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Title 3—

Executive Order 14123 of June 14, 2024

The President

White House Council on Supply Chain Resilience

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* As described in Executive Order 14017 of February 24, 2021 (America's Supply Chains), it is the policy of my Administration to strengthen the enduring resilience of America's supply chains. The United States needs resilient, diverse, and secure supply chains to ensure our economic prosperity, public health, and national security. Pandemics and other biological threats, cyber attacks, climate stressors and extreme weather events, transnational corruption, terrorist attacks, geopolitical disputes, unfair economic competition, and other disruptive conditions can reduce critical infrastructure, manufacturing, and processing capacity and the availability of critical goods, materials, and services. Building resilient American supply chains will necessitate enhancing domestic manufacturing capacity, supporting America's competitive edge in research and development, encouraging innovation, reinforcing critical infrastructure, and creating well-paying jobs. Building resilient American supply chains will also provide a foundation to strengthen prosperity, advance the fight against climate change, enhance national emergency preparedness, and encourage economic growth across the Nation.

More resilient supply chains are secure and diverse. Characteristics of resilient supply chains include greater domestic production; a diverse and agile supplier base; built-in redundancies; a reliable transportation system; secure critical infrastructure; adequate stockpiles; safe and secure data networks; reliable food systems; and a world-class, globally competitive American manufacturing base and workforce. Close cooperation on building global supply chain resilience with allies and partners who share our values will foster collective economic and national security, encourage innovation, and strengthen the capacity to respond to and recover from international disasters and emergencies.

Sec. 2. *Definitions.* For purposes of this order:

(a) "Agency" has the meaning given to that term in Executive Order 14017.

(b) "Critical goods and materials" has the meaning given to that term in Executive Order 14017.

(c) "Other essential goods, materials, and services" means goods, materials, and services that are essential to national and economic security, emergency preparedness, or to advance the policy set forth in section 1 of this order, but not included within the definition of "critical goods and materials."

(d) "Critical infrastructure" means assets, systems, and networks, whether physical or virtual, that are so vital to the United States that their incapacitation or destruction would have a debilitating effect on national security, economic security, national public health or safety, or any combination thereof.

Sec. 3. *Coordination.* (a) This order supplements and reaffirms the principles governing America's supply chains established in Executive Order 14017. Any provisions of Executive Order 14017 not amended in this order shall remain in effect.

(b) Notwithstanding section 2 of Executive Order 14017, the Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Economic Policy (APEP) shall coordinate, as appropriate, the executive branch actions necessary to implement this order through the White House Council on Supply Chain Resilience (Council) established on November 27, 2023, and further described in section 4 of this order. In coordinating the work of the Council on issues related to national security, and on other issues as they deem appropriate, the APNSA and the APEP shall work with the Council in conformance with the interagency process identified in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System).

Sec. 4. *White House Council on Supply Chain Resilience.* (a) The White House Council on Supply Chain Resilience residing within the Executive Office of the President is led by the APNSA and the APEP, who serve as Co-Chairs of the Council. In addition to the Co-Chairs, the membership of the Council consists of the following members:

- (i) the Secretary of State;
- (ii) the Secretary of the Treasury;
- (iii) the Secretary of Defense;
- (iv) the Attorney General;
- (v) the Secretary of the Interior;
- (vi) the Secretary of Agriculture;
- (vii) the Secretary of Commerce;
- (viii) the Secretary of Labor;
- (ix) the Secretary of Health and Human Services;
- (x) the Secretary of Housing and Urban Development;
- (xi) the Secretary of Transportation;
- (xii) the Secretary of Energy;
- (xiii) the Secretary of Veterans Affairs;
- (xiv) the Secretary of Homeland Security;
- (xv) the Administrator of the Environmental Protection Agency;
- (xvi) the Director of the Office of Management and Budget;
- (xvii) the Director of National Intelligence;
- (xviii) the United States Trade Representative;
- (xix) the Chair of the Council of Economic Advisers;
- (xx) the Administrator of the Small Business Administration;
- (xxi) the Director of the Office of Science and Technology Policy;
- (xxii) the Assistant to the President and Homeland Security Advisor;
- (xxiii) the Assistant to the President and National Climate Advisor;
- (xxiv) the National Cyber Director;
- (xxv) the Senior Advisor to the President for International Climate Policy;
- (xxvi) the Chair of the Council on Environmental Quality;
- (xxvii) the Administrator of the National Aeronautics and Space Administration;
- (xxviii) the Administrator of the United States Agency for International Development;
- (xxix) the Director of the Office of Pandemic Preparedness and Response Policy;
- (xxx) the President of the Export-Import Bank of the United States; and

(xxxi) the heads of such other agencies and offices as the Co-Chairs may from time to time invite to participate.

(b) The Co-Chairs shall invite participation of the Chairman of the Federal Maritime Commission and the Chairman of the Surface Transportation Board to the extent consistent with their statutory authorities and obligations.

(c) The Council shall coordinate and promote Federal Government efforts to strengthen long-term supply chain resilience and American industrial competitiveness; identify and provide a coordinated response to address supply chain insecurities, threats, and vulnerabilities, including excessive geographic or supplier concentration; and facilitate collaboration by agencies with allies and partners to foster greater global supply chain resilience. To serve these purposes, the Council shall:

(i) recommend to agencies procedures and best practices for agency cooperation and coordination on data collection and analysis, especially to the extent that agency missions may overlap or intersect, and help facilitate such cooperation and coordination;

(ii) identify budgetary and any other resources needed to support supply chain resilience, including resources to build strong and enduring agency capabilities to identify, address, mitigate, and prevent supply chain risks, shocks, and disruptions;

(iii) recommend administrative actions that would further the policy objectives set forth in section 1 of Executive Order 14017 and in section 1 of this order;

(iv) coordinate with other interagency bodies managing policy areas that affect the integrity of supply chains; and

(v) coordinate with agencies, to the extent appropriate and consistent with applicable law, to ensure that agency operations related to building critical supply chain resilience are conducted in a manner that promotes a fair, open, and competitive marketplace and empowers workers to advocate for their rights and quality jobs.

(d) The Council shall, as appropriate and consistent with applicable law, consult outside stakeholders—such as private industry; academic and educational institutions; non-governmental organizations; labor unions; and State, local, Tribal, and territorial governments—on an individual basis to help accomplish the policy objectives identified in section 1 of this order and in section 1 of Executive Order 14017. Any member of the Council that receives a recommendation from a Federal Advisory Committee, as that term is defined in 5 U.S.C. 1001(2), regarding industrial resilience and competitiveness or supply chain risks, resilience, diversity, or sustainability shall, as appropriate and consistent with applicable law, share that recommendation with the Council.

(e) The Council shall conduct a quadrennial supply chain review of industries critical to national or economic security. The review shall address the processes in place to monitor supply chains and the timeliness of the associated data. At the conclusion of each review, the Council shall submit a report to the President, with the first report submitted no later than December 31, 2024, and subsequent reports submitted every 4 years thereafter. Where practicable and as appropriate, the report shall make recommendations concerning:

(i) Federal incentives and any potential amendments to Federal procurement regulations that may be necessary to attract and retain private sector investments in the supply chains for critical goods and materials and other essential goods, materials, and services as defined in section 2 of this order, including any new programs that could encourage both domestic and foreign investment in the supply chains for critical goods and materials and other essential goods, materials, and services;

(ii) a strategic plan that includes diplomatic, economic, security, international development, trade, and other policy actions to guide United States engagement with allies and partners, including through regional

economic frameworks or partnerships supported by the United States, to strengthen global supply chain resilience in critical sectors;

(iii) actions for the insulation of Federal supply chain analyses and actions from conflicts of interest, corruption, or the appearance of impropriety to ensure continued integrity and public confidence in supply chain analyses and actions;

(iv) potential legislative changes that would promote the policy objectives set forth in section 1 of Executive Order 14017 and in section 1 of this order;

(v) reforms to domestic and international trade rules and agreements that could be pursued to support supply chain resilience, security, diversity, sustainability, and strength;

(vi) education and workforce reforms needed to strengthen the domestic industrial base for critical goods and materials and other essential goods, materials, and services; and

(vii) steps to ensure that the Federal Government's supply chain policies support small businesses and family-owned small- and mid-sized farming operations, prevent monopolization, strengthen critical infrastructure, empower workers to advocate for their rights and quality jobs, consider climate and other health and environmental effects, encourage economic growth in underserved communities and economically distressed areas, and promote the geographic dispersal of economic activity across all regions of the United States.

(f) Subsection (e) of this section supersedes section 5(c) of Executive Order 14017.

(g) Each member of the Council shall designate, within 30 days of the date of this order, a senior official within their respective agency or office who shall coordinate with the Council and who shall be responsible for overseeing the agency's or office's efforts to address supply chain resilience. The Co-Chairs may designate Council subgroups consisting of Council members or their designees, as appropriate.

(h) The Council shall meet on a semiannual basis unless the Co-Chairs determine that a meeting is unnecessary or that additional meetings are needed.

(i) Each agency or office shall bear its own expenses for participating in the Council.

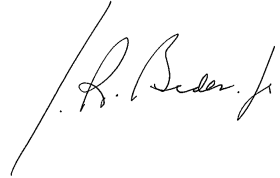
Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
June 14, 2024.

Rules and Regulations

Federal Register

Vol. 89, No. 120

Friday, June 21, 2024

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.

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Chapter X

Consumer Financial Protection Circular 2024–03: Unlawful and Unenforceable Contract Terms and Conditions

AGENCY: Consumer Financial Protection Bureau.

ACTION: Consumer financial protection circular.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) has issued Consumer Financial Protection Circular 2024–03, titled, “Unlawful and Unenforceable Contract Terms and Conditions.” In this circular, the CFPB responds to the question, “Can persons that include unlawful or unenforceable terms and conditions in contracts for consumer financial products and services violate the prohibition on deceptive acts or practices in the Consumer Financial Protection Act (CFPA)?”

DATES: The CFPB released this circular on its website on June 4, 2024.

ADDRESSES: Enforcers, and the broader public, can provide feedback and comments to Circulars@cfpb.gov.

FOR FURTHER INFORMATION CONTACT: George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at 202–435–7700 or at: <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

Question Presented

Can persons that include unlawful or unenforceable terms and conditions in contracts for consumer financial products and services violate the prohibition on deceptive acts or practices in the Consumer Financial Protection Act (CFPA)?

Response

Yes. “Covered persons” and “service providers” must comply with the prohibition on deceptive acts or practices in the CFPA.¹ The inclusion of certain terms in contracts for consumer financial products or services may violate the prohibition when applicable Federal or State law renders such contractual terms, including those that purport to waive consumer rights, unlawful or unenforceable.

Background on Unlawful and Unenforceable Contract Terms

Many Federal laws—including statutes enforced by the CFPB—render unlawful or unenforceable various contract terms in certain contexts. For example, as highlighted in a recent CFPB compliance bulletin,² the Consumer Review Fairness Act of 2016 generally prohibits the use of form contracts that limit how consumers communicate their reviews, assessments, or similar analysis of the sale of goods or services, and invalidates these types of contract terms and conditions.³ As another example, Regulation Z, which implements the Truth in Lending Act (TILA), prohibits the inclusion in a residential mortgage loan or open-ended consumer credit plan secured by the principal dwelling of terms requiring arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling claims arising out of the transaction.⁴ The Electronic Fund Transfer Act (EFTA) prohibits contract terms that contain a “waiver of any right conferred” by EFTA and prohibits waivers of any “cause of action” under EFTA.⁵ And the Military Lending Act

and its implementing regulations generally prohibit terms in certain consumer credit contracts that require servicemembers and their dependents to “waive the covered borrower’s right to legal recourse under any otherwise applicable provision of State or Federal law”⁶

In addition to express prohibitions like these, a recent Federal district court decision held that the Servicemembers Civil Relief Act (SCRA) renders unenforceable provisions in contracts with servicemembers that purport to waive their right to participate in class actions to enforce the SCRA.⁷ The Federal Trade Commission also administers laws that forbid certain contractual waivers.⁸ And certain State laws similarly prohibit or restrict the use of waivers in consumer contracts.⁹

where remittance transfer provider required consumers to sign a remittance services agreement containing language limiting consumers’ damages and claims for costs and attorney fees, contrary to the provisions for defendant liability contained in section 1693m(a)(3)).

