barrier Reef in Australia (Couch *et al.*, 2017; Hughes, Kerry, *et al.*, 2017; Hughes, Kerry, *et al.*, 2018). In addition, many other regional-scale bleaching events over the last several decades have caused widespread coral mortality in reef communities throughout the Indo-Pacific (Brainard *et al.*, 2011; Hughes, Anderson, *et al.*, 2018).

While coral bleaching patterns can be complex, there is a general consensus that rising global ocean temperatures have led to more frequent and severe coral bleaching and mortality events (Hughes, Anderson, *et al.*, 2018; Lough *et al.*, 2018). Without drastic action to curb greenhouse gas emissions, this trend is projected to continue throughout this century (van Hooidonk *et al.*, 2016). Additionally, several studies have shown that warming can significantly increase coral susceptibility to disease (Bruno *et al.*, 2007; Sokolow, 2009; Brainard *et al.*, 2011; Howells *et al.*, 2020). The combination of these warming-related impacts has already caused dramatic

declines in many coral species and changes to the composition and structure of coral reefs around the world (Brainard *et al.*, 2011; Hughes, Barnes, *et al.*, 2017; Hughes, Kerry, *et al.*, 2018). During the major 2016 coral bleaching event on the Great Barrier Reef, for example, the fast-growing, structurally complex tabular and branching species suffered disproportionately (≤ 75 percent mortality on heavily bleached reefs), shifting reef communities towards taxa with simpler morphological characteristics and slower growth rates (Hughes, Kerry, *et al.*, 2018). Other studies similarly suggest that coral reef ecosystems, rather than disappear entirely as a result of warming, will likely persist, but with unpredictable changes to their community composition and ecological function (Pandolfi *et al.*, 2011; Hughes *et al.*, 2012).

Coral reefs are also facing increasing risk from ocean acidification, the process by which atmospheric carbon dioxide (CO_2) is absorbed into the surface ocean, resulting in reduced seawater pH and reduced availability of carbonate ions. Due to anthropogenic CO_2 emissions, average surface ocean pH (total scale, pHt) has already decreased by more than 0.1 pHt units below the pre-industrial average of 8.17, and is expected to fall up to an additional 0.42 pHt units by 2100 under the worst-case emissions scenario from the Intergovernmental Panel on Climate Change (IPCC) (RCP 8.5) (Pörtner *et al.*, 2014).

Such reductions in ocean pH could lead to drastic changes to the net calcification balance in many coral reef ecosystems. Numerous laboratory and mesocosm experiments have demonstrated a correlation between lower pH (or elevated partial pressure of CO_2 , $p\text{CO}_2$) and decreased coral calcification rates (Anthony *et al.*, 2008; Ries *et al.*, 2009; Anthony *et al.*, 2011; Gazeau *et al.*, 2013; Albright *et al.*, 2018). Brainard *et al.* (2011) provide a table summarizing the existing literature on the topic (table 3.2.2 of the report), and for every species studied, net calcification rate either declines, or in very few, there is no significant effect. In a pair of controlled mesocosm experiments, net community calcification of a small enclosed coral reef was found to increase under enhanced alkalinity and decrease after the addition of CO_2 (Albright *et al.*, 2016; Albright *et al.*, 2018), indicating that current levels of acidification are already impairing ecosystem-level calcification and will likely exacerbate this effect in the future. Coupled with dwindling coral cover due to warming-

associated bleaching and mortality, continued acidification could transition many reef systems from net overall accretion to net erosion within this century (Eyre *et al.*, 2018; Cornwall *et al.*, 2021).

Others anticipate that ocean acidification will also weaken the structural integrity of coral reefs, both by promoting the efficiency of bioeroding organisms and by reducing reef cementation (*i.e.*, secondary processes of carbonate precipitation that bind the reef framework). Observations from coral reefs of the eastern Pacific, which occur in naturally low-pH upwelling zones reveal some of the highest rates of bioerosion documented globally, as well as poorly cemented, fragile, and unstable reef frameworks (Glynn, 1988; Eakin, 1996, 2001; Manzello *et al.*, 2008). Crustose coralline algae (CCA) contribute significantly to reef cementation by consolidating loose rubble and sealing porous dead coral skeletons (Adey, 1998; Littler & Littler, 2013). There is major concern that CCA may be among the most sensitive taxa to declines in seawater pH, because they build their skeletons with magnesium-rich calcite, a highly soluble form of carbonate (Andersson *et al.*, 2008). Although some argue that the risk to CCA may be overestimated, as certain aspects of their skeletal structure and biology have proven resilient to projected future conditions (Nash *et al.*, 2013; Nash *et al.*, 2015; Nash *et al.*, 2016). At this point, the potential impacts of ocean acidification on CCA are not fully resolved.

Given the documented and projected impacts of ocean warming and acidification on coral reef ecosystems, we assessed the direct implications of these impacts on the extinction risk of the seven giant clam species. In our previous status review for 82 species of corals, Brainard *et al.* (2011) concluded that “the combined direct and indirect effects of rising temperature, including increased incidence of disease, and ocean acidification [. . .] are likely to represent the greatest risks of extinction to all or most of the candidate coral species over the next century.” They assessed the threat of continued ocean warming to be “highly certain” and graded the threat as “high” for most regions where the candidate corals are known to occur. Based on this assessment, we find it likely that live coral cover in general will continue to decline due to more frequent and severe bleaching events, and that ecosystem-scale calcification rates will decline as a result. Critically for giant clams, the negative impacts of warming are most

pronounced in the fast-growing branching and tabular coral species, which are the primary contributors to the three-dimensional complexity of reef habitats. Thus, continued loss of live coral cover and of these coral species in particular will likely severely reduce the rugosity of future reef ecosystems. There is also evidence that ocean acidification will further inhibit calcification rates of living corals and weaken the structural integrity of the reef framework, although the magnitude of these effects is not clear. As with ocean warming, the primary implication of these effects for giant clams will be reduced habitat rugosity.

Nevertheless, there are two important layers of uncertainty associated with these predictions, and especially their potential impacts to giant clam habitat. First, with respect to ocean acidification, carbonate chemistry is notoriously difficult to model precisely in open systems, as it relies on many physical and biological factors, including seawater temperature, proximity to land-based runoff and CO_2 seeps, proximity to sources of oceanic CO_2 , salinity, nutrients, as well as ecosystem-level photosynthesis and respiration rates. The last factor, in particular, means that in many cases, daily fluctuations in pH or carbonate chemistry can significantly outweigh projected long-term changes to the average (Manzello *et al.*, 2012; Johnson *et al.*, 2019). Secondly, as mentioned above, there is very little research establishing the degree to which giant clams rely on coral reef rugosity and thus might be impacted by any reduction thereof. The few larval choice experiments to date suggest that *T. squamosa* prefers rough to smooth surfaces and is attracted to CCA. However, most giant clam species can be found in an array of habitat types, and some even seem to prefer areas of low rugosity, such as sand flats and seagrass beds (*e.g.*, *H. hippopus*, *H. porcellanus*, and *T. squamosina*). No studies have quantified how or if giant clams might be affected under varying levels of coral reef complexity.

If giant clams are sensitive to reductions in net ecosystem calcification and reef rugosity, the projected climate change-related impacts to coral reefs would likely pose a significant threat to *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosa* within the foreseeable future, as these species are known to inhabit coral reef environments. We would expect decreased larval recruitment and juvenile survival across broad portions of their range. These early life stages are already known to suffer exceptionally

high mortality rates naturally, and any further reduction in productivity would greatly threaten the viability of remaining giant clam populations.

However, without more information on the direct association between substrate rugosity and giant clam survival and productivity, it is difficult to estimate with any confidence the degree to which reef rugosity must decline to threaten the persistence of these species. Likewise, given the lingering uncertainty in the dynamics and effects of ocean acidification, it is not possible to estimate a timespan over which such a risk can be expected. Thus, while it is likely that continued ocean warming and acidification will drastically alter coral reef communities and reduce the rugosity of many reef habitats, we concluded that the potential effect on the quality or suitability of giant clam habitat cannot be confidently assessed.

Coastal Development

The physical degradation of nearshore habitats due to coastal development poses an additional threat to giant clams throughout much of their range. Sedimentation associated with the construction and maintenance of coastal infrastructure can reduce the amount of suitable substrate available for larval settlement. There is extensive evidence for such an effect in corals—increased sediment load has been shown to deter larval recruitment (Babcock & Davies, 1991), reduce settlement success and survival (Hodgson, 1990; Babcock & Smith, 2002), and decrease the effectiveness of CCA to induce settlement (Ricardo *et al.*, 2017). We could not find any research directly investigating this effect in giant clams; however, similarities in the biology and behavior of giant clam larvae would suggest that comparable results can reasonably be expected. Like coral larvae, giant clam larvae prefer rough settlement surfaces and are likely deterred by unconsolidated, fine-grained silt that is typical of anthropogenic sedimentation. Moreover, CCA provide a similarly important settlement cue for giant clams (Courtois de Vicose, 2000; Neo *et al.*, 2009; Neo *et al.*, 2015), and a reduction in effectiveness would likely decrease larval recruitment and settlement success.

Importantly, compared to habitat degradation due to climate change, coastal development poses a more localized threat to giant clam populations in specific regions. In the Red Sea, for example, Roa-Quiaoit (2005) notes intense modification to the Jordanian coastline over “four decades

of rampant development of ports, industrial and tourism areas, as well as extreme events such as oil spills.” Surveys of giant clam density in the area revealed an inverse relationship between the population density of *T. squamosa* and metrics of human impact and coastal use. The author argues that the observed 12-fold reduction of giant clam density in Jordan over three decades is in major part due to this intense habitat modification. Similar examples of anthropogenic impacts to the coastal environment have also been documented in many areas of the Indo-Pacific region, although this is often discussed in relation to the health of coral reef ecosystems. In Singapore, approximately 60 percent coral reef area was lost during the 20th century due to land reclamation and associated sedimentation (Chou, 2006; Guest *et al.*, 2008). On three specific Singapore reefs—Tanjong Teritip, Pulau Seringat, and Terumbu Bayan—Neo and Todd (2012) note that giant clams were once found, but the areas have since been reclaimed (covered over) in their entirety. In addition, more than 20 percent of coral reefs in Indonesia, 35 percent of reefs in Malaysia, 25 percent of reefs in Papua New Guinea, and 60 percent of reefs in the Philippines are threatened by the impacts of coastal development, including runoff from construction and waste from coastal communities (Burke *et al.*, 2012).

In addition to undergoing intense coastal development activities over the past several decades, many of these areas are not well regulated with respect to coastal runoff and often do not prioritize sustainable management of the coastal environment (*e.g.*, Gladstone *et al.*, 1999; O. A. Lee, 2010). In contrast, the Great Barrier Reef in Australia and island nations of the central and western Pacific, two other important areas of giant clam distribution, likely do not suffer the same effects of coastal development. Australia strictly enforces an integrated management plan to protect the Great Barrier Reef from the effects of coastal land use change via numerous national and State regulations, and the relatively small populations of most Pacific island nations minimize the impact of coastal development on surrounding waters.

Because *T. mbalavuana* and *T. derasa* reside preferentially in offshore coral reef areas, we conclude that habitat degradation of the nearshore environment related to coastal development likely does not pose a significant threat to these two species. With respect to *H. hippopus*, *T. gigas*, and *T. squamosa*, considering the relatively localized impacts of coastal

development (*e.g.*, near heavily urbanized areas) compared to the size of the species’ ranges, we conclude that the threat of habitat destruction, modification, or curtailment related to nearshore impacts of coastal development likely poses a low risk to *H. hippopus* and *T. gigas*, and a very low risk to *T. squamosa*. Specifically, we find the risk to be lower for *T. squamosa* due to the species’ expansive geographic range as well as its current abundance and distribution, compared to *H. hippopus* and *T. gigas*.

Because the restricted range of *H. porcellanus* is centered in a region of intense urban development (*i.e.*, within the densely populated Indo-Malay Archipelago), we conclude that habitat destruction and modification of the nearshore environment poses a moderate risk to the species. In other words, it likely contributes significantly to the species’ long-term extinction risk, but given the localized nature of these impacts, does not in itself constitute a danger of extinction in the near future. *H. porcellanus* is also faced with an acute threat of habitat destruction in the northern portion of its range, where fishermen primarily from Tanmen, China have been razing shallow reef areas of the South China Sea in a search for giant clam shells (see *Tanmen Destructive Shell Harvesting* below). The damage from these operations is extensive and has likely eliminated any *H. porcellanus* that may have previously occurred in the islands of the South China Sea.

With respect to *T. squamosina*, we considered reports indicating specific areas of the Red Sea coastline which have been targeted for development of tourist activities and infrastructure, including Hurghada and the Gulf of Aqaba coastline from Sharm el-Sheikh to Nuweiba (Egypt), Eilat (Israel), and Aqaba (Jordan). These areas are significant, as they directly overlap with the majority of recent *T. squamosina* observations. As is mentioned above, Roa-Quiaoit (2005) estimated that 70 percent of the Jordanian coastline has been developed into ports, industrial centers, and tourism areas over the past several decades. Additionally, near Hurghada, Mekawy and Madkour (2012) observed dredging activities associated with a newly-constructed harbor and offshore trash disposal from boats. The authors also described industrial and tourist activities in several other areas along the coast of mainland Egypt (*e.g.*, oil drilling in El-Esh, dense industrial and tourism-related development near Safaga Harbor, high human activity in Quesir), which they argue have likely been the principal factors driving the

declining abundance of giant clams (primarily *T. maxima*) in these areas. Similarly, Hassan *et al.* (2002) reported “major decreases in giant clam populations between 1997 and 2002, with many small clams seen in 1997 not surviving through to 2002.” The authors attributed this population loss directly to sedimentation from major construction activities in South Sinai. While these studies address impacts to giant clams broadly, it is likely that *T. squamosina* experiences a similar threat in these areas. Lastly, Pappas *et al.* (2017) suggest that coastal development may, in combination with overutilization, explain the apparent absence of *T. squamosina* in the central Red Sea, but do not provide any data to support this claim.

Thus, while we do not have any data specifically linking habitat destruction, modification, or curtailment with the abundance of *T. squamosina*, based on the species’ distribution in nearshore habitats, documented evidence of the impact of coastal development on giant clam abundance generally, and ongoing regional development goals, we conclude that this threat poses a high risk to *T. squamosina*. In other words, we find that it contributes significantly to the species’ long-term extinction risk and is likely to contribute to its short-term extinction risk in the near future.

Tanmen Destructive Shell Harvesting

Despite a relatively small geographic scope, giant clam shell harvesting in the South China Sea has caused severe destruction of shallow water habitats. In the last decade, the small fishing village of Tanmen in China’s Hainan province became a regional epicenter for giant clam shell handicraft and trade (Hongzhou, 2016; Larson, 2016; Lyons *et al.*, 2018). From 2012 to 2015, the number of retailers of giant clam shell handicraft increased from 15 to more than 460, the number of shell carving workshops increased from a dozen to more than 100, and by the end of this period, it was estimated that this industry supported the livelihood of nearly 100,000 Tanmen residents (Hongzhou, 2016; Bale, 2017; Wildlife Justice Commission, 2021).

As the industry grew, many Tanmen fishermen increasingly abandoned the traditional fishing industry and shifted focus to giant clam shells as their primary livelihood. With local stocks of giant clams having been depleted by a long history of overharvesting, many fleets resorted to destructive methods of digging out large portions of coral reef using their boat propellers to access the shells of long-dead clams that had been buried under the reef substrate (Wildlife

Justice Commission, 2021). As reported by V. R. Lee (2016), harvesting boats are anchored with a long rope or chain against which the propeller holds tension as it carves an arc-shaped scar in the reef (see also Wingfield-Hayes, 2015). The majority of this activity has occurred the South China Sea, and an analysis of satellite imagery revealed extensive damage in the Spratly Islands and Paracels, with an estimated 160 km² of coral reef in these areas completely destroyed by the combination of clam dredging and island-building activities (McManus, 2017).

In response to international pressures and following a 2016 arbitral tribunal ruling that China was aware of and responsible for “severe harm to the coral reef environment” in the South China Sea due in part to these activities (Permanent Court of Arbitration, 2016), steps were taken to halt destructive clam shell harvesting operations. China began to enforce anti-corruption measures aimed at undermining demand for the expensive jewelry and statues carved from giant clam shells (Bale, 2017), and in January 2017 the Hainan Province People’s Congress passed new regulations that effectively banned the commercial trade of all giant clam species in Hainan (Wildlife Justice Commission, 2021). However, while giant clam shell harvesting operations were found to decline significantly between 2016 and 2018, the Wildlife Justice Commission (2021) reports several lines of evidence to suggest that “illegal giant clam shell trade persists in China in a covert manner with one clear supply area” (Hainan Province), and that a new influx of clam harvesting boats have returned since 2018. Thus, while the extensive damage to the habitat in this region would likely take several decades or more to undo if the ecosystems were allowed to recover, the ongoing threat of illegal harvesting is likely to prevent any substantial habitat recovery in the foreseeable future.

This threat of habitat loss is relevant to the species that are known to occur in this region and that are typically found in reef flat environments where the harvesting operations primarily occur. This includes *T. gigas*, *T. squamosa*, *H. hippopus*, and most critically *H. porcellanus*, which has a highly restricted range centered in the Sulawesi region of Indonesia but that extends northward into the Philippines and portions of the South China Sea (Wells, 1997; bin Othman *et al.*, 2010; Neo *et al.*, 2017). As is mentioned above, the damage from these operations has likely eliminated any *H. porcellanus* that may have previously occurred in the islands of the South China Sea.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The pervasive harvest of giant clams for subsistence and domestic sale, and several periods of short-lived but intensive commercial harvest have severely depleted giant clam populations throughout their respective ranges. Once the center of giant clam diversity in the region, the Philippines saw commercial exploitation of giant clams for the international shell trade decimate populations of *H. hippopus*, *H. porcellanus*, *T. gigas*, and *T. squamosa*. Similar trends have been observed throughout Southeast Asia (*i.e.*, Indonesia, Singapore, Thailand, Cambodia, Vietnam, and in the South China Sea), where each of these species except *T. squamosa* is now considered rare or locally extinct (Neo *et al.*, 2017). Likewise, illegal harvest of giant clams for the international clam meat trade, primarily by Taiwanese fishermen or to supply Taiwanese demand, severely reduced giant clam populations throughout the western and central Pacific. As a result, as in Southeast Asia, nearly all of the species (excluding *T. squamosa*) are now considered rare or extinct throughout most of their Pacific range (Wells, 1997; Neo *et al.*, 2017). Although international demand (primarily for the aquarium trade) is increasingly met by the growing field of giant clam mariculture, wild-sourced clams are still observed in international trade, and the potential for laundering wild clams with mariculture-produced specimens cannot be discounted (Sant, 1995).

Ongoing harvest for subsistence or domestic market supply, as well as persistent poaching, continues to limit substantial population recovery of giant clams throughout much of their range. As broadcast-spawning organisms with little to no mobility, giant clams are reliant on sufficient population density to facilitate gamete fertilization. Thus, even if small populations of giant clams have survived the years of exploitation, in many cases individuals may be too dispersed to successfully reproduce. Furthermore, the largest individuals were often targeted for the meat and shell trade, leading to altered size structures in remnant giant clam populations. Juveniles and smaller adults are known to be more susceptible to predators and to exhibit lower reproductive output, which will likely continue to limit population recovery in the near future. It is for these reasons that we consider overutilization to be the most significant threat to all seven giant clam species. Below, we

summarize the threats posed by overutilization related to subsistence fisheries, domestic markets, international trade, and illegal poaching, highlighting specific details related to each affected species.

Subsistence Fisheries

Giant clams have long been, and continue to be, an important component of traditional livelihoods and culture throughout their geographic range (Craig *et al.*, 2011). As described by Lindsay *et al.* (2004), “there are few locations within the Pacific where tridacnids are not gathered on a daily basis and found in local markets” (Munro, 1993a). Archaeological evidence from shell middens (piles of discarded shells), which can be found across the Indo-Pacific from as far back as 2000 years ago (Swadling, 1977), as well as anecdotal accounts and local fishing practices all point to the importance of giant clam in Indo-Pacific diets (Neo & Loh, 2014). The shells of giant clams are also frequently carved for use as tools, containers, and ornaments (Copland & Lucas, 1988; Lucas, 1994).

Because *H. hippopus* is unattached to the substrate and occupies nearshore habitats that are relatively accessible to humans, it is an easy target for reef gleaners (*i.e.*, fishers that collect organisms by hand from nearshore sand and reef flats). Consequently, it has been a popular species for local harvest and consumption throughout its range. Many years of subsistence harvest have driven widespread population declines and local extirpations from many Pacific island nations and territories, including American Samoa, CNMI, and Guam.

In Fiji, for example, Seeto *et al.* (2012) discovered *H. hippopus* fossils in shell middens from two Lapita-era settlements (1100–550 B.C.), and found that shell size increased with midden depth, suggesting that human consumption contributed to population reductions and to its eventual extirpation. Surveys from Palau in the 1970s indicated that *H. hippopus* populations declined drastically as a direct result of overharvest (Bryan & McConnell, 1975). In Singapore, *H. hippopus* was considered rare historically (S. K. Lee, 1966; Dawson & Philipson, 1989), but consistent harvest pressure is thought to have prevented the species from establishing a sustainable population in the area and ultimately led to its extirpation (Neo & Todd, 2012). Additionally, *H. hippopus* continues to be exploited for consumption by coastal communities in Indonesia (Naguit *et al.*, 2012), Malaysia (Neo & Todd, 2012), New Caledonia (Purcell *et al.*, 2020), the Andaman and

Nicobar Islands (Nandan *et al.*, 2016), Papua New Guinea (Kinch, 2003), and virtually every other country where it occurs, except for Australia (Wells, 1997).

H. hippopus has also been extirpated from American Samoa, CNMI, and Guam due to a long history of harvest for subsistence consumption and for sale in local markets (Munro and Heslinga, 1983; Sant, 1995; Wells, 1997; Green and Craig, 1999; Pinca *et al.*, 2010). According to Score (2017), giant clams have a “special significance” in American Samoa culture and are often used as offerings during family and community gatherings when available. Moreover, Cunningham (1992) describes the cultural significance of giant clams to the Chamorro people, who live throughout the Mariana Islands, including CNMI and Guam. The common use of *H. hippopus* as a source of food and to make tools likely led to its extirpation in these locations (Wells, 1997).

Similar to *H. hippopus*, the tendency of *H. porcellanus* to occupy shallow nearshore areas make the species highly vulnerable to harvesting (Dolorosa *et al.*, 2014). Heavy exploitation from both subsistence and commercial harvest has led to severe population declines throughout its range (Dolorosa *et al.*, 2014; Neo *et al.*, 2017). Villanoy *et al.* (1988) determined that *H. porcellanus* was overexploited in the Philippines as early as the 1980s, and more recently, Rubec *et al.* (2001) reported that *H. porcellanus* has been depleted to such an extent that it is no longer commercially viable for harvest in the Philippines. Ultimately, while subsistence harvest was widespread, heavy fishing pressure on giant clam stocks in the Philippines for the commercial shell trade has been the primary cause of population decline, and has led to local extinctions throughout the region (see International Trade in Giant Clam Shells and Shell-Craft below).

Because of their large size and fast growth rates, *T. derasa* and *T. gigas* have historically been two of the most widely exploited giant clam species for the consumption of their meat. Reports from throughout their ranges indicate that both species are harvested for subsistence consumption in nearly every location where they occur, with the major exception being the Great Barrier Reef and northwestern (NW) islands of Australia. There are certain Pacific island communities that attribute unique significance to *T. gigas* as a cultural symbol and place high value on the species as a food item for special occasions (Hviding, 1993). The

shell of *T. gigas* is also valued as a traditional resource among many coastal communities for use as basins or as personal or religious decorations (Juinio *et al.*, 1987; Hviding, 1993; Lucas, 1994). Both *T. derasa* and *T. gigas* are reported to have been extirpated from CNMI and Guam as a result of longstanding subsistence harvest (Wells, 1997; Pinca *et al.*, 2010).

Based on the best available scientific and commercial data, it is likely that past and current subsistence harvest has played a significant role in the low abundance of *T. mbalavuana* throughout its range. S. Lee *et al.* (2018) attributes its absence from areas outside of the eastern Lau group in Fiji to a combination of ecological factors and “serial overfishing.” Additionally, Lewis and Ledua (1988) reported that in Fiji, *T. mbalavuana* is occasionally harvested unintentionally with *T. derasa*, due to the similarity in appearance between the two species. In Tonga, *T. mbalavuana* has traditionally been harvested for subsistence consumption and to supply domestic markets (Ledua *et al.*, 1993), and although its occurrence in deeper areas may have offered some protection from harvest historically, the advancement of SCUBA and hookah gear has facilitated greater access to previously inaccessible stocks (Lewis & Ledua, 1988; Lucas *et al.*, 1991; Neo *et al.*, 2017). Interviews with a number of traditional fishermen indicated that the abundance of *T. mbalavuana* in Tonga had declined considerably during their lifetimes (Ledua *et al.*, 1993). Harvest of giant clams for subsistence consumption and domestic markets is ongoing and largely unregulated in Fiji and Tonga.

Compared to the more common *T. maxima* and *T. crocea* (that are not themselves subject to this rulemaking), which often co-occur with *T. squamosa*, *T. squamosa* is typically larger and easier to physically remove from the reef, which makes it highly susceptible to harvest, particularly in shallow nearshore areas. For this reason, *T. squamosa* is an important resource in subsistence fisheries in nearly every location across its range, and in several locations, it is the preferred giant clam species for meat consumption (Neo *et al.*, 2017). Few exceptions include Australia, where giant clam harvest is strictly prohibited, and remote areas where the distance from human settlements and infrastructure limits accessibility. However, in most locations where the species occurs, longstanding subsistence harvest has reportedly driven widespread population declines (Neo *et al.*, 2017).

There are several studies that provide some insight as to the impact of past and current harvest on the abundance of the *T. squamosina* in the Red Sea. Paleolithic artifacts indicate that modern humans have been exploiting mollusks in the Red Sea for at least 125,000 years (Richter *et al.*, 2008). During this time, Richter *et al.* (2008) found that giant clam communities in the Red Sea have changed dramatically from before the last interglacial period (122,000 to 125,000 years ago), when *T. squamosina* constituted approximately 80 percent of the shell remains, to *T. squamosina* comprising less than 5 percent of shells in freshly discarded shell middens. While the authors acknowledge that variable recruitment rates and mortality among the three Red Sea giant clam species may be attributed to natural disturbances, a concurrent decline in the size of giant clam shells strongly suggests that overutilization has played a significant role (Richter *et al.*, 2008). In general, giant clam stocks in the Red Sea (including *T. maxima*, *T. squamosa*, and *T. squamosina*) have declined to less than 5 percent of their historical abundance in the 1980s and 1990s, largely due to artisanal reef-top gathering for meat and shells (Richter *et al.*, 2008).

As with *H. hippopus* and *H. porcellanus*, the distribution of *T. squamosina* in shallow, nearshore habitats makes it particularly accessible to reef-top gatherers and exacerbates the threat of overutilization. Bodoy (1984) reported that giant clams had been subject to “heavy exploitation in the vicinity of Jeddah, Saudi Arabia, and they [were] often collected on the reef flat, both for food and for decorative purposes.” Additionally, two firsthand accounts from Gladstone (2000, 2002) described the harvest of “a significant number of clams” (primarily *T. maxima*, which is not subject to this rulemaking) from the Kharij As Sailah and Kharij Al Qabr areas of the Farasan Islands, noting that “clams were easily harvested in the shallow reef flats.” Overall, the best available scientific and commercial data suggest that giant clams have been harvested extensively in the Red Sea for many years, and given their traditional importance in the diets of coastal communities, harvest is likely ongoing in most areas of the Red Sea.