⁶ 32 CFR part 232.8(b), implementing 10 U.S.C. 987(e)(2).

⁷ *Espin v. Citibank, N.A.*, No. 5:22–CV–383–BO–RN, 2023 WL 6449909, at *3 (E.D.N.C. Sept. 29, 2023) (denying defendant’s motion to compel arbitration and observing that the SCRA was “amended to codify the unwaivable right of servicemembers to bring and participate in class actions, ‘notwithstanding any previous agreement to the contrary’”) (quoting 50 U.S.C. 4042(a)).

⁸ See 16 CFR part 442(a)(2) (FTC’s 1984 Credit Practices Rule, prohibiting the use of contract terms purporting to waive a consumer’s State law right to block creditors from seizing personal or real property of the consumer in which they do not hold security interests). The FTC also has interpreted section 604(b)(2)(A) of the Fair Credit Reporting Act (FCRA) to prohibit the inclusion of a waiver of consumer rights in a disclosure form required under that section, observing that “it is a general principle of law that benefits provided to citizens by federal statute generally may not be waived by private agreement unless Congress intended such a result.” *FTC, Division of Credit Practices, Staff Opinion Letter* (June 12, 1998), 1998 WL 34323756, at *1 (citing *Brooklyn Savings Bank v. O’Neill*, 324 U.S. 697 (1945)). In addition, while not an express prohibition on waivers, the FTC’s *Preservation of Consumers’ Claims and Defenses* rule, commonly known as the “Holder Rule” and also enforced by the CFPB, requires sellers of goods or services to consumers to include a provision in their finance contracts that ensures that if another person holds the loan or lease a consumer uses to finance acquisition of a good or service from a seller or lessor, then the holder is subject to the same consumer rights and defenses that the consumer had with respect to the seller or lessor, thereby emphasizing the importance of preserving consumer rights. 16 CFR part 433.

⁹ For instance, the California Consumer Privacy Act affords consumers certain rights to know how their information will be used, instructs businesses

Continued

¹ 12 U.S.C. 5481(6), (26), 5531, 5536. For simplicity, the remainder of this Circular refers to covered persons and service providers as “covered persons.”

² CFPB, *Bulletin 2022–05: Unfair and Deceptive Acts or Practices That Impede Consumer Reviews* (Mar. 22, 2022), https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2022-05_unfair-deceptive-acts-practices-impede-consumer-reviews.pdf.

³ 15 U.S.C. 45b.

⁴ 12 CFR 1026.36(h)(1), implementing 15 U.S.C. 1639c(e)(1).

⁵ 15 U.S.C. 1693l; see also, e.g., *Choice Money Transfer, Inc. d/b/a Small World Money Transfer*, ¶¶ 79–83, File No. 2022–CFPB–0009 (Oct. 4, 2022) (consent order) (finding remittance transfer provider violated section 1693l by including waiver of consumer rights in disclosure consumers were required to sign); *Chime, Inc. d/b/a Sendwave*, ¶¶ 26–29, File No. 2023–CFPB–0012 (Oct. 17, 2023) (consent order) (finding violation of section 1693l

Analysis

The CFPB is issuing this Circular to emphasize that covered persons who include unlawful or unenforceable terms in their consumer contracts may violate the CFPB's prohibition on deceptive acts or practices.¹⁰

Covered persons may violate the CFPB's prohibition on deceptive acts or practices if they include terms, including waiver provisions, in their consumer contracts that are rendered unlawful or unenforceable by Federal or State law. Under the CFPB, a representation or omission is deceptive if it is likely to mislead a reasonable consumer and is material. A representation is "material" if it "involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product."¹¹ A contractual provision stating that a consumer agrees not to exercise a legal right is likely to affect a consumer's willingness to attempt to exercise that right in the event of a dispute. Moreover, certain categories of information, including express representations, are presumptively material.¹²

In the recent compliance bulletin noted above, the CFPB reminded covered persons that they could be liable under the CFPB if they deceive

not to sell consumers' personal information, and deems "void and unenforceable" any contractual provision "that purports to waive or limit in any way rights under this title, including, but not limited to, any right to a remedy or means of enforcement." See generally Cal. Civ. Code sec. 1798.100 *et seq.* described at <https://oag.ca.gov/privacy/ccpa>; Cal. Civ. Code sec. 1798.192. Further, certain State laws, including those of California, Illinois, Kansas, and Tennessee, contain outright prohibitions of waivers of legal protections in general consumer protection laws. See Cal. Civ. Code sec. 1751 (barring waivers of protections under California Consumers Legal Remedies Act); Ill. St. Ch. 815 sec. 505(10c). Waiver or modification (barring waiver or modification of protections under consumer fraud and deceptive practices statute); Kan. Stat. 50–625(a). Waiver (generally prohibiting waivers of rights or benefits under the Kansas Consumer Protection Act, unless otherwise specified in the statute); Tenn. Stat. 47–18–113(a) (generally prohibiting waivers "by contract, agreement, or otherwise" of provisions of the Tennessee Consumer Protection Act of 1977).

¹⁰ Covered persons also should comply with other consumer protection laws enforceable by the CFPB that may apply to their conduct, including but not limited to EFTA, Regulation E; RESPA, Regulation X; and TILA, Regulation Z.

¹¹ *Novartis Corp. v. FTC*, 223 F.3d 783, 786 (D.C. Cir. 2000) (quoting *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 165 (1984)) (emphasis added).

¹² See, e.g., *CFPB v. Chou Team Realty LLC*, Case No. 8:20-cv-00043-SB-ADS, 2021 WL 4077110, at *4 (C.D. Cal. Aug. 10, 2021) (citing *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095–96 (9th Cir. 1994)); *FTC v. NCH, Inc.*, Civ.A. No. CV–S–94–138LDG, 1995 WL 623260, at *8 (D. Nev. May 25, 1995) ("express representations that are shown to be false are presumptively material") (citing *Cliffdale Assocs.*, 103 F.T.C. at 168, 182).

consumers using form contract restrictions on consumer reviews that are unenforceable.¹³ The CFPB explained that "including an unenforceable material term in a consumer contract is deceptive, because it misleads consumers into believing the contract term is enforceable," and that "disclaimers in a contract such as 'subject to applicable law' do not cure the misrepresentation caused by the inclusion of an unenforceable contract term."¹⁴ Similarly, qualifying a provision that purports to waive a consumer right with "except where unenforceable" is unlikely to cure the provision's misleading or material nature. Neither do disclaimers that are issued after the fact.¹⁵

CFPB supervisory examiners have identified several violations of the CFPB's prohibition on deception stemming from covered persons' use of unlawful or unenforceable contract terms and conditions.¹⁶ In addition, in several prior enforcement matters, the CFPB has found covered persons to have violated the CFPB by including in contracts for consumer financial products or services terms that are unlawful or unenforceable under Federal or State law, such as waivers that are prohibited by Federal or State law. For example, the CFPB found that a respondent bank engaged in a deceptive practice under the CFPB when it represented to consumers that

¹³ CFPB, *Bulletin 2022–05: Unfair and Deceptive Acts or Practices That Impede Consumer Reviews* (Mar. 22, 2022), https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2022-05_unfair-deceptive-acts-practices-impede-consumer-reviews.pdf (Bulletin 2022–05).

¹⁴ *Id.* at 4–5; cf. *Ruth v. Triumph P'ships*, 577 F.3d 790, 801–02 (7th Cir. 2009) ("To threaten to take some action 'to the extent permitted by law' . . . is to imply that, under some set of circumstances and to some extent, the law actually permits that action to be taken.").

¹⁵ Bulletin 2022–05 at 5 (citing *FTC v. IAB Marketing Assocs., LP*, 746 F.3d 1228, 1233 (11th Cir. 2014)).

¹⁶ See *Supervisory Highlights: Summer 2015*, at 15, available at https://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf (deceptive waivers of borrowers' rights in mortgage loan agreements that were unenforceable under Regulation Z, implementing TILA); *Supervisory Highlights: Fall 2015*, at 17, available at https://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf (same); *Supervisory Highlights: Summer 2017*, 82 FR 48703, 48708 (Oct. 19, 2017) (deceptive waivers of borrowers' rights in loss mitigation agreements that were unenforceable under Regulation Z, implementing TILA); *Supervisory Highlights, Issue 24, Summer 2021*, 86 FR 36108, 36117 (July 8, 2021) (deceptive waivers of rights in security deed riders that were unenforceable under Regulation X, implementing the Real Estate Settlement Procedures Act); *Supervisory Highlights, Issue 28, Fall 2022*, 87 FR 72449, 72455 (Nov. 25, 2022) (deceptive waiver of borrowers' rights in loan security agreements that was unenforceable under Regulation Z, implementing TILA).

because they signed a deposit agreement including broad language directing the bank not to contest legal process, consumers had waived their right to hold the bank liable for improperly responding to garnishment notices; in fact, regardless of the language in the account agreement, consumers had the right to challenge the garnishments.¹⁷ In another matter, the CFPB found that a respondent auto loan servicer violated the CFPB's deception prohibition when it used loan extension agreements or written confirmations that included language that created the net misimpression that consumers could not exercise bankruptcy protection rights, which was false.¹⁸ In fact, an agreement to waive an individual's right to file for bankruptcy is void as against public policy,¹⁹ rendering terms that purport to waive such right generally unenforceable. The CFPB found in a different matter that a respondent non-bank remittance transfer provider engaged in a deceptive act or practice in violation of the CFPB when it made misleading statements in disclosures purporting to limit consumers' error resolution rights, in violation of EFTA and the Remittance Rule.²⁰ And, in a recent report, the CFPB highlighted that certain student tuition payment plan agreements and financial responsibility agreements "include terms and conditions that purport to waive consumers' legal protections, limit how consumers enforce their rights, or misrepresent the rights or protections available to consumers under existing law."²¹ Some of these terms and conditions, such as purported waivers of the right to retain counsel and the right to seek discharge in bankruptcy proceedings, are likely unenforceable and thus similarly raise deception risk.

As these examples demonstrate, the inclusion of unlawful or unenforceable terms and conditions in consumer contracts is likely to mislead a

¹⁷ *In re Bank of America, N.A.* (2022–CFPB–0002), <https://www.consumerfinance.gov/enforcement/actions/bank-of-america-na/>.

¹⁸ *In re Nissan Motor Acceptance Corp.* (2020–BCFP–0017), <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/nissan-motor-acceptance-corporation/>.

¹⁹ See 11 U.S.C. 524(a) (providing that a bankruptcy discharge under title 11 voids judgments and operates as an injunction against the commencement or continuation of an action "whether or not discharge of such debt is waived").

²⁰ *In re Trans-Fast Remittance LLC*, also d/b/a New York Bay Remittance (2020–BCFP–0010), <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/trans-fast-remittance-llc/>.

²¹ CFPB, *Tuition Payment Plans in Higher Education* (Sept. 2023), at 29–30, available at https://files.consumerfinance.gov/f/documents/cfpb_tuition_payment_plan_report_2023-09.pdf.

reasonable consumer into believing that the terms are lawful and/or enforceable, when in fact they are not. Further, the representations made by the presence of such terms are often material, presumptively so when they are made expressly. In particular, consumers are unlikely to be aware of the existence of laws that render the terms or conditions at issue unlawful or unenforceable, so in the event of a dispute, they are likely to conclude they lawfully agreed to waive their legal rights or protections after reviewing the contract on their own or when covered persons point out the existence of these contractual terms and conditions. Deceptive acts and practices such as these pose risk to consumers, whose rights are undermined as a result, and distort markets to the disadvantage of covered persons who abide by the law by including only lawful terms and conditions in their consumer contracts.

Thus, the inclusion of unlawful or unenforceable terms in consumer contracts, including unlawful or unenforceable waiver provisions, may violate the CFPB's prohibition on deceptive acts or practices.

About Consumer Financial Protection Circulars

Consumer Financial Protection Circulars are issued to all parties with authority to enforce Federal consumer financial law. The CFPB is the principal Federal regulator responsible for administering Federal consumer financial law, *see* 12 U.S.C. 5511, including the Consumer Financial Protection Act's prohibition on unfair, deceptive, and abusive acts or practices, 12 U.S.C. 5536(a)(1)(B), and 18 other "enumerated consumer laws," 12 U.S.C. 5481(12). However, these laws are also enforced by State attorneys general and State regulators, 12 U.S.C. 5552, and prudential regulators including the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. *See, e.g.,* 12 U.S.C. 5516(d), 5581(c)(2) (exclusive enforcement authority for banks and credit unions with \$10 billion or less in assets). Some Federal consumer financial laws are also enforceable by other Federal agencies, including the Department of Justice and the Federal Trade Commission, the Farm Credit Administration, the Department of Transportation, and the Department of Agriculture. In addition, some of these laws provide for private enforcement.

Consumer Financial Protection Circulars are intended to promote consistency in approach across the

various enforcement agencies and parties, pursuant to the CFPB's statutory objective to ensure Federal consumer financial law is enforced consistently. 12 U.S.C. 5511(b)(4).

Consumer Financial Protection Circulars are also intended to provide transparency to partner agencies regarding the CFPB's intended approach when cooperating in enforcement actions. *See, e.g.,* 12 U.S.C. 5552(b) (consultation with CFPB by State attorneys general and regulators); 12 U.S.C. 5562(a) (joint investigatory work between CFPB and other agencies).

Consumer Financial Protection Circulars are general statements of policy under the Administrative Procedure Act. 5 U.S.C. 553(b). They provide background information about applicable law, articulate considerations relevant to the Bureau's exercise of its authorities, and, in the interest of maintaining consistency, advise other parties with authority to enforce Federal consumer financial law. They do not restrict the Bureau's exercise of its authorities, impose any legal requirements on external parties, or create or confer any rights on external parties that could be enforceable in any administrative or civil proceeding. The CFPB Director is instructing CFPB staff as described herein, and the CFPB will then make final decisions on individual matters based on an assessment of the factual record, applicable law, and factors relevant to prosecutorial discretion.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024-13581 Filed 6-20-24; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2024-0948; Airspace Docket No. 24-ASW-9]

RIN 2120-AA66

Amendment of Class E Airspace; Dallas-Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Dallas-Fort Worth, TX. This action is the result of an airspace review conducted due to the amendment of the instrument procedures at Bourland Field, Fort

Worth, TX—contained within the Dallas-Fort Worth, TX, Class E airspace legal description. This action brings the airspace into compliance with FAA orders and supports instrument flight rule (IFR) operations and procedures.

DATES: Effective 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 JO 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Bourland Field, Fort Worth, TX—contained within the Dallas-Fort Worth, TX, airspace legal description—to support IFR operations at these airports.

History

The FAA published an NPRM for Docket No. FAA-2024-0948 in the

Federal Register (89 FR 30292; April 23, 2024) proposing to amend the Class E airspace at Dallas-Fort Worth, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.9-mile (increased from a 6.5-mile) radius of Bourland Field, Fort Worth, TX.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA

Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Dallas-Fort Worth, TX [Amended]

Dallas-Fort Worth International Airport, TX
(Lat. 32°53′50″ N, long. 97°02′16″ W)
McKinney National Airport, TX
(Lat. 33°10′37″ N, long. 96°35′20″ W)
Ralph M. Hall/Rockwall Municipal Airport, TX
(Lat. 32°55′50″ N, long. 96°26′08″ W)
Mesquite Metro Airport, TX
(Lat. 32°44′49″ N, long. 96°31′50″ W)
Lancaster Regional Airport, TX
(Lat. 32°34′39″ N, long. 96°43′03″ W)
Point of Origin
(Lat. 32°51′57″ N, long. 97°01′41″ W)
Fort Worth Spinks Airport, TX
(Lat. 32°33′54″ N, long. 97°18′30″ W)
Clebume Regional Airport, TX
(Lat. 32°21′14″ N, long. 97°26′02″ W)
Bourland Field, TX
(Lat. 32°34′55″ N, long. 97°35′27″ W)
Granbury Regional Airport, TX
(Lat. 32°26′35″ N, long. 97°49′17″ W)
Parker County Airport, TX
(Lat. 32°44′47″ N, long. 97°40′57″ W)
Bridgeport Municipal Airport, TX

(Lat. 33°10′26″ N, long. 97°49′42″ W)
Decatur Municipal Airport, TX
(Lat. 33°15′15″ N, long. 97°34′50″ W)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas-Fort Worth International Airport; and within a 6.6-mile radius of McKinney National Airport; and within 1.8 miles each side of the 002° bearing from McKinney National Airport extending from the 6.6-mile radius to 9.2 miles north of the airport; and within a 6.3-mile radius of Ralph M. Hall/Rockwall Municipal Airport; and within 1.6 miles each side of the 010° bearing from Ralph M. Hall/Rockwall Municipal Airport extending from the 6.3-mile radius to 10.8 miles north of the airport; and within a 7-mile radius of Mesquite Metro Airport; and within a 6.6-mile radius of Lancaster Regional Airport; and within 1.9 miles each side of the 140° bearing from Lancaster Regional Airport extending from the 6.6-mile radius to 9.2 miles southeast of the airport; and within 8 miles northeast and 4 miles southwest of the 144° bearing from the Point of Origin extending from the 30-mile radius of Dallas-Fort Worth International Airport to 35 miles southeast of the Point of Origin; and within a 6.5-mile radius of Fort Worth Spinks Airport; and within 8 miles east and 4 miles west of the 178° bearing from Fort Worth Spinks Airport extending from the 6.5-mile radius to 21 miles south of the airport; and within a 6.9-mile radius of Cleburne Regional Airport; and within 3.6 miles each side of the 292° bearing from the Cleburne Regional Airport extending from the 6.9-mile radius to 12.2 miles northwest of airport; and within a 6.9-mile radius of Bourland Field; and within a 8.8-mile radius of Granbury Regional Airport; and within a 6.3-mile radius of Parker County Airport; and within 8 miles east and 4 miles west of the 177° bearing from Parker County Airport extending from the 6.3-mile radius to 21.4 miles south of the airport; and within a 6.3-mile radius of Bridgeport Municipal Airport; and within 1.6 miles each side of the 040° bearing from Bridgeport Municipal Airport extending from the 6.3-mile radius to 10.6 miles northeast of the airport; and within 4 miles each side of the 001° bearing from Bridgeport Municipal Airport extending from the 6.3-mile radius to 10.7 miles north of the airport; and within a 6.3-mile radius of Decatur Municipal Airport; and within 1.5 miles each side of the 263° bearing from Decatur Municipal Airport extending from the 6.3-mile radius to 9.2 miles west of the airport.

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Issued in Fort Worth, Texas, on June 13, 2024.

Martin A. Skinner,

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

[FR Doc. 2024–13345 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2024–0543; Airspace
Docket No. 24–ASO–8]

RIN 2120–AA66

**Amendment of Class E Airspace;
Covington, KY**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Covington, KY. This action is the result of an airspace review conducted due to the decommissioning of the Cincinnati very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of various airports are also being updated to coincide with the FAA's aeronautical database. This action brings the airspace into compliance with FAA orders to support instrument flight rule (IFR) operations.

DATES: Effective 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 JO 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Cincinnati Municipal Airport/Lunken Field, Cincinnati, OH, (contained within the Covington, KY, airspace legal description) to support IFR operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2024–0543 in the **Federal Register** (89 FR 18855; March 15, 2024) proposing to amend the Class E airspace at Covington, KY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within an 8.8-mile (decreased from a 10.5-mile) radius of Cincinnati Municipal Airport/Lunken Field, Cincinnati, OH; and within 2 miles each side of the 021° bearing from the Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius from the Cincinnati Municipal Airport/Lunken Field to 12.3 miles north of Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of

the 062° bearing from the Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius of Cincinnati Municipal Airport/Lunken Field to 11 miles northeast of Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 201° bearing from Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius of Cincinnati Municipal Airport/Lunken Field to 11.7 miles south of Cincinnati Municipal Airport/Lunken Field; removes the Cincinnati NDB and associated extensions from the airspace legal description as they are no longer needed; removes the Cincinnati-Blue Ash Airport and associated airspace as the airport has closed and the airspace is no longer needed; removes the cities associated with the airports to comply with changes to FAA Order JO 7400.2P, Procedures for Handling Airspace Matters; and updates the geographic coordinates of the Cincinnati/Northern Kentucky International Airport, Covington, KY, and the name of the Cincinnati Municipal Airport/Lunken Field (previously Cincinnati Municipal Airport-Lunken Field) to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO KY E5 Covington, KY [Amended]

Cincinnati/Northern Kentucky International Airport, KY

(Lat. 39°02′56″ N, long. 84°40′04″ W)

Cincinnati Municipal Airport/Lunken Field, OH

(Lat. 39°06′12″ N, long. 84°25′07″ W)

Clermont County Airport, OH

(Lat. 39°04′42″ N, long. 84°12′37″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Cincinnati/Northern Kentucky International Airport; and within an 8.8-mile radius of Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 021° bearing from the Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius of the Cincinnati Municipal Airport/Lunken Field to 12.3 miles north of Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 062° bearing of the Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius of Cincinnati Municipal Airport/Lunken Field to 11 miles northeast of Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 201° bearing from the Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius of the Cincinnati Municipal Airport/Lunken Field to 11.7 miles south of Cincinnati Municipal Airport/Lunken Field; and within a 6.8-mile radius of Clermont County Airport.

* * * * *

Issued in Fort Worth, Texas, on June 13, 2024.

Martin A. Skinner,

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

[FR Doc. 2024–13344 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

**[Docket No. FAA–2024–0542; Airspace
Docket No. 24–AGL–8]**

RIN 2120–AA66

**Amendment of Class D and Class E
Airspace; Cincinnati, OH**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace at Cincinnati, OH. This action is the result of an airspace review conducted due to the decommissioning of the Cincinnati very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name of the airport is also being updated to coincide with the FAA's aeronautical database. This action brings the airspace into compliance with FAA orders to support instrument flight rule (IFR) operations.