Domestic Markets (Meat and Shells)

In areas where giant clams were historically abundant, commercial fisheries often developed alongside subsistence harvesting to supply the local demand for giant clam meat and shells. In Fiji, *T. squamosa* and *T.*

derasa were harvested by small-scale commercial operations and sold in 11 municipal markets or other direct sales outlets (Lewis *et al.*, 1988). From 1979–1987, annual sale of giant clam meat in the domestic market ranged between 6 and 42 tons (Adams, 1988; Lewis *et al.*, 1988; Wells, 1997). With respect to both species, Lewis *et al.* (1988) reported that the commercial harvest had driven once abundant populations to low densities, particularly near major urban centers.

Local markets also exist in a number of other Pacific countries and territories, although data on giant clam meat are often not reported at the species level. This is because of the difficulty in identifying the species once the meat is harvested since the shells are often left in the water, or because giant clam meat may have been mixed together or recorded collectively with other shellfish products when it was landed. Wells (1997) reported varying prices for giant clam meat from markets in American Samoa, the Solomon Islands (amounting to about 1 tonne of giant clam meat sold per year), the Marshall Islands (*H. hippopus* and *T. squamosa*), Niue, Vanuatu, Samoa, and FSM, where in 1990, 3.66 tonnes of giant clam meat were sold in the main markets of Chuuk. Data collected over a 10-week period in Tonga suggested that annual landings of giant clam meat for the domestic market might be 639–1,346 kg (Tacconi & Tisdell, 1992). Wells (1997) noted that in Jepara, Indonesia, giant clam meat was often sold dried, suggesting that the lack of fresh meat may be due to local overutilization of stocks. In Myanmar, clam meat was often marketed fresh for local consumption (Munro, 1989).

Additional reports indicate that domestic markets have continued in many of these localities into at least the early 2000s. In 1998–1999, nearly six tonnes of giant clam products were sold at a single market in Samoa (Skelton *et al.*, 2000). Giant clam meat was still reported to be sold openly at markets in Malaysia as of 2003 (Shau-Hwai & Yasin, 2003). Until bag limits were established in 2009, the declared commercial catch of giant clams in New Caledonia varied between 1.5 and 9 tonnes per year. This included *T. derasa*, *T. squamosa*, and *H. hippopus*, and the authors indicate that it is often the adductor muscle that is sold in stalls of local markets. In the decade since the bag limits were put in place, commercial catch has fallen below 2 tonnes per year (Purcell *et al.*, 2020). Kinch and Teitelbaum (2010) report that a high demand for giant clams to supply the local market in Tonga “has resulted in the over-exploitation of giant clam stocks in some areas.” In Papua New

Guinea, Kinch (2003) attributes sparse populations of giant clams to commercial harvest, particularly that of Brooker Islanders. From January to September 1999, the author recorded the total sales of giant clam adductor muscle from Brooker Islanders to a local fishing company, which included 551 kg (or 1,970 clams) of specimens under 400 g and 146 kg (or 170 clams) greater than 400 g. Notably, nearly one-third of the *T. gigas* individuals included in these sales were not full-grown adults, which likely had an effect on the future productivity of those populations. Similarly, harvesting of giant clams for sale and subsistence use in Vanuatu has led to severely reduced populations that are “now considered close to collapse in many locations despite the presence of suitable habitats for juveniles and adults” (Dumas *et al.*, 2012).

Domestic markets for giant clam shells are often related to the tourism industry. In the Andaman and Nicobar Islands of India, Nandan *et al.* (2016) report that giant clams, including *T. squamosa* and *H. hippopus*, are fished for the tourism-based ornamental shell industry. Additionally, in Thailand, giant clam shells are usually first sold to local traders in Phuket, and then sold to tourists as ornamental shells or various shell crafts (e.g., ashtrays, soap trays, lamps) (Chantrapornsy *et al.*, 1996). Shells have also been a popular souvenir for tourists visiting beach and resort areas of the Philippines and Indonesia (Tisdell, 1994). At the Pangandarin and Pasir Putih beach resorts in Java, Indonesia, as many as 39 and 35 giant clam shells, respectively, were available for sale in 2013, despite a prohibition on the harvest and sale of giant clams (except under “exceptional circumstances”) under Indonesian law since 1987 (Nijman *et al.*, 2015).

Prior to this prohibition, a major industry based on the use of giant clam shells for production of floor tiles (a.k.a, ‘teraso’ tiles) led to the extensive harvest of giant clams in Indonesian waters. While much of the shell material was dead shells of *T. derasa* and *T. gigas* buried in reef flats, living specimens were known to be taken when found (Lucas, 1994). As described by Lucas (1994), there were tile production centers at Jakarta, Semarang, Bali, Manado, and likely Suabaya in the early 1980s, and clam shell trade routes had developed throughout the Indonesian islands to supply the industry. The best estimates of giant clam shell import to the Semarang tile production center from the nearby Karimun Jawa islands varied between about 20 and 200 tonnes per month over the period 1978–1983 (Brown & Muskanofola, 1985). At the

Jakarta production center, the clam shell trade was estimated to reach at least 600 tonnes per month in 1982 (Usher, 1984 cited in Lucas, 1994). This industry is no longer active in Indonesia as a result of the 1987 prohibition; however, it is likely that such intense demand contributed significantly to the depletion and current rarity of *T. derasa* and *T. gigas* in Indonesian waters and limited any potential for their recovery. Moreover, despite regulatory protection, all species of giant clams remain heavily exploited in Indonesia for their meat and shells, and some for the live aquarium trade (Neo *et al.*, 2017). As a result of this overutilization, the larger giant clam species are now thought to occur in only a few locations archipelago-wide (Hernawan, 2010).

International Trade of Giant Clam Meat and Poaching

While giant clam meat is consumed throughout the Indo-Pacific region, Taiwan has consistently had the largest market and demand for giant clams. Some of the earliest references indicate that giant clams around Taiwan were depleted many decades ago (Pearson, 1977; Tisdell & Chen, 1994). As local stocks were rapidly exhausted, Taiwanese vessels began to range farther from their home ports, and from the 1960s to the mid-1980s, a surge of Taiwanese fishing vessels began illegally entering the waters of other Pacific nations in search of giant clam adductor muscle, particularly from the larger species, *T. gigas* and *T. derasa* (Munro, 1993a; Kinch & Teitelbaum, 2010). Occasionally, these vessels operated under agreements with local communities in exchange for resources (Adams, 1988), but in the vast majority of cases, giant clams were harvested illegally and to an unsustainable degree (Lucas, 1994; Kinch, 2002). The clam poachers progressively worked their way through the Pacific, typically concentrating their efforts on uninhabited islands and reefs where giant clam stocks had been virtually untouched and where local surveillance was limited. Reports of Taiwanese poaching include areas of the Philippines, FSM, Indonesia, Papua New Guinea, the Solomon Islands, Australia (the Great Barrier Reef), Palau, Fiji, Kiribati, and the Marshall Islands (Dawson & Philipson, 1989; Sant, 1995).

Data on the landings of giant clam meat in Taiwan are generally unavailable due both to their illegal nature and because in the records, landings were combined with meat of other marine molluscs and collectively referred to as 'ganbei' or 'compoy' (Lucas, 1994; Tisdell & Chen, 1994).

Tisdell and Chen (1994) report that imports of ganbei ranged from 9 tons in 1977 to 621 tons in 1988. Other estimates of giant clam adductor muscle landings in the 1960s and 1970s range between 100 and 400 tons per year (Carlton, 1984; Dawson & Philipson, 1989). Dawson and Philipson (1989) estimated that during the peak of the Taiwanese fishery for giant clams, harvest did not likely exceed 100 tons of adductor muscle per year, though Munro (1989) regarded this to be an underestimate. Accounting for the potential harvest of the smaller species, *T. derasa* and *H. hippopus*, which have an adductor muscle about one-third the weight of *T. gigas*, those landings correspond to 300,000 to 450,000 clams per year. According to Dawson (1986), "it seems certain [. . .] that the total illegal harvest of giant clams over the twenty-odd years that such activities have occurred in the region can safely be measured in the millions."

Poaching by long-range Taiwanese vessels peaked in the mid-1970s and gradually declined during the 1980s as the extension of exclusive economic zones, improved surveillance of reef areas, boat seizures, and depleted stocks made the fishery less profitable (Lucas, 1994). In addition, growing pressure from many Indo-Pacific nations forced the Taiwanese government to take stricter actions against giant clam harvesters (Dawson, 1986). The last five 'compoy' (*i.e.*, clam and other shellfish) fishing licenses were rescinded by the Taiwanese government in 1982, mainly due to pressure from the Australian government, and beginning in 1986, the Taiwanese government began rejecting all requests for approval of Taiwanese involvement in any clam fishing activities, regardless of whether foreign agreement or license documents were provided. There is evidence, however, that some poaching activities continued in remote locations. From 1982 to 1987, at least four Taiwanese vessels were apprehended on outlying reefs of the Solomon Islands, in each case carrying clam meat from tens of thousands of giant clams (Govan *et al.*, 1988). The authors note that the small size of the adductor muscles recovered indicates that large clams had likely already been harvested from the reef at an earlier date.

Even as Taiwanese poaching operations declined, the demand for giant clam meat in Taiwan persisted, incentivizing the development of legal commercial fisheries for export throughout the Indo-Pacific (Lewis *et al.*, 1988; Basker, 1991; Lucas, 1994). It was estimated that imports of adductor muscle to Taiwan from these newly

formed fisheries totaled approximately 30–40 tons in 1987 and 1988 (Tisdell & Chen, 1994). The fisheries, however, rapidly depleted local stocks and were in most cases short-lived, typically being shut down by local authorities in the span of a few years. In the Maldives, for example, commercial harvest of giant clams began in June 1990 and continued until early in 1991. Two buyers were operating and collectively harvested over 90,000 individuals; one buyer exported 9.8 tons to a Taiwanese buyer (Basker, 1991). Concerned over the high exploitation rate, the Ministry of Fisheries and Agriculture conducted an assessment of the giant clam stocks and fishery, and the resulting report recommended closing off high density areas to further fishing and other restrictions (Basker, 1991). The commercial fishery was subsequently closed, and collection of giant clams remains prohibited in the Maldives. Likewise, a commercial fishery in Papua New Guinea reportedly removed at least 85 tons of adductor muscle over a 5-year period, equivalent to over 750 tons total flesh weight, until it was closed due to depleted stocks (Munro, 1993a).

Adams (1988) described one example of the impact of extreme commercial harvesting pressure in Fiji when a ship named 'Vaea' intensively harvested giant clam stocks in 1985. Teams of two harvesters on Hookah gear reportedly caught 50–250 clams per day. At one site, harvesters had taken approximately 80 percent of the standing stock of *T. derasa*, or nearly 15,000 individuals, from an area of 25.9 square miles down to a depth of 20 meters. Adams (1988) estimated that harvesting rates averaged 70 percent of the total living stock at each reef, less for scattered populations and more for denser ones. From 1984 to 1987, *T. derasa* catch rates in Fiji varied between 20 and 40 tons of flesh per year, half of which was exported (Adams, 1988). The Fijian fishery as a whole (including municipal markets, wholesale and retail outlets, and exports) landed over 149 tons during this period, with the largest annual harvest reaching 49.5 tons in 1984, the year in which exports began (Lewis *et al.*, 1988).

By the early 1990s, pervasive stock depletions across the Indo-Pacific severely limited Taiwanese imports of giant clam meat (Tisdell and Chen, 1994). In the years since, many countries in the region have banned commercial export of giant clams, some have imposed size and/or bag limits, and many have become signatories to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). The regulatory

implications of CITES participation are discussed more thoroughly below in the section on *Inadequacy of Existing Regulatory Mechanisms*, but one of its requirements is that Parties must submit an annual report of their trade in CITES-listed species, including the number and type of permits and certificates granted, the countries involved, and the quantities and types of specimens traded. All species of giant clams have been listed under appendix II of CITES since 1985, and we can therefore rely to some extent on trade statistics from the CITES reporting database to characterize more recent patterns in the international market for giant clams.

In most cases, countries have limited their reporting to the family or genus level, and outside of a few instances of trade reported for *T. derasa*, *T. gigas*, and *T. squamosa*, no other species were identified specifically. Additionally, of all the transactions reported from 1983 to 2020, 50.4 percent and 39.5 percent were en route to New Zealand and the United States, respectively, while Japan, Singapore, and Australia comprised the remaining 10.1 percent of imports. Law Enforcement Management Information System (LEMIS) trade data provided by USFWS for the period 2016–2020 indicate that nearly all of the imports of giant clam meat over the past 5 years were classified to be of ‘Personal’ nature, likely representing shipments intended for families or friends of Pacific islanders (Shang *et al.*, 1994). Prior to 2000, there are several years in which countries reported significant export of meat from giant clams that had been born or bred in captivity. This includes 3615 kg and 472 kg of *T. gigas* and *T. derasa* meat, respectively, exported from Solomon Islands in the 1990s, 1695 kg of *T. derasa* meat exported from Palau in 1990–1991, and 65 kg of *T. gigas* meat exported from Australia.

A number of other countries have reported significant export of giant clam meat (species unknown) since the late 1990s, primarily to New Zealand and the United States. Nearly all of these exports are of wild-caught specimens, many of which have been seized or confiscated at the border due to improper or missing CITES export permits. The major exporters of giant clam meat in the last two decades include the Cook Islands, Kiribati, Marshall Islands, FSM, and Tonga. At the higher end, Tonga has exported an average of 1210 kg giant clam meat per year since 2005, and at the lower end, the FSM has averaged 58 kg per year during the same period.

Importantly, a number of the key countries in the trade of giant clam meat

are not CITES contracting parties (*e.g.*, Cook Islands, Kiribati, Marshall Islands, FSM) or have only become so relatively recently (*e.g.*, Palau in 2004, Solomon Islands in 2007, Tonga in 2016). Thus, any trade reported for these countries is based on values reported by the CITES party involved, and any trade among two non-contracting nations is not included in these estimates.

Additionally, the USFWS Office of Law Enforcement in Honolulu, Hawaii has reported that approximately 450 lbs (200 kg) of giant clam meat per year is refused (*i.e.*, seized, confiscated, or re-exported) from Tonga, FSM, and the Marshall Islands (K. Swindle, USFWS, pers. comm., December, 2017). This is likely a significant underestimate of the total amount of giant clam meat that comes into the United States (as a whole) illegally, as many shipments outside of those that pass through Honolulu likely make it past enforcement inadvertently (K. Swindle, USFWS, pers. comm., December, 2017). For these reasons, the CITES data should be viewed as incomplete, and the reported quantities are likely an underestimate of the total trade in giant clam meat.

International Trade in Giant Clam Shells and Shell-Craft

Giant clam shells have been used for a variety of decorative and utilitarian purposes, including as beads, vases, lamps, ashtrays, and wash basins. *H. hippopus* and *T. squamosa* are considered the most popular giant clam species for the shell trade (Shang *et al.*, 1994) because of their unique physical characteristics (*e.g.*, attractive colors, bowl-like shape, *etc.*), although nearly all of the species have been harvested depending on the intended use, cultural preference, or geographic availability.

The Philippines has historically operated as the largest exporter of giant clam shells and shell-craft, accounting for over 95 percent of the global exports of giant clam shell products from 1983 to 2020. During the peak of the shell trade from 1979 to 1992, total exports from the Philippines surpassed 4.2 million kg (Juinio *et al.*, 1987; Wells, 1997). While all species of giant clam that occur in the Philippines have been exploited, the two *Hippopus* spp. and *T. squamosa* were the most frequently used for ornamental purposes and handicrafts, and *T. gigas* was most frequently used for basins (Lucas, 1994). Juinio *et al.* (1987) noted that *T. derasa* may have also been harvested but was often not distinguished by shell dealers as a separate species; rather, it was known as a “heavier variety” of *T. gigas* or *H. porcellanus*.

Export records from the Philippines Bureau of Fisheries and Aquatic Resources indicate an initial peak in 1979, when 1,003 tonnes of giant clam shells were exported, corresponding to 895,000 shell pairs. Exports then declined to a minimum of 63 tonnes (or 67,000 shell pairs) in 1982, which was thought to reflect saturation of the international demand. Juinio *et al.* (1987) reported that the demand for giant clam shells could be met from existing stock piles (except those of *H. porcellanus*, which was still considered to be highly marketable). However, exports began to increase again in the late 1980s and peaked in 1991 with nearly 1.2 million shells, over 460,000 carvings, and over 1,186 tonnes of shells (equivalent to about 825,000 shell pairs) exported in a single year (Wells, 1997). This occurred despite the government of the Philippines instituting a ban on the export of giant clams (except *T. crocea*, not subject to this rulemaking) in 1990. In the following year, exports declined to 374,000 shells and 70,000 carvings, likely due to the issuance of CITES Notification No. 663 (16 January 1992) urging all CITES Parties to refuse trade permits for Tridacninae products from the Philippines, in accordance with Philippine legislation (Wells, 1997). In the three decades since 1992, reported exports of giant clam shells from the Philippines have been considerably lower (but not absent), totaling only 8,528 shells and 6,359 carvings (CITES Trade Database, accessed 22 Mar 2022).

Ultimately, widespread subsistence harvest in conjunction with the heavy fishing pressure on giant clams to supply the commercial shell trade decimated the populations of several giant clam species (*e.g.*, *H. hippopus*, *H. porcellanus*, *T. gigas*, and *T. squamosa*), with local extinctions widespread throughout the Philippines (Juinio *et al.*, 1987). Wells (1997) reported that exports until 1992 were dominated by *H. hippopus*, *T. squamosa*, and *H. porcellanus*, with *H. hippopus* comprising 53 percent of shell exports and 94 percent of carvings. Even the few remaining locations thought to be the species’ last strongholds in Philippine waters (*e.g.*, in the Sulu Archipelago and Southern Palawan) were overharvested by the mid-1980s (Villanoy *et al.*, 1988). Presently, five of the seven giant species considered here (*H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, and *T. squamosa*) can still be found in the Philippines and they are all protected by Philippine law. Native *T. gigas* populations are restricted to small portions of Tubbataha Reefs Natural Park in very low abundances; *T. derasa*,

H. hippopus, and *H. porcellanus* are considered rare, and *T. squamosa* is considered frequent (Neo *et al.*, 2017).

The United States, Japan, Australia and various European countries have historically been the largest importers of shells and shell-craft from the Philippines (Juinio *et al.*, 1987; Wells, 1997). The United States alone has accounted for over 50 percent of shells and over 60 percent of shell carvings imported between 1983 and 2020. More recently, however, dwindling giant clam populations as well as greater regulatory protections in many countries have limited the shell trade among the traditional major importers of the 1980s. Instead, the majority of international trade has shifted increasingly to illegal means. From 2016 to 2020, the global trade in giant clam shells based on CITES reports totaled 65,129 shells and 221 shells carvings (primarily *T. gigas*), of which over 92 percent originated in Indonesia and over 97 percent was imported by China. This has occurred despite a prohibition on the harvest and export of giant clams under Indonesian law since 1987. While not at the same scale as the Philippines, Indonesia has participated in the trade of giant clam shells and shell products since the 1980s. Once giant clams were listed as protected species in 1987, Tisdell (1992) suggested that unrecorded exports of giant clam shells continued to occur from Indonesia to the Philippines. Likewise, several reports in the years since indicate that enforcement of the harvest and export ban remains grossly insufficient and, as is suggested by the CITES reports, substantial export of giant clam shells from Indonesia is ongoing (Allen & McKenna, 2001; Nijman *et al.*, 2015; Harahap *et al.*, 2018).

Presently, the largest market for giant clam shells is in the city of Tanmen, in the southern Chinese Province of Hainan. As discussed previously, a major shell-crafting industry developed in this region during the 2000s. During the peak of the Tanmen shell-crafting industry in 2013–2014, there were an estimated 150 processing workshops supplying 900 craft shops with giant clam shell products in the province (Wildlife Justice Commission, 2021). The annual sales revenue of giant clam shell handicrafts in 2014 was estimated to be \$75 million USD (Lyons *et al.*, 2018). In January 2017, the Hainan Province People's Congress passed new regulations banning the commercial trade of giant clams in Hainan. However, investigations conducted 2 years later by the Wildlife Justice Commission (2021) found that there were still more than 100 craft shops in

Tanmen, although fewer than 20 percent were still in business. Giant clam shell products were also being sold openly in hundreds of stores in other parts of the Hainan Province, such as Haikou, Sanya, Guangdong and Fujian provinces, and could be ordered on social media platforms, such as WeChat, for delivery to other locations (Wildlife Justice Commission, 2021). This has been corroborated by first-hand news reporting from Scarborough Shoal in April 2019, which documented ongoing shell harvesting by fishing boats flying the Chinese flag (ABS–CBN News, 2019). The ABS–CBN film crew captured many large piles of extracted giant clam shells around the harvesting area, some even extending above the water surface.

This industry primarily targets the shells of deceased clams embedded in the reef substrate; however, live clams are also taken whenever found. Large shells in particular are of the highest value, putting the remaining *T. gigas* populations in the area at the greatest risk. According to Lyons *et al.* (2018), “the more valuable [*T. gigas*] pieces come with a certificate of origin, specifying, for example, that it comes from Scarborough Shoal, Spratlys, or Paracels and, occasionally, even the specific reef concerned.” This suggests that *T. gigas* shells are considered to have different grades or qualities depending on where in the South China Sea they were harvested. As a result of this intense market demand in combination with the destructive shell harvesting methods described above, Gomez (2015) noted that *T. gigas* is now “virtually extinct” in the center of the South China Sea, including the Paracels, the Macclesfield Banks, and the Spratlys.

International Trade of Live Giant Clams for Aquaria

The largest current market for giant clams is that of live specimens for the aquarium trade and, to a lesser extent, to supply broodstock for mariculture operations. It can be difficult to distinguish the purpose of live specimen transactions from CITES reports alone, but Wells (1997) concluded “that the aquarium trade is now the main market for both wild-collected and mariculture clams.” In the 25 years since that report, the market for giant clams as aquarium specimens has continued to grow, with giant clams now representing one of the most desired groups of invertebrates in the aquarium industry (Wabnitz *et al.*, 2003; Teitelbaum & Friedman, 2008; Mies, Dor, *et al.*, 2017). They are a sought-after commodity and have been described as

a “must have” item by collectors and aquarium hobbyists (Lindsay *et al.*, 2004). The smaller, more brightly colored species (*i.e.*, *T. maxima* and *T. crocea*, species not subject to this rulemaking) are by far the most popular in the marine ornamental trade, but *T. squamosa*, *T. gigas*, *T. derasa*, and *H. hippopus* are also traded in smaller numbers (Lindsay *et al.*, 2004; Kinch & Teitelbaum, 2010).

CITES records indicate that the primary source countries for the seven species considered here include Australia, Palau, Vietnam, Solomon Islands, and Marshall Islands, among others. Notably, the vast majority of giant clams exported from Australia, Palau and Marshall Islands have been bred/born in captivity and thus pose less risk to wild populations; however, much of the export volume from Vietnam, Solomon Islands, Tonga, and more recently, Cambodia, are of wild-sourced specimens.

Of the seven species considered here, *T. derasa* and *T. squamosa* have been the most popular in the trade of live specimens, according to CITES reports. Comparing the two, exports of *T. derasa* have been higher from Pacific island nations, such as Palau, Solomon Islands, Marshall Islands, Tonga, and FSM. Nearly all recent trade of this species is of captive-bred/born individuals, with wild harvest in these countries contributing minimally, if at all, by 2010. *T. squamosa*, by comparison, has been harvested more often by countries in Southeast Asia, such as Vietnam, Cambodia and Indonesia, and many of the recent exports from Vietnam and Cambodia are of wild-sourced individuals. Exports from Vietnam peaked in the 2000s and have declined over the last decade, while exports from Cambodia have increased more recently, reaching nearly 10,000 *T. squamosa* specimens in 2019. Neo *et al.* (2017) notes that the decline in exports from Vietnam is related to trade restrictions implemented in response to concerns and regulations sourcing wild specimens, and it is possible that some giant clams from Vietnam have been re-routed for export through Cambodia. In fact, according to CITES reports, over 99 percent of the recorded *T. squamosa* exports from Cambodia were imported by Vietnam, implying a close trade connection between the two nations. Neither *H. hippopus* nor *T. gigas* have been harvested consistently for the aquarium trade, although with respect to *T. gigas*, Craig *et al.* (2011) attributed this to a lack of available supply rather than a decline in demand. Because of declining populations throughout much of its range, the majority *T. gigas*

specimens for the aquarium trade in the late 2000s were being sourced from just a few small island nations, primarily Tonga (Craig *et al.*, 2011). However, according to CITES records, trade of *T. gigas* from Tonga has not occurred since 2011. *T. gigas* is not considered to be native to Tonga, but had reportedly been introduced there as part of stock enhancement and aquaculture programs (Munro, 1993a; Wells, 1997). According to a CITES assessment in 2004, the introduced populations of *T. gigas* had by that point died out, so it is not clear where the exported specimens originated (CITES, 2004a).

The United States has consistently been one of the top import markets for live giant clams, along with Canada, several countries in Europe, Japan and Hong Kong (Wabnitz *et al.*, 2003; Craig *et al.*, 2011). In 2002, 70 percent of the giant clams exported for the aquarium trade went to the United States (Mingoa-Licuanan & Gomez, 2002 cited in Craig *et al.*, 2011). According to CITES reports from 1983–2020, the United States has accounted for 24.2 percent of the total recorded imports of *H. hippopus*, 53 percent of imports of *T. derasa*, 56 percent of imports of *T. gigas*, 38.4 percent of imports of *T. squamosa*, and 12.8 percent of imports of Tridacninae specimens that were not identified to the species level. Throughout the full record since 1983, 50.6 percent of the imports to the United States were recorded as captive-bred/born specimens, while 44.7 percent were recorded as wild-sourced; however, according to LEMIS data for the period 2016–2020, wild-sourced specimens now represent only 4 percent of imports, with captive-bred/born specimens accounting for the remaining 96 percent.

Summary of Risks to Specific Species Due to Overutilization for Commercial Purposes

After considering the best available scientific and commercial data presented above and in the Status Review Report, we reached several different conclusions regarding the threat of overutilization for various commercial purposes to the seven giant clam species considered here. We summarize these conclusions of the risks for this threat category for each species below.

H. hippopus

A long history of subsistence harvest punctuated by two decades of intense commercial exploitation for the shell and shell-craft industry have led to severe declines of *H. hippopus* populations throughout its range. As is

mentioned above, *H. hippopus* has been one of the most popular giant clam species in the international shell trade because of its size and physical characteristics (e.g., attractive colors, bowl-like shape) (Shang *et al.*, 1994). The Philippines operated as the largest exporter of giant clam shells in the 1970s and 1980s, with *H. hippopus* being the most frequently traded species during this time. According to CITES annual report data, over 277,000 kg, 341,000 shell pairs, 2 million “shells” (without associated units), and 1.7 million shell carvings of *H. hippopus* were exported from the Philippines from 1985 to 1993. This period of intense harvest left *H. hippopus* severely depleted throughout the Philippines and much of Southeast Asia, where it remains at very low abundance except in a few isolated areas.

While most countries have imposed prohibitions on the commercial exploitation of giant clams and CITES records indicate that recent international trade of *H. hippopus* is minimal, subsistence harvest continues to pose a threat to the species in most populated areas where it occurs. Without more thorough monitoring from many of these locations, it is difficult to determine if this ongoing harvest is causing further population declines, but at the very least, it is likely preventing any substantial rebound of depleted populations throughout its range. An important exception is Australia, where anecdotal reports suggest that strictly enforced harvest bans have been largely successful in preventing overutilization and protecting reportedly healthy stocks of this species. For these reasons, and considering the documented effects of past harvest for the international shell trade on species abundance, we conclude that overutilization of *H. hippopus* contributes significantly to the species’ long-term risk of extinction.

H. porcellanus

As is mentioned above, heavy fishing pressure on *H. porcellanus* in the Philippines for the commercial shell trade has been the primary cause of population decline, and has led to local extinction of the species throughout the region (Juinio *et al.*, 1987). Villanoy *et al.* (1988) documented the export volume of giant clam shells from one major shell dealer in the Zamboanga region of the Philippines, San Luis Shell Industries. From 1978 to 1985, approximately 413,230 pairs of shells were exported by this company, of which about 37 percent (or nearly 153,000) were *H. porcellanus*. Based on comparisons to data provided by Juinio

et al. (1987), the authors estimate that this shell dealer accounted for approximately 18.5 percent of the estimated total export volume of giant clam shells from the Zamboanga region during this period, suggesting that the total harvest of *H. porcellanus* during this period was likely much higher. According to CITES annual reports, from 1985 to 1992, the Philippines exported an additional 576,298 *H. porcellanus* shells, 145,926 shell pairs, 179,043.5 kg of shell material, 293,110 shell carvings, and 38,138 kg of shell carvings. All were either reported to be wild-caught or did not include the source of harvest. No other nation reported export volumes close to this magnitude during this time. Malaysia reported the export of 500 kg of shell material in 1985, and Indonesia reported the export of 100 kg of shell material in 1986, but there are no other CITES reports relating to *H. porcellanus* from these two countries. CITES reports also indicate that 16 *H. porcellanus* were exported as live specimens from the Philippines to Norway and Germany in 1992 and 1997, respectively; there have been no exports of live *H. porcellanus* specimens since. Additionally, export of 35 live specimens from the Solomon Islands to Germany and the United States was reported in 1997, but this is likely a reporting error, as this species has not been observed in the Solomon Islands.

In Indonesia, *H. porcellanus* is extremely rare. It was historically, and still is reportedly, exploited for its meat and shells when it is found (Pasaribu, 1988; Neo *et al.*, 2017). Consequently, the species is now thought to occur in only a few locations in Indonesia (Hernawan, 2010; Wakum *et al.*, 2017). Likewise, *H. porcellanus* abundance is also declining in Malaysia, in part due to ongoing harvest of meat and shells (Neo *et al.*, 2017). As they are considered rare and are restricted to Sabah and Pulau Bidong on the east coast of Peninsular Malaysia, continued harvest likely threatens the persistence of these populations. Additionally, international poaching continues to pose a threat, as authorities from both Malaysia and the Philippines reported an increase in the number of fishing boats illegally harvesting giant clams as recently as 2010–2015 (Neo *et al.*, 2017).

Overall, it is clear that intense historical commercial demand for *H. porcellanus* led to severe population declines and the current low abundance of the species throughout its range. Furthermore, ongoing subsistence harvest and poaching of giant clams throughout the South Asia region continue to threaten the few

populations of *H. porcellanus* that remain. Accordingly, we conclude that overutilization is contributing significantly to the long-term extinction risk of *H. porcellanus* and is likely to contribute to short-term extinction risk in the near future.

T. derasa and *T. gigas*

Due to the similarities of the threat to *T. derasa* and *T. gigas*, we present the conclusions for these two species together. Overall, the best available scientific and commercial data indicate that both *T. derasa* and *T. gigas* have been widely exploited for many years for their meat, shells, and as popular aquarium specimens. Many consider *T. gigas* to be the most heavily exploited among all giant clams (Craig *et al.*, 2011; Mies, Scozzafave, *et al.*, 2017; Neo *et al.*, 2017), noting its extensive harvest for its meat and shells in nearly every location where it has occurred. Similarly, *T. derasa* is also highly valued as a food source throughout the entirety of its range. For over two decades, both species were subject to an intense commercial demand for the meat of their adductor muscle, primarily from consumers in Taiwan. Widespread harvest and poaching to supply this commercial market caused severe, documented population losses throughout the majority of the species' ranges. The commercial demand for giant clam meat began to decline by the end of the 1980s due to the low abundance of remaining populations in conjunction with stricter harvest regulations and improved enforcement. However, due to their traditional importance as a food source in many cultures, subsistence harvest of *T. derasa* and *T. gigas* continues in most locations throughout their respective ranges, which may lead to further population decline and likely prevents any substantial recovery of depleted populations.

Furthermore, recent CITES records and available reports indicate that *T. gigas* shells continue to be traded in high volumes from Indonesia to China despite a prohibition on the harvest and export of giant clams that has been in place under Indonesian law since 1987 (Allen & McKenna, 2001; Nijman *et al.*, 2015; Harahap *et al.*, 2018).

The Great Barrier Reef and outlying islands of NW Australia are, for the most part, an exception to the range-wide trends for these species. Northern areas of the Great Barrier Reef were subjected to widespread poaching of *T. derasa* and *T. gigas* in the 1970s and 1980s, but improved surveillance of Australian fishing grounds and stronger enforcement of harvest bans reduced the

poaching pressure considerably. As a result, harvest of the two species in Australian waters since the 1980s has likely been minimal. Recent quantitative estimates of abundance are scarce, but based on past surveys and the strong protective measures in place, most experts consider the Great Barrier Reef to have relatively large, stable populations of giant clams, including *T. derasa* and *T. gigas* (Neo *et al.*, 2017; Wells, 1997).

Overall, we consider the severe impact of past harvest on species abundance range-wide alongside reports of ongoing subsistence and commercial use in most locations except Australia. Based on this information, we conclude that overutilization of *T. derasa* and *T. gigas* contributes significantly to the species' long-term extinction risk. However, because the threat is minimal in Australia, which represents a substantial proportion of suitable habitat within these species' respective ranges, and where populations are reportedly healthy, this factor likely does not constitute a danger of extinction to the two species in the near future.

T. mbalavuana

As is discussed above, harvest of giant clams for subsistence consumption and domestic markets is ongoing and largely unregulated in Fiji and Tonga. Thus, given the highly restricted range and general scarcity of *T. mbalavuana*, we conclude that the threat of overutilization for commercial purposes contributes significantly to the species' long-term extinction risk and is likely to contribute to the short-term risk of extinction in the near future.

T. squamosa

T. squamosa has been harvested extensively for both subsistence and commercial purposes for several decades, which has led to documented population declines in many areas of its range (Neo *et al.*, 2017). While most countries have imposed prohibitions on the commercial exploitation of giant clams, the demand for *T. squamosa* in the ornamental aquarium market continues to pose a threat to wild populations in Cambodia and Vietnam. Additionally, subsistence harvest is ongoing in most populated areas where the species occurs. Without more thorough monitoring from many of these locations, it is difficult to determine if this ongoing harvest is causing further population declines, but at the very least, it is likely preventing any substantial rebound of depleted populations throughout its range. As with other species, an important

exception is Australia, where anecdotal reports suggest that strictly enforced harvest bans have been largely successful in preventing overutilization and protecting reportedly healthy stocks of giant clams. For these reasons, and considering the documented effects of past harvest on species abundance, we conclude that overutilization of *T. squamosa* contributes significantly to the species' long-term risk of extinction, but does not in itself constitute a danger of extinction in the near future.

T. squamosina

The best available scientific and commercial data suggest that giant clams (including *T. squamosina*) have been harvested extensively in the Red Sea for many years. Given their traditional importance in the diets of coastal communities, harvest is likely ongoing in most areas of the Red Sea. In combination with the natural accessibility of *T. squamosina* in shallow nearshore areas, this past and ongoing harvest pressure has likely contributed significantly to the exceptionally low abundance of this species throughout the region. We are aware of 30 documented observations of *T. squamosina* since its re-discovery in 2008. This includes 17 specimens from the Gulf of Aqaba and northern Red Sea (Roa-Quiaio, 2005; Richter *et al.*, 2008; Huber & Eschner, 2011; Fauvelot *et al.*, 2020), seven individuals from the Farasan Islands in southern Saudi Arabia (Fauvelot *et al.*, 2020; K.K. Lim *et al.*, 2021), and six individuals from an unnamed site in the southern Red Sea (Rossbach *et al.*, 2021). As an indication of its exceptionally low abundance at present, Rossbach *et al.* (2021) surveyed 58 sites along the entire eastern coast of the Red Sea, from the Gulf of Aqaba down to southern Saudi Arabia, and observed six *T. squamosina* at only one survey site in the southern Red Sea. Similarly, Pappas *et al.* (2017) did not encounter any *T. squamosina* at nine survey sites in the central Red Sea. With so few *T. squamosina* remaining, we conclude that this factor is likely to contribute to short-term extinction risk in the near future.

Disease or Predation

There are a number of infectious diseases and parasites that have been reported in giant clams, most often either bacterial or protozoan in origin (Braley, 1992; Mies, Scozzafave, *et al.*, 2017). Bacterial infections are most often caused by *Rickettsia* sp., which infect the ctenidia (gill-like respiratory organ) and the digestive lining of the clam (Norton *et al.*, 1993; Mies, Scozzafave, *et al.*, 2017). Protozoan

infections are often caused by either *Marteilia* sp. or *Perkinsus* spp. Giant clams with *Marteilia* infections show no external symptoms, but the infection will eventually cause superficial lesions on the kidney (Mies, Scozzafave, *et al.*, 2017).

Perkinosis, also known as pinched mantle syndrome, is caused by *Perkinsus* spp. Giant clams typically do not exhibit any symptoms of the infection until they become immunosuppressed due to some other environmental stress. At that point, the protozoan population is able to proliferate, and in some cases causes mortality of the host clam. Once the clam dies, trophozoites of *Perkinsus* spp. become waterborne and can infect nearby individuals (Mies, Scozzafave, *et al.*, 2017). A significant rate of infection by *Perkinsus* spp. was previously observed at several sites on the Great Barrier Reef, with 38 of 104 sampled individuals (including *T. gigas* and *H. hippopus*) being infected (Goggin & Lester, 1987). Additionally, several *Perkinsus* infections were observed in association with a mass mortality of giant clams at Lizard Island in Australia in 1985; however, the cause of the death was never determined and the infections may have been coincidental (Alder & Braley, 1989).

Giant clams are also affected by external parasites, including snails, sponges, and algae. Pyramidellid snails are particularly invasive, exploiting the clams by inserting their proboscises (*i.e.*, feeding appendage) into the clam tissue and consuming the hemolymph within the siphonal mantle (Braley, 1992). On rare occasions, the snails may prove fatal to juvenile clams, but they are unlikely to cause mortality in adult clams (Mies, Scozzafave, *et al.*, 2017). Other external parasites (*i.e.*, sponges and algae) are typically more of a nuisance to giant clams rather than fatal infestations. For instance, boring sponges (*e.g.*, *Cliona*) may drill holes into the clam's shells, and algae (*e.g.*, *Gracilaria* sp.) may overcrowd the shell and prevent the mantle from extending, but neither of these parasites typically cause mortality (Mies, Scozzafave, *et al.*, 2017).

When disease is present, giant clams exhibit physical symptoms that are usually quite obvious, including a retracted mantle (typically the initial symptom), a gaping incurrent siphon (indicative of more advanced disease), and discarding of the byssal gland (Mies, Scozzafave, *et al.*, 2017). While some diseases may respond to antibiotics, concentrations and dosages for giant clams have not been well studied. Overall, the prevalence and

severity of disease likely vary across the extensive range of giant clams, but there is no information to indicate that disease is an operative threat to giant clams to the extent that it is significantly increasing the extinction risk of the species addressed here.

Much of what is known regarding predation of giant clams has been learned from the ocean nursery phase of mariculture activities, when juveniles are outplanted to their natural environment (Govan, 1992). Giant clams are widely exploited as a food source on coral reefs, with 75 known predators that employ a variety of attack methods (see table 3 in Neo, Eckman, *et al.* (2015) for a comprehensive list). These predators are largely benthic organisms, including balistid fishes, octopods, xanthid crabs, and muricid gastropods (Govan, 1992). The fishes (*e.g.*, wrasse, triggerfish, and pufferfish) prey on both juvenile and adult giant clams by biting the mantle edge, the exposed byssus, or extended foot. Other predators (*e.g.*, crabs, snails, and mantis shrimp) have been observed chipping, drilling holes into, and/or crushing the shells of smaller individuals (see review in Neo *et al.* 2015). Heslinga *et al.* (1984) observed several instances of predation firsthand in association with giant clam culturing operations in Palau. Large muricid snails (*Chicoreus ramosus*) were found to attack, kill, and eat *T. squamosa* specimens up to at least 300 mm shell length, and a single hermit crab was able to crush 26 *T. gigas* juveniles (20–30 mm) when inadvertently left in the culture tank. The authors also noted circumstantial evidence of predation by *Octopus* spp. in Palau based on the characteristically chipped shells of giant clams often observed outside of octopus dens.

Giant clams employ a suite of defense mechanisms, both morphological and behavioral, to resist predatory attacks (Soo & Todd, 2014). For example, their large body size, small byssal orifice, and strong shells create physical barriers to predation. In addition, *T. squamosa* is equipped with hard, scaly projections on its shell known as scutes that have been shown to provide protection from crushing predators (Han *et al.*, 2008). Giant clams also exhibit behavioral defense mechanisms, such as aggregation, camouflage, rapid mantle withdrawal (Todd *et al.*, 2009) and squirting water from siphons (Neo & Todd, 2010). While the ability of giant clams to endure intense predation pressure and acclimate to repeated disturbance can have implications on their survival, these attributes have not been studied extensively (Soo & Todd 2014). Similar to disease, we find no

evidence to indicate that predation presents a significant threat to the extinction risk of the giant clam species addressed here.

The Inadequacy of Existing Regulatory Mechanisms

Giant clams are protected from overutilization to varying degrees by a patchwork of regulatory mechanisms implemented by the many countries, territories, and Tribal entities within their range. These local-scale measures are also supplemented by CITES international trade regulation, and in some areas, by multi-national initiatives aimed at supporting sustainable regional giant clam fisheries. We address each of these regulatory mechanisms in the following section and also include a brief discussion of international climate change regulations in the context of their potential effects on the extinction risk of giant clams. More detailed information on these management measures can be found in the accompanying Status Review Report (Rippe *et al.*, 2023).

Local Regulations

There is national legislation in place in more than 30 countries and territories specifically related to the conservation of giant clams. Many also provide indirect protection via marine parks and preserves or ecosystem-level management plans. In general, management of giant clam populations has been most effective in Australia, where early harvest prohibitions and strict enforcement have been largely successful in stabilizing giant clam population declines and limiting illegal poaching (Wells *et al.*, 1983; Dawson, 1986; Lucas, 1994). Many Pacific island nations have also implemented strict measures to mitigate fishing pressure on giant clams. These include total bans on commercial harvest and export of giant clams (*e.g.*, Fiji, Papua New Guinea, Solomon Islands, Vanuatu, FSM, Guam, Republic of Kiribati and Palau), minimum size limits for harvest (*e.g.*, French Polynesia, Niue, Samoa, American Samoa, Guam, and Tonga), harvest quotas or bag limits (*e.g.*, New Caledonia, the Cook Islands, and Guam), and gear restrictions on the use of SCUBA or certain fishing equipment (Andréfouët *et al.*, 2013; Kinch & Teitelbaum, 2010; Neo *et al.*, 2017). We are not aware of any local regulations in place restricting the harvest of giant clams in CNMI, although the harvest of all coral reef-associated organisms in Guam and CNMI is managed under the 2009 Fishery Ecosystem Management Plan for the Mariana Archipelago.

In many Pacific islands, national legislation is also supplemented or enforced by way of customary fishing rights and marine tenure systems. This is the case in parts of Fiji, Samoa, Solomon Islands, Cook Islands, Papua New Guinea, and Vanuatu, where indigenous village groups hold fishing rights and regulate access to adjacent reef and lagoon areas (Govan *et al.*, 1988; Fairbairn, 1992a, 1992b, 1992c; Wells, 1997; Foale & Manele, 2004; Chambers, 2007; UNEP-WCMC, 2012). The rights of each Tribal group over its recognized fishing area include the right to carry out and regulate subsistence fishing activities. In certain circumstances, a local village or villages may impose temporary area closures to reduce harvesting pressure and allow giant clam stocks to recover (Foale & Manele, 2004; Chambers, 2007).

The effectiveness of these measures to address overutilization, however, is variable, and with limited capacity for long-term monitoring programs in the region, it can be difficult to properly assess. In general, anecdotal reports indicate that giant clam populations throughout the Indo-Pacific region continue to face severe stress (Neo *et al.*, 2017).

In the Philippines, for example, numerous reports following the giant clam export ban in 1990 suggested problems with enforcement, particularly within Badjao communities. The Badjao people live a predominantly seaborne lifestyle and are spread across the coastal areas of the southern Philippines, Indonesia, and Malaysia, with a total population estimated to be around one million (Government of the Philippines National Statistics Office, 2013; Rincon, 2018). Many in these communities were encouraged by buyers to collect and stockpile giant clam shells in the hope that the ban on giant clam export would eventually be lifted (Salamanca & Pajaro, 1996; Wells, 1997). Middlemen would reportedly advance money and provisions to fishermen on the condition that the shells be sold to them exclusively. The Badjaos would then harvest clams, consume or discard the meat and stockpile the shells (Salamanca & Pajaro, 1996). The non-compliance was exacerbated by varying interpretations of the law by Philippine authorities, who issued numerous CITES export permits in 1991–1992 under the presumption that the law excluded ‘pre-ban stock’ (Wells, 1997). The ban was ultimately never lifted, and CITES reports indicate that the legal export of giant clams has ended in the Philippines. However, a recent report by the Wildlife Justice Commission (2021)

found that authorities have continued to find stockpiles of giant clam shells throughout the country. Authorities have made 14 seizures from 2016 to 2021, including of a 132,000-ton stockpile in the southern Philippines in October 2019 and several stockpiles in the Palawan area, one of the centers of giant clam abundance in the region. It is unclear how many of the shells were collected prior to the ban in 1990 versus how many were collected illegally in the years since, but it suggests that the market for giant clam shells remains active more than 30 years after the ban was instituted. In an interview with ABS-CBN News (2021), Teodoro Jose Matta, executive director of Palawan Council for Sustainable Development, claimed that the clams are being smuggled to Southeast Asia and Europe and attributed the activities to a criminal syndicate operating across the Philippines, not just in Palawan. To our knowledge, these claims have not been corroborated by authorities.

Similar confusion over giant clam harvesting regulations has impeded the effectiveness of regulations to address overutilization in Papua New Guinea. An initial ban on the purchase and export of wild-caught giant clams was put in place in 1988 by the Department of Environment and Conservation (DEC) (Kinch, 2002; UNEP-WCMC, 2011). It was lifted in 1995 following the development of a management plan for sustainable harvest; however, Kinch (2002) noted that although the Milne Bay Province Giant Clam Fishery Management Plan had been drawn up by the National Fisheries Authority (NFA)—the CITES Scientific Authority for Papua New Guinea—it was never officially adopted “owing to confusion between the NFA and the DEC over responsibility for the enforcement of the plan and because of opposition from commercial and political interests.” The ban was reinstated in 2000 following reports that a local fishing company was exporting wild-caught specimens as captive-bred. Kinch (2002) suggested that further “conflict and confusion between the fisheries and environmental legislation” ensued and recommended that it be addressed to ensure success of the regulation. Unfortunately, the last known monitoring survey in Papua New Guinea was conducted in 1996 in the Engineer and Conflict Island Groups. Based on survey findings, it was estimated that the overall density of giant clams (all local species) had declined by over 82 percent since the early 1980s, while the density of *T. gigas* had declined by over 98 percent

(Ledua *et al.*, 1996). Without more recent data, we cannot determine whether the regulatory actions have had any effect on this trajectory.

Furthermore, despite various levels of harvest and export prohibitions among many of the Pacific island nations, Kinch and Teitelbaum (2010) highlight a number of common challenges to ensuring sustainable giant clam management in these communities. This includes a lack of capacity for conducting stock assessments, promoting giant clam mariculture, enforcing harvesting regulations, and monitoring and actively managing giant clam harvest. The list also includes a lack of education and awareness among community members about sustainable giant clam harvest, uncoordinated legislative structure, and a lack of international collaboration to promote a sustainable and scalable market for captive-bred giant clams. According to the assessment by Kinch and Teitelbaum (2010), each of the countries experiences these challenges to a different degree, but overall it highlights the difficulties in effectively managing giant clam populations for smaller island nations that may lack enforcement resources or expertise. This is compounded, in many cases, by the traditional importance of giant clams as a coastal resource, which may limit the willingness among indigenous communities to adopt the recommended practices (Neo *et al.*, 2017).

In addition to the two examples above, there are a number of other reports highlighting the inadequacy of local regulations to address the threat of overutilization throughout Indo-Pacific region. In Malaysia, and particularly in Borneo, illegal collection of giant clams was reported to occur despite a national prohibition on the collection of giant clams (Ibrahim & Ilias, 2006). In the Solomon Islands, commercial harvest and export was banned in 1998, but CITES records indicate that export of wild-sourced clams and shells from the Solomon Islands has continued to occur throughout the 2000s and as recently as 2015. Yusuf and Moore (2020) note that despite being fully protected under Indonesian law and widespread public awareness of associated harvest prohibitions, giant clams are still harvested regularly in the Sulawesi region of Indonesia, including mass collections for traditional festivals. When asked about enforcement of legal protections, locals explained that surveillance in certain areas was generally absent (or at best sporadic and ineffective), and throughout the region was “minimal, often perceived as misdirected and/or unfair, and mostly

ineffective.” Due in part to the ineffectiveness of the existing regulations, Yusuf and Moore (2020) have documented progressive declines in giant clam populations from 1999 to 2002, 2007, and 2015, with “some larger species (*T. gigas*, *T. derasa*, *T. squamosa*, and *H. porcellanus*) no longer found at many sites.” Low abundance of *T. squamosa*, *T. derasa*, *T. gigas*, and *H. hippopus* has also been observed in the Anambas Islands of Indonesia, where Harahap *et al.* (2018) report ongoing harvesting and habitat destruction. In Mauritius, giant clams are protected under the Fisheries and Marine Resources Act of 2007, but a recent study shows continued population declines even within marine protected areas (Ramah *et al.*, 2018). There are few studies highlighting success of local regulations, but Rossbach *et al.* (2021) report based on interviews with local fishermen that giant clams are no longer targeted in Saudi Arabia since a harvest prohibition was imposed in the early 2000s. Although we note that giant clams were listed as “Taxa of High Conservation Priority” in Saudi Arabia’s First National Report to the Convention on Biological Diversity in 2004 (AbuZinada *et al.*, 2004), we could not find any national regulations associated with this designation.

The general lack of long-term monitoring data makes it difficult to evaluate the effectiveness of local regulatory mechanisms to address threats from overutilization for commercial purposes beyond relying on anecdotal reports. In many areas, for example, harvest prohibitions have been instituted within the last decade or two, but there have been few, if any, follow-up surveys conducted in the time since. However, using what survey data are available, we can infer that existing regulations have been inadequate to protect any of the seven giant clam species from overutilization. Despite widespread commercial export bans, the capacity for enforcing existing regulations is often limited, existing regulations do not restrict continued subsistence harvest in many locations, and illegal harvest and trade of giant clams (particularly for the shell trade) continues to occur (Kinch & Teitelbaum, 2010; Yusuf & Moore, 2020; Wildlife Justice Commission, 2021). For these reasons, we conclude that the inadequacy of local harvest regulations to address overutilization associated with subsistence fisheries and illegal harvest in all locations outside of Australia contributes significantly to the long-term extinction risk of *H.*

hippopus, *T. derasa*, *T. gigas*, and *T. squamosa*. Moreover, considering the exceptionally low abundance and restricted ranges of *H. porcellanus* and *T. mbalavuana*, we conclude that the inadequacy of local harvest regulations to address overutilization associated with subsistence fisheries likely also poses a short-term risk of extinction for these species in the near future.

With respect to *T. squamosina*, we also considered the likely effect of marine protected areas (MPAs), which are the principal regulatory mechanism relevant to the protection of giant clams from overutilization in the Red Sea. Based on the known distribution of *T. squamosina*, there are three MPAs that are most relevant to the species: Ras Mohammed National Park in South Sinai, Aqaba Marine Park in Jordan, and the Farasan Islands Protected Area in southern Saudi Arabia. These are three areas where *T. squamosina* has previously been observed, and remaining populations likely benefit from the prohibitions against hunting or collecting wildlife within the boundaries of the MPAs. According to Gladstone (2000), a prohibition on the collection of giant clams in the Farasan Islands appeared to be effective, with harvest-related mortality falling to 1.7 percent, compared to an estimated 11.1–47.8 percent mortality rate prior to the regulation. Ras Mohammed National Park is also regarded as effective in the protection of 345 km² of marine area, which includes important fringing reef habitats in the southern portion of the Gulf of Aqaba.

Collectively, however, these three protected areas encompass only a small fraction (5,756 km²) of the coastal marine area in the Red Sea. Throughout most of the region, harvest of giant clams remains largely unregulated. As is described above, historical harvest of giant clams has likely led to the exceptionally low abundance of *T. squamosina* in the Red Sea, and there are reports that harvest is ongoing in most locations. Thus, given the lack of national regulations pertaining to the harvest of giant clams in the Red Sea, we find that an inadequacy of existing regulatory mechanisms to address the threat of overutilization contributes significantly to the long-term extinction risk for *T. squamosina*. However, because several MPAs have been established in key areas where the species has been recently observed, we conclude that this factor does not in itself constitute a danger of extinction in the near future.

Regulations for International Trade

Giant clams are listed under appendix II of CITES, which consists of species that “are not necessarily now threatened with extinction, but may become so unless trade is closely monitored.” This designation does not necessarily limit trade of the species, but instead requires that any species in trade has been legally acquired and a finding that trade is not detrimental to the survival of the species by the exporting Party’s Scientific Authority. CITES regulates all international trade in giant clams (including living, dead, and captive-bred specimens) and requires the issuance of export permits and re-export certificates. For each listing, a Party may take a reservation to that listing, meaning the Party will not be bound by the provisions of the Convention relating to trade in that species. While the reservation is in effect, the Party is treated as a non-Party regarding trade in the particular species. Currently, Palau has reservations on all of the giant clam listings. Parties with reservations or other non-Parties that trade with a CITES Party are required to have documentation comparable to CITES permits. It is up to the Party State receiving the export whether to accept this documentation in lieu of CITES permits.

Effective enforcement of CITES is largely dependent on whether the countries involved are signatories to the Treaty, as well as the accuracy of trade data supplied by the Parties (Wells, 1997). Of the 60 countries and territories where the seven giant clam species considered here naturally occur, 52 are signatories to the Treaty. This includes the United States and all of its Pacific island territories. A number of countries that have historically played a significant role in the trade of giant clam products are not CITES contracting parties (*e.g.*, Cook Islands, Kiribati, Marshall Islands, FSM) or have only become so relatively recently (*e.g.*, Palau in 2004, Solomon Islands in 2007, Maldives in 2012, Tonga in 2016). However, all CITES Parties trading in CITES listed species with countries that are not members of CITES, or with CITES Parties that have taken a reservation on the species, must still seek comparable documentation from the competent authorities of the reserving Party or the non-member country, which substantially conforms with the usual requirements of CITES for trade in the species. Importantly, even in instances where exporting countries are Parties to CITES, the trade data must be interpreted cautiously for reasons that may include frequent

discrepancies in recorded import and export quantities, inconsistencies in the terms or units used to describe the trade, occasional omissions of seized or confiscated specimens, erroneous data entry, and delays or failure to submit trade statistics to the Secretariat (UNEP-WCMC, 2012; CITES, 2013; Neo *et al.*, 2017).

Overall, the threat of inadequate regulations related to the international trade of giant clam products is relevant only to the species that are traded in significant quantities. This does not include *T. mbalavuana* or *T. squamosa*, as we could not find any information to indicate that there has ever been an international commercial export market for these species. With respect to *H. hippopus*, *T. derasa*, and *T. squamosa*, CITES annual report data indicate that the large majority of recent international trade of these species is of culture-raised specimens and products. Since 2010, only 2,756 *H. hippopus* shells and 7,302 live *H. hippopus* specimens have been recorded in trade. Approximately 51.2 percent of traded shells during this period were of wild-caught origin, primarily from the Solomon Islands in 2014, while 34.1 percent were reportedly culture-raised. Of the live specimens, only 2.6 percent were wild-caught, while 96.2 percent were reportedly culture-raised.