DATES: Effective 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 JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT:
Jeffrey Claypool, Federal Aviation
Administration, Operations Support

Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace and Class E surface airspace at Cincinnati Municipal Airport/Lunken Field, Cincinnati, OH, to support IFR operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2024–0542 in the **Federal Register** (89 FR 18857; March 15, 2024) proposing to amend the Class D and Class E airspace at Cincinnati, OH. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and E airspace designations are published in paragraphs 5000 and 6002 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This amendment to 14 CFR part 71: Modifies the Class D airspace within a 4.2-mile (increased from a 4.1-mile) radius of Cincinnati Municipal Airport/Lunken Field, Cincinnati, OH; and within 2 miles each side of the 024° bearing from the airport extending from the 4.2-mile radius to 5.9 miles

northeast of the airport; and within 2 miles northwest and 1.7 miles southeast of the 064° bearing from the airport extending from the 4.2-mile radius to 5.3 miles northeast of the airport; and within 2.1 miles each side of the 204° bearing from the airport extending from the 4.2-mile radius to 6.2 miles southwest of the airport; and within 2 miles northwest and 1.7 miles southeast of the 244° bearing from the airport extending from the 4.2-mile radius to 5.2 miles southwest of the airport; updates the name of the airport (previously Cincinnati Municipal Airport Lunken Field) to coincide with the FAA's aeronautical database; and replaces the outdated terms "Notice to Airmen" and "Airport/Facility Directory" with "Notice to Air Missions" and "Chart Supplement";

And modifies the Class E surface airspace to within a 4.2-mile (increased from a 4.1-mile) radius of Cincinnati Municipal Airport/Lunken Field, Cincinnati, OH; and within 2 miles each side of the 024° bearing from the airport extending from the 4.2-mile radius to 5.9 miles northeast of the airport; and within 2 miles northwest and 1.7 miles southeast of the 064° bearing from the airport extending from the 4.2-mile radius to 5.3 miles northeast of the airport; and within 2.1 miles each side of the 204° bearing from the airport extending from the 4.2-mile radius to 6.2 miles southwest of the airport; and within 2 miles northwest and 1.7 miles southeast of the 244° bearing from the airport extending from the 4.2-mile radius to 5.2 miles southwest of the airport; updates the name of the airport (previously Cincinnati Municipal Airport Lunken Field) to coincide with the FAA's aeronautical database; and replaces the outdated terms "Notice to Airmen" and "Airport/Facility Directory" with "Notice to Air Missions" and "Chart Supplement".

Regulatory Notices and Analyses

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

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AGL OH D Cincinnati, OH [Amended]

Cincinnati Municipal Airport/Lunken Field, OH
(Lat. 39°06'12" N, long. 84°25'07" W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.2-mile radius of the Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 024° bearing from the airport extending from the 4.2-mile radius to 5.9 miles northeast of the airport; and within 2 miles northwest and 1.7 miles southeast of the 064° bearing from the airport extending from the 4.2-mile radius to 5.3 miles northeast of the airport; and within 2.1 miles each side of the 204° bearing from the airport extending from the 4.2-mile radius to 6.2 miles southwest of the airport; and within 2 miles northwest and 1.7 miles southeast of the 244° bearing from the airport extending from the 4.2-mile radius to 5.2 miles southwest of the airport excluding that airspace within the Covington, KY, Class B

airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AGL OH E2 Cincinnati, OH [Amended]

Cincinnati Municipal Airport/Lunken Field, OH
(Lat. 39°06'12" N, long. 84°25'07" W)

That airspace within a 4.2-mile radius of the Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 024° bearing from the airport extending from the 4.2-mile radius to 5.9 miles northeast of the airport; and within 2 miles northwest and 1.7 miles southeast of the 064° bearing from the airport extending from the 4.2-mile radius to 5.3 miles northeast of the airport; and within 2.1 miles each side of the 204° bearing from the airport extending from the 4.2-mile radius to 6.2 miles southwest of the airport; and within 2 miles northwest and 1.7 miles southeast of the 244° bearing from the airport extending from the 4.2-mile radius to 5.2 miles southwest of the airport excluding that airspace within the Covington, KY, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in Fort Worth, Texas, on June 13, 2024.

Martin A. Skinner,

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

[FR Doc. 2024–13343 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1413; Airspace
Docket No. 24–AEA–1]

RIN 2120–AA66

Amendment of Jet Route J–220; Eastern United States

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jet Route J–220 by removing an unnecessary mid-point from the route description. This action is an administrative change and does not affect the airspace boundaries or operating requirements.

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 JO 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Background

The FAA identified that the route description for Jet Route J-220 contained unnecessary navigational aid (NAVAID) radials that defined the route mid-point. The radials used in the description do not form a turn point of one degree or more, so their inclusion in the description is not necessary. The FAA corrects this error by removing the unnecessary NAVAID radials from the route description which follows the

FAA's current airspace description formatting requirements.

Incorporation by Reference

Jet Routes are published in paragraph 2004 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending Jet Route J-220 by removing NAVAID radials defining an unnecessary mid-point from the route description. The amendment is described below.

J-220: Prior to this final rule, J-220 extended between the Armel, VA (AML), Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the Stonyfork, PA (SFK), VOR/DME. This amended route removes the intersection of Armel VOR/DME 001° and Stonyfork VOR/DME 181° radials. As amended, the route continues to extend between the Armel VOR/DME and the Stonyfork VOR/DME.

This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this airspace action of amending Jet Route J-220 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

* * * * *

J-220 [Amended]

From Armel, VA, to Stonyfork, PA.

* * * * *

Issued in Washington, DC, on June 12, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–13339 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31550; Amdt. No. 4117]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 21, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 2024.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Air Missions (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on June 7, 2024.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 11 July 2024

Holy Cross, AK, HCA/PAHC, RNAV (GPS) RWY 2, Amdt 1
 Holy Cross, AK, HCA/PAHC, RNAV (GPS) RWY 20, Amdt 1
 Savoonga, AK, PASA, RNAV (GPS) RWY 5, Amdt 1D, CANCELED
 Savoonga, AK, SVA/PASA, RNAV (GPS) RWY 23, Amdt 2
 Savoonga, AK, SVA/PASA, RNAV (GPS) Y RWY 5, Orig
 Savoonga, AK, PASA, VOR RWY 23, Amdt 1C, CANCELED
 Tununak, AK, POKA, RNAV (GPS) RWY 34, Orig
 Tununak, AK, POKA, RNAV (GPS) Y RWY 16, Orig
 Sacramento, CA, MHR, RNAV (GPS) RWY 4R, Amdt 2
 San Carlos, CA, SQL, RNAV (GPS) Y RWY 30, Orig–C
 San Carlos, CA, SQL, RNAV (GPS) Z RWY 30, Amdt 1C
 San Francisco, CA, SFO, RNAV (GPS) RWY 10L, Amdt 3
 Craig, CO, CAG, VOR RWY 25, Amdt 5
 Washington, DC, DCA, RNAV (GPS) Y RWY 19, Orig
 Washington, DC, DCA, RNAV (RNP) Z RWY 19, Amdt 3
 Tallahassee, FL, TLH, ILS Z OR LOC Z RWY 36, Amdt 26
 Tallahassee, FL, TLH, RNAV (GPS) RWY 36, Amdt 3
 Tallahassee, FL, TLH, VOR OR TACAN RWY 36, Amdt 2

Iola, KS, K88, RNAV (GPS) RWY 1, Amdt 2
 Iola, KS, K88, RNAV (GPS) RWY 19, Amdt 1
 Newton, KS, EWK, ILS OR LOC RWY 17, Amdt 5
 Louisville, KY, SDF, ILS OR LOC RWY 17L, Amdt 6
 Louisville, KY, SDF, ILS OR LOC RWY 17R, Amdt 5
 Louisville, KY, SDF, ILS OR LOC RWY 35L, ILS RWY 35L (SA CAT I), ILS RWY 35L (CAT II), ILS RWY 35L (CAT III), Amdt 5
 Louisville, KY, SDF, ILS OR LOC RWY 35R, ILS RWY 35R (SA CAT I), ILS RWY 35R (CAT II), ILS RWY 35R (CAT III), Amdt 6
 Louisville, KY, SDF, LOC RWY 29, Amdt 2
 Louisville, KY, SDF, RNAV (GPS) Y RWY 17L, Amdt 2
 Louisville, KY, SDF, RNAV (GPS) Y RWY 17R, Amdt 2
 Louisville, KY, SDF, RNAV (GPS) Y RWY 29, Amdt 1
 Louisville, KY, SDF, RNAV (GPS) Y RWY 35L, Amdt 2
 Louisville, KY, SDF, RNAV (GPS) Y RWY 35R, Amdt 2
 Louisville, KY, SDF, RNAV (RNP) Z RWY 17L, Amdt 1
 Louisville, KY, SDF, RNAV (RNP) Z RWY 17R, Amdt 1
 Louisville, KY, SDF, RNAV (RNP) Z RWY 29, Orig
 Louisville, KY, SDF, RNAV (RNP) Z RWY 35L, Amdt 2
 Louisville, KY, SDF, RNAV (RNP) Z RWY 35R, Amdt 1
 Rochester, MN, RST, ILS Z OR LOC Z RWY 31, ILS Z RWY 31 (SA CAT I), ILS Z RWY 31 (CAT II), Amdt 24
 Belmar/Farmingdale, NJ, KBLM, RNAV (GPS) Z RWY 14, Orig
 Belmar/Farmingdale, NJ, KBLM, RNAV (GPS) Z RWY 32, Orig
 Clovis, NM, CVN, VOR RWY 22, Amdt 5A
 Cincinnati, OH, KLUK, ILS OR LOC RWY 21, Orig
 Cincinnati, OH, LUK, ILS OR LOC RWY 21L, Amdt 20, CANCELED
 Cincinnati, OH, KLUK, RNAV (GPS) RWY 3, Orig
 Cincinnati, OH, LUK, RNAV (GPS) RWY 3R, Amdt 1A, CANCELED
 Cincinnati, OH, KLUK, RNAV (GPS) RWY 21, Orig
 Cincinnati, OH, LUK, RNAV (GPS) RWY 21L, Amdt 1D, CANCELED
 Cincinnati, OH, KLUK, Takeoff Minimums and Obstacle DP, Amdt 16
 Astoria, OR, AST, ILS RWY 26, Amdt 3C
 Waynesburg, PA, WAY, COPTER RNAV (GPS) Y RWY 9, Amdt 1A

Rescinded

On May 14, 2024 (89 FR 41883), the FAA published an Amendment in Docket No. 31544, Amdt No. 4111, to part 97 of the Federal Aviation Regulations under § 97.33. The following entry for Victorville, CA, effective July 11, 2024, is hereby rescinded in its entirety:

Victorville, CA, VCV, RNAV (GPS) RWY 3, Orig

[FR Doc. 2024–13506 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31551; Amdt. No. 4118]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 21, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 2024.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954-1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Air Missions (P-NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on June 7, 2024.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
11-Jul-24	CA	Burbank	Bob Hope	4/4987	5/17/2024	RNAV (GPS) Z RWY 8, Amdt 2A.
11-Jul-24	CA	Burbank	Bob Hope	4/4991	5/17/2024	ILS Y OR LOC Y RWY 8, Amdt 6A.
11-Jul-24	CA	Burbank	Bob Hope	4/4993	5/17/2024	ILS Z OR LOC Z RWY 8, Amdt 39A.
11-Jul-24	CA	Burbank	Bob Hope	4/5001	5/17/2024	RNAV (RNP) Y RWY 8, Amdt 2A.
11-Jul-24	FL	Arcadia	Arcadia Muni	4/5155	5/16/2024	RNAV (GPS)—B, Amdt 1.

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
11-Jul-24	NY	Farmingdale	Republic	4/5157	5/16/2024	RNAV (RNP) Z RWY 14, Orig-B.
11-Jul-24	NY	Farmingdale	Republic	4/5161	5/16/2024	ILS OR LOC RWY 14, Amdt 8G.
11-Jul-24	NY	Farmingdale	Republic	4/5163	5/16/2024	RNAV (GPS) RWY 32, Amdt 1.
11-Jul-24	MS	Clarksdale	Fletcher Fld	4/5171	5/16/2024	RNAV (GPS) RWY 36, Amdt 2.
11-Jul-24	MS	Clarksdale	Fletcher Fld	4/5188	5/16/2024	RNAV (GPS) RWY 18, Amdt 2.
11-Jul-24	CA	Sacramento	Sacramento Mather	4/5313	5/17/2024	RNAV (GPS) RWY 22R, Orig.
11-Jul-24	OH	West Union	Alexander Salamon	4/6917	5/20/2024	RNAV (GPS) RWY 5, Orig-C.
11-Jul-24	IA	Iowa Falls	Iowa Falls Muni	4/8135	5/22/2024	RNAV (GPS) RWY 13, Amdt 1A.
11-Jul-24	FL	Tallahassee	Tallahassee Intl	4/8813	5/24/2024	ILS OR LOC RWY 27, ILS RWY 27 (CAT II), Amdt 10C.
11-Jul-24	CO	Gunnison	Gunnison-Crested Butte Rgnl	4/8900	5/28/2024	VOR OR GPS-A, Amdt 7D.
11-Jul-24	NM	Clovis	Clovis Rgnl	4/8942	5/28/2024	RNAV (GPS) RWY 4, Amdt 1.
11-Jul-24	NM	Clovis	Clovis Rgnl	4/9752	5/28/2024	RNAV (GPS) RWY 22, Amdt 1.