Similarly, since 2010, 154,245 of the 158,319 live *T. derasa* specimens recorded in trade were culture-raised (97.4 percent), while only 3,514 were reportedly wild-caught (2.2 percent). A smaller proportion of shells and shell products recorded in trade since 2010 were of cultured *T. derasa*, but the total trade volume is significantly lower. In total, 3,775 of the 11,100 *T. derasa* shells and shell products were of culture-raised specimens (34 percent), while 7,312 were wild caught (65.9 percent).

The primary market for *T. squamosa* in international trade is of live clams for the ornamental aquarium industry, and it appears that most major exporters have transitioned their supply to cultured specimens. The major exceptions are Cambodia and Vietnam, which together have exported over 50,000 wild-caught *T. squamosa* since 2010. The government of Vietnam instituted a quota system to regulate the commercial harvest of wild giant clams after concerns were raised in the early 2010s about the level of exploitation. However, the subsequent rise in the export of live *T. squamosa* from Cambodia to Vietnam suggests that this regulation simply diverted the harvest to neighboring waters. While this harvest pressure likely threatens the

persistence of *T. squamosa* populations in Cambodia in the long term, available reports suggest that the species is still frequent in both countries.

Based on these data, we conclude CITES regulations have been effective at transitioning much of the international supply of *H. hippopus*, *T. derasa*, and *T. squamosa* products away from wild harvest and towards mariculture operations and therefore, minimizing the risks to these three species from overutilization associated with international trade. In other words, it is unlikely that this factor contributes significantly to the extinction risk for these species.

With respect to *H. porcellanus*, only five shells have been recorded in international trade since 2010—two exported from Malaysia to the Netherlands in 2013, and three exported from the Philippines and seized in the United States in 2011 and 2016. However, it is likely that the low trade levels are as much a reflection of the species' low abundance as they are of the effectiveness of international regulation. Regardless, although commercial trade of this species significantly reduced its abundance in the past, there is little evidence to suggest that international trade is a threat currently operating on this species, and given the available information to suggest otherwise, the regulations appear to be adequate to address that threat.

With respect to *T. gigas*, unlike *H. hippopus* and *T. derasa*, CITES records indicate that the majority of the reported trade since 2010 is of wild-caught specimens, suggesting that mariculture has not played a significant role in diverting harvest away from wild populations. As recently as 2018, Indonesia exported 59,000 wild-harvested *T. gigas* shells to China despite the reportedly low abundance of *T. gigas* throughout the region and despite both nations being CITES contracting Parties. While most countries and territories within the range of *T. gigas* are regulated under the provisions of CITES, the associated protections were clearly not adequate to prevent widespread population loss and local extirpations of the species from many of the same locations (Neo *et al.*, 2017). Thus, we conclude that inadequate regulation of international trade to address the threat of overutilization contributes significantly to the long-term extinction risk of *T. gigas*.

Regulations on Climate Change

In the final rule to list 20 reef-building corals under the ESA (79 FR 53851), we

assessed the adequacy of existing regulatory mechanisms to reduce global greenhouse gas (GHG) emissions and thereby prevent widespread impacts to corals and coral reefs. We concluded that existing regulatory mechanisms were insufficient to effectively address this threat. Since the publication of that final rule in 2014, 197 countries and the European Union (EU) adopted the Paris Agreement on climate change, which set a goal of limiting the global temperature increase to below 2 °C and optimally keeping it to 1.5 °C. Since the Agreement was entered into force on November 4, 2016, 191 countries and the EU have ratified or acceded to its provisions, and each Party has made pledges to decrease GHG emissions to achieve its goals (UNFCCC, 2018). The United States, which currently accounts for one-fifth of the world's emissions, pledged to cut its emissions by 26–28 percent. However, according to the 2023 Synthesis Report for the IPCC's Sixth Assessment Report, there remains a “substantial emissions gap” between the projected emissions trajectory associated with the climate actions currently proposed by the Parties to the Paris Agreement and the trajectories associated with mitigation pathways that limit warming to 1.5 °C or 2 °C by 2100 (IPCC 2023). The IPCC reported with high confidence that current limited progress towards GHG emissions reduction make it likely that warming exceeds 1.5 °C by 2100 and make it considerably harder to limit warming to less than 2 °C. In addition, the IPCC projected with medium confidence that the current emissions trajectory without strengthening of policies will lead to an estimated global temperature increase of 3.2 °C by 2100, with a range of 2.2 °C to 3.5 °C (IPCC, 2023).

At this rate, unless average emissions reduction goals are significantly strengthened, van Hooijdonk *et al.* (2016) project that over 75 percent of reefs will experience annual recurrence of severe bleaching events before 2070. In a similar analysis, Hoegh-Guldberg *et al.* (2007) investigated four emissions reduction pathways that are used by the Intergovernmental Panel on Climate Change and found that only the most aggressive scenario would allow the current downward trend in coral reefs to stabilize. The study predicts that even moderate emission reductions will still lead to the loss of more than 50 percent of coral reefs by 2040–2050. Thus, regardless of whether the goals of the Paris Agreement are met, impacts to coral reefs are expected to be widespread and severe. However, as is

discussed above, while there is clear evidence that coral reefs will undergo substantial changes as a result of ocean warming and acidification, it is unclear whether and to what degree the changes in coral reef composition and ecological function will threaten the survival and productivity of giant clams. Furthermore, as is discussed below in *Other Natural or Man-Made Factors*, there is substantial evidence to suggest that giant clams may experience significant physiological changes under projected ocean warming scenarios. The precise magnitude of these impacts is unknown, but any significant changes in metabolic demand, reproductive success, and the possibility of bleaching due to warming summer temperatures, will likely increase the risk of extinction. For this reason, we find with respect to all seven species that the inadequacy of regulations to address climate change may, in combination with the aforementioned impacts, contribute significantly to the long-term or near future risk of extinction, but is unlikely a significant threat on its own.

Inadequacy of Regulations in the South China Sea

As is discussed above, *H. hippopus*, *H. porcellanus*, *T. gigas*, and *T. squamosa* also face the threat of habitat destruction in portions of the South China Sea where fishermen, primarily from the Hainan Province of China, have been razing shallow reef areas in a search for giant clam shells (see *Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*). In an effort to curtail this destructive activity, the Hainan Province People's Congress passed regulations in January 2017 to prohibit the commercial trade of all giant clam species in the province. However, a recent report from the Wildlife Justice Commission (2021) suggests that the illegal harvest and trade of giant clam shells continues to occur in the region, with new harvesting boats returning to the Hainan Province since 2018. For this reason, we conclude that the inadequacy of existing regulations to address the threat of habitat destruction in the South China Sea due to giant clam shell harvesting operations contributes significantly to the long-term extinction risk of *H. hippopus*, *T. gigas*, and *T. squamosa*. In addition, due to the exceptionally low abundance and highly restricted range of *H. porcellanus*, which includes the southern portion of the South China Sea, the combination of these threats likely also contributes to the near future extinction risk for *H. porcellanus*.

Other Natural or Man-Made Factors

There are several other natural or manmade factors that impact giant clams, such as ocean warming and acidification, coastal pollution and sedimentation, and stochastic mortality events. Below, we summarize each of these factors, and where sufficient information is available, evaluate the severity of the associated threat to each of the seven giant clam species.

Ocean Warming

As is mentioned above, giant clams associate symbiotically with a diverse group of dinoflagellates of the family Symbiodiniaceae which reside within a network of narrow tubules that branch off the primary digestive tract and spread throughout the upper layers of the mantle (Norton *et al.*, 1992). Giant clams provide dissolved inorganic nutrients to the zooxanthellae via direct absorption from the seawater or as an excretory byproduct of respiration, and in return, receive photosynthetic carbon in the form of glucose, glycerol, oligosaccharides and amino acids, comprising the majority of their metabolic carbon requirements (Klumpp *et al.*, 1992; Hawkins & Klumpp, 1995). Exposure to stressful environmental conditions, however, can cause dysfunction in the symbiosis and, in extreme cases, can lead to a bleaching response wherein the zooxanthellae is expelled from the mantle tissue. When they bleach, giant clams lose a critical source of nutrition and experience drastic changes to their physiology, including decreased glucose and pH in the hemolymph, an increased concentration of inorganic carbon (*e.g.*, CO₂ and HCO₃⁻), and a reduced capacity for ammonium assimilation (Leggat *et al.*, 2003).

Elevated temperatures, in particular, are known to induce bleaching in giant clams. Widespread bleaching of giant clams was observed in the central Great Barrier Reef, Australia in 1997–1998, when elevated water temperatures in conjunction with low salinity caused 8,000 of 9,000 surveyed *T. gigas* to experience varying levels of bleaching (Leggat, pers. comm., cited in Buck *et al.*, 2002; Leggat *et al.*, 2003). Some individuals suffered a complete loss of symbionts, while others were only affected in the central part or at the margins of the mantle tissue (Grice, 1999). A follow-up experiment designed to replicate the environmental conditions during this event demonstrated that elevated temperatures combined with high solar irradiance induced a consistent bleaching response in *T. gigas* (Buck *et*

al., 2002). Populations of *T. squamosa* around Mannai Island, Thailand also suffered extensive bleaching in mid-2010 due to prolonged exposure to temperatures averaging 32.6 °C (Junchompoo *et al.*, 2013). Bleaching was recorded in every *T. squamosa* specimen observed (*n* = 12), of which only four individuals recovered while the remaining two-thirds died (Junchompoo *et al.*, 2013).

While the appearance is similar to the bleaching response observed in corals, bleaching of giant clams is unique in two important ways. First, the mechanics differ on account of the zooxanthellae residing extracellularly in giant clams. Rather than being expelled from host cells, as is the case with corals, zooxanthellae are thought to be driven out of the giant clam tubular system via long cilia and expelled through the digestive tract (Norton & Jones, 1992; Norton *et al.*, 1995). The expulsion of algal cells is associated with atrophy of the tertiary zooxanthellae tubes, which is thought to inhibit the return of the zooxanthellae to the host clam (Norton *et al.*, 1995). According to one account, some adult *T. gigas* have remained partially bleached for more than a year (R. Braley, pers. comm., cited in Norton *et al.*, 1995). Second, there is evidence that giant clams are more resilient to bleaching than corals and can tolerate temperature stress for longer (Grice, 1999; Buck *et al.*, 2002; Leggat *et al.*, 2003). According to Leggat *et al.* (2003), of 6,300 *T. gigas* that bleached at Orpheus Island, Australia in 1998, over 95 percent completely recovered after 8 months. Moreover, during the three global-scale coral bleaching events when anomalous warming caused widespread mortality of stony corals (1998, 2010, and 2014–2017), reports of giant clam bleaching have been sparse and variable across species and geography. Neo *et al.* (2017) reported that in 2016, “*Tridacna maxima* [which is not subject to this rulemaking] did not bleach in Mauritius (R. Bhagooli, pers. comm., cited in Neo *et al.*, 2017), but those in Singapore (M. L. Neo, pers. obs.), Guam (A. Miller, pers. comm., cited in Neo *et al.*, 2017), and East Tuamotu (S. Andréfouët, pers. comm., cited in Neo *et al.*, 2017) were bleached severely.” At Lizard Island, Australia, *T. gigas* reportedly suffered “much lower” mortality than *T. derasa* and *T. squamosa* during the 2016 event (A.D. Lewis, pers. comm., cited in Neo *et al.*, 2017). Actual mortality rates were not provided.

Even in the absence of bleaching, warming-related stress can profoundly impact the growth and reproduction of giant clams. Growth rates in giant clams

tend to follow a standard thermal performance curve whereby growth is positively correlated with temperature up to a thermal optimum (Pearson & Munro, 1991; Hart *et al.*, 1998; Schwartzmann *et al.*, 2011; Van Wynsberge *et al.*, 2017). Beyond this point, further warming can cause shell growth to become erratic and slow down significantly (Schwartzmann *et al.*, 2011; Syazili *et al.*, 2020). Excessive warming has also been shown to lower fitness by reducing photosynthetic yield (Brahmi *et al.*, 2021), altering the photosynthesis-respiration ratio (Braley *et al.*, 1992; Blidberg *et al.*, 2000; Elfving *et al.*, 2001), reducing the strength and carbonate content of the shells (Syazili *et al.*, 2020), and reducing fertilization success (Armstrong *et al.*, 2020). Early life stages are thought to be particularly sensitive to these impacts, as warming has been shown to speed up the progression through early development, leading to abnormal development, reduced settlement, and lower overall juvenile survival (Watson *et al.*, 2012; Neo *et al.*, 2013; Enricuso *et al.*, 2019).

In assessing the contribution of ocean warming to the extinction risk of the seven species considered in this rulemaking, we relied on the best available scientific and commercial data relating to each species specifically. With respect to *H. hippopus*, results from a laboratory experiment in the Philippines showed that *H. hippopus* experienced a significant increase in respiration under elevated temperatures and was more sensitive to warming than the two other species tested (*T. gigas* and *T. derasa*). After 24 hours of exposure to elevated temperatures (3 °C above ambient), no bleaching was observed (Blidberg *et al.*, 2000). Additionally, Schwartzmann *et al.* (2011) documented the in situ response of *H. hippopus* to elevated temperatures in New Caledonia. At the end of the summer, the combination of high temperatures and high irradiance altered the growth and gaping behavior of *H. hippopus*. At the solar maximum, daily growth increments and gaping behavior became erratic, indicating some degree of physiological distress. The effect was pronounced when temperatures stayed above 27 °C, which is near the current summer maximum in this region.

The few studies available with respect to *T. derasa* found that juveniles suffered reduced photosynthetic production and respiration when exposed to warming of 3 °C, but neither bleaching nor mortality were reported (Blidberg *et al.*, 2000). Neo *et al.* (2017) also noted significant mortality of *T.*

derasa at Lizard Island, Australia following anomalous warming in 2016 that led to widespread coral bleaching and following three successive years of cyclones, but did not provide evidence directly tying the mortality to one cause or the other.

The best available scientific and commercial data suggest that *T. gigas* is sensitive to ocean warming at multiple life stages. For example, Enricuso *et al.* (2019) found that higher water temperatures (33 °C, compared to 28 °C and 30 °C) promote rapid progression through early development, but result in lower overall survival as a consequence of abnormal development and reduced post-settlement survival. Lucas *et al.* (1989) found that juvenile growth rate increased during summer months as temperatures rose to 30 °C, but noted that higher temperatures (33–35 °C) can lead to bleaching (Estacion & Braley, 1988). As is discussed above, widespread bleaching of *T. gigas* was observed in the central Great Barrier Reef, Australia in 1997–1998 (Leggat, pers. comm., cited in Buck *et al.*, 2002; Leggat *et al.*, 2003), later attributed to the combination of elevated temperatures with high solar irradiance (Buck *et al.*, 2002). Notably, according to Leggat *et al.* (2003), over 95 percent of the *T. gigas* that were observed to have bleached in 1998 completely recovered after 8 months, indicating that *T. gigas* can withstand the acute stress of bleaching if anomalous conditions are not prolonged.

With respect to *T. squamosa*, two similar studies used a cross-factorial experimental design to examine the synergistic effects of elevated temperature and pCO₂ on the survival and growth rate of juveniles. Watson *et al.* (2012) found that juvenile survival decreased with increasing temperature, with the lowest survival occurring at the moderate and highest seawater temperatures (30.0° and 31.5 °C, versus 28.5 °C) combined with the highest acidification treatment (1019 ppm pCO₂, versus 416 and 622 ppm). Likewise, Syazili *et al.* (2020) found that elevated warming significantly reduced juvenile growth rate, as well as the strength and carbonate content of the shell, based on temperature treatments of 30, 32, and 34 °C. However, a separate study by Armstrong *et al.* (2022) yielded conflicting results indicating that the growth rate of juvenile *T. squamosa* was unaffected by an increase in temperature. These findings were based on temperature treatments of 28.5 ° and 30.5 °C, meant to simulate present-day and end-of-century conditions. Elfving *et al.* (2001) found that experimental warming enhanced respiration rate in *T.*

squamosa juveniles and, in effect, reduced the photosynthesis-respiration ratio. Elevated temperatures have also been shown to enhance fertilization success in *T. squamosa* but significantly reduce trochophore survival (Neo *et al.*, 2013). Only 3.6–13.9% of trochophores survived 24 hours of exposure to 29.5 °C compared to 32.5–46.8% survival at 22.5 °C.

Based on this information, we find it likely that ocean warming will likely negatively impact the fitness of *H. hippopus*, *T. derasa*, *T. gigas*, and *T. squamosa* in various ways and that it may, in combination with other threats and demographic risk factors, contribute to the long-term extinction risk for these species. However, given the limited information available and the variability in the reported impacts of ocean warming among studies and species, we cannot conclude with confidence that ocean warming on its own constitutes a significant long-term or near future extinction risk to *H. hippopus*, *T. derasa*, *T. gigas*, and *T. squamosa*.

With respect to *H. porcellanus*, *T. mbalavuana*, and *T. squamosina*, we could not find any specific information addressing the potential impacts of ocean warming beyond what is discussed above in regard to other giant clam species. Based on the information that is available for other species, we find that ocean warming may, in combination with other threats and demographic risk factors, contribute to the long-term extinction risk for *H. porcellanus*, *T. mbalavuana*, and *T. squamosina*. However, while we can broadly infer that ocean warming may negatively impact the fitness of these species in some respect, we are reluctant to make extrapolations from these studies about the specific nature or magnitude of the impact, as it is possible that susceptibility may vary significantly among species. For example, species like *H. porcellanus* or *T. squamosina*, which reside preferentially in shallow habitats where temperature fluctuations can be quite extreme, may have adapted a higher tolerance to such conditions. Given this uncertainty, we do not have sufficient information to conclude that ocean warming is a significant threat to *H. porcellanus*, *T. mbalavuana*, and *T. squamosina* on its own.

Ocean Acidification

There is concern that ocean acidification may also pose a significant risk to giant clams, based primarily on experimental evidence from other shelled mollusks. In two comprehensive literature reviews, both Parker *et al.* (2013) and Gazeau *et al.* (2013)

concluded that the consequences of ocean acidification for calcifying marine organisms (and mollusks in particular) are likely to be severe, as they rely on the uptake of calcium and carbonate ions for shell growth and calcification. Yet, while many studies have demonstrated a negative effect on the growth of marine mollusks, some species have shown no response or even a positive growth response to ocean acidification (Ries *et al.*, 2009; Gazeau *et al.*, 2013; Parker *et al.*, 2013).

With respect to giant clams specifically, experimental data on the effects of ocean acidification are limited and similarly inconclusive. Syazili *et al.* (2020) found that juvenile *T. squamosa* exhibited decreased growth and weaker shell structure under elevated pCO₂; however, Armstrong *et al.* (2022) found the opposite, that growth rates of juvenile *T. squamosa* were enhanced under acidification treatments. Watson *et al.* (2012) found that juvenile *T. squamosa* suffered greater mortality when exposed to elevated pCO₂ (see also Syazili *et al.*, 2020), and fertilization success of *T. maxima* was found to be unaffected (Armstrong *et al.*, 2020). Lastly, in comparing the growth and survival of four giant clam species in conditions approximating future ocean acidification scenarios, Toonen *et al.* (2011) found the responses to vary among species. *T. maxima* and *T. squamosa* had significantly lower growth rates in low pH, *T. derasa* had a significantly higher growth rate, and *T. crocea* was not significantly different between low pH and ambient seawater. The authors concluded that “such strong species-specific differences and interactions among treatment variables [. . .] caution against broad generalizations being made on community effects of ocean acidification from single-species laboratory studies” (Toonen *et al.*, 2011).

Furthermore, as is mentioned above, ocean acidification will likely not affect all regions uniformly, as seawater carbonate dynamics are highly dependent on many local-scale factors, such as temperature, proximity to land-based runoff, proximity to sources of oceanic CO₂, salinity, nutrients, as well as ecosystem-level photosynthesis and respiration rates. This makes it difficult to assess how ocean acidification is impacting giant clams currently or may impact them in the future. For this reason, and given the existing uncertainty regarding the effects of ocean acidification on giant clams, there is not sufficient information to further consider this potential threat in the extinction risk assessments for each species.

Land-Based Sources of Pollution

Giant clams are also susceptible to land-based sources of pollution, including sedimentation, elevated nutrients, salinity changes, and exposure to heavy metals. Together, these factors represent environmental conditions that giant clams may experience following heavy rains, particularly near coastlines that have been altered by human development. In its Sixth Assessment Report, the IPCC found that the frequency and intensity of heavy rainfall events has likely increased globally since the pre-industrial era and projected that this trend is “virtually certain” to continue with additional global warming (Seneviratne *et al.*, 2021). The IPCC also found it “likely” that annual precipitation will increase over the equatorial Pacific and monsoon regions under a business-as-usual scenario, and projected with “medium confidence” that flooding and associated runoff will increase over parts of South and Southeast Asia by 2100 (Douvillie *et al.*, 2021). Thus, it is likely that giant clams will face an increasing occurrence of heavy rain events, runoff, and associated changes to water quality throughout much of their range.

Available evidence suggests that the impacts of sedimentation may vary between species. Reduced light levels associated with sedimentation have been shown to significantly decrease the growth rate of *T. squamosa* (Beckvar, 1981; Foyle *et al.*, 1997; Guest *et al.*, 2008), likely by limiting the photosynthetic potential of the symbiotic algae (Jantzen *et al.*, 2008; Przeslawski *et al.*, 2008). However, in situ observations from Pioneer Bay, Australia revealed that *T. gigas* actually grows faster in more turbid conditions compared to two offshore sites (Lucas *et al.*, 1989). These contrasting results may be indicative of differences in nutritional strategy between species (Klumpp *et al.*, 1992), suggesting that certain species are able to compensate for the reduction in photosynthetic yield by increasing the relative contribution of heterotrophy.

Giant clams are also sensitive to variations in salinity, nutrients, and heavy metal concentrations. Blidberg (2004) showed that a reduction in salinity significantly decreased the survival rates of *T. gigas* larvae. Only 1.1 percent and 2.2 percent of larvae survived when exposed to salinities of 20 parts per thousand (ppt) and 25 ppt, respectively, compared to a survival rate of 4.2 percent in the 32 ppt control. Maboloc *et al.* (2014) also found that lower salinity (18 ppt and 25 ppt vs. 35

ppt) reduced the feeding capacity of juvenile *T. gigas* due to alteration of the digestive membrane. The same effects, however, were not observed for *T. squamosa*, as a milder salinity reduction (27 ppt vs. 30 ppt) led to an increase in survival of *T. squamosa* trochophores and no significant effect on the survival *T. squamosa* embryos (Neo *et al.*, 2013).

Extreme reductions in salinity have been shown to alter the behavior of early life stages. *T. squamosa* trochophores and veligers stopped swimming and sank to the bottom of an experimental tank when exposed to salinities of 9 ppt and 12 ppt; although, once conditions returned to normal, the larvae resumed normal swimming functions within an hour (Eckman *et al.*, 2014). These results provide some evidence that giant clams may be able to withstand temporary salinity fluctuations. However, it is unlikely that they would experience such extreme conditions in situ. For example, in October 2010, immediately after a week-long heavy rainfall in the Bolinao region of the Philippines brought by Typhoon Megi, salinity at a coastal giant clam nursery was measured to be 25 ppt (Maboloc *et al.*, 2014).

With respect to dissolved nutrients, there is consistent evidence that nitrogen enrichment increases the density of zooxanthellae in the clam tissue (Braley *et al.*, 1992; Belda, Lucas, *et al.*, 1993; Belda-Baillie *et al.*, 1999) and, in most cases, enhances the growth rate of giant clams. The addition of inorganic nitrogen led to a near doubling of the growth rate of young juvenile *T. derasa* (<1 cm) and a 20 percent increase in shell length in older juveniles over controls (Heslinga *et al.*, 1990). Similarly, *H. hippopus* juveniles exhibited a 110 percent increase in growth per month when exposed to elevated nitrogen (Solis *et al.*, 1988). Nitrogen enrichment has also been shown to enhance the shell and tissue growth of *T. gigas* (Belda, Cuff, *et al.*, 1993; Belda, Lucas, *et al.*, 1993).

Elevated heavy metals contribute to the environmental stress factors in contaminated waters near human development. For instance, in the Cook Islands, giant clams collected from the populated Pukapuka Atoll had significantly higher concentrations of iron, manganese, zinc, and lead than clams from the unpopulated Suvorov Atoll (Khristoforova & Bogdanova, 1981). Three related studies demonstrated that exposing *T. gigas*, *H. hippopus*, and *T. squamosa* to sub-lethal levels of copper (*T. gigas* and *H. hippopus*: 5 µg l⁻¹; *T. squamosa*: 50 µg l⁻¹) reduces photosynthetic activity and, in effect, significantly lowers the

production-respiration ratio (Elfwing *et al.*, 2001; Elfwing *et al.*, 2002; Elfwing *et al.*, 2003). This aligns with previous work showing that copper acts as an inhibitor in photosynthesis (Cid *et al.*, 1995 cited in Elfwing *et al.*, 2001).

In most circumstances, however, it is unlikely that giant clams would experience only one of the aforementioned issues associated with land-based sources of pollution independent of the others. River outflows and runoff from heavy rain events will necessarily alter the salinity, and in most cases will also carry suspended sediments, dissolved nutrients, heavy metals, or a combination of the three to the nearshore environment. Blidberg (2004) suggests that synergistic effects of elevated heavy metal concentrations in combination with low salinity may be more detrimental to giant clams than either factor alone. At a relatively low dose of copper ($2.5 \mu\text{g l}^{-1}$), *T. gigas* larvae survival was not significantly altered, but combined with a moderate reduction in salinity (25 ppt vs. 32 ppt), larval survival rate was decreased by nearly 75 percent. From these results, Blidberg (2004) hypothesized that chronically high copper concentrations and low salinity may explain the absence of giant clams near human settlements and river mouths.

Overall, the best available scientific and commercial data provide some indication that sedimentation, salinity changes, nutrient enrichment, and elevated heavy metal concentrations may impact the physiology and fitness of giant clams in certain respects. However, the effects are often not consistent between species and, in some cases, the experimental treatments do not reflect conditions that giant clams may realistically experience in the natural environment. Given this uncertainty and the likely localized nature of these impacts near areas of high runoff, we conclude that the threat of land-based sources of pollution is unlikely to contribute significantly to the extinction risk of any of the seven giant clam species considered here, either itself or in combination with other threats and demographic risks.

Stochastic Mortality Events

There have been several reports of mass mortalities of giant clams without a definitive cause. For example, reports from Lizard Island, Great Barrier Reef indicated that 25 percent of *T. gigas* and *T. derasa* died in a 6-week period in mid-1985, and over the following 18 months, total mortality rates were 55–58 percent (Alder & Braley, 1988). The authors ruled out toxins, predators,

environmental conditions, and old age as possible causes, and hypothesized that two pathogens that were observed (*Perkinsus* and an unknown protozoan) may be to blame. However, the findings were inconclusive, and the hypothesis was never confirmed. Extensive mortality was also reported in the early 1990s in the Solomon Islands, where *T. gigas* and *H. hippopus* were the main species affected (Gervis, 1992).

Mass mortality events represent a complex, unpredictable issue that can cause acute damage to giant clam populations with little forewarning. In each case, only certain giant clam species and certain areas were impacted by the mortality events, while other species, other bivalve mollusks, and other regions remained apparently unaffected (Lucas, 1994). For this reason, the extinction risk associated with these stochastic events is likely most significant for species with a restricted range or with few remaining populations, such as *H. porcellanus*, *T. mbalavuana*, and *T. squamosina*. However, the inherent unpredictability of these events affords little confidence in any assessment regarding the time scale of this threat. Overall, we conclude that the threat of stochastic mortality events may, in combination with low abundance, contribute significantly to the long-term extinction risk of *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosina*. Considering the expansive range of *T. squamosa*, including several regions of relatively high abundance, we find it unlikely that this threat contributes significantly to the long-term or near future extinction risk of *T. squamosa* by itself or in combination with other threats or demographic risks.

Demographic Risk Analysis

Abundance

Because there are no global abundance estimates for the seven species considered here, we rely on the qualitative estimates of population status summarized in table 1, which are based on the best available survey data from all countries or territories where each species has been recorded.

H. hippopus

Available data indicate that *H. hippopus* has suffered significant population declines to the extent that the species is rare, extirpated, has been reintroduced after extirpation, or is data deficient (likely exceptionally rare or extinct) in 21 of 26 locations throughout its range. For broadcast spawning organisms like *H. hippopus*, which rely on the external fertilization of gametes,

the implications of such sparse distribution on reproduction can be significant. As is discussed above, Braley (1984) observed that 70 percent of nearest spawning giant clams (*T. gigas*) were found within 9 m of one another, while only 13 percent were between 20–30 m of one another. These findings suggest that individuals in rare populations are less likely to spawn in synchrony and as a result are likely to experience infrequent, sporadic reproductive success. This negative relationship between population density and productivity, known as the Allee effect, can cause further reductions in population abundance and put rare populations of *H. hippopus* at greater risk of extinction.

In 5 of the 26 locations where *H. hippopus* has been recorded, the species is considered frequent, indicating population density estimates that are between 10 and 100 ind ha⁻¹. This includes the Great Barrier Reef, outlying islands of NW Australia, the Marshall Islands, Vanuatu, and Palau. Of these locations, only Australia has in place a total ban on the harvest of *H. hippopus*. The other countries have instituted a ban on the commercial export of giant clams, but subsistence harvest is still ongoing. In Vanuatu, *H. hippopus* is considered a prized subsistence food and is harvested regularly for household consumption and special occasions. Zann and Ayling (1988) reported that *H. hippopus* was overharvested on inhabited islands in Vanuatu and secure on only two reefs; it is unknown if these remote populations have been subjected to harvest in the three decades since the observations were published. Similarly, in the Marshall Islands, available reports suggest that giant clams are heavily exploited near population centers, and *H. hippopus* was reported to be abundant only on three remote atolls. Thus, in Vanuatu and Marshall Islands, overutilization remains a significant threat to *H. hippopus* populations. In Palau, the most recent survey from Helen Reef, a remote uninhabited atoll in the Western Caroline Islands was conducted in 1976, when the standing stock of *H. hippopus* was estimated to be over 70,500 (or 40.1 ind ha⁻¹) (Hirschberger, 1980). However, due to its remoteness from the inhabited islands of Palau and the difficulty of surveilling the area, Helen Reef was historically targeted by giant clam poachers in the 1970s. While we are not aware of any more recent poaching in the area, it is possible that such activities have gone undetected. Thus, the current status of *H. hippopus* at Helen Reef is unknown. A recent survey

from the main island group in Palau (Rehm *et al.*, 2022) recorded an average population density of 51.5 ind ha⁻¹, but the authors note that harvest of *H. hippopus* in this area is still “very common.” In Australia, there are very limited survey data on the abundance of *H. hippopus* on the Great Barrier Reef; however, anecdotal reports commonly suggest that populations of giant clams in general are healthy relative to other areas of the Indo-Pacific. Additionally, there is evidence that existing regulations have been effective at preventing illegal harvest and minimizing the risk of overutilization of giant clams in Australian waters. Several reports have suggested significant population declines from 1999 to 2009 at Ashmore and Cartier Reefs, two islands in NW Australia that have historically had abundant *H. hippopus* populations. The cause of the decline and current status of these populations is unknown.

Thus, while we consider *H. hippopus* to be frequent in 5 of the 26 locations where it occurs naturally (*i.e.*, where it has not been artificially introduced), in 2 of these locations (Vanuatu and the Marshall Islands), available reports indicate only a few remote sites have relatively abundant populations. The abundance of *H. hippopus* outside of these remote sites, particularly near human population centers, is considerably lower and is subject to the ongoing threat of unregulated domestic harvest. Populations of *H. hippopus* in Palau, NW Australia, and on the Great Barrier Reef appear to be healthy, despite ongoing harvest in Palau. Considering these locations alongside the 21 other locations in the species’ range where overutilization has driven *H. hippopus* to low abundance, we find that this factor likely contributes significantly to the species’ long-term risk of extinction, but does not in itself constitute a danger of extinction in the near future.

H. porcellanus

Although quantitative abundance estimates are limited, the best available scientific and commercial data suggest that *H. porcellanus* has suffered significant population declines since the 1970s, leading to low abundance and very few remaining populations throughout its historical range. Only 55 individuals have been observed and recorded in published surveys since 1989, and recent reports suggest that the species has disappeared from most areas of the Philippines and Indonesia, which were once the core of this species’ distribution. Only two sites, Tubbataha Reefs Natural Park in the Philippines

and Raja Ampat in Indonesia, are thought to have substantial populations of *H. porcellanus*. However, while there is some evidence that *H. porcellanus* may have recovered to an extent in Tubbataha Reefs after two decades of protection from harvest (Dolorosa & Jontila, 2012), the most recent survey data available are from 2008 and cover only 0.42 ha of the 96,828 ha in the park. Given the history of intense exploitation of this species in the Philippines and recent evidence of ongoing giant clam poaching in the region, we cannot conclude that this population has recovered to a sustainable level.

With so few remaining populations reduced to such a small fraction of the species’ historical range, *H. porcellanus* is highly susceptible to the ongoing and future threats described above, including coastal development, ongoing harvest, the inadequacy of existing regulations, potential physiological impacts of ocean warming, and stochastic mortality events. Continued population reductions due to these factors threatens the persistence of remaining populations, and in effect, significantly elevates the extinction risk of *H. porcellanus*. For this reason, we find that the species’ low abundance puts it in danger of extinction in the near future.

T. derasa

The best available scientific and commercial data indicate that *T. derasa* has suffered significant population declines to the extent that the species is considered rare, extirpated, or has been reintroduced after extirpation in 15 of the 18 locations throughout its range. As is discussed with respect to *H. hippopus*, such sparse distribution can significantly reduce reproductive success by disrupting spawning synchrony and minimizing fertilization rates. In every location where *T. derasa* is considered rare, subsistence harvest is still permitted or existing harvest bans, such as in Indonesia and the Philippines, have largely been ineffective at eliminating illegal harvest. In these locations, the low abundance of *T. derasa* exacerbates the extinction risk associated with continued harvest pressure.

Of the 18 locations where *T. derasa* occurs naturally (*i.e.*, where it has not been artificially introduced), there are only 3 locations where reports indicate that the species is likely frequent—these are the Great Barrier Reef, outlying islands of NW Australia, and Palau. Both locations in Australia are subject to a total ban on the harvest of *T. derasa*. As is discussed with respect to *H.*

hippopus, while there are very limited recent survey data on the abundance of *T. derasa* on the Great Barrier Reef, anecdotal reports consistently suggest that populations of giant clams (including *T. derasa*) in Australia are healthy relative to other areas of the Indo-Pacific.

In NW Australia, population estimates of *T. derasa* are variable, ranging from 1.3 ind ha⁻¹ at Ashmore Reef to 77.7 ind ha⁻¹ at N Scott Reef (Skewes *et al.*, 1999). In Palau, there is a ban on the commercial export of giant clams, but harvesting for subsistence and domestic sale is still reportedly very common, and *T. derasa* remains a highly desired food item, leaving these populations at risk of overutilization.

Overall, the abundance of *T. derasa* is greatly reduced from historical levels throughout its range, leaving only three locations where the species is not considered rare or extirpated. The species is at continued risk of overutilization in all locations where it is found, except for Australia, due to ongoing subsistence harvest and inadequate regulation. Based on this information, we find that the abundance of remaining populations contributes significantly to the species’ long-term risk of extinction, but does not in itself constitute a danger of extinction in the near future.

T. gigas

The best available scientific and commercial data indicate that *T. gigas* has suffered significant population declines to the extent that the species is considered rare, extirpated, has been reintroduced after extirpation, or is data deficient (likely exceptionally rare or extinct) in 32 of the 33 locations where it occurs naturally (*i.e.*, where it has not been artificially introduced). As is discussed above, such sparse distribution can significantly reduce reproductive success by disrupting spawning synchrony and minimizing fertilization rates. In every location where *T. gigas* is considered rare, except for NW Australia, subsistence harvest is still permitted or existing harvest bans, such as in Indonesia and the Philippines, have largely been ineffective at eliminating illegal harvest. In these locations, the low abundance of *T. gigas* exacerbates the extinction risk associated with continued harvest pressure.

Of the 33 locations where *T. gigas* occurs naturally, the only location where the species is considered “frequent” is the Great Barrier Reef in Australia. Populations on the Great Barrier Reef are protected by a total ban on the harvest of giant clams. As is

mentioned above, while there are very limited recent survey data on the abundance of *T. gigas* on the Great Barrier Reef, the data that are available, as well as anecdotal reports, consistently suggest that populations of giant clams (including *T. gigas*) in Australia are healthy relative to other areas of the Indo-Pacific.

Overall, the abundance of *T. gigas* is greatly reduced from historical levels throughout its range, leaving only one location where the species is not considered rare or locally extinct. Importantly, however, while we refer to the Great Barrier Reef as only one location, it covers an expansive geographic area that comprises a significant proportion of the suitable habitat within the species' range. Nonetheless, in all locations of its range outside of the Great Barrier Reef, *T. gigas* is at continued risk of overutilization due to ongoing subsistence harvest and inadequate regulation. Based on this information, we find that the abundance of remaining populations contributes significantly to the species' long-term risk of extinction, but does not in itself constitute a danger of extinction in the near future.

T. mbalavuana

Although quantitative abundance estimates are lacking, the best available scientific and commercial data suggest that *T. mbalavuana* occurs at exceptionally low abundance and is sparsely distributed "with single individuals being found at most locations" (Ledua *et al.*, 1993). As part of a concentrated effort to collect broodstock specimens of *T. mbalavuana* for attempted spawning and larval culture, Ledua *et al.* (1993) estimated the number of clams found per man-hour of search on SCUBA. The data showed that an average of about one clam per man-hour was collected in Tonga, while about 0.26 clams per man-hour were collected in Fiji. There were only three sites where more than six clams were found, and all were around Ha'apai, Tonga, which the authors suggested may be the center of distribution for *T. mbalavuana* with the "largest repository of the species." In total, 76 *T. mbalavuana* were observed and collected in Fiji and Tonga between 1986 and 1992 in more than 277 hours of searching.

Given its exceptionally low abundance, sparse distribution, and highly restricted range, *T. mbalavuana* is highly susceptible to the ongoing and future threats described previously, including continued domestic harvest, the inadequacy of existing regulations, and the possibility of future climate

change-related impacts to coral reef habitats. Potential population reductions due to these factors threatens the persistence of remaining populations, and in effect, significantly elevates the extinction risk of *T. mbalavuana*. For this reason, we find that the species' low abundance puts it in danger of extinction in the near future.

T. squamosa

Based on the best available scientific and commercial data, historical demand for *T. squamosa* meat and shells, ongoing demand for live specimens for the ornamental aquarium industry, and longstanding subsistence harvest has depleted *T. squamosa* populations in many areas of its range. Yet, despite the widespread exploitation, the global abundance of *T. squamosa* is relatively high compared to other giant clam species, with several locations where populations are likely frequent or abundant. This includes Australia (Great Barrier Reef), Indonesia, and the Philippines, which are the three locations with the most estimated coral reef area (and likely suitable habitat for *T. squamosa*) of all locations within the species' range. Of the 63 locations where *T. squamosa* occurs naturally, it is likely abundant in 5 locations, frequent in 14, rare in 32, and extirpated in 2 locations, with the other locations characterized as data deficient. Available reports suggest that abundance is particularly high in the Red Sea and in the South Asia regions, despite these areas being subject to widespread subsistence harvest and, in the case of South Asia, being at the center of the commercial shell and shell craft industry of the 1980s. Given the significant harvest pressure, this pattern suggests that *T. squamosa* populations in these regions are somewhat resilient to population declines, perhaps due to a large historical population size or due to high demographic connectivity facilitating larval exchange among connected populations within each region. Such a scenario would align with the genetic connectivity observed throughout the Indo-Malay Archipelago, discussed further in regard to the *Spatial Structure/Connectivity* risk below.

Overall, because the species occurs at relatively high abundance in a number of locations throughout its range, and especially in locations where the total area of coral reefs (and likely *T. squamosa* habitat) is relatively high, we find it unlikely that its abundance contributes significantly to the long-term or near-future risk of extinction by itself. However, its reportedly low

abundance at many locations in the Pacific islands and southeast Africa, where population growth may be hindered by the relative isolation of these populations from the closest regions of abundance, suggests that this factor may, in combination with other VP descriptors or threats, contribute to the species' extinction risk.

T. squamosina

There have been 30 documented observations of *T. squamosina* since its re-discovery in 2008, including 17 specimens from the Gulf of Aqaba and northern Red Sea, 7 individuals from the Farasan Islands in southern Saudi Arabia, and 6 individuals from an unnamed site in the southern Red Sea. The species was absent from all but 1 of the 58 survey sites visited by Rossbach *et al.* (2021) along the eastern Red Sea coast, including all sites in central and northern Saudi Arabia.

Given its exceptionally low abundance, sparse distribution, and highly restricted range, *T. squamosina* is highly susceptible to the ongoing and future threats described above, including habitat destruction and modification, continued artisanal harvest, and the inadequacy of existing regulations. Potential population reductions due to these factors threatens the persistence of remaining populations, and in effect, significantly elevates the extinction risk of *T. squamosina*. For this reason, we find that the species' low abundance puts it in danger of extinction in the near future.

Productivity

Despite exceptionally high fecundity, there is substantial evidence that low recruitment success and high mortality rates during early development lead to low productivity in most species of giant clams (Jameson, 1976; Beckvar, 1981; Fitt *et al.*, 1984; Crawford *et al.*, 1986; Munro, 1993a). Thus, as is discussed in relation to the *Abundance* risk factor above, we find it likely that all seven species are experiencing an Allee effect in locations where each species is considered rare, such that low productivity is directly correlated with low population abundance. As broadcast spawning organisms, giant clams rely on sufficient population density in order to respond to spawning cues of nearby individuals and to facilitate successful external fertilization of their gametes. The best available evidence suggests that spawning synchrony in *T. gigas* drops significantly at population densities lower than 10 ind ha⁻¹ (Braley, 1984), and while gametes have been found to

remain viable for up to 8 hours in *T. squamosa*, viability decreases significantly with time (Neo *et al.*, 2015). It is possible that the exact distance and duration of viability may vary among species, but because reproductive success is so closely tied to population density, we find it likely that the overall effect of low abundance in reducing productivity is applicable to all seven species considered here.

For these reasons, we conclude that the low natural productivity of giant clams as well as decreased productivity due to low abundance contribute significantly to the long-term risk of extinction of all seven species. Additionally, with respect to *H. porcellanus*, *T. mbalavuana*, and *T. squamosina*, which are exceptionally rare throughout their ranges, we find that this factor is likely to contribute to the short-term risk of extinction in the near future.

Spatial Structure/Connectivity

As is discussed above, the best available scientific and commercial data indicate that *T. gigas* populations in the central Pacific region (*i.e.*, Kiribati, Marshall Islands, Tuvalu, and Cook Islands) are genetically differentiated from populations in the western Pacific (*i.e.*, Great Barrier Reef, Philippines, Solomon Islands, and Fiji). The same pattern is largely consistent for *T. derasa*, although there is some variability in the inferred level of connectivity between the Great Barrier Reef and the Philippines.

There is strong evidence indicating four (possibly five) genetically isolated clades (*i.e.*, groups of individuals that share similar ancestry) of *T. squamosa* in the Indo-Malay Archipelago, the northeastern Indo-Pacific (*i.e.*, northern Philippines and Cenderwasih Bay), Red Sea, and western Indian Ocean. There may be a fifth clade in the eastern Indian Ocean, but more data are needed to corroborate this finding. We could not find any data pertaining to the genetic signature of *T. squamosa* populations in the Pacific islands or on the Great Barrier Reef and therefore cannot infer the degree of connectivity to these areas.

We could not find any data regarding the genetic structure or connectivity among populations of *H. hippopus*, *H. porcellanus*, *T. mbalavuana*, or *T. squamosina*.

Based on the relatively short duration of the pelagic larval phase of giant clams (~6–14 days), we would expect that long-range dispersal between distant locations is likely highly infrequent for each of these species, and perhaps particularly so among the regions

highlighted above (*i.e.*, the central Pacific, western Pacific, Indo-Malay Archipelago, eastern Indian Ocean, western Indian Ocean, and the Red Sea).

With respect to *T. derasa* and *T. gigas*, based on the spatial structure suggested by the available genetic data, it is unlikely that populations on the Great Barrier Reef provide significant larval subsidy to other locations of the species' ranges. Because the Great Barrier Reef represents one of the few remaining locations supporting relatively healthy populations of these species, any barrier to dispersal from this region reduces its capacity as a larval source and limits the species' rebound potential range-wide. Likewise, according to the limited genetic data, populations in Palau may function as a significant larval source only to nearby locations in the western Pacific, such as the Philippines. For this reason, based on the best available population genetic data and considering the abundance distribution of *T. derasa* and *T. gigas*, we conclude that limited connectivity, particularly between the Great Barrier Reef and other locations within the species' ranges, likely contributes significantly to the long-term extinction risk for these species, but does not in itself constitute a danger of extinction in the near future.

With respect to *T. squamosa*, the available data regarding spatial structure suggest that the relatively abundant populations in the Indo-Malay and Red Sea region likely do not provide significant larval subsidy to less abundant populations in the western Pacific and western Indian Oceans. Therefore, it is likely that the status of the populations in these regions is primarily dependent on local demographics. Reported declines of many *T. squamosa* populations in these regions due to longstanding harvest for subsistence and commercial purposes suggest that the lack of connectivity may be limiting the species' potential for population growth in these regions and exacerbating the species' extinction risk range-wide. However, because the abundance of *T. squamosa* remains relatively high in major portions of its range (*e.g.*, the Indo-Malay Archipelago, Red Sea, and Great Barrier Reef), we find it unlikely that the observed spatial structure contributes significantly to long-term or near-term risk of extinction by itself, but it may in combination with other VP descriptors or threats.

Without further information on the spatial structure and connectivity of *H. hippopus*, *H. porcellanus*, *T. mbalavuana*, and *T. squamosina*, we cannot assess the contribution of this factor to the extinction risk for these four species.

Diversity

Overall, we could find very little information regarding the genetic diversity of the seven species considered here. With respect to *T. derasa* and *T. gigas*, the best available scientific and commercial data indicate regional differences in the degree of genetic variation. Macaranas *et al.* (1992) found that mean heterozygosity of *T. derasa* based on allozyme variation was highest on the Great Barrier Reef ($h = 0.35\text{--}0.46$), intermediate in the Philippines ($h = 0.29$), and lowest in Fiji ($h = 0.14$). Similarly, Gomez *et al.* (1994) found low mean heterozygosity in both Fiji and Tonga ($h = 0.17\text{--}0.19$). While it is difficult to know the exact cause, the relatively low genetic diversity in the small island populations may be reflective of smaller populations and low rates of immigration due to their geographic remoteness. Macaranas *et al.* (1992) also note that samples from Fiji were collected from the Makogai Island hatchery, where genetic diversity may be artificially reduced. Similarly, comparing across several locations in the Indo-Pacific, Benzie and Williams (1995) found that genetic diversity of *T. gigas*, based on the percentage of polymorphic loci and mean number of alleles per locus (N_a), was lowest in the Philippines (57.1 percent; $N_a = 2$), Marshall Islands (71.4 percent; $N_a = 2.3$), and Kiribati (57.1 percent; $N_a = 2.3$), and highest in the Solomon Islands (85.7 percent; $N_a = 2.4\text{--}2.7$) and the Great Barrier Reef (100 percent; $N_a = 2.9$). Overall, while these data highlight geographic differences in the magnitude of genetic diversity in both *T. derasa* and *T. gigas*, we find no evidence to suggest that this factor contributes significantly to the extinction risk for these species by itself or in combination with other factors.

Likewise, with respect to *T. squamosa*, the best available scientific and commercial data suggest that genetic diversity in the Indo-Malay region is low relative to *T. maxima* and *T. crocea*, two other giant clam species with similarly broad distributions but which are not subject to this rulemaking. However, we find no evidence to suggest that this factor contributes significantly to the extinction risk for *T. squamosa* by itself or in combination with other factors.

With respect to *T. squamosina*, K.K. Lim *et al.* (2021) measured very low diversity of the mitochondrial DNA (*i.e.*, 16S haplotype diversity) and very few polymorphic loci, indicating that genetic diversity is very low. The authors hypothesized that the low diversity may be the result of a

population bottleneck, but cautioned that it may also reflect low natural diversity or a small sample size. In general, low genetic diversity may limit adaptive potential, and effectively lower the resilience of populations to environmental change. Thus, we have some concern that this factor may, in combination with the low abundance of the species, contribute to the long-term or near future extinction risk for *T. squamosina*.

We could not find any information regarding the genetic diversity of *H. hippopus*, *H. porcellanus*, or *T. mbalavuana*. Given these species' declining population trends, and the exceptionally low abundance of *H. porcellanus* and *T. mbalavuana* overall, it is possible that genetic diversity may be significantly reduced as a result of a population bottleneck. However, without any genetic testing on these species to determine diversity or effective population size, we are unable to conclude whether this is a relevant threat contributing to the species' risk of extinction.

Overall Risk Summary

Guided by the results of the demographic risk analysis and threats assessment above, we considered the best available scientific and commercial data to analyze the overall risk of extinction for each of the seven giant clam species throughout their respective ranges. We outline the conclusions and supporting rationale for each species below.

H. hippopus

Considering the best available scientific and commercial data regarding *H. hippopus* from all locations of the species' range, we determined that the most critical demographic risks to the species include the low abundance and negative trajectory of populations throughout the majority of its range, compounded by low natural productivity. Additionally, our threats assessment revealed that the past and present overutilization and associated inadequacy of existing regulatory mechanisms to address overutilization (e.g., subsistence fisheries, domestic markets, and international trade in giant clam shells and shell-craft) contribute most significantly to the extinction risk of this species. Continued harvest of *H. hippopus* primarily for subsistence purposes, combined with the species' low productivity will likely drive further population declines and prevent any substantial population increases.

The best available scientific and commercial data indicate that very few abundant populations of *H. hippopus*

remain, and that in almost every location outside of Australia, domestic harvest of *H. hippopus* is ongoing. In Palau, Vanuatu, and the Marshall Islands, which are three of the five locations where we consider *H. hippopus* to be frequent, anecdotal reports indicate that harvest for subsistence and for sale in domestic markets is still very common. In Vanuatu and the Marshall Islands, there is evidence that this has significantly reduced *H. hippopus* abundance in the areas around human population centers, leaving very few remote areas with relatively healthy populations. There is very little quantitative information regarding the abundance of *H. hippopus* on the Great Barrier Reef, but anecdotal reports commonly suggest that populations of giant clams in general are healthy. There is also quantitative evidence that *H. hippopus* occurs in significant numbers in the outlying islands of NW Australia (Richards *et al.*, 2009; Skewes *et al.*, 1999), likely benefiting from the strong regulatory protections within Australian waters. Additionally, in Palau, although subsistence harvest of giant clams is permitted and is reported to occur commonly, a recent survey indicated relatively large populations of *H. hippopus* (Rehm *et al.*, 2022). As is discussed below in the Protective Efforts section, it is possible that the significant output of cultured giant clams from the Palau Mariculture Demonstration Center (PMDC) mariculture facility and reported efforts to use a portion of *H. hippopus* seedstock to enhance depleted populations in certain conservation areas may be offsetting the harvest pressure in Palau. However, without further information, we are not able to assess with confidence whether populations in Palau are stable, or whether they may be increasing or decreasing significantly due to one factor outweighing the other.

In contrast to these 5 locations where *H. hippopus* populations are relatively healthy (i.e., the Great Barrier Reef, NW Australia, Palau, and remote areas of Vanuatu and the Marshall Islands), the best available scientific and commercial data indicate that, at the 21 other locations across the range with documented occurrences of this species, extensive exploitation for past commercial harvest for the shell and shell-craft industry and ongoing subsistence harvest have driven *H. hippopus* to low abundance, and in some cases, extirpation. The continued threat of overutilization and the demographic risks outlined above likely put the species at a high level of

extinction risk in these locations in the foreseeable future. However, because *H. hippopus* populations in Australia and Palau, and certain areas of Vanuatu and the Marshall Islands are relatively abundant, and the enforcement of strict harvest bans have effectively minimized the threat of overutilization in Australian waters, we cannot conclude that the species is at moderate or high risk of extinction throughout its entire range.

Significant Portion of Its Range (SPR) Analysis: *H. hippopus*

Under the ESA and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. Thus, a species may be endangered or threatened throughout all of its range, or a species may be endangered or threatened throughout only a significant portion of its range. Having determined that *H. hippopus* is not at moderate or high risk of extinction throughout all of its range, in order to inform the listing determination, we conducted an additional analysis to assess whether the species is at higher risk of extinction in a "significant portion of its range"—that is, we assessed whether there is any portion of the species' range for which it is true that both (1) the portion is significant and (2) the species, in that portion, is in danger of extinction or likely to become so in the foreseeable future. A joint USFWS–NMFS policy, finalized in 2014, provided the agencies' interpretation of this phrase ("SPR Policy," 79 FR 37578, July 1, 2014) and explains that, depending on the case, it might be more efficient for us to address the "significance" question or the "status" question first. (Certain aspects of the SPR Policy have been invalidated by courts; we describe below where those decisions affect the SPR analysis.) Regardless of which question we choose to address first, if we reach a negative answer with respect to the first question, we do not need to evaluate the other question for that portion of the species' range.

Because there are infinite ways in which a range could be theoretically divided for purposes of this analysis, we first evaluated whether there are portions of the range of *H. hippopus* that have a reasonable likelihood of being both in danger of extinction or likely to become so in the foreseeable future, and biologically significant to the species. In other words, unless portions met both of these conditions, they were not further considered in this analysis. As discussed in the SPR Policy, as a

practical matter, a key part of this analysis is considering whether threats are geographically concentrated in some way. In this case, because we determined that the most significant threats to the species are overutilization and inadequacy of regulatory mechanisms to address overutilization, we focused our analysis on the portion of the range where these threats are most severe.

As has been discussed previously, several sources indicate that the early adoption of strict harvest prohibitions in Australia has been largely effective at preventing illegal harvest and minimizing the risk of overutilization of giant clams in Australian waters. This differs considerably from reports from every other location throughout the species' range, which consistently indicate that the threat of overutilization in combination with inadequate regulatory mechanisms to address this overutilization poses a significant extinction risk to *H. hippopus*. Thus, for the purpose of this SPR analysis, we distinguish locations in Australia (*i.e.*, the Great Barrier Reef and NW Australia) from all other locations where *H. hippopus* occurs and consider them as two separate portions of the species' range.

The portion of the range outside of Australia includes 24 countries and territories where the primary threat to the species is overutilization. In 21 of these locations (Andaman and Nicobar Islands (India), Japan, Taiwan, South China Sea, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Fiji, New Caledonia, Papua New Guinea, Solomon Islands, FSM, Guam, Republic of Kiribati, CNMI, American Samoa, Samoa, Tonga, and Tuvalu), the best available scientific and commercial data, consisting of surveys as well as qualitative descriptions of abundance, suggest that past commercial harvest for the shell and shell-craft trade (primarily in the South Asia region), as well as past and ongoing subsistence harvest throughout this entire portion of the species' range has driven *H. hippopus* to low abundance, and in several cases, extirpation.

There are three main exceptions to this trend—Vanuatu, the Marshall Islands, and Palau. In Vanuatu, a single survey in 1988 spanning 13 islands reported that *H. hippopus* was “overfished on inhabited islands but secure on two remote reefs” (Zann & Ayling, 1988). We are not aware of any follow-up surveys, and the current status of these remote reef populations is unknown. Available reports from the Marshall Islands suggest that *H. hippopus* is relatively abundant at three

less-populated atolls, reporting “huge undisturbed” populations in Bok-ak and Pikaar Atolls in particular, but do not provide any quantitative data (Maragos, 1994; Beger *et al.*, 2008). Lastly, in Palau, a recent survey of the main island group and past surveys of a remote uninhabited atoll indicate that abundance of *H. hippopus* is relatively high (Rehm *et al.*, 2022). It is also important to note that, while we consider the overall abundance of *H. hippopus* in the Philippines and Indonesia to be “rare,” there are a number of studies reporting small areas within each country where *H. hippopus* still occurs at relatively high frequency. This includes, for example, Carbin Reef and Tubbataha Reefs Natural Park in the Philippines, and Raja Ampat and Kei Islands in Indonesia, where recently estimated population densities are over 20 ind ha⁻¹ (Dolorosa, 2010; Lebata-Ramos *et al.*, 2010; Wakum *et al.*, 2017; Triandiza *et al.*, 2019).