[FR Doc. 2024-13507 Filed 6-20-24; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 515 and 558

[Docket No. FDA-2024-N-2731]

Medicated Feed Mill License; Veterinary Feed Directive Drugs; Change of Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is amending the regulations for medicated feed mill applications and for veterinary feed directive drugs to update addresses and simplify notification procedures. These technical amendments are being made to improve the accuracy of the Agency's regulations and are non-substantive.

DATES: This rule is effective June 21, 2024.

FOR FURTHER INFORMATION CONTACT: Katherine Collins, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-796-6736, Katherine.Collins@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations for medicated feed mill notification applications at 21 CFR 515.10 and for veterinary feed directive drugs at 21 CFR 558.6 to update addresses and Agency notification procedure. These technical amendments are being made to improve the accuracy of the Agency's regulations and are non-substantive. Publication of this document constitutes final action on the changes under the Administrative Procedure Act

(5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only technical or non-substantive, ministerial changes to update addresses and Agency notification procedure.

List of Subjects

21 CFR Part 515

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 515 and 558 are amended as follows:

PART 515—MEDICATED FEED MILL LICENSE

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 515.10, revise paragraphs (c) and (e) to read as follows:

§ 515.10 Medicated feed mill license applications.

* * * * *

(c) Applications must be completed, signed, and submitted to the Food and Drug Administration, Center for Veterinary Medicine, Division of Food Compliance, 12225 Wilkins Ave., Rockville, MD 20852, or email (via attachment): MedicatedFeedsTeamMail@fda.hhs.gov.

* * * * *

(e) Upon approval, the application will be signed by an authorized employee of FDA designated by the Commissioner of Food and Drugs, and a copy will be returned to the applicant.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc-1, 371.

■ 4. In § 558.6, revise paragraph (c)(7) to read as follows:

§ 558.6 Veterinary feed directive drugs.

* * * * *

(c) * * *

(7) The notifications cited in paragraphs (c)(5) and (6) of this section must be submitted to the Food and Drug Administration, Center for Veterinary Medicine, Division of Food Compliance, 12225 Wilkins Ave., Rockville, MD 20852, or email (via attachment): MedicatedFeedsTeamMail@fda.hhs.gov.

* * * * *

Dated: June 17, 2024.

Lauren K. Roth,
Associate Commissioner for Policy.

[FR Doc. 2024-13678 Filed 6-20-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2024-0169]

RIN 1625-AA08

Special Local Regulation; Sail Grand Prix; Upper Bay, New York City, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation in the Upper Bay of New York Harbor in support of Sail Grand Prix 2024 from June 21, 2024, through June 23, 2024. This special local regulation is necessary to provide for

the safety of life from the dangers associated with high-speed sailing during the event. This regulation will temporarily prohibit persons and vessels from entering, transiting through, blocking, or loitering within the event area unless authorized by the Captain of the Port of New York or a designated representative.

DATES: This rule is effective from 1 p.m. on June 21, 2024, through 6:30 p.m. on June 23, 2024. This rule will be enforced from 1 p.m. to 4 p.m. on June 21, 2024, and from 3:30 p.m. to 6:30 p.m. on June 22, 2024, and June 23, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0169 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 MST1 Kathryn Veal, Waterways Management Division, U.S. Coast Guard Sector New York; telephone 718–354–4151, email Kathryn.M.Veal@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
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

On October 5, 2023, a representative of Sail Grand Prix (Sail GP) notified the Coast Guard of intentions to conduct Sail Grand Prix 2024 in the Upper Bay of New York Harbor from 1 p.m. to 4 p.m. on June 21, 2024, and from 3:30 p.m. to 6:30 p.m. on June 22, 2024, through June 23, 2024. The race will take place between Governor’s Island, Ellis Island and Liberty Island in the Upper Bay and feature 50-foot foiling catamaran sailboats. In response, on April 19, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Sail Grand Prix, Upper Bay, New York City, NY (89 FR 28691). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this race event. During the comment period that ended May 20, 2024, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to public interest because prompt action is needed to appropriately respond to the potential safety hazards associated with this event on June 21, 2024, through June 23, 2024.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port (COTP) Sector New York has determined that potential hazards associated with this event will be a safety concern for personnel and vessels on the navigable waters of the Upper Bay of New York Harbor. Due to the high-profile nature of this event, spectator vessels and support craft that will be present and have the potential to cause vessel congestion in proximity of the Anchorage Channel and Hudson River Channel. This rule is needed to protect personnel, vessels, and the marine environment from the hazards associated with the race event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 19, 2024; however, there is one change in the regulatory text of this rule from the proposed rule in the NPRM. Statue City Cruises contacted Sail Grand Prix and requested modifications be made to the special local regulation. We reduced the size of the northwest section of the regulated area to facilitate the ease of transit and reduce vessel traffic from Battery Park to Liberty Island and Ellis Island. As a result, the starting coordinate point in the regulatory text was updated from 40°42′10.6″ N, 74°01′48.5″ W to 40°42′03.7″ N, 74°01′26.9″ W.

This rule establishes a special local regulation in the Upper Bay of New York Harbor from 1 p.m. on June 21, 2024, through 6:30 p.m. on June 23, 2024. The special local regulation will be enforced from 1 p.m. until 4 p.m. on June 21, 2024, and from 3:30 p.m. until 6:30 p.m. on June 22, 2024, and June 23, 2024. The area regulated by this special local regulation will be between Governor’s Island, Ellis Island and Liberty Island and will cover all navigable waters, from surface to bottom, within the area formed by connecting the following latitude and longitude points in the following order: 40°42′03.7″ N, 74°01′26.9″ W; thence to 40°41′50.0″ N, 74°01′08.7″ W; thence to 40°41′35.6″ N 74°01′08.8″ W; thence along the shore to 40°41′02.4″ N 74°01′29.3″ W; thence to 40°40′46.9″ N

74°01′49.3″ W; thence to 40°40′49.0″ N 74°02′25.5″ W; thence to 40°41′13.3″ N 74°02′26.2″ W; thence to 40°41′31.0″ N 74°02′18.7″ W; thence to 40°41′54.6″ N 74°02′01.3″ W; thence to 40°42′03.9″ N 74°01′56.8″ W and thence back to the beginning point. Sail GP will mark the regulated area via colored visual markers and will designate a spectator area within the regulated area. The spectator area will be located on the southern end of the regulated area and will change depending upon the racecourse. The duration of the establishment of the special local regulation is intended to ensure the safety of vessels in these navigable waters during the scheduled practice and race periods. This special local regulation will temporarily restrict vessel traffic in the vicinity of Liberty Island and Ellis Island and prohibit vessels and persons not participating in the race event from entering the dedicated race area. No vessel or person will be permitted to enter the regulated area 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 the size, location, duration, and time of day of the regulated area. Vessel traffic will be able to safely transit around this area via the Buttermilk Channel and via a transit lane west of the race area. The event will impact a small, designated area of the New York Harbor for less than 4 hours each day. Considerations were made to adjust to an earlier time for Friday June 21, 2024, to reduce impact to commuter ferries. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM

Channel 16 about the regulation, and 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 received no comments from the Small Business Administration on this rulemaking. 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. Routes around the race area are present while the special local regulation is in effect.

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 affects 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 special local regulation in the Upper Bay of New York Harbor lasting 3 hours that will limit entry to the race area without authorization from the Captain of the Port or their designated representatives. It is categorically excluded from further review under paragraph L61 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 100

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 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T01–0169 to read as follows:

§ 100.T01–0169 Sail Grand Prix 2024, Upper Bay New York Harbor, New York City, NY.

(a) *Regulated area.* The regulations in this section apply to the following area: All waters of the Upper Bay of New York Harbor, from surface to bottom, encompassed by a line connecting the following points beginning at 40°42′03.7″ N, 74°01′26.9″ W; thence to 40°41′50.0″ N, 74°01′08.7″ W; thence to 40°41′35.6″ N, 74°01′08.8″ W; thence along the shore to 40°41′02.4″ N, 74°01′29.3″ W; thence to 40°40′46.9″ N, 74°01′49.3″ W; thence to 40°40′49.0″ N, 74°02′25.5″ W; thence to 40°41′13.3″ N, 74°02′26.2″ W; thence to 40°41′31.0″ N, 74°02′18.7″ W; thence to 40°41′54.6″ N, 74°02′01.3″ W; thence to 40°42′03.9″ N, 74°01′56.8″ W and thence back to the beginning point. These coordinates are based on North American Datum 83 (NAD 83).

(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 New York (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port New York or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-FM Channel 16. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement periods.* This section will be enforced from 1 p.m. to 4 p.m. on June 21, 2024, and from 3:30 p.m. to 6:30 p.m. on June 22, 2024, through June 23, 2024.

Jonathan Andrechik,

Captain, U.S. Coast Guard, Captain of the Port Sector New York.

[FR Doc. 2024-13602 Filed 6-20-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2024-0448]

Safety Zone; Annual Fireworks Displays and Other Events in the Eighth Coast Guard District Requiring Safety Zones—St. John the Baptist Independence Day Celebration

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the St. John the Baptist Independence Day celebration fireworks display located on the navigable waters of the Lower Mississippi River between mile marker (MM) 137.5 and MM 138.5 in vicinity of Reserve, Louisiana. This action is necessary to provide for the safety of life on these navigable waterways during this event. During the enforcement period, entry into this safety zone is prohibited unless authorized by the Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR, Part 165.801, will be enforced for the

location identified in Item 2 of Table 5 to § 165.801, from 8:45 through 9:45 p.m. on July 3, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander Xiaobin Tuo, Sector New Orleans, U.S. Coast Guard; telephone 504-269-7251, email Xiaobin.Tuo@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone in 33 CFR 165.801, Table 5 to § 165.801, Item 2 for the St. John the Baptist Independence Day celebration event. This safety zone will be enforced from 8:45 through 9:45 p.m. on July 3, 2024. This action is being taken to provide for the safety of life on these navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Sector New Orleans Annual and Recurring Safety Zones in § 165.801, Table 5 to § 165.801, Item 2, specifies the location of the regulated area on the Lower Mississippi River between MM 137.5 and MM 138.5 in vicinity of Reserve, Louisiana. During the enforcement period, as reflected in § 165.801(a), entry into this safety zone is prohibited unless authorized by the Captain of the Port or a designated representative.

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

Dated: June 14, 2024.

G.A. Callaghan,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2024-13627 Filed 6-20-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0396]

RIN 1625-AA87

Safety Zone, Lake Erie, Mentor (Mentor Headlands), Ohio

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Lake Erie off Mentor Headlands Beach State Park, Mentor, Ohio. This action is necessary to provide offshore safety for motion

picture production activity on the Mentor Headlands Beach from June 17 through June 18, and June 20 through June 21, 2024. Entry of persons and vessels into this safety zone is prohibited unless authorized by the Captain of the Port Sector Eastern Great Lakes or a designated representative.