However, in each of Vanuatu, the Marshall Islands, and Palau, existing regulations do not prohibit the domestic harvest of giant clams for subsistence purposes or for sale in local markets. According to Neo *et al.* (2017), giant clams, and especially *H. hippopus*, are still a prized subsistence food on most islands in Vanuatu. The same is true in Palau, where the harvest of *H. hippopus* is still very common near populated areas (L. Rehm, pers. comm., May 26, 2022), and in the Marshall Islands, where available information indicates that *H. hippopus* has historically been sold in local markets (S. Wells, 1997). Thus, while the current status of *H. hippopus* in these locations may be healthier than many other locations throughout the species' range, the threat of domestic harvest and inadequate regulatory mechanisms to address overutilization continues to expose the species to an elevated extinction risk in the foreseeable future. It seems that the principal factor protecting *H. hippopus* in Vanuatu and the Marshall Islands is simply the remoteness of the populations rather than any formal regulatory mechanism.

Theoretically, mariculture operations in Palau could potentially prevent the species from going extinct in the foreseeable future. As noted above, however, we are not able to assess whether populations in Palau are stable or are increasing or decreasing significantly due to the output of cultured giant clams compared to ongoing harvest. We did not base our assessment on the past success of mariculture operations, because of its reliance on a number of unpredictable factors (*e.g.*, funding, management

priorities, natural disasters, *etc.*). Thus, it is difficult to extrapolate the effect of mariculture beyond the next few years.

Basing our assessment on the demographic risks of low abundance and low productivity in 21 of 24 locations where the species naturally occurs, and the ongoing threats of overutilization and inadequate regulatory mechanisms to address it in all 24 locations, we conclude that in the portion of the species' range defined as all locations outside of Australia, *H. hippopus* is at moderate risk of extinction. Because the species still occurs in 24 locations within this portion of its range, which encompass a broad geographic area and variety of environmental conditions, and relatively healthy populations can still be found in the Marshall Islands, Palau, Vanuatu, and a number of small areas within the Philippines and Indonesia, we do not find that *H. hippopus* is at or near a level of abundance that places its continued persistence in question. However, given the ongoing threats of overutilization and inadequate regulatory mechanisms to address it, as well as documented populations declines that have been attributed to these threats, we find that the species is on a trajectory that puts it at a high level of extinction risk within the foreseeable future in the portion consisting of 24 countries and territories outside of Australia.

Having reached a positive answer with respect to the “status” question, we move on to determine whether this portion of the range is “significant.” The definition of “significant” in the SPR Policy has been invalidated in two District Court cases that addressed listing decisions made by the USFWS. The SPR Policy set out a biologically-based definition that examined the contributions of the members in the portion to the species as a whole, and established a specific threshold (*i.e.*, when the loss of the members in the portion would cause the overall species to become threatened or endangered). The courts invalidated the threshold component of the definition because it set too high a standard. Specifically, the courts held that, under the threshold in the policy, a species would never be listed based on the status of the species in the portion, because in order for a portion to meet the threshold, the species would be threatened or endangered range-wide. See *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d 946, 958 (D. Ariz. 2017); *Desert Survivors v. DOI*, 321 F. Supp. 3d 1011 (N.D. Cal. 2018). However, those courts did not take issue with the fundamental approach of evaluating

significance in terms of the biological significance of a particular portion of the range to the overall species. NMFS did not rely on the definition of “significant” in the policy here. Rather, to assess whether a portion of a species’ range is “significant,” we consider relevant biological information, such as whether the portion was historically highly abundant, potentially functioning as a source population for other areas of the range, whether there is evidence that it was historically highly productive with potential to contribute to the population growth of this species as a whole, whether the portion encompasses a substantial area relative to the species’ current range, whether the portion historically facilitated gene flow between populations, and whether the portion contains genetic or phenotypic diversity that is important to species viability. The contribution or role of that portion to the viability of the species as a whole is also considered from a historical, current, and future perspective to the extent possible.

With respect to *H. hippopus*, there is strong evidence that the portion of the species’ range defined as all locations outside of Australia qualifies as a “significant portion.” Based on historical trade statistics, as well as the countless reports describing major population losses resulting from years of domestic harvest and intense commercial harvest, primarily for the international shell and shell-craft industry (e.g., see Villanoy *et al.*, 1988; Kinch, 2003; Dolorosa & Schoppe, 2005; Harahap *et al.*, 2018; Purcell *et al.*, 2020), it is clear that *H. hippopus* was historically highly abundant in this portion of its range.

Furthermore, prior to these losses, it is likely that populations in this portion, which includes 24 of 26 locations comprising the species’ range (*i.e.*, all locations except for the Great Barrier Reef and NW islands in Australia), played a critical role in maintaining genetic connectivity throughout the species’ range. For many marine organisms, and particularly sedentary taxa such as giant clams, long-range dispersal (e.g., between islands and other distant locations) is likely highly stochastic and infrequent (see Cowen *et al.*, 2003; Siegel *et al.*, 2008). As is discussed above in *Growth and Reproduction*, it relies on a process known as ‘sweepstakes’ reproduction, in which spawning and fertilization coincidentally align with oceanographic conditions that facilitate successful long-distance dispersal and recruitment to a suitable habitat. The relatively short pelagic larval duration of giant clams

(~6–14 days) further limits the probability of long-distance dispersal. Thus, it is likely that *H. hippopus* was dependent on serial migration between nearby locations (*i.e.*, ‘stepping stones’) to maintain genetic connectivity throughout its range. Historically, this portion would have once facilitated this connectivity between populations.

Given its geographic size, this portion of the species’ range encompasses a wide variety of habitats and environmental conditions. Therefore, we expect that, to some extent, past populations were likely genetically adapted to their local setting, as has been demonstrated with respect to numerous other marine organisms across similar geographic scales (e.g., see Sanford & Kelly, 2011 for comprehensive review). Such genetic diversity can function as an important foundation to enhance the resilience of the species and facilitate future adaptation to environmental change. Furthermore, given the geographic extent of this portion of this range and the varied habitats it encompasses, the populations of *H. hippopus* within this portion would have provided an important demographic reserve, which could facilitate recovery following stochastic mortality events or other localized population declines.

Based on the rationale described above, we find that the portion of the species’ range defined as all locations outside of Australia is “significant,” and serves a biologically important role in maintaining the long-term viability of *H. hippopus*.

H. porcellanus

Despite a lack of formal, comprehensive abundance estimates, the best available scientific and commercial data suggest that *H. porcellanus* has suffered significant population declines since the 1970s, leading to low abundance and very few remaining populations throughout its historical range. The inherent risks of such low abundance are compounded by low natural productivity, which likely prevents any substantial short-term rebound. Additionally, our threats assessment revealed that past and present overutilization in subsistence fisheries, domestic markets, and the international trade of giant clam shells and shell-craft, as well as the inadequacy of existing regulatory mechanisms to address this overutilization contribute most significantly to the extinction risk of this species. *H. porcellanus* has historically been highly desired commercially for the aesthetic of its shell and once comprised a substantial

portion of the giant clam shell export volume from the Philippines, reaching a total export of nearly a million *H. porcellanus* shells and shell pairs between 1978 and 1992. While *H. porcellanus* is no longer legally exported from the Philippines, reports of ongoing subsistence harvest throughout its range and illegal poaching to supply a continued demand for giant clam shells and shell-craft throughout East Asia suggest that the species will likely continue to experience declining trends in its abundance and productivity in the foreseeable future. Based on our assessment of these threats and demographic risk factors, we conclude that *H. porcellanus* is at a high risk of extinction throughout its range.

T. derasa

Considering the best available scientific and commercial data regarding *T. derasa* from all locations of the species’ range, we determined that the most critical demographic risks to *T. derasa* are the low abundance and negative trajectory of populations throughout the majority of its range, compounded by low natural productivity and the likelihood of the Allee effect. Additionally, our threats assessment revealed that the past and present overutilization due to subsistence fisheries, domestic markets, and the international trade of giant clam meat and poaching, as well as the inadequacy of existing regulatory mechanisms to address this overutilization contribute most significantly to the extinction risk of this species. Continued harvest of *T. derasa* primarily for subsistence purposes, combined with the species’ low productivity will likely drive further population declines and prevent any substantial population rebound. We also consider that the close association of *T. derasa* with coral reefs may make the species more susceptible to the projected impacts of ocean warming and acidification on coral reef habitats.

As with *H. hippopus*, the best available scientific and commercial data indicate that very few abundant populations of *T. derasa* remain and occur primarily in the waters of Australia. Extensive surveys of *T. derasa* on the Great Barrier Reef from the 1980s (Braley, 1987a, 1987b) found that the species’ distribution was patchy with several sites of relatively high density (>10 ind ha⁻¹) interspersed among many other sites of low abundance or where the species was completely absent. The Swain Reefs in particular, a group of approximately 350 offshore reefs in the southern region of

the Great Barrier Reef, was one area described as having especially high abundance of *T. derasa*, with densities ranging from 12 to 172 ind ha⁻¹ (Pearson, 1977). Based on the species' patchy distribution and the observed pattern of recruitment, Braley (1988) found it likely that the relatively few reefs with abundant populations of clams (mostly in the south) may dominate recruit production for the rest of the Great Barrier Reef.

According to Pearson (1977), during the 1960s and early 1970s, Taiwanese vessels poached giant clams (primarily *T. gigas* and *T. derasa*) from the entire length of the Great Barrier Reef. As surveillance and enforcement efforts by Australian authorities increased in the 1970s, poachers began to concentrate their activities to offshore areas, such as the Swain Reefs, but this likely only lasted at significant scale for a few years, as Dawson (1986) claimed that during the lead up to the declaration of the Australian Fishing Zone (AFZ) in 1979, Taiwanese authorities were warned that continued illegal poaching of giant clams would jeopardize Taiwan's position in gaining access rights to the AFZ. This forced the Taiwanese government to enhance inspection of suspected boats upon departure and return to port. According to Dawson (1986), "the combined effect of these two components, almost certain apprehension by the coastal State and effective sanctions by the flag State, combined to result in the virtual cessation of illegal giant clam activities in the AFZ." Based on this assessment and because subsistence demand for giant clams in Australia is minimal, we find it likely that the population density estimates provided by Braley (1987a, 1987b) generally represent the current status of *T. derasa* on the Great Barrier Reef. This is further supported by more recent reviews and reports (bin Othman *et al.*, 2010; Braley, 2023; Neo *et al.*, 2017; S. Wells, 1997) suggesting that *T. derasa* is still relatively abundant on much of the Great Barrier Reef.

There is also quantitative evidence that *T. derasa* occurs in significant numbers in the outlying islands of NW Australia (Richards *et al.*, 2009; Skewes *et al.*, 1999), likely benefitting from the strong regulatory protections within Australian waters. Additionally, in Palau, although subsistence harvest of giant clams is permitted and is reported to occur commonly, a recent survey indicated relatively large populations of *T. derasa* (Rehm *et al.*, 2022). As with *H. hippopus*, it is possible that the significant output from the PMDC mariculture facility and reported efforts to use a portion of *T. derasa* seedstock

to enhance depleted populations in certain conservation areas may be balancing the harvest pressure in Palau. However, without further information, we are not able to assess with confidence whether *T. derasa* abundance in this location is stable, or whether it may be increasing or decreasing significantly due to one factor outweighing the other.

In contrast to these 3 locations where *T. derasa* populations are relatively healthy (*i.e.*, the Great Barrier Reef, NW Australia, Palau), the best available data indicate that, at the 15 other locations across the range where this species naturally occurs, extensive exploitation for past commercial trade, ongoing subsistence use, and illegal harvest have driven *T. derasa* to exceptionally low abundance, and in some cases, extirpation. The continued threat of overutilization, the inadequacy of existing regulatory mechanisms to address overutilization, the possible future threat of habitat degradation due to climate change impacts on coral reefs, and the demographic risks outlined above, likely put the species at a high level of extinction risk in these locations. However, because *T. derasa* populations in Australia and Palau are relatively abundant, and the enforcement of strict harvest bans have effectively minimized the threat of overutilization in Australian waters, we cannot conclude that the species is at moderate or high risk of extinction throughout its entire range.

It is worth highlighting that, although we refer to the Great Barrier Reef as only one location for the purpose of this analysis, it covers an expansive geographic area that comprises a substantial proportion of the suitable habitat within the species' range. Additionally, while the future threat of habitat degradation due to climate change impacts on coral reefs may be relevant to these populations, we do not have sufficient information to confidently assess the extent to which the survival or productivity of giant clams (even those species closely associated with coral reefs, such as *T. derasa*) may be impacted by projected changes to coral reef communities.

SPR Analysis: *T. derasa*

Having determined that *T. derasa* is not at moderate or high risk of extinction throughout all of its range, in order to inform the listing determination, we conducted an additional analysis to assess whether the species is at higher risk of extinction in a "significant portion of its range"—that is, we assessed whether there is any portion of the species' range for which

it is true that both (1) the portion is significant and (2) the species, in that portion, is in danger of extinction or likely to become so in the foreseeable future.

Because we determined that the most significant threats to *T. derasa* are overutilization and the inadequacy of regulatory mechanisms to address overutilization, we focused our analysis on the portion of the range where these threats are most severe, consistent with the approach used in the SPR analysis for *H. hippopus*. As discussed above, several sources indicate that the early adoption of strict harvest prohibitions in Australia has been largely effective at preventing illegal harvest and minimizing the risk of overutilization of giant clams in Australian waters. This differs considerably from reports from every other location throughout the species' range, which consistently indicate that the threat of overutilization in combination with inadequate regulation and enforcement poses a significant extinction risk to *T. derasa*. Thus, for the purpose of this SPR analysis, we distinguish locations in Australia (*i.e.*, the Great Barrier Reef and NW Australia) from all other locations where *T. derasa* occurs and consider them as two separate portions of the species' range.

In this case, the portion outside of Australia that was further considered includes 16 countries and territories (Christmas Island, Cocos (Keeling) Islands, Taiwan, South China Sea, Indonesia, Malaysia, Philippines, Fiji, New Caledonia, Papua New Guinea, Solomon Islands, Vanuatu, Guam, CNMI, Palau, and Tonga) where the primary threat to the species is overutilization. In 15 of these locations, the best available scientific and commercial data, consisting of surveys as well as qualitative descriptions of abundance, suggest that past commercial harvest for the giant clam meat trade, past and ongoing subsistence harvest, and widespread illegal poaching have driven *T. derasa* to exceptionally low abundance, and in several cases, extirpation. The one exception is Palau, where a recent survey of the main island group and past surveys of a remote uninhabited atoll indicate that abundance of *T. derasa* is likely relatively high. However, as is discussed above, while commercial export of wild-caught giant clams is prohibited in Palau, harvest for subsistence purposes and for sale in domestic markets is reportedly very common, and *T. derasa* is one species that is specifically targeted by locals.

As with *H. hippopus*, the success of mariculture operations in Palau could

theoretically prevent the species from going extinct in the foreseeable future. For example, since 1990, the PMDC alone has cultured over 150,000 *T. derasa* for export internationally, and likely many more that were traded or distributed domestically, or were otherwise not included in CITES reports. It is possible that the threat of overutilization in Palau has been somewhat offset in the short term by documented efforts to reseed depleted populations (see Protective Efforts). However, as we discussed previously with respect to *H. hippopus*, we are not basing our assessment on the past success of mariculture operations; its reliance on a number of unpredictable factors (*e.g.*, funding, management priorities, natural disasters, *etc.*) makes it difficult to extrapolate the effect of mariculture beyond the next few years. Thus, we based our assessment on the demographic risks of low abundance and low productivity that exist in 15 of 16 locations in this portion where the species naturally occurs, and the ongoing threats of overutilization and inadequate regulatory mechanisms to address it in all 16 locations.

Similar to *H. hippopus*, we considered the geographic range of the remaining populations, noting that the species still occurs in 16 locations within this portion of its range, which encompass a broad geographic area and a variety of environmental conditions within the Indo-Pacific region. However, Palau is the only location in this portion where *T. derasa* is considered frequent (although, we note that two recent surveys have found relatively abundant populations in the Anambas Islands and Raja Ampat region of Indonesia). Because of its large size, *T. derasa* is often the most highly desired species for subsistence consumption and to sell for its meat in local markets. This continued demand at the local level, combined with the widespread and lasting impact of the Taiwanese poaching effort, has driven the species to exceptionally low abundance on average in this portion of its range. Among the many low estimates of population density, *T. derasa* has been described as “virtually extinct from most of [the Philippines] due to overexploitation” (Gomez & Alcala, 1988), “likely functionally extinct” from Karimun Jawa, Indonesia (Brown & Muskanofola, 1985), and “at risk of extirpation” in New Caledonia (Purcell *et al.*, 2020). For these reasons, despite the geographic scope of the remaining *T. derasa* populations, given the desirability and ongoing demand for *T. derasa* for consumption and sale in

local markets, we find that the species is at or near a level of abundance that places its continued persistence in this portion in question (high extinction risk).

Having reached a positive answer with respect to the “status” question, we next considered whether this portion of the range is “significant.” Similar to the SPR analysis for *H. hippopus*, we considered the historically high abundance of *T. derasa* in this portion of the range, as evidenced by trade statistics and the many reports of major population losses resulting from years of subsistence and commercial harvest. Additionally, as was described with respect to *H. hippopus*, it is likely that populations in this portion played an important role in maintaining genetic connectivity throughout the species’ range. Given the relatively short pelagic larval phase of giant clams (~6–14 days), there is a diminishing likelihood of larval dispersal between locations at progressively greater distances. Therefore, genetic exchange between distant populations likely relied on many smaller dispersal events across the network of more closely spaced islands or habitat areas that comprise this portion of the species’ range. Lastly, considering the geographic extent of this portion and the diverse habitats that it encompasses, the populations of *T. derasa* within this portion likely served as an important demographic and genetic reserve, which could facilitate recovery following localized population declines. Based on this rationale, we find that the portion of the species’ range defined as all locations outside of Australia is “significant,” or in other words serves a biologically important role in maintaining the long-term viability of *T. derasa*.

T. gigas

Considering the best available scientific and commercial data regarding *T. gigas* from all locations of the species’ range, we determined that the most critical demographic risks to *T. gigas* are the low abundance and negative trajectory of populations throughout the majority of its range, compounded by low natural productivity and likely Allee effect. Additionally, our threats assessment revealed that the past and present overutilization due to subsistence fisheries, domestic markets, the international trade of giant clam meat and poaching, and the international trade of giant clam shells and shell-craft, as well as the inadequacy of existing regulatory mechanisms to address this overutilization contribute most significantly to the extinction risk of

this species. Continued harvest of *T. gigas* primarily for subsistence purposes and illegally by poachers, combined with the species’ low productivity will likely drive further population declines and prevent any substantial population recovery in locations where it is rare.

The best available scientific and commercial data indicate that very few abundant populations of *T. gigas* remain and occur exclusively on the Great Barrier Reef in Australia. Extensive surveys of *T. gigas* on the Great Barrier Reef from the 1980s (Braley, 1987a, 1987b) recorded population densities as high as 56 ind ha⁻¹, with numerous sites hosting populations of *T. gigas* at densities greater than 10 ind ha⁻¹ interspersed among other sites of low abundance or where the species was completely absent. Braley (1987a) noted that *T. gigas* was present on 36 of 57 (63 percent) randomly chosen survey sites, and 17 of 19 (89 percent) sites chosen specifically because of known giant clam populations. High population densities were found in the Cairns, Cooktown, and Escape Reefs transects, while no living *T. gigas* were observed south of 19° S. Based on the species’ patchy distribution and the observed pattern of recruitment, Braley (1988) found it likely that the scattered reefs hosting abundant populations of clams (mostly in the south) may dominate recruit production for the rest of the Great Barrier Reef.

As was discussed in the extinction risk analysis for *T. derasa*, Taiwanese vessels poached giant clams (primarily *T. derasa* and *T. gigas*) from the Great Barrier Reef during the 1960s and 1970s. However, strict enforcement of a harvest ban on giant clams resulted in the virtual cessation of illegal giant clam activities in Australia by the mid-1980s. Based on this information and because giant clams are not harvested for subsistence in Australia, we find it likely that the population density estimates provided by Braley (1987a, 1987b) generally represent the current status of *T. gigas* on the Great Barrier Reef. This is further supported by more recent reviews and reports (bin Othman *et al.*, 2010; Braley, 2023; Neo *et al.*, 2017; S. Wells, 1997) suggesting that *T. gigas* is still relatively abundant on much of the Great Barrier Reef. According to R.D. Braley (pers. comm., October 19, 2022) and Neo *et al.* (2017), the distribution of *T. gigas* on the Great Barrier Reef represents a “natural” and “virtually undisturbed” state for the species.

In contrast to the Great Barrier Reef, where *T. gigas* populations are relatively healthy, the best available data indicate that, at the other 32 of 33

locations across the range with documented natural occurrence of this species, extensive exploitation for past commercial trade, ongoing subsistence use, and illegal harvest have driven *T. gigas* to exceptionally low abundance, and in many cases, extirpation (this applies to all locations except NW Australia, where the low abundance cannot be attributed to harvest). The continued threat of overutilization, the possible future threat of habitat degradation due to climate change impacts on coral reefs, and the demographic risks outlined above, places the continued persistence of *T. gigas* in these locations in question. However, because *T. gigas* populations on the Great Barrier Reef are relatively abundant, even described as “virtually untouched,” and the enforcement of strict harvest bans have effectively minimized the threat of overutilization in Australian waters, we cannot conclude that the species is at moderate or high risk of extinction throughout its entire range.

It is worth highlighting that, although we refer to the Great Barrier Reef as only one location for the purpose of this analysis, it covers an expansive geographic area that comprises a substantial proportion of the suitable habitat within the species’ range. Additionally, as is mentioned in regard to *T. derasa*, while the future threat of habitat degradation due to climate change impacts on coral reefs may be relevant to *T. gigas* populations, including those on the Great Barrier Reef, we do not have sufficient information to confidently assess the extent to which the survival or productivity of giant clams may be impacted by projected changes to coral reef communities.

SPR Analysis: *T. gigas*

Having determined that *T. gigas* is not at moderate or high risk of extinction throughout all of its range, in order to inform the listing determination, we conducted an additional analysis to assess whether the species is at higher risk of extinction in a “significant portion of its range”—that is, we assessed whether there is any portion of the species’ range for which it is true that both (1) the portion is significant and (2) the species, in that portion, is in danger of extinction or likely to become so in the foreseeable future.

Because we determined that the most significant threats to *T. gigas* are overutilization and the inadequacy of regulatory mechanisms to address overutilization, we focused our analysis on the portion of the range where these threats are most severe, consistent with

the approach used for both *H. hippopus* and *T. derasa*. As has been discussed, several sources indicate that the early adoption of strict harvest prohibitions in Australia has been largely effective at preventing illegal harvest and minimizing the risk of overutilization of giant clams in Australian waters. This differs considerably from reports from every other location throughout the species’ range, which consistently indicate that the threat of overutilization in combination with inadequate regulatory mechanisms to address that threat pose a significant extinction risk to *T. gigas*. Thus, for the purpose of this SPR analysis, we distinguish locations in Australia (i.e., the Great Barrier Reef and NW Australia) from all other locations where *T. gigas* occurs and consider them as two separate portions of the species’ range.

In this case, the portion of the range outside of Australia that we considered further includes 29 countries and territories (Andaman and Nicobar Islands (India), Christmas Island, Cocos (Keeling) Islands, Japan, Taiwan, China, South China Sea, Indonesia, Malaysia, Myanmar, Cambodia, Philippines, Singapore, Thailand, Vietnam, East Timor, Fiji, New Caledonia, Papua New Guinea, Solomon Islands, Vanuatu, FSM, Guam, Republic of Kiribati, Marshall Islands, CNMI, Palau, Tonga, and Tuvalu) where the primary threat to the species is overutilization. In all of these locations, the best available scientific and commercial data, consisting of survey data as well as qualitative descriptions of abundance, suggest that past commercial harvest for the giant clam meat trade, past and ongoing subsistence harvest, and widespread illegal poaching have driven *T. gigas* to exceptionally low abundance, and in many cases, extirpation. Based on the demographic risks of low abundance and low productivity in this portion, and the ongoing threats of overutilization and inadequate regulatory mechanisms to address overutilization in all 29 locations, we conclude that in the portion of the species’ range defined as all locations outside of Australia, *T. gigas* is at or near a level of abundance that places it at high risk of extinction.

To evaluate whether this portion is “significant,” we applied similar rationale as was used with respect to the SPR analyses for *H. hippopus* and *T. derasa*. We considered the historically high abundance of *T. gigas* in this portion of the range, as evidenced by trade statistics and the many reports of major population losses resulting from years of subsistence and commercial harvest. Additionally, as was described

in relation to *H. hippopus* and *T. derasa*, it is likely that populations of *T. gigas* in this portion played an important role in maintaining genetic connectivity throughout the species’ range. Given the relatively short pelagic larval phase of giant clams (~6–14 days), there is a diminishing likelihood of larval dispersal between locations at progressively greater distances. Therefore, genetic exchange between distant populations likely relied on many smaller dispersal events across the network of more closely spaced islands or habitat areas that comprise this portion of the species’ range. Lastly, considering the geographic extent of this portion and the diverse habitats that it encompasses, the populations of *T. gigas* within this portion likely served as an important demographic and genetic reserve, which could facilitate recovery following localized population declines. Based on this rationale, we find that the portion of the species’ range defined as all locations outside of Australia is “significant,” or in other words serves a biologically important role in maintaining the long-term viability of *T. gigas*.

T. mbalavuana

Despite a lack of formal, comprehensive abundance estimates, the best available scientific and commercial data suggest that *T. mbalavuana* occurs at exceptionally low abundance and is sparsely distributed throughout its highly restricted range. Anecdotal accounts from traditional fishermen in Tonga indicate that the species has experienced significant population loss since the 1940s, which has been attributed at least in part to longstanding harvest of giant clams in both Fiji and Tonga, where the species primarily occurs. The inherent risks of such low abundance are compounded by low natural productivity and the likelihood of the Allee effect, which likely prevents any substantial short-term recovery. Additionally, our threats assessment revealed that past and present overutilization and associated inadequacy of existing regulatory mechanisms at the local level contribute most significantly to the extinction risk of this species. *T. mbalavuana* has historically been and continues to be collected for subsistence consumption and for sale in domestic markets, occasionally being mistaken for *T. derasa* by local fishermen. While commercial export of giant clams has been prohibited in both Fiji and Tonga, existing regulations afford little protection to the species from the ongoing domestic harvest. Based on our assessment of these threats and

demographic risk factors, we conclude that *T. mbaluvana* is at a high risk of extinction throughout its range.

T. squamosa

Considering the best available scientific and commercial data regarding *T. squamosa* from all locations of the species' range, we determined that the most critical demographic risk to the species is the low natural productivity of giant clams generally, reflected by reports of little to no *T. squamosa* recruitment in several recently published surveys from Malaysia, Singapore, and Palau. Additionally, our threats assessment revealed that past and present overutilization due to subsistence fisheries, domestic markets, the international trade of giant clam shells and shell-craft, and the international trade of live giant clams for aquaria, as well as the inadequacy of existing regulatory mechanisms to address overutilization contribute most significantly to the extinction risk of this species. Continued harvest of *T. squamosa* primarily for subsistence purposes, combined with the species' low productivity may drive further population declines and prevent substantial recovery in locations where the species is already rare, including much of southeast Africa and the Pacific islands.