DATES: This rule is effective June 21, 2024, with rain dates from June 24 to June 28, 2024. For the purposes of enforcement, actual notice will be used from June 17, 2024, until June 21, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-0396 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, contact Cody Mayer with the U.S. Coast Guard Marine Safety Unit Cleveland's Waterways Management Division; via telephone at 216-937-0111, or by email at D09-SMB-MSUCLEVELAND-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Eastern Great Lakes
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
SNPRM Supplemental notice of proposed rulemaking
U.S.C. United States Code

II. Background Information and Regulatory History

On February 27, 2024, S&K Productions notified the U.S. Coast Guard that it will be filming a motion picture on the Mentor Headlands Beach State Park in Mentor, Ohio from June 17 through June 18, and from June 20 through June 21, 2024, with rain dates from June 24 through June 28, 2024. The Captain of the Port Sector Eastern Great Lakes (COTP) has determined that a safety zone covering certain navigable waters of Lake Erie is needed to protect life and property during the S&K Productions' filming of project "Genesis".

In response, on May 9, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Security Zone, Lake Erie, Mentor (Mentor Headlands), Ohio (89 FR 39576). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to the filming activities. During the comment period

that ended June 10, 2024, we received one comment.

After the comment period ended, certain changes needed to be made to ensure the safety of life and property during the filming activities, namely, the Coast Guard found it necessary to redesignate this regulated area as a safety zone and increase the size of the zone. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment on these changes from the NPRM 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 supplemental notice of proposed rulemaking (SNPRM) with respect to this rule because it is impracticable. The filming is scheduled to start on June 17, 2024, and prompt action is needed to respond to the potential safety risks presented by the planned activities.

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**. The comment period for the NPRM associated with the filming activities ended on June 10, 2024, and the filming is scheduled to begin June 17, 2024. Thus, there is insufficient time to allow for 30 days before the rule becomes effective. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the potential safety risks associated with the planned filming.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under its authority granted in 46 U.S.C. 70034. The purpose of this rule is to ensure offshore safety of the film production personnel, sets, and equipment during production activity.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published May 9, 2024, which stated that “the Coast Guard should strongly consider whether regulating waterways is an appropriate use of resources.” The Coast Guard is creating this safety zone on Lake Erie, which is a Federally navigable waterway, to ensure the safety of nearby recreational and commercial vessel traffic, as well as the film production activities ashore. Waterways

management is a statutory mission of the United States Coast Guard under Congressionally mandated authorities as cited in the below regulatory text.

There are changes in the regulatory text of this rule from the proposed rule in the NPRM:

1. The Security Zone has been redesignated as a Safety Zone.
2. The Safety Zone has been expanded to include certain waters of the Grand River.

3. The Safety Zone enforcement time for June 20 and June 21 has been modified by one hour as outlined below.

This rule establishes a safety zone from 6:30 a.m. through 7:30 p.m. on June 17, 2024, from 6:30 a.m. through 7:30 p.m. on June 18, 2024, from 1:30 p.m. through 2:30 a.m. on June 20, 2024, and from 1:30 p.m. to 2:30 a.m. on June 21, 2024. Rain dates have been identified as June 24–28, 2024. Times of enforcement should these rain dates be necessary will be advertised through Local Notice to Mariners and Broadcast Notice to Mariners. The duration of the zone is intended to ensure safety in Lake Erie offshore from the Mentor Headlands Beach State Park before, during, and after the scheduled film production. 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 the size, location, duration, and time of day of the regulated area. This safety zone would restrict navigation through Lake Erie offshore of the Mentor Headlands Beach State Park and certain waters of the Grand River for 13 hours each day, for four days. 52 hours in all.

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 received no comments from the Small Business Administration on this rulemaking. 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 IV.A above, this rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this 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 offshore of the Mentor Headlands State Park Beach and certain waters of the Grand River lasting 13 hours each day for a total of four days. Normally such actions are categorically excluded from further review under paragraph L60a 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 is amending 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.T09–0396 to read as follows:

§ 165.T09–0396 Safety Zone; Mentor Headlands Beach, Mentor, Ohio.

(a) *Location.* The following area is a safety zone: Mentor, OH. All U.S. waters of Lake Erie out to 500-yards from the shoreline at Mentor Headlands Beach State Park within a rectangle of which the four corners of the polygon are located in the following positions:

- (1) 41°45′15.7″ N, 081°17′43.9″ W;
- (2) 41°45′27.4″ N, 081°17′57″ W;
- (3) 41°46′26.9″ N, 081°16′46.1″ W; and
- (4) 41°45′38.8″ N, 081°16′51.2″ W (NAD 83).

(b) *Definitions.* For the purposes of this section, the following definitions apply:

Official Patrol Vessel 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 law enforcement officer designated by or assisting the Captain of the Port Sector Eastern Great Lakes (COTP) in the enforcement of the regulations in this section.

Rain date means an alternate date and/or time in which the safety zone would be enforced in the event of inclement weather.

Spectator means all persons and vessels not registered with the production company as participants or official patrol vessels.

(c) *Regulations.* (1) The Coast Guard may patrol the safety zone area described in paragraph (a) of this section under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign “PATCOM.”

(2) All persons and vessels not registered with the production company or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, federal, state, or local law enforcement and production company provided vessels designated or assigned by the COTP Sector Eastern Great Lakes, to patrol the safety zone.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger anyone directly involved with the production or any other craft.

(4) No spectator shall anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated areas specified in this chapter, but may not anchor in, block, or loiter in a navigable channel.

(7) The Patrol Commander may terminate the filming or the operation of any vessel at any time it is deemed necessary for the protection of life and/or property.

(8) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

(d) *Enforcement period.* This section will be enforced from 6:30 a.m. through 7:30 p.m. on June 17 and 18, 2024, and from 1:30 p.m. through 2:30 a.m. on June 20 and 21, 2024. Rain dates have been identified as June 24–28, 2024. Times of enforcement should these rain dates be necessary will be advertised through Local Notice to Mariners and Broadcast Notice to Mariners.

Dated: June 18, 2024.

M.I. Kuperman,

Captain, U.S. Coast Guard, Captain of the Port Eastern Great Lakes.

[FR Doc. 2024–13781 Filed 6–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0547]

RIN 1625–AA00

Safety Zone; M/V Dali, Transit to Maryland/Virginia Line, Chesapeake Bay and Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Chesapeake Bay and Patapsco River to provide for the safety of life on these navigable waters during the movement of the M/V Dali from the Port of Baltimore to Norfolk Va. M/V Dali is expected to leave Baltimore at 10 a.m. on June 20, 2024, and arrive at the Maryland/Virginia state line about 10 p.m. June 20, 2024. This rulemaking will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from June 20 to June 21, 2024. For the purposes of enforcement, actual notice will be used on June 20.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0547 in the “SEARCH” box and click “SEARCH.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call, or email LCDR Kate M. Newkirk, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard; telephone (410) 576–2596, Kate.M.Newkirk@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
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

On March 26, 2024, the M/V Dali lost propulsion and allided with the Francis Scott Key Bridge in the Chesapeake Bay causing the bridge to collapse upon it. See 89 FR 24385 (April 8, 2024) for additional details about the allision. On June 12 2024, Maryland Pilots Association, LLC notified the Coast Guard that the M/V Dali will be transiting from the Port of Baltimore to Norfolk, Va. for repairs. The vessel transit is taking place with the assistance of multiple tugboats. The current estimated date of arrival in Norfolk is June 21, 2024, but it is subject to change. Given both the damage to the vessel from the allision, and the vessel’s mechanical history, including the loss of propulsion which led to the allision, a 500-yard safety zone will be enforced during the transit from Baltimore Md. to the Maryland/Virginia state line, where it is anticipated that the vessel will be subject to another safety zone issued by the Captain of the Port (COTP) of Sector Virginia.

The Coast Guard is issuing this temporary final 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 doing so would be impracticable and contrary to the public interest. There is insufficient time to provide notice of a proposed rule, take and consider comments, and publish a final rule before June 20, when the rule must be in effect to provide for safety in the navigable waters around the M/V Dali as it transits to Virginia.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It is impracticable and contrary to the public interest to delay the effective date of this rule because the safety zone must be effective by June 20, 2024, to protect vessels and persons from the dangers associated with the M/V Dali as it transits a busy waterway.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with the transit of M/

V Dali resulting from its limited ability to maneuver will be a safety concern for any vessel transiting the navigation channels of the Chesapeake Bay and the Patapsco River that might meet, pass, or overtake the M/V Dali. The purpose of this rule is to protect personnel, vessels, and the marine environment in the navigable waters around the M/V Dali during its transit to the Norfolk, Va.

IV. Discussion of the Rule

This rule establishes a safety zone during the transit of the M/V Dali. It is currently anticipated that the M/V Dali will arrive in Norfolk Va. on June 21, 2024. The transit to the Maryland/Virginia state line is expected to last approximately 12 hours.

The safety zone covers all navigable waters of the Chesapeake Bay and Patapsco River within 500 yards of the M/V Dali while it is transiting between the Seagirt Marine Terminal, in Baltimore, Md., and the Maryland/Virginia State line. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled transit. 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 Executive Order 12866. Accordingly, this rule has not been subject to review by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the safety zone, which is only anticipated to impact only vessel traffic required to transit certain navigation channels of the Chesapeake Bay and the Patapsco River for a total of no more than 12 enforcement-hours. Although these waterways support both commercial and recreational vessel traffic, the downriver portions of the waterway will be reopened as the M/V Dali transits southward in the Chesapeake Bay and

up the Patapsco River. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Regulatory Flexibility Act

Because the Coast Guard has determined that this final rule is exempt from notice and comment rulemaking requirements, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this action.

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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 14 enforcement hours that would prohibit entry within certain navigable waters of the Chesapeake Bay and Patapsco River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A 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 is amending 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; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T05–0547 to read as follows:

§ 165.T05–0547 Safety Zone; M/V Dali, Transit Operation, Chesapeake Bay and Patapsco River, Baltimore, MD.

(a) *Location.* The following area is a safety zone: All waters of the Chesapeake Bay and Patapsco River within 500 yards of the M/V Dali while it is transiting between Seagirt Marine Terminal, Baltimore Md., and the Maryland/Virginia state line.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means 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 Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced during inbound transit of the M/V Dali to the Port of Norfolk.

Dated: June 17, 2024.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Maryland-NCR.

[FR Doc. 2024–13635 Filed 6–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0402]

Safety Zones; Recurring Events in Captain of the Port Duluth—City of Bayfield 4th of July Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the City of Bayfield Fireworks in Bayfield, WI from 9:00 p.m. through 10:00 p.m. on July 04, 2024. This action is necessary to protect participants and spectators during the City of Bayfield Fireworks. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or designated on-scene representative.

DATES: The regulations in 33 CFR 165.943(b) will be enforced from 9:00 p.m. through 10:00 p.m. on July 04, 2024, for the City of Bayfield Fireworks safety zone, § 165.943.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email LT Joe McGinnis, telephone (218)–725–3818, email DuluthWWM@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the annual City of Bayfield 4th of July Fireworks Display in 33 CFR 165.943 from 9:00 p.m. through 10:00 p.m. on July 04, 2024. All waters of the Lake Superior North Channel in Bayfield, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°48'40" N, 090°48'32" W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners.

Dated: June 14, 2024.

J.P. Botti,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2024–13592 Filed 6–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0541]

RIN 1625–AA00

Safety Zone; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations for certain waters of the Back River, near Baltimore County, MD. This action is necessary to provide for the safety of life on these navigable waters during a fireworks display on July 20, 2024 (or on an alternate date of July 21, 2024). This regulation prohibits persons and

vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 8 p.m. to 10:30 p.m. on July 20, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0541 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Kate M. Newkirk, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2519, email MDNCRMarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

In “Tiki Lee’s Shootout on the River High Speed Power Boat” event, approximately 40 participants compete with one another, completing individually timed power boat speed runs on a designated, marked, linear course. See an NPRM (notice of proposed rulemaking) at 89 FR 34173 (April 30, 2024) for more information about a Special Local Regulation proposed to accommodate this event on an annual basis.

On June 11, 2024, Fantastic Fireworks, on behalf of Tiki Lee’s Dock Bar, notified the Coast Guard that it will be conducting fireworks display between 9 and 10 p.m. on July 20, 2024, as a part of the “Shootout on the River” event activities this year. The fireworks are to be launched from a barge located on the Back River, near Tiki Lee’s Dock Bar, in Sparrows Point, MD. In the event of inclement weather on July 20, 2024, the fireworks display will be conducted between 9 and 10 p.m. on July 21, 2024.

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 immediate action is needed to respond to the potential safety hazards associated with fireworks debris and the anticipated large spectator fleet.

In addition, the Coast Guard finds that good cause exists under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the date of the event, it would be impracticable to make the regulation effective 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with this fireworks event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Coast Guard anticipates a large spectator fleet for the events. The Captain of the Port, Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in the July 20, 2024, display will be a safety concern for anyone within a 600-foot radius of the fireworks barge. Potential hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

IV. Discussion of the Rule

The fireworks fallout zone extends across the navigable channel. The Coast Guard is establishing a temporary safety zone around the fireworks discharge site, in approximate position latitude 39°15'43.13" N, longitude 76°27'28.41" W. The safety zone covers all navigable waters within 600 feet of a fireworks barge in the Back River located near Tiki Lee’s Dock Bar in Sparrow’s Point, MD. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person would 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 Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, and time-of-day of the special local regulation and safety zone, which would impact a small, designated area of the Back River for a total of no more than 2.5 enforcement-hours, during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zones.

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 regulated area or safety zone may be small entities, for the reasons stated in section V.A above, this rule would 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 implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area, and within 33 CFR part 165 establishing a temporary safety zone that would prohibit entry within 600 feet of a fireworks barge, both lasting a total of 2.5 consecutive hours. It is categorically excluded from further review under paragraph L61 and 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 protestors. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0541 to read as follows:

§ 165.T05–0541 Safety Zone; Back River, Baltimore County, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Back River within 600 feet of the

fireworks barge in approximate position latitude 39°15'43.13" N, longitude 76°26'28.41" W. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by other Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8 p.m. to 10:30 p.m. on July 20, 2024, and, if necessary due to inclement weather on July 21, 2024, from 8 p.m. to 10:30 p.m.

Dated: June 17, 2024.

David E. O'Connell,

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

[FR Doc. 2024-13642 Filed 6-20-24; 8:45 am]

BILLING CODE 9110-04-P

POSTAL SERVICE

39 CFR Part 111

Customs Declaration Exceptions

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®), in various sections, to delete the “known mailer” and “official mail” exceptions for customs declarations for mail to, from, or between overseas U.S.

military and diplomatic Post Office® addresses.

DATES: *Effective:* September 29, 2024.

FOR FURTHER INFORMATION CONTACT: Vlad Spanu at (202) 268-4180 or Kathy Frigo at (202) 268-4178.

SUPPLEMENTARY INFORMATION: On May 10, 2023, the Postal Service published a notice of proposed rulemaking (88 FR 30068) to delete section 703.2.3.9, “Customs Declarations—Exceptions,” to align Postal Service regulations with current customs policy.

The Postal Service also proposed to make minor revisions to the text in sections 608.2.4.4 and 703.2.3.8 to align with deleting section 703.2.3.9.

Additionally, due to deleting section 703.2.3.9, the Postal Service is renumbering current sections 703.2.3.10 through 703.2.3.13, respectively, and revising the introductory text in renumbered section 703.2.3.10.

Responses to Comments

The Postal Service received nine formal comments on the May 10, 2023, proposed rule. Two commenters concurred without comment, and seven commenters cited concerns to the proposed rule.

The comments received and the Postal Service's responses area as follows:

Comment: Two commenters said that they felt the current “known mailer” and “official mail” exceptions wording should not be amended for mail sent to or from overseas military and diplomatic Post Office addresses since the change could prevent mailing classified materials. The commenters also indicated that providing detailed descriptions on the customs form could identify secret and sensitive contents.

In addition, the commenters noted that they send and receive documents and equipment currently considered as “official mail” from military locations and utilize a general description to deter rifling or theft. In support, one of the two commenters cited a reference from the Department of Defense Manual 5200.01-V3 Enclosure 4: “Preparation of Material for Shipment: (3) Do not place a classification marking or any other unusual marks on the outer envelope or container that might invite special attention to the fact that the contents are classified.”

For these reasons, both commenters said that they felt that instituting the proposed rule would hinder investigations and clearance adjudications missions, ultimately stagnating the nation's trusted workforce, and adversely impacting governmental departments. The

commenters further indicated that continued use of the Postal Service for classified mail is contingent upon official mail to move freely without unnecessary roadblocks to meet critical mission requirements.

USPS Response: The Postal Service requires the information senders provide on customs declaration forms to be electronically transmitted to USPS before the package enters the Postal Service network. By using the electronic customs declaration data, risk assessment tools, and data analytics, the United States Postal Inspection Service (USPIS) identifies packages with a potential risk to national security or the safety of the Postal Service mail stream.

The detailed descriptions' section of the Customs Declaration Form and Advance Electronic Data (AED) are used to provide a list of the contents within the package. The Postal Service does not have rules that require the disclosure of whether the contents are sensitive or confidential, nor a requirement to provide such marking on the exterior package that would reveal the national-security-classification level of the contents.

Comment: Like the previous comment, three commenters said that they felt the current “known mailer” and “official mail” exceptions wording should not be amended for mail sent to or from overseas military and diplomatic Post Office addresses since the change could prevent mailing sensitive or classified materials if the contents are required to be disclosed as such on the customs declaration form.

One of the two commenters also indicated that requiring a detailed description for unclassified materials poses a potential of identifying other mail as sensitive or classified based on the sole “documents” description.

The commenters further indicated that it would not be an issue if the Postal Service continued to accept a general description, such as “documents” for the description of sensitive or classified documents and equipment. One commenter further indicated that mailing classified documents would be contingent upon the allowance of using “documents” as the descriptor for all official mail.

USPS Response: Similar to the previous responses, there is no requirement to identify “secret,” “sensitive,” “classified,” or any other such distinction. For non-dutiable documents, the level of detail that would most often be expected to be adequate is “documents.”

Comment: One commenter did not oppose removing the “known mailer” and “official mail” exemptions for

customs declaration forms for mail addressed to international addresses, but did oppose removing the exemption for mail addressed to and from overseas military and diplomatic Post Office addresses. The commenter felt that the exemption allows mail sent in an official capacity to move freely and for the most part without unnecessary roadblocks to meet critical mission requirements, and also provides the ability to conceal contents that could potentially be of a sensitive nature.

USPS Response: Similar to previous responses, the Postal Service requires the information senders provide on customs declaration forms to be electronically transmitted to USPS before the package enters the Postal Service network. By using the electronic customs declaration data, risk assessment tools, and data analytics, the USPS identifies packages with a potential risk to national security or the safety of the Postal Service mail stream.

There is no Postal Service requirement to identify a non-dutiable document as classified or sensitive on the customs declaration form or on the exterior of the package and, therefore, would not reveal the national security classification level of the contents.

Comment: One commenter opposed amending the “known mailer” and “official mail” exceptions for mail to or from overseas military and diplomatic Post Office addresses since it would cause a change to current procedures, requiring time to educate their personnel and the communities they support on the new procedures. The commenter further indicated that U.S. Government entities should not be subjected to providing information on the customs declaration form or markings on the outer envelope or box since it could allude to the contents as confidential or classified material and cited a reference from the Department of Defense Manual 5200.01–V3 Enclosure 4: “Preparation of Material for Shipment: (3) Do not place a classification marking or any other unusual marks on the outer envelope or container that might invite special attention to the fact that the contents are classified.”

USPS Response: As indicated in previous responses, there is no requirement to identify “secret” or “sensitive” or “classified” or any other such distinction. The “detail” description that would most often be expected to be adequate is “documents.”

In addition, the Postal Service is simultaneously implementing associated changes to the International Mail Manual (IMM®) under separate

cover, eliminating the “known mailer” and “official mail” exceptions for mail in the international Postal Service network to conform to international law requirements for customs forms and data, which do not allow such exceptions.

Given these necessary changes for international mail, the changes to the DMM will also promote uniformity in how mail originating in the United States and destined for overseas is inducted, screened, and processed, thus simplifying operational processes and avoiding customer confusion.

Comment: Two commenters responded as “Concurred without comment.”

USPS Response: The Postal Service thanks those commenters for the feedback and appreciates the support of this change.

The Postal Service adopts the described changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*.

The Postal Service will publish an appropriate amendment to 39 CFR part 111 to reflect the changes.

In a separate rule, the Postal Service will also revise associated revisions to the International Mail Manual (IMM).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise *Mailing Standards of the United States Postal Service*, Domestic Mail (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

608 Postal Information and Resources

* * * * *

2.0 Domestic Mail

* * * * *

2.4 Customs Forms Required

* * * * *

2.4.4 Overseas Military Mail

[Revise the text of 2.4.4 to read as follows:]

For determining customs declarations’ required usage when mailing to or from APO, FPO, or DPO addresses, see 703.2.3.6 through 703.2.3.8.

* * * * *

700 Special Standards

703 Nonprofit USPS Marketing Mail and Other Unique Eligibility

* * * * *

2.0 Overseas Military and Diplomatic Post Office Mail

* * * * *

2.3 General Restrictions

* * * * *

2.3.8 Customs Declarations—Required Usage

[Revise the introductory text of 2.3.8 to read as follows:]

In accord with the procedures provided in 2.3.6, customs declarations forms are required for use on shipments to or from APO/FPO/DPO locations as follows:

[Revise the text of item a. to read as follows:]

a. Priority Mail Express mailpieces addressed to or from an APO, FPO, or DPO location must bear a properly completed computer-generated PS Form 2976–B, *Priority Mail Express International Shipping Label and Customs Form*, regardless of weight, value, or contents.

[Revise the introductory text of item b. to read as follows:]

b. All other mailpieces addressed to or from an APO, FPO, or DPO location must bear a properly completed computer-generated PS Form 2976, *Customs Declaration CN22—Sender’s Declaration*, or, if the customer prefers, a properly completed computer-generated PS Form 2976–A, *Customs Declaration and Dispatch Note—CP 72*, if either of the following conditions applies:

* * * * *

[Delete 2.3.9, “Customs Declarations—Exceptions,” in its entirety and renumber current 2.3.10 through 2.3.13 as 2.3.9 through 2.3.12.]

* * * * *

2.3.10 Items Not Eligible for Deposit or Pickup

[Revise the introductory text of renumbered 2.3.10 to read as follows:]

Customers must present the following items requiring a customs form to an employee at a Post Office retail service counter. The Postal Service will return these improperly presented items to the sender for proper entry and acceptance:

* * * * *

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2024–13425 Filed 6–20–24; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0608; FRL–12022–01–OCSPP]

Poly(oxy-1,2-ethanediyl), Polymer With 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol in Pesticide Formulations; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, with a minimum number average molecular weight (in amu) of 1400, (No CAS Reg. No.), when used as an inert ingredient in a pesticide chemical formulation. Pyxis Regulatory Consulting Inc., on behalf of Tessara PTY Ltd., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol on food or feed commodities when used in accordance with these exemptions.

DATES: This regulation is effective June 21, 2024. Objections and requests for

hearings must be received on or before August 20, 2024 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0608, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an

objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number: EPA–HQ–OPP–2023–0608 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before August 20, 2024. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2023–0608, by one of the following methods.

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

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of March 22, 2024 (89 FR 20410) (FRL–11682–02–OCSPP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11735) filed

by poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol with a minimum number average molecular weight (in amu) of 1400, (No CAS Reg. No.), Pyxis Regulatory Consulting Inc., 4110 136th St., Ct., NW, Gig Harbor, WA 98332, on behalf of Tessara PTY Ltd., 35 Kimball Avenue Epping 2 Cape Town 7460 S. Africa. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol with a minimum number average molecular weight (in amu) of 1400, (No CAS Reg. No.). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to

pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize. An available biodegradation study supports that

poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol with a minimum number average molecular weight (in amu) of 1400, (No CAS Reg. No.), is not readily biodegradable (MRID: 52034702).