However, the best available scientific and commercial data indicate that there are a number of locations where *T. squamosa* still occurs at relatively high abundance. This includes significant portions of South Asia and the Red Sea, two regions which notably have been subjected to a long history of subsistence harvest, and in the case of South Asia, intense commercial trade of *T. squamosa* shells throughout the 1980s. Yet, based on available reports, we consider *T. squamosa* to be "frequent" (10–100 ind ha⁻¹) or "abundant" (>100 ind ha⁻¹) in locations such as Indonesia, the Philippines, Malaysia, Australia (Great Barrier Reef), the Solomon Islands, and Saudi Arabia, all of which host substantial coral reef habitat, and likely also suitable habitat for *T. squamosa* based on the species' known habitat preferences. Furthermore, of the 63 locations where *T. squamosa* has been observed, it has been reported as likely extirpated in only 2 of them. Thus, its current distribution encompasses an expansive geographic range and broad array of environmental conditions. Together, these factors suggest that, despite the many reports of population decline in most locations throughout its range, *T. squamosa* may be somewhat resilient to

the threat of subsistence harvest at its current level, particularly in the Indo-Malay and Red Sea regions.

The general lack of information regarding *T. squamosa* productivity (e.g., natural reproductive and recruitment success) and long-term abundance trends limits our understanding of the factors that may underlie this apparent resilience. One important factor may be that, although *T. squamosa* was harvested extensively for the commercial shell trade in the 1980s, it was not targeted for its meat by commercial entities and illegal poachers with the same intensity as *T. gigas* and *T. derasa*, which severely depleted these species in the South Asia region. It is also possible that the global abundance of *T. squamosa* was historically larger than other giant clam species, or that high demographic connectivity within the Indo-Pacific and Red Sea regions, as is suggested by the available population genetic data, may facilitate significant larval exchange and recovery of depleted populations.

Regardless, given the relatively high abundance of *T. squamosa* in major portions of its range and its expansive distribution, we conclude that the species is at low risk of extinction throughout its entire range. In other words, based on the best available scientific and commercial data, we find it unlikely that the current and projected threats to the species, namely ongoing subsistence harvest and inadequate regulatory mechanisms to address overutilization, place the continued existence of *T. squamosa* in question presently or within the foreseeable future.

SPR Analysis: *T. squamosa*

Having determined that *T. squamosa* is at low risk of extinction throughout all of its range, in order to inform the listing determination, we conducted an additional analysis to assess whether the species is at higher risk of extinction in a "significant portion of its range"—that is, we assessed whether there is any portion of the species' range for which it is true that both (1) the portion is significant and (2) the species, in that portion, is in danger of extinction or likely to become so in the foreseeable future. We analyzed two different configurations of portions (e.g., Australia and all areas where *T. squamosa* currently is known to occur outside of Australia; and Red Sea, southeast Africa, Indo-Malay Archipelago, and Cenderwasih Bay), both of which had a reasonable likelihood of meeting these conditions, as described in more detail below.

As with the SPR analyses for *H. hippopus*, *T. derasa*, and *T. gigas*, because we determined that the most significant threats to *T. squamosa* are overutilization and inadequacy of regulatory mechanisms to address that threat, we base our analysis here on the portion of the range where these threats are most severe. Using the same rationale as was used for *H. hippopus*, *T. derasa*, and *T. gigas*, we distinguish locations in Australia (i.e., the Great Barrier Reef and NW Australia) from all other locations where *T. squamosa* occurs and consider them as two separate portions of the species' range.

The portion outside of Australia that we further considered includes 59 countries and territories (see table 1) where the primary threat to the species is overutilization due to subsistence fisheries, domestic markets, the international trade of giant clam shells and shell-craft, and the international trade of live giant clams for aquaria. Unlike the SPR analyses for *H. hippopus*, *T. derasa*, and *T. gigas*, however, there are a number of locations, including the Philippines, Indonesia, Malaysia, and much of the Red Sea, where the best available scientific and commercial data suggest that *T. squamosa* abundance is quite high and where there is substantial coral reef area, and likely suitable habitat for *T. squamosa* based on the species' known habitat preferences.

While it is clear that *T. squamosa* has suffered significant population declines throughout much of this portion of its range, available reports suggest that a major fraction of the loss can be attributed to the intense commercial demand for its shell and shell products in the 1980s, particularly in the South Asia region. Since the early 1990s, when the commercial shell industry in the Philippines began to dwindle, harvest of *T. squamosa* has primarily been limited to a smaller scale, mostly for subsistence consumption or for sale in local markets. As is discussed above, harvest for subsistence purposes continues to occur in all locations outside of Australia, constituting the most significant present and future threat to *T. squamosa* within this portion of its range.

Without the benefit of long-term monitoring data, we are not able to assess population trends over the last few decades to quantitatively evaluate the effect of the ongoing subsistence harvest. However, given the reports of relatively high abundance in locations such as the Philippines, Indonesia, and Malaysia, where *T. squamosa* has been subjected to both commercial harvest and longstanding subsistence harvest,

and much of the Red Sea, where subsistence harvest is common, we find that *T. squamosa* is at low risk of extinction in this portion of its range.

Having determined that *T. squamosa* is at low risk of extinction in the portion of its range including all locations outside of Australia, we also considered population genetics as a means of delineating alternative portions of the species' range. As is discussed above, the best available population genetic data indicate at least four (possibly five) discrete metapopulations, located in the Red Sea, southeast Africa, Indo-Malay Archipelago, and Cenderwasih Bay in northern Papua (and a possible fifth population in the eastern Indian Ocean). Studies of other broadly distributed species (e.g., *T. maxima* and *T. crocea*) suggest that there may also be genetic breaks between the central and western Pacific islands, and also between the western Pacific and Indo-Malay Archipelago (Nuryanto & Kochzius, 2009; Huelsen *et al.*, 2013; Hui *et al.*, 2016). However, we were not able to find any studies including data from *T. squamosa* populations in the Pacific islands to confirm these patterns in this species. Because population genetic patterns are often variable between species, we cannot rely on these inferences for the purposes of this analysis.

Therefore, we consider the populations of *T. squamosa* in the Red Sea, southeast Africa, Indo-Malay Archipelago, and Cenderwasih Bay as four distinct portions of the species' range. As has been addressed above, the relatively high abundance of *T. squamosa* within the Red Sea and Indo-Malay regions leads us to conclude that the species is likely at low risk of extinction in these portions of its range. With respect to the portions in southeast Africa and in Cenderwasih Bay, given their genetic and likely demographic isolation from the majority of the species' range, as well as the relatively small geographic area they occupy, we do not find that these two portions can be considered "significant," or that they likely serve a biologically important role in maintaining the long-term viability of this species. Thus, as a result of this SPR analysis, we do not find any portions within the range of *T. squamosa* for which it is true that both the portion is significant and that the species in the portion is at moderate or high risk of extinction.

T. squamosina

The best available scientific and commercial data suggest that *T. squamosina* occurs at exceptionally low abundance and is sparsely distributed

throughout its highly restricted range. Since the re-discovery of the species in 2008, there have been only 30 recorded observations of *T. squamosina*, which are divided between the Gulf of Aqaba in the northern Red Sea and two sites including the Farasan Islands in the south. The inherent risks of such low abundance are compounded by low natural productivity, which likely prevents any substantial recovery of the species in the near future. Additionally, our threats assessment revealed that past and present overutilization and associated inadequacy of existing regulatory mechanisms at the local level contribute most significantly to the extinction risk of this species. *T. squamosina* has historically been and continues to be collected for subsistence consumption and for sale in domestic markets, and the existing regulatory mechanisms are limited to the management of a few protected areas, affording little protection to the species in the remainder of its range. Based on our assessment of these threats and demographic risk factors, we conclude that *T. squamosina* is at a high risk of extinction throughout its range.

Protective Efforts

Section 4(b)(1)(A) of the ESA requires that NMFS make listing determinations based solely on the best available scientific and commercial data after conducting a review of the status of the species and taking into account those efforts, if any, being made by any State or foreign nation, or political subdivisions thereof, to protect and conserve the species. Above, we identified local and international regulatory mechanisms that have been adopted in some parts of these species' ranges, and determined that these mechanisms were generally inadequate to address threats arising from overutilization outside of Australia. In reaction to dwindling giant clam stocks throughout the Indo-Pacific, several nations have supported efforts exploring the use of mariculture to replenish and/or re-establish populations in local waters. As of 2016, there were an estimated 20 giant clam mariculture facilities in operation, primarily in the Pacific islands, as well as in Indonesia, Malaysia, the Philippines, and Australia (Mies, Dor, *et al.*, 2017). Here, we specifically examine whether mariculture efforts may be contributing to the protection and conservation of the seven giant clam species at issue in this proposed rulemaking.

There is extensive literature highlighting the challenges of giant clam mariculture generally, and particularly for the purpose of stock replenishment

(Munro, 1993a; Gomez & Mingoa-Licuanan, 2006; Teitelbaum & Friedman, 2008; Mies, Scozzafave, *et al.*, 2017). The primary barrier to these efforts is the exceptionally low survival rate of giant clam larvae post-fertilization compounded by the time and resources required to protect juveniles once they have been outplanted and before they reach a size at which they are sufficiently protected from predation. Despite the numerous restocking and translocation programs known to exist throughout the Indo-Pacific, most are reported to still be operating on a small or pilot scale with only partial success, and further intensification of giant clam mariculture for the purpose of stock replenishment or reintroduction is in most cases considered economically unviable (Teitelbaum & Friedman, 2008; UNEP-WCMC, 2012).

One possible exception is in Palau, where the PMDC has pioneered many of the methods for giant clam mariculture and has successfully cultured large numbers of giant clams, particularly *T. derasa*. Following receipt of funding from the United States in 1982, the PMDC expanded production of giant clams substantially, and the facility began exporting significant quantities of "seed" clams (*i.e.*, small juveniles) and broodstock to many other Indo-Pacific countries and territories (Shang *et al.*, 1994). It is difficult in most cases to determine the exact purpose of the shipments—some were intended to be used exclusively for conservation-related stock enhancement, while others were used to establish local hatcheries for the purpose of subsistence or commercial harvest. Additionally, there are reports that a portion of the *H. hippopus* and *T. derasa* culture stock is being used to enhance giant clam populations in 23 conservation areas around Palau (Kinch & Teitelbaum, 2010; L. Rehm, pers. comm., May 26, 2022). We could not find any follow-up surveys specifically documenting the success of these efforts (or lack thereof). According to L. Rehm (pers. comm., May 26, 2022), authorities in Palau struggle to enforce the regulations of conservation areas, particularly those on offshore reefs, because they lack sufficient personnel and equipment, potentially negating any benefit of reseeded.

In regard to the individual species addressed here, several countries are known to have imported *H. hippopus* broodstock for the purposes of stock enhancement or reintroduction, but there is very little information regarding the success of these efforts in establishing sustainable populations of

H. hippopus in the wild. An unpublished report by Braley (*n.d.*) describes the outcome of translocating a single cohort of *H. hippopus* (~70,000 specimens) from Australia to Fiji, Tonga, and the Cook Islands in 1991. According to the report, survival to mid-1997 averaged 1.79 percent across all the countries, and was considerably higher in Tonga (5.2 percent) compared to Fiji (0.04 percent) and the Cook Islands (0.13 percent). In Fiji and the Cook Islands, only 9 and 27 clams, respectively, remained in 1997 from the original 25,000 and 20,000 clams delivered to the countries in 1991. In Tonga, 1,300 of the 25,000 original clams survived to 1997, but many of these were still being actively managed in protective cages on the sand flat.

There have also been a number of countries and territories which have cultured or imported *T. derasa* and *T. gigas* for the purpose of restocking depleted populations or to introduce the species to locations outside of its natural range. Because of its relatively fast growth rate, *T. derasa* has been a priority for mariculture throughout the Indo-Pacific for many years. There are at least 17 countries and territories with hatchery and/or growout facilities that have cultured *T. derasa* for the purpose of enhancing depleted populations (Lindsay *et al.*, 2004; Mies, Dor, *et al.*, 2017), and several others that have initiated *T. derasa* restocking programs without domestic hatcheries (Teitelbaum & Friedman, 2008).

There are also numerous mariculture facilities where *T. squamosa* has been cultured successfully, but most are focused primarily on commercial production for the ornamental aquarium industry. We are aware of facilities in Fiji, Tonga, Cook Islands, Marshall Islands, Palau, Papua New Guinea, American Samoa, Samoa, FSM, Solomon Islands, Tuvalu, Vanuatu, Japan, Philippines, Malaysia, Indonesia, Thailand, Australia, and Hawaii (USA), which produce *T. squamosa* currently or did so in the past (Kittiwattanawong *et al.*, 2001; Lindsay *et al.*, 2004; Gomez & Mingoa-Licuanan, 2006; Teitelbaum & Friedman, 2008; Mies, Dor, *et al.*, 2017; Neo *et al.*, 2019). While many have experimented with outplanting cultured clams with the purpose of restocking natural populations, it seems that success of these efforts has been limited in most cases for reasons that have been discussed above (*e.g.*, difficulties in sustaining funding, monitoring, and protection). For example, the Marine Science Institute at the University of the Philippines produced 23,020 *T. squamosa* juveniles in October 2002 and distributed the clams throughout the

Mindanao region to restock natural populations (Gomez & Mingoa-Licuanan, 2006). The fate of this specific restocking effort has not been publicly reported, but other species that had been outplanted during the same period (primarily *T. gigas*) experienced high mortality in part due to a loss of institutional support, which limited the resources and personnel available to maintain and monitor the outplants (Gomez & Mingoa-Licuanan, 2006). Thus, it is likely that the *T. squamosa* suffered similarly low survivorship.

We are aware of two examples that have reported some measure of success in establishing sustainable populations of *T. derasa* in the wild. In Tonga, village-based nurseries of *T. squamosa* and *T. derasa* led to a notable increase in juvenile recruitment according to local accounts (Chesher, 1993). Villagers of Vava'u conveyed to the author that they had never seen so many young clams in surrounding reefs and that the children had collected and eaten "baskets" of them. This account, however, highlights the primary motivation of this effort, which was to replenish the natural giant clam stocks to support subsistence harvest, not to establish and conserve a sustainable population of the species. The most recent published survey of giant clams in the Vava'u area found that abundance of *T. squamosa* was very low, likely as a result of the ongoing harvest. Only 3 *T. derasa* and 10 *T. squamosa* were recorded in total across 27 survey sites in the area (Atherton *et al.*, 2014). Similarly, with significant financial support from the United States, FSM imported approximately 25,000 *T. derasa* from Palau in 1984–90 with the goal of establishing naturally reproducing populations on Yap and several of its outer atolls (Lindsay, 1995). Because the species is not endemic to FSM, researchers were able to easily monitor whether the introduced populations did indeed reproduce and recruit successfully. However, a number of challenges, including theft, neglect, limited aquaculture skills, and storm damage, led to large losses of introduced clams (Lindsay, 1995). At the time of the report in 1995, a small percentage (approximately 8 percent) of introduced *T. derasa* remained, but there was evidence of successful reproduction and recruitment of offspring on surrounding reefs. Surveys conducted by the Secretariat of the Pacific Community (PROC-Fish/C–CoFish programmes) noted the continued presence of *T. derasa* in Yap in low numbers in mid-2006 (Teitelbaum & Friedman, 2008).

We were not able to find any more recent monitoring data to indicate the current status of this introduced population, but with subsistence harvest of giant clams prevalent in FSM (Lindsay, 1995), it is unlikely to have grown significantly.

Beyond these examples, we could not find any other records documenting successful giant clam restocking initiatives. As is explained by Munro (1993b), efforts to replenish populations in areas where giant clams are still harvested should more accurately be viewed as "a form of fishery enhancement," in that outplanted individuals will simply increase harvest volume rather than contribute to the conservation and long-term population growth of the species. In order to achieve significant conservation success, restocking initiatives must be accompanied by effective enforcement of harvest bans or an otherwise substantial reduction of harvest pressure on giant clams. However, as is discussed above, subsistence fishing for all giant clam species is ongoing throughout their respective ranges, and in most locations where harvest bans are in place, regulations are often poorly enforced.

There have also been a number of projects funded by the U.S. government seeking to explore markets, marketing strategies, and production economics for giant clams, with a particular focus on the Pacific islands that are subject to U.S. jurisdiction (Shang *et al.*, 1990, 1992; Leung *et al.*, 1994). As is described by Wells (1997), these projects have sponsored workshops on CITES and giant clam mariculture (Killelea-Almonte, 1992), funded hatchery development in American Samoa, and provided giant clam aquaculture training support for the U.S. Pacific Island territories. In American Samoa, *T. derasa*, *T. gigas*, and *H. hippopus* have all been cultured at the government hatchery with the "main aim of establishing local farms to produce meat for local market" (Wells, 1997). Wells (1997) reported that there were 6 lagoon nursery sites and 25 small-scale farms in operation in 1995, but the current status of each of these operations is not clear. According to Marra-Biggs *et al.* (2022), the "stocks were harvested prior to reproduction and appear to be functionally extirpated." Samoa gifted approximately 650 *T. derasa* juveniles to American Samoa at the end of 2023, but similar to past giant clam nurseries, it appears that the primary ambition for this initiative is to establish a sustainable food source for the local community (American Samoa Department of Marine and Wildlife Resources Agency Report

2024). In Guam, a giant clam hatchery was established at the Guam Aquaculture Development and Training Center and in the past has received a number of shipments of *T. derasa* broodstock from the PMDC (Wells, 1997). However, many were lost due to damage from a cyclone in 1992, leaving approximately 100 specimens alive by 1994 (Wells, 1997). The current status of this initiative is not clear, but similar to American Samoa, many sources indicate that past attempts at giant clam mariculture in Guam have been plagued by persistent poaching. Heslinga *et al.* (1984) also noted that PMDC had shipped 500 *T. gigas* and 500 *T. squamosa* to the University of Guam Marine Laboratory “to explore the possibility of reintroducing giant clams to areas where they are now extinct or very rare.” However, we could not find any information indicating the outcome of these reintroductions, and later reports consistently consider *T. gigas* to be extinct in Guam (Munro, 1994; Pinca *et al.*, 2010; Neo *et al.*, 2017). Lastly, there is a report that *T. gigas* and *T. squamosa* were introduced to Keahole Point, Hawaii as part of a 5-year research project by Indo-Pacific Sea Farms to explore aquaculture of ornamental marine invertebrates for the aquarium trade (Heslinga, 1996). However, we are not aware of any efforts to outplant giant clams in Hawaii specifically for the purpose of establishing sustainable populations in the wild.

Thus, while there are many known mariculture facilities throughout the Indo-Pacific that have successfully bred and raised giant clams *ex situ*, there is little evidence that these initiatives further the protection or conservation of the seven species considered here. Without further information or survey data demonstrating such success, we consider the impact of these initiatives to be negligible with respect to the status of the species.

Proposed Listing Determinations

We have independently reviewed the best available scientific and commercial data, including the petition, public comments submitted in response to the 90-day finding (82 FR 28946, June 26, 2017), the Status Review Report, and other published and unpublished information. We considered each of the statutory factors to determine whether they contributed significantly to the extinction risk of each of the seven giant clam species considered here, alone or in combination with one another. As required by section 4(b)(1)(A) of the ESA, we also took into account efforts to protect the species by States, foreign

nations, or political subdivisions thereof, and evaluated whether those efforts provide a conservation benefit to the species.

Having considered this information in its entirety, we have determined that *H. porcellanus*, *T. mbalavuana*, and *T. squamosa* are presently in danger of extinction throughout the entirety of their respective ranges, *T. derasa* and *T. gigas* are in danger of extinction in a significant portion of their respective ranges, and *H. hippopus* is likely to become an endangered species within the foreseeable future in a significant portion of its range. Therefore, we propose to list *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosa* as endangered species and *H. hippopus* as a threatened species under the ESA. We have determined that the fluted clam (*T. squamosa*) is not currently in danger of extinction throughout all or a significant portion of its range and is not likely to become so within the foreseeable future. Therefore, we find that *T. squamosa* does not meet the definition of a threatened or an endangered species under section 4(a)(1) of the ESA.

This finding is consistent with the statute’s requirement to base our findings on the best scientific and commercial data available, which is summarized and analyzed above, and discussed in more detail in Rippe *et al.* (2023).

Similarity of Appearance

As discussed in the section titled *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*, giant clams and their derivative products (*e.g.*, meat, shells, and shell carvings) are traded extensively in international markets and are commonly imported into the United States. Beginning in 2009, U.S. customs officials began encountering regular shipments of giant clam meat from Pacific island nations, chiefly from the Marshall Islands and FSM, but also from Fiji, Tonga, Palau, Samoa, Kiribati, and French Polynesia. Law enforcement personnel report that the meat is typically frozen in plastic bags or bottles and is often shipped in coolers mixed together with various other seafood products. The shipments are very rarely accompanied by valid CITES permits and are therefore nearly always seized or refused entry at the border when discovered.

LEMIS trade data provided by USFWS indicate that an average of 127 shipments of giant clam meat originating from the Marshall Islands and FSM were seized or refused entry at U.S. ports of entry per year from 2016

to 2020. These shipments equated to approximately 233 kg and 4,504 specimens per year, reflecting shipments recorded by weight and by number of specimens, respectively. Furthermore, over the past two years, U.S. law enforcement has documented an additional 250 cases of giant clam meat violations and seizures between December 2021 and October 2023 (S. Valentin, USFWS Office of Law Enforcement, pers. comm., November 8, 2023). The LEMIS trade data also reveal an average of 9 shipments of shell carvings, jewelry, and other worked shell products into the United States per year from 2016 to 2020. These shipments comprise approximately 152 specimens per year on average, in most cases without record of the location or species of origin.

Critically, for derivative giant clam parts and products, such as meat that has been removed from the shell and worked shell items (*i.e.*, carvings and jewelry), law enforcement personnel are not able to visually determine or verify the species from which the product is derived. Therefore, it is possible that these shipments may have contained any of the six giant clam species that are proposed for listing based on their extinction risk (*i.e.*, *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosa*).

Section 4(e) of the ESA authorizes the treatment of a species, subspecies, or population segment as endangered or threatened if: “(a) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.”

The aforementioned reports from U.S. law enforcement personnel make it clear that the similarity of appearance between worked products derived from the species that are proposed for listing (*i.e.*, *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, *T. squamosa*) and those from the species that are not proposed for listing (*i.e.*, *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa*) causes substantial difficulty for law enforcement personnel in attempting to differentiate between the six species proposed for listing and the other four species that are not. Law enforcement personnel have expressed confidence in distinguishing the meat of

giant clams from that of other marine fauna based on visual characteristics, but note that visual differentiation between giant clam species is not possible.

Furthermore, the difficulty in distinguishing the species from which worked products are derived is an additional threat to the six species proposed to be listed under section 4(a)(1) of the Act. Due to the inadequacy of existing regulations, lack of enforcement capacity, and typical harvesting practices in most Pacific island nations (see sections titled *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes* and *The Inadequacy of Existing Regulatory Mechanisms*), it is possible, if not likely, that giant clam specimens reaching U.S. ports are harvested opportunistically with little regard for the species collected. Moreover, neither the Marshall Islands nor FSM are signatories to CITES and have not demonstrated the capacity to assess and regulate the trade of protected species. Because of these regulatory inadequacies and the aforementioned U.S. enforcement challenges, it is feasible that persons engaging in commerce involving derivative products from one of the six species proposed to be listed could misrepresent, either accidentally or purposefully, that such products are derived from a species that has not been proposed for listing. For example, a recent forensic investigation revealed that several recent seizures of giant clam meat contained specimens that were identified genetically as *H. hippopus*, *T. gigas*, and *T. maxima*, a combination of species that are and are not proposed to be listed. The meat of the three species was otherwise indistinguishable by law enforcement personnel, highlighting the substantial difficulty in differentiating the species visually and the potential for those species that are proposed to be listed as threatened or endangered to be misrepresented as species that are not proposed to be listed in shipments to the United States. In addition, given the significant volume of giant clam meat and shell products intercepted by law enforcement personnel on a regular basis, it is not always possible to conduct detailed forensic analyses due to a limited capacity to store and process the samples on site.

In order for the ESA's import and export restrictions to be effective, enforcement personnel must be able to quickly determine whether derivative parts or products are from a listed species at U.S. ports of entry and take appropriate enforcement action to suppress illegal trade. Misrepresentation

of the species of giant clam would prevent effective enforcement of the import and export restrictions on the species proposed to be listed, because enforcement personnel will not be able to visually determine which species derivative parts or products are from. The high risk of misrepresentation, coupled with the visual similarity of certain derivative part or products of giant clams species, creates a loophole that would undermine the effectiveness of import and export restrictions imposed under section 9(a)(1)(A) of the ESA. The effect of this loophole—the weakened deterrent value of the Act in protecting the species proposed to be listed due to the substantial difficulty in visually distinguishing derivative parts or products among different species of giant clams—is an additional threat to the species that we propose to list under section 4(a)(1).

The similarity of appearance regulation proposed by NMFS in this action would substantially facilitate enforcement of the ESA's import and export restrictions, because it would allow enforcement personnel to easily identify and take enforcement action when they identify derivative parts or product from giant clams at U.S. ports of entry. Without a similarity of appearance regulation, derivative parts and products from a listed giant clam species could easily be mislabeled and imported to or exported from the U.S. This would substantially undermine the enforcement of regulations under section 9(a)(1) and section 4(d) for the protection of the proposed endangered and threatened species, respectively. We therefore propose to list *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* as threatened species under the authority of section 4(e) of the ESA. These four species have ranges that overlap the Pacific region where virtually all of the shipments of giant clam meat to the U.S. originate. Taking this action would alleviate an enforcement challenge that has the potential to contribute to unauthorized commerce of endangered and threatened giant clam species in the U.S. and would provide for the conservation of these species under the ESA.

Effects of This Rulemaking

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)); concurrent designation of critical habitat, if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); Federal agency requirements to consult with NMFS under section 7 of the ESA to ensure their actions are not likely to jeopardize

the species or result in adverse modification or destruction of critical habitat should it be designated (16 U.S.C. 1536); and, for endangered species, prohibitions on “taking” (16 U.S.C. 1538). Recognition of the species' plight through listing also promotes conservation actions by Federal and State agencies, foreign entities, private groups, and individuals.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

All of the prohibitions of section 9(a)(1) of the ESA will apply to the five species of giant clams that are proposed to be listed as endangered (*i.e.*, *H. porcellaneus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosa*), should the proposed rule be adopted. We are also proposing to extend the section 9(a)(1) prohibitions to *H. hippopus*. Section 9(a)(1) prohibits import; export; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce of the species, by any means whatsoever and in the course of commercial activity; or sale or offer for sale in interstate or foreign commerce. Section 9(a)(1) also prohibits take within the United States or on the high seas; or to possess, sell, deliver, carry, transport, or ship a species that has been taken in violation of the ESA.

On July 1, 1994, NMFS and USFWS published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. Based on available information, we believe that the following categories of activities are most likely to result in a violation of the ESA section 9 prohibitions should the proposed rule be adopted. We emphasize that whether a violation results from a particular activity is dependent on the facts and circumstances of each incident. The mere fact that an activity may fall within one of the categories does not mean that the specific activity will cause a violation; due to such factors as location and scope, specific actions may not result in direct or indirect adverse effects on a species. Further, an activity not listed may in fact result in a violation. However, based on currently available information, we believe the following types of activities that could result in a violation of section 9 prohibitions include, but are not limited to, the following:

(1) Take of any listed species within the U.S. or its territorial sea, or upon the high seas. Take is defined in section 3 of the ESA as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”;

(2) Possessing, delivering, transporting, or shipping any individual or part of listed species (dead or alive) taken in violation of section 9(a)(1)(B) or 9(a)(1)(C);

(3) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any individual or part of listed species, in the course of a commercial activity, even if the original taking was legal;

(4) Selling or offering for sale in interstate or foreign commerce any part of listed species, except antique articles at least 100 years old;

(5) Exporting or importing any individual or part of listed species to or from any country;

(6) Releasing captive or cultured specimens of listed species into the wild. Although specimens held non-commercially in captivity at the time of listing are exempt from certain prohibitions, the individual animals are considered listed and afforded most of the protections of the ESA, including most importantly the prohibitions against injuring or killing of endangered species. Release of a captive animal has the potential to injure or kill the animal. Of an even greater conservation concern, the release of a captive animal has the potential to affect wild populations through introduction of diseases or inappropriate genetic mixing. Depending on the circumstances of the case, NMFS may authorize the release of a captive animal through a section 10(a)(1)(A) permit;

(7) Altering the habitat of listed species in such a way that results in injury or death of the species, such as removing or altering substrate or other physical structures, activities resulting in elevated water temperatures that lead to bleaching or other degradation of the physiological functions of listed species, and activities resulting in altered water chemistry and/or water acidification that lead to reduced calcification rates, reproductive impairment, or other degradation of physiological functions of listed species; and

(8) Discharging pollutants or organic nutrient-laden water, including sewage water, into the habitat of listed species to an extent that harms or kills listed species.