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 Daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF₃- or longer chain length as listed in 40 CFR 723.250(d)(6). Additionally, the polymer also meets as required the following exemption criteria: specified in 40 CFR 723.250(e): The polymer's number average MW of 1400 Daltons is greater than 1,000, and less than 10,000 Daltons. However, the polymer contains less than 10% oligomeric material below MW 500, and less than 25% oligomeric material below MW 1,000, and the polymer has a combined (total) reactive group equivalent weight greater than or equal to 1,000 for the reactive functional groups listed in 40 CFR 723.250(e)(1)(ii)(B).

Thus, poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-

benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol is 1400 Daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol to share a common mechanism of toxicity with any other substances, and poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-

benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides>.

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, EPA has not used a safety factor analysis to assess the risk. For the same reasons no additional safety factor is needed for assessing risk to infants and children.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol.

VIII. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IX. Conclusion

Accordingly, EPA finds that exempting residues of poly(oxy-1,2-

ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled

“Federalism” (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: June 12, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

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

TABLE 1 TO § 180.960

Polymer	CAS No.
Poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenbis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, with a minimum number average molecular weight (in amu) of 1400	None.

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

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

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

■ 2. In § 180.960, amend table 1 to § 180.960 by adding, in alphabetical order, the polymer “Poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1'-methylenbis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, with a minimum number average molecular weight (in amu) of 1400” to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

[FR Doc. 2024–13588 Filed 6–20–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT–OST–2021–0093]

RIN 2105–AE94

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Technical Amendments

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation is making a series of technical amendments to its drug testing procedures rule, which was effective June 1, 2023. The purpose of these technical amendments is to clarify certain provisions of the rule and address omissions of which we have become aware since the publication of the final rule.

DATES: This final rule is effective June 21, 2024.

FOR FURTHER INFORMATION CONTACT:

Bohdan Baczara, Deputy Director, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone number 202–366–3784; ODAPCwebmail@dot.gov.

SUPPLEMENTARY INFORMATION: DOT published amended procedures for its drug testing program (49 CFR part 40) on May 2, 2023 (88 FR 27596). This rule went into effect on June 1, 2023. The final rule authorized oral fluid drug testing as an additional methodology for employers to use as a means of achieving the safety goals of the program. We have determined instances in which the text of various sections of the regulation should be clarified and errors or omissions that should be corrected. This technical amendment is intended to make these clarifications and corrections.

Section 40.14 What collection information must employers provide to collectors?

In the introductory sentence, we are removing the word ‘urine’ because, as described in the preamble to the May

2023 final rule and consistent with numerous other deletions of the term “urine” in instances where the rule was intended to cover both urine and oral fluid specimens, the information the employer provides to collectors applies to all specimen collections (urine and oral fluid). Also, in bullet ‘(e)’ we are fixing an incorrect reference. The reference should read § 40.36 and not § 40.35. Section 40.14(e) requires employers to provide to collectors the designated employer representative (DER) information required elsewhere in part 40. Section 40.36 specifies the required DER information and is the correct reference. Section 40.35 specifies training requirements for oral fluid collectors and is not the correct reference.

Subpart C—Urine Collection Personnel

As described in the preamble to the May 2023 final rule and consistent with numerous other deletions of the term “urine” in instances where the rule was intended to cover both urine and oral fluid specimens, Subpart C provides instructions for both types of specimen collectors, urine and oral fluid. With that in mind, we are removing the word

'Urine' from the heading and replacing it with the word 'Specimen'.

Section 40.81 What laboratories may be used for DOT drug testing?

Before oral fluid drug testing was authorized in the DOT drug testing program, laboratories conducting DOT drug testing could only test urine specimens. With oral fluid drug testing now authorized, we are removing the word 'required' from § 40.81(a) as both urine and oral fluid drug testing are each authorized, and urine testing is no longer required.

Section 40.83 How do laboratories process incoming specimens?

In § 40.83(d), (e)(3), and (g)(2) there is an incorrect reference to § 40.97(a)(3). Each of these § 40.83 paragraphs require reporting of 'fatal flaw' and 'rejected for testing' test results in accordance with § 40.97(a)(3). However, there is in fact no paragraph (a)(3) in § 40.97(a). Section 40.97(a) requires laboratories to report the specimen type for any result it reports. The correct reference should be § 40.97(b)(3), titled "Category 3: Rejected for testing". We are making that correction in this final rule. We are also fixing an incorrect reference in § 40.83(f)(2), which requires a laboratory to report a result when certain conditions have been met where the urine specimen temperature was not checked on the CCF. That reference should read § 40.97(b) and not § 40.97(a). As noted previously, § 40.97(a) refers to the reporting of specimen type. Section 40.97(b), the correct reference, pertains to required reporting of results for the specified categories of specimens.

Section 40.97 What do laboratories report and how do they report it?

We are making two technical corrections. First, in § 40.97(c)(1)(i)(M) there is an incorrect reference to "paragraph (a)". Second, in § 40.97(c)(2) there is an incorrect reference to "paragraphs (b)(1)(i) and (ii) of this section". When we inserted a new paragraph "(a)", the remaining paragraphs were renumbered and the references in (c)(1)(i)(M) and (c)(2) were not adjusted accordingly. The correct references should be "paragraph (b)" and "paragraphs (c)(1)(i) and (ii) of this section", respectively.

Section 40.113 Where is other information concerning laboratories found in this regulation?

Section 40.169 Where is other information concerning the role of MROs and the verification process found in this regulation?

Section 40.189 Where is other information concerning split specimens found in this regulation?

Section 40.217 Where is other information on the role of STTs and BATs found in this regulation?

Section 40.313 Where is other information on SAP functions and the return-to-duty process found in this regulation?

The preamble to the final rule discussed removing several sections from part 40. After careful consideration of public comment, DOT stated that it proposed removing several sections (§§ 40.29, 40.37, 40.113, 40.169, 40.189, 40.217, and 40.313), which listed other sections of part 40 touching on a given topic (e.g., employer responsibilities in § 40.29). The more than 20 years since DOT placed these sections into part 40, electronic search tools have become sophisticated and ubiquitous, making these sections no longer necessary. DOT removed the cross-reference sections of §§ 40.29, 40.37, 40.113, 40.169, 40.189, 40.217, and 40.313, as proposed.

However, in the final rule only §§ 40.29 and 40.37 were removed. In this technical amendment, we are providing instructions to remove §§ 40.113, 40.169, 40.189, 40.217 and 40.313, as discussed in the preamble but were inadvertently left in the final rule. [88 FR 27609] We are now removing them as initially determined.

Section 40.145 On what basis does the MRO verify test results involving adulteration or substitution?

In § 40.145(e)(2), (h)(1) introductory text, (h)(1)(ii), (h)(2) introductory text, and (h)(2)(ii), which are related to substituted urine results, there is an incorrect reference to § 40.93(b). Section 40.93(b) pertains to the validity testing for oral fluid specimens. The correct reference should be § 40.88(b), which pertains to criteria laboratories must use to establish that a urine specimen is dilute or substituted. In this final rule, we are correcting that reference in each section identified above.

Section 40.159 What does the MRO do when a drug test result is invalid?

In § 40.159(a)(1), there are incorrect references to §§ 40.91(e) and 40.96(b). The correct references should be §§ 40.87(e) and 40.90(b), respectively.

There is no § 40.91(e). Section 40.91 contains only a chart of the cutoff concentrations for oral fluid drug tests. There is also no § 40.96. We are making these corrections in this final rule.

Section 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

In § 40.191, paragraphs (a)(2) and (3) state that it is a refusal to test if an employee fails to remain at the testing site until the testing process is complete and if an employee fails to provide a specimen for any drug test required by Part 40 or the DOT agency regulations. Those subparagraphs go on to say that it is not a refusal to test if the test reason is 'pre-employment' and the employee left before the testing process commenced and provide citations to when the testing process commences for urine § 40.63(c) and oral fluid § 40.72(e), as applicable. The reference to § 40.72(e) is incorrect. The correct reference should be § 40.72(d)(3) as it is specific to when the employee selects a specimen collection device, or the collector provides a specimen collection device to the employee. Referencing § 40.72(d)(3) is the correct reference as it mirrors the commencement of a urine collection.

Section 40.207 What is the effect of a cancelled drug test?

Section 40.207(d) allows MROs to reverse cancelled tests where the reason for the cancellation involves paperwork errors (e.g., missing or delayed paperwork) that were not corrected which resulted in the MRO sending the cancellation to the employer. The reversible cancellations need to be administrative errors that can be corrected by paperwork. We added language to the May 2, 2023, final rule, in the form of a parenthetical in § 40.207(d), to note that correctible flaws arising under §§ 40.203 and 40.205 are examples of what is reversible (88 FR 27596, 27606). We also provided an example of an MRO uncanceling for a reason not included in §§ 40.203 and 40.205. However, in the rule text we inadvertently used an "i.e.," instead of an "e.g.,". As written, the parenthetical (i.e., §§ 40.203 and 40.205) arguably precludes the MRO from considering any other scenario in which they can un-cancel a drug test result. The intent in the preamble is clear and to avoid confusion for the MROs, we are revising "i.e.," in the parenthetical to read "e.g.,".

Section 40.245 *What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?*

We are correcting a typographical error in § 40.245(a)(6)(ii). Specifically, paragraph (a)(6)(ii) states that the new device you use must be one that has been under your control or that of the *employee* before the test. The language states that the responsibility for providing a new saliva testing device in instances where the STT or BAT is unable to successfully follow the procedures of § 40.245(a)(3) through (5) (e.g., the device breaks, you drop the device on the floor) falls to the STT or BAT or the *employee* (emphasis added). Reference to the employee was in error. While it is reasonable to rely on the STT or BAT to provide the new device, the employee would not be expected to have a backup device on hand. Instead, the employer could also provide the new device. Ultimately, the employer is responsible for ensuring the test is completed, not the employee. This change will mirror the existing language in 40.245(b)(7)(ii), which describes similar procedures and responsibilities for alcohol testing using a breath tube alcohol screening device. We are making the correction by replacing ‘employee’ with ‘employer’.

Section 40.291 *What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT Agency drug and alcohol testing regulations?*

In the last sentence of § 40.291(a)(1), there is duplicative text. We are removing the duplicative text.

Regulatory Notices and Analyses

This final rule is a non-significant rule for purposes of section 3(f) of Executive Order (E.O.) 12886, as supplemented by E.O. 13563 and amended by E.O. 14094. DOT has determined that the regulatory analyses conducted for the May 2, 2023, final rule remain applicable to this technical correction final rule. DOT makes these statements on the basis that, as a series of technical amendments that correct or clarify existing regulatory provisions, this rule will not impose any significant costs or have impacts beyond those analyzed in the May 2, 2023, final rule.

DOT concludes that it has good cause to waive prior opportunity for notice and comment under 5 U.S.C. 553(b)(B). The technical amendments included in this final rule render notice and comment unnecessary and contrary to the public interest. The amendments made in this rule are technical, corrective, and clarifying changes to an

existing rule that went through an extensive public notice and comment process. The amendments do not make significant substantive changes to part 40. The errors in the current regulation are also potentially confusing to testing laboratories, employers, employees subject to testing, and other stakeholders, and prompt publication would clarify ambiguities. For these same reasons, DOT finds good cause to waive the 30-day delay in effective date under 5 U.S.C. 553(d)(3).

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. DOT will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. This rule does not constitute a major rule as defined in 5 U.S.C. 804(2).

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons stated in the preamble, DOT amends 49 CFR part 40 as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority for part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

§ 40.14 [Amended