This list provides examples of the types of activities that are likely to cause a violation, but it is not exhaustive. Persons or entities concluding that their

activity is likely to violate the ESA are encouraged to immediately adjust that activity to avoid violations and to seek authorization under: (a) an ESA section 10(a)(1)(B) incidental take permit; (b) an ESA section 10(a)(1)(A) research and enhancement permit; or (c) an ESA section 7 consultation. The public is encouraged to contact us (see **FOR FURTHER INFORMATION CONTACT**) for assistance in determining whether circumstances at a particular location, involving these activities or any others, might constitute a violation of the ESA. Furthermore, the scientific research community is encouraged to submit applications for research to be conducted on *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosina* so that the research can continue uninterrupted should this proposed rule be adopted.

Identification of Those Activities That Would Not Constitute a Violation of Section 9 of the ESA

We have also identified, based on information available at this time, categories of activities that are not considered likely to result in a violation of section 9 should the proposed rule be adopted. As noted above, whether a violation results from a particular activity is entirely dependent on the facts and circumstances of each incident, and it is possible that specific actions taken on this list may in fact result in a violation. However, although not binding, we consider the following actions as not likely to result in violations of ESA section 9:

(1) Take authorized by, and carried out in accordance with the terms and conditions of, an ESA section 10(a)(1)(A) permit issued by NMFS for purposes of scientific research or the enhancement of the propagation or survival of the listed species;

(2) Incidental take of a listed species resulting from Federally authorized, funded, or conducted projects for which consultation under section 7 of the ESA has been completed, and when the otherwise lawful activity is conducted in accordance with any terms and conditions granted by NMFS in an incidental take statement of a biological opinion pursuant to section 7 of the ESA;

(3) Continued possession of listed species that were in captivity at the time of listing, including any progeny produced from captive specimens after the rule is finalized, so long as the prohibitions of ESA section 9(a)(1) are not violated. Specimens are considered to be in captivity if they are maintained in a controlled environment (e.g., land-based aquaria) or under human care in

open-water nurseries (i.e., protected nearshore enclosures under the active management of humans). Specimens are not considered to be in captivity if they have been outplanted to a natural habitat or restoration site. Individuals or organizations should be able to provide evidence that specimens or parts of listed species were in captivity prior to their listing. Captive specimens may be non-commercially exported or imported; however, the importer or exporter must be able to provide evidence to show that the parts meet the criteria of ESA section 9(b)(1) (i.e., held in a controlled environment at the time of listing, in a non-commercial activity);

(4) Providing normal care for legally-obtained captive specimens of listed species. Normal care includes handling, cleaning, maintaining water quality within an acceptable range, extracting tissue samples for the purposes of disease diagnosis or genetics, and treating of maladies such as disease or parasites using established methods proven to be effective;

(5) Interstate transportation of legally-obtained captive specimens or parts of listed species, provided it is not in the course of a commercial activity. If captive specimens of listed species are to be moved to a different holding location, records documenting the transfer should be maintained;

(6) Use of captive specimens of listed species for scientific studies under the authorization of an ESA section 10(a)(1)(A) permit issued by NMFS;

(7) Import or export of live specimens or parts of listed species with all accompanying CITES export permits and an ESA section 10(a)(1)(A) permit for purposes of scientific research or the enhancement of the propagation or survival of the species.

Protective Regulations for Threatened Species Under Section 4(d) of the ESA

We are proposing to list *H. hippopus* as a threatened species under section 4(a)(1). The ESA does not specify particular prohibitions for threatened species. For species listed as threatened, the second sentence in section 4(d) of the ESA authorizes the Secretary to extend any or all of the prohibitions identified in section 9(a)(1) for endangered species to threatened species. We therefore propose to extend the section 9(a)(1) prohibitions in protective regulations issued under the second sentence of section 4(d) to *H. hippopus*. No special findings are required to support extending section 9 prohibitions for the protection of threatened species. See *In re Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation*, 818 F.Supp.2d 214, 228

(D.D.C. 2011); *Sweet Home Chapter of Cmities. for a Great Oregon v. Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), *modified on other grounds on reh'g*, 17 F.3d 1463 (D.C. Cir. 1994), *rev'd on other grounds*, 515 U.S. 687 (1995).

We are also proposing to list *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* as threatened species under section 4(e) of the ESA. Because these listings are being proposed on the basis of similarity of appearance rather than the extinction risk of these four species, we are not proposing to extend the section 9(a)(1) prohibitions to these species in a blanket fashion. Rather, we aim to facilitate the protection of *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosina* by mitigating the challenge that law enforcement personnel face in determining the species of origin for derivative parts and products of giant clams, such as meat and shell carvings, in imports and exports into and from the United States and its territories.

To do so, we are proposing to apply the ESA section 9(a)(1)(A) prohibition of import into and export from the United States and its territories to *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa*, but limit the prohibition to derivative parts and products for which the species of origin cannot be visually determined. For the purpose of this regulation, “derivative parts and products” are defined as: (a) any tissue part that has been removed from the shell, including mantle tissue, adductor muscle, portions thereof, or the whole flesh of the animal comprising both the mantle and adductor muscle; (b) any worked shell product, including handicrafts, sculptures, jewelry, tableware, decorative ornaments, and other carvings, but not raw, unworked shells; and (c) pearls or any product derived from a pearl. This prohibition would apply to commercial and non-commercial shipments of any such products of *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* and would make it unlawful for any person subject to the jurisdiction of the United States to import such products into or export such products from the United States or its territories.

No other prohibitions under section 9 of the ESA are proposed to be extended to these four species. A person would continue to be able to possess, deliver, carry, transport, ship, sell, or offer to sell *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa*, and their parts and products, domestically and in interstate and foreign commerce. We have information indicating that all four of these species occur within the waters of at least one U.S. Pacific Island territory.

T. maxima, in particular, is the target of several mariculture initiatives intended to establish a sustainable source of food and income for communities in American Samoa, Guam, and CNMI. The best available scientific and commercial information indicates that none of the other six species that we are proposing to list as endangered or threatened based on their extinction risk are still extant within U.S. waters. Therefore, it is unlikely that domestic activities and interstate commerce involving *T. crocea*, *T. maxima*, *T. noae*, or *T. squamosa* would threaten the status or recovery of *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosina* throughout their current range. For this reason, we are not proposing to prohibit these activities.

We are also not proposing to prohibit the import or export of live or intact specimens or raw, unworked shells of *T. crocea*, *T. maxima*, *T. noae*, *T. squamosa* into or from the United States and its territories. As mentioned above, there are several initiatives within the United States focused on culturing one or more of *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* for the purpose of providing food and income to local communities. These operations often rely on the international trade of live broodstock or juveniles between mariculture facilities to initiate or supplement a culture stock. We have no information to suggest that live or intact specimens or raw, unworked shells of giant clams are being misrepresented as incorrect species in imports or exports into or from the United States, nor that law enforcement personnel have substantial difficulties visually differentiating the species of origin for such shipments. Thus, there is little risk that imports or exports of live or intact *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* or raw, unworked shells of these species into or from the United States or its territories would threaten the status or recovery of *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosina* in the wild. We are therefore not proposing to prohibit those activities.

Identifying Section 7 Conference and Consultation Requirements

Section 7(a)(4) (16 U.S.C. 1536(a)(4)) of the ESA and NMFS/USFWS regulations (50 CFR 402.10) require Federal agencies to confer with NMFS on actions likely to jeopardize the continued existence of species proposed for listing, or that are likely to result in the destruction or adverse modification of proposed critical habitat of those species. If a proposed species is

ultimately listed, under section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and the NMFS/USFWS regulations (50 CFR part 402), Federal agencies must consult on any action they authorize, fund, or carry out if those actions may affect the listed species or its critical habitat to ensure that such actions are not likely to jeopardize the continued existence of the species or result in adverse modification or destruction of critical habitat should it be designated. Examples of Federal actions that may affect giant clams include, but are not limited to: alternative energy projects, discharge of pollution from point sources, non-point source pollution, contaminated waste disposal, dredging, pile-driving, development of water quality standards, and military activities.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. Critical habitat cannot be designated within foreign countries or in other areas outside the jurisdiction of the United States (50 CFR 424.12(g)). Thus, with respect to *H. porcellanus*, *T. mbalavuana*, and *T. squamosina*, which have highly restricted ranges that are entirely outside the jurisdiction of the United States, we cannot designate any areas as critical habitat within their occupied ranges.

At this time, critical habitat is not yet determinable for *H. hippopus*, *T. derasa*, and *T. gigas*, which are believed to occur in areas under U.S. jurisdiction, because data sufficient to perform

required analyses are lacking. See 50 CFR 424.12(a)(2). Therefore, we are not proposing to designate critical habitat for these species at this time. However, we invite public comments on physical and biological features and areas in U.S. waters that may be essential to these species and well as any other information that may inform our consideration of designating critical habitat for these three species (see Public Comments Solicited).

Designation of critical habitat would not be applicable to *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa*, because these species are proposed to be listed due to their similarity of appearance to *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosina*, rather than on the basis of their extinction risk.

Role of Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554) is intended to enhance the quality and credibility of the Federal Government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the draft Status Review Report. Three independent specialists were selected from the academic and scientific community for this review. After substantial revision of the Status Review Report following an initial round of peer review, one of the reviewers agreed to provide a second review of the updated version, and one additional review was received from a fourth expert from the scientific community. All peer reviewer comments were addressed prior to dissemination of the Status Review Report and publication of this document. The peer review report can be found online (see ADDRESSES).

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, we solicit comments and suggestions from the public, other governmental agencies, the scientific community, industry, environmental groups, territorial governments, cultural practitioners, indigenous communities, and any other interested parties. Comments are

encouraged on this proposal (see DATES and ADDRESSES). Specifically, we are interested in information regarding: (1) new or updated information regarding the range, distribution, and abundance of the six giant clam species proposed for listing based on their extinction risk (*H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosina*); (2) new or updated information regarding their genetics and population structure; (3) habitat within their range that was present in the past but may have been lost over time; (4) new or updated biological or other relevant data concerning any threats to these giant clams; (5) current or planned activities within their range and the possible impact of these activities on the relevant species; (6) recent observations or sampling of *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosina*; and (7) efforts being made to protect or recover natural populations of these species, and documented results of such efforts.

Public Comments Solicited on Critical Habitat

We request information describing the quality and extent of habitats for the three giant clam species proposed for listing based on their extinction risk and that occur in areas under U.S. jurisdiction (i.e., *H. hippopus*, *T. derasa*, and *T. gigas*), as well as information on areas that may qualify as critical habitat for these three species in U.S. waters. Specific areas that include the physical and biological features essential to the conservation of the species, where such features may require special management considerations or protection, should be identified. Areas outside the occupied geographical area should also be identified, if such areas may be essential to the conservation of the species. As noted previously, ESA implementing regulations at 50 CFR 424.12(g) specify that critical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction. Therefore, we request information only on potential areas of critical habitat within waters under U.S. jurisdiction.

Section 4(b)(2) of the ESA requires the Secretary to consider the economic impact, impact on national security, and any other relevant impact of designating a particular area as critical habitat. Section 4(b)(2) also authorizes the Secretary to exclude from a critical habitat designation those particular areas where the Secretary finds that the benefits of exclusion outweigh the benefits of designation, unless excluding that area will result in

extinction of the species. For features and areas potentially qualifying as critical habitat, we also request information describing: (1) Activities or other threats to the essential features or activities that could be affected by designating them as critical habitat; and (2) the positive and negative economic, national security and other relevant impacts, including benefits to the recovery of the species, likely to result if these areas are designated as critical habitat. We seek information regarding the conservation benefits of designating areas within waters under U.S. jurisdiction as critical habitat. In keeping with the guidance provided by OMB (2000; 2003), we seek information that would allow the monetization of these effects to the extent possible, as well as information on qualitative impacts to economic values.

Data reviewed may include, but are not limited to: (1) scientific or commercial publications; (2) administrative reports, maps or other graphic materials; (3) information received from experts; and (4) comments from interested parties. Comments and data particularly are sought concerning: (1) maps and specific information describing the abundance and distribution of *H. hippopus*, *T. derasa*, and/or *T. gigas*, as well as any additional information on occupied and unoccupied habitat areas; (2) the reasons why any habitat should or should not be determined to be critical habitat as provided by sections 3(5)(A) and 4(b)(2) of the ESA; (3) information regarding the benefits of designating particular areas as critical habitat; (4) current or planned activities in the areas that might be proposed for designation and their possible impacts; and (5) any foreseeable economic or other potential impacts resulting from designation, and in particular, any impacts on small entities.

You may submit your comments and supporting information concerning this proposal electronically, by mail (see ADDRESSES), or during public hearings (see DATES). The proposed rule and supporting documentation can be found on the Federal eRulemaking Portal at <https://www.regulations.gov> by entering NOAA–NMFS–2017–0029 in the Search box.

Public Informational Meetings and Public Hearings

Section 4(b)(5)(E) of the ESA requires us to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed rule to implement a species listing determination. Public hearings provide a forum for accepting formal

verbal comments on this proposed rule. Prior to each public hearing, we will provide an overview of the proposed rule during a public informational meeting. In-person and virtual public hearings on this proposed rule will be held during the public comment period at dates, times, and locations to be announced in a forthcoming **Federal Register** notice. Requests for additional public hearings must be made in writing (see **ADDRESSES**) by September 9, 2024.

References

A complete list of the references used in this proposed rule is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of NEPA (see NOAA Administrative Order 216–6A (2016) and the companion manual, “Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities,” which became effective January 13, 2017 (“Companion Manual”), at 2).

Further, we conclude that extension of the ESA section 9(a)(1) protections in a blanket or categorical fashion is a form of ministerial action taken under the authority of the second sentence of ESA section 4(d). Courts have found that it is reasonable to interpret the second sentence of section 4(d) as setting out distinct authority from that of the first sentence, which is invoked when the agency proposes tailored or special protections that go beyond the standard section 9 protections. See *In re Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation*, 818 F. Supp. 2d 214, 228 (D.D.C. 2011); *Sweet Home Chapter of Cmities. for a Great Oregon v. Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), *modified on other grounds on reh'g*, 17 F.3d 1463 (D.C. Cir. 1994), *rev'd on other grounds*, 515 U.S. 687 (1995). This type of action is covered under the NOAA categorical exclusion G7, which applies to “policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature . . .” See Companion Manual, Appx. E. None of the extraordinary

circumstances identified in § 4.A. of the Companion Manual apply.

However, the promulgation of ESA section 4(d) protective regulations in association with the proposed listing of *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* as threatened species is subject to the requirements of NEPA and we have prepared a draft Environmental Assessment (EA) analyzing the proposed 4(d) regulation for these species and alternatives. We are seeking comment on the draft EA, which is available on the Federal eRulemaking Portal (<https://www.regulations.gov/>) or upon request (see **DATES** and **ADDRESSES**, above).

Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analyses required by the Regulatory Flexibility Act are not applicable to the listing process nor the ministerial extension of the section 9(a) prohibitions to *H. hippopus*.

However, the promulgation of ESA section 4(d) protective regulations in association with the proposed listing of *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* as threatened species is subject to the requirements of the Regulatory Flexibility Act. We have prepared an initial regulatory impact analysis (IRFA) in accordance with section 603 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The IRFA analyzes the impacts to small entities that may be affected by the proposed 4(d) regulations for *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa*. To review the IRFA, see the **ADDRESSES** section above. We welcome comments on this IRFA, which is summarized below.

The IRFA first identified the types and approximate number of small entities that would be subject to regulation under the proposed rule. It then evaluated the potential for the proposed rule to incrementally impact small entities (*i.e.*, result in impacts to small entities beyond those that would be incurred due to existing regulations but absent the proposed rule). The IRFA was informed by data gathered from the Small Business Administration (SBA), Dun and Bradstreet, Inc., the CITES trade database, and the LEMIS trade database.

The IRFA examined the potential economic impacts on small entities of the proposed prohibition on the import and export of derivative parts and products of *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* into and from

the United States. It focused specifically on products that would otherwise be cleared by U.S. Customs and Border Protection officials and whose purpose of import or export is either commercial trade or non-personal exhibition. The prohibition on import or export of products coded as personal property by U.S. Customs and Border Protection officials would not impact a small business or other small entity, and any imports or exports of parts accompanied by both a valid CITES export permit and an ESA section 10(a)(1)(A) permit for purposes of scientific research or the enhancement of the propagation or survival of the species would be exempted from the proposed prohibition.

The IRFA anticipates that the proposed prohibition on the import and export of derivative parts and products of *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* would apply to thousands of small entities, but that only a small subset of these small entities would be impacted and impacts would be minor. Any additional costs associated with enforcement of the rule would be incurred by government agencies that do not qualify as small entities, and it is unlikely that the proposed rule would affect any small governmental jurisdictions.

The small entities most likely to be directly impacted by the proposed rule include those classified under the North American Industry Classification System (NAICS) as Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers (NAICS industry code 423940) and Museums (NAICS industry code 712110). According to data gathered from the Dun and Bradstreet Hoovers database, there are approximately 25,000 U.S. small entities classified as Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers and approximately 47,000 museums in the U.S. that qualify as small entities. Under the proposed rule, wholesalers could lose revenue that would otherwise be generated through the importation and sale, or exportation, of the derivative parts and products for commercial purposes. Museums or similar entities that would otherwise import and exhibit derivative parts and products could lose revenue if attendance declines as a result of an artistic item not being exhibited.

LEMIS trade data provided by the USFWS for the years 2016–2020 indicate that there were two imports into and two exports from the 50 states and the District of Columbia over these years of derivative parts or products of giant clams that were cleared by U.S. Customs and Border Protection officials

and whose purpose of import or export was either commercial trade or non-personal exhibition. As there is no basis for expecting an increase in the rate of U.S. import or export of derivative parts or products of giant clams over the foreseeable future, the IRFA assumes that the number, type, and dollar value of imports and exports of these products over the years 2016–2020 reasonably represents the composition of trade of these products that would occur in the future, absent the proposed rule. Based on a combined value of \$19,000 of U.S. imports and exports of derivative parts or products of giant clams from 2016 to 2020 for the purpose of commercial trade, this IRFA estimates that the proposed rule would result in annualized impacts on wholesalers of \$3,700 (2023 dollars). Revenue losses to museums cannot be quantified with available data but are expected to be minor, as there was only one import into and one export from the U.S. of a derivative product of giant clams between the years 2016–2020 for the purpose of exhibition in a museum. The item, a carving valued at \$44,000 (2023 dollars), was imported into and then exported from the U.S. in 2018. While it is possible that the proposed rule could result in a small entity wholesaler or museum with low annual revenue bearing impacts that constitute a large percentage of their annual revenue, this outcome is highly uncertain. Based on the low volume of annual U.S. imports and exports of derivative parts or products of giant clams, it is more likely that impacts on small entities would be minor and limited to a very small number of small entities.

The RFA requires consideration of any significant alternatives to the proposed rule that would accomplish the stated objectives of the applicable statutes and would minimize significant economic impacts to small entities. We considered the following alternatives when developing this proposed rule.

Alternative 1. No-action Alternative. Under the No-action Alternative, NMFS would not apply any protective regulations in association with the proposed listing of *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* as threatened species under section 4(e) of the ESA, and there would be no change from current management policies of these four species. Alternative 1 represents the regulatory status quo with respect to *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa*, but assumes that *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosina* would be listed as endangered and *H. hippopus* would be listed as threatened

under the ESA due to their extinction risk.

Without a prohibition on the import into and export from the U.S. of derivative parts and products derived from *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa*, derivative parts and products derived from any of the six species proposed to be listed due to their extinction risk could be misidentified by law enforcement officials as deriving from these four species. Thus, Alternative 1 would undermine the listing of *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* based on the similarity of appearance of their derivative products to those of the six species proposed to be listed due to their extinction risk, as their listing would provide no incremental benefit to the survival and recovery of six species proposed to be listed as endangered or threatened. No incremental impacts would be borne by small (or large) entities, but *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, and *T. squamosina* would continue to be at risk of further declines in abundance and increased risk of extinction due to international trade of their derivative parts and products. Thus, Alternative 1 is not a reasonable alternative.

Alternative 2. Proposed Alternative. Under the Proposed Alternative, the import into and export from the U.S. of derivative parts and products from *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* would be prohibited. This alternative would allow for import into and export from the U.S. of live and intact specimens and raw, unworked shells of these species, as well as the delivery, receipt, carry, transport, or shipment, and sale or offer for sale of these species and their derivative parts and products in interstate commerce. Impacts on small entities would be limited to revenue losses borne by small entity wholesalers or museums or other non-personal exhibitors of giant clam products that, absent the Proposed Alternative, would engage in the import and/or export of parts and products derived from these four species. Small entities that, absent the Proposed Alternative, would engage in the export of parts and products derived from maricultured *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* specimens would be impacted to the extent that they would otherwise generate revenue from such exports. However, no information is available suggesting this type of international trade would occur over the foreseeable future in the absence of the Proposed Action. Alternative 2 was selected as the Proposed Alternative because it would

contribute to the survival and recovery of six species of giant clams proposed to be listed as endangered or threatened due to their extinction risk without constraining international trade of live or intact specimens or shells of *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa*, or domestic activities involving these four species.

Alternative 3. Application of All ESA section 9(a)(1) Prohibitions (Full Action Alternative). Alternative 3 would apply all section 9(a)(1) prohibitions of the ESA to *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa*. Prohibitions under this alternative would include, but not be limited to, the import, export, possession, sale, delivery, carrying, transport, or shipping of these species—including live or intact specimens and shells—in interstate or foreign commerce or for commercial activity. Imports and exports of live specimens would be permitted under the Proposed Alternative but prohibited under Alternative 3, which, relative to the Proposed Action and No-action Alternative, would incrementally impact small entities to the extent that they would otherwise generate revenue from sale of these four species of giant clams or their derivative products. The total value of U.S. imports of live specimens of *T. crocea*, *T. maxima*, *T. noae*, and *T. squamosa* from 2016 to 2020 was approximately \$3.12 million (2023 dollars), while exports had a total value of approximately \$113,000. Small businesses in the Pet and Supplies Retailers and Other Miscellaneous Nondurable Goods Merchant Wholesalers industries (NAICS codes 424990 and 459910) would bear the vast majority of these impacts, which would likely be concentrated among a small number of companies. Incremental impacts of Alternative 3 on small entities could also be substantially greater than those that would occur under the Proposed Alternative in part because the prohibitions on take and interstate commerce would significantly constrain the development of giant clam mariculture projects in the U.S., notably those in the U.S. Pacific Island territories. Alternative 3 would impact small entities to the extent that they would otherwise generate revenue from these mariculture projects. Alternative 3 would likely result in substantially greater impacts on small entities than the Proposed Alternative, without incrementally contributing to the survival or recovery of *H. hippopus*, *H. porcellanus*, *T. derasa*, *T. gigas*, *T. mbalavuana*, or *T. squamosina*.

Executive Order 12866 and Paperwork Reduction Act

This rulemaking is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the relevant governmental

agencies in the countries in which the species occurs, and they will be invited to comment. As we proceed, we intend to continue engaging in informal and formal contacts with the States, and other affected local, regional, or foreign entities, giving careful consideration to all written and oral comments received.

List of Subjects in 50 CFR Part 223 and 224

Endangered and threatened species.
Dated: July 2, 2024.
Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 223 and 224 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

- 1. The authority citation for part 223 continues to read as follows:
- Authority:** 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).
- 2. In § 223.102, amend the table in paragraph (e) by adding new entries for “Clam, horse’s hoof”, “Giant clam, boring”, “Giant clam, fluted”, “Giant clam, Noah’s”, and “Giant clam, small” in alphabetical order under “Molluscs” to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.
* * * * *
(e) * * *

Species ¹						
Common name	Scientific name	Description of listed entity	Citation(s) for listing determination(s)		Critical habitat	ESA rules
*	*	*	*	*	*	*
Molluscs						
*	*	*	*	*	*	*
Clam, horse’s hoof	<i>Hippopus hippopus</i>	Entire species	[Federal Register page where the document begins], [date of publication of final rule].		NA	NA
Giant clam, boring	<i>Tridacna crocea</i>	Entire species	[Federal Register page where the document begins], [date of publication of final rule].		NA	NA
Giant clam, fluted	<i>Tridacna squamosa</i>	Entire species	[Federal Register page where the document begins], [date of publication of final rule].		NA	NA
Giant clam, Noah’s	<i>Tridacna noae</i>	Entire species	[Federal Register page where the document begins], [date of publication of final rule].		NA	NA
Giant clam, small	<i>Tridacna maxima</i> ...	Entire species	[Federal Register page where the document begins], [date of publication of final rule].		NA	NA
*	*	*	*	*	*	*

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

- 3. Add § 223.217 to subpart B to read as follows:
- § 223.217 Horse’s hoof clam.**
- Prohibitions.* The prohibitions of section 9(a)(1)(A) through 9(a)(1)(G) of the ESA (16 U.S.C. 1538) relating to endangered species shall apply to the horse’s hoof clam (*Hippopus hippopus*) listed in § 223.102.
- 4. Add § 223.218 to subpart B 223 to read as follows:

§ 223.218 Boring giant clam, small giant clam, Noah’s giant clam, fluted giant clam.

(a) *Prohibitions.* It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States or its territories any derivative parts or products of the boring giant clam (*Tridacna crocea*), fluted giant clam (*Tridacna squamosa*), Noah’s giant clam (*Tridacna noae*), and small giant clam (*Tridacna maxima*) listed in § 223.102. The term “derivative parts or products” is defined in this part as:

- (1) Any tissue part that has been removed from the shell, including mantle tissue, adductor muscle, portions thereof, or the whole flesh of the animal comprising both the mantle and adductor muscle;
- (2) Any worked shell product, including handicrafts, sculptures, jewelry, tableware, decorative ornaments, and other carvings, but not raw, uncarved shells; or
- (3) Pearls or any product derived from a pearl.
- (b) [Reserved]

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 5. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 6. In § 224.101, amend the table in paragraph (h) by adding new entries for “Clam, China”, “Clam, devil”, “Giant clam, Red Sea”, “Giant clam, smooth”, and “Giant clam, true” in alphabetical

order under Molluscs” to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

Species ¹					
Common name	Scientific name	Description of listed entity	Citation(s) for listing determination(s)	Critical habitat	ESA rules
*	*	*	*	*	*
Molluscs					
*	*	*	*	*	*
Clam, China	<i>Hippopus porcellanus</i> .	Entire species	[Federal Register page where the document begins], [date of publication of final rule].	NA	NA
Clam, devil	<i>Tridacna mbalavuana</i> .	Entire species	[Federal Register page where the document begins], [date of publication of final rule].	NA	NA
Giant clam, Red Sea	<i>Tridacna squamosina</i> .	Entire species	[Federal Register page where the document begins], [date of publication of final rule].	NA	NA
Giant clam, smooth ...	<i>Tridacna derasa</i>	Entire species	[Federal Register page where the document begins], [date of publication of final rule].	NA	NA
Giant clam, true	<i>Tridacna gigas</i>	Entire species	[Federal Register page where the document begins], [date of publication of final rule].	NA	NA
*	*	*	*	*	*

¹Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[FR Doc. 2024–14970 Filed 7–24–24; 8:45 am]

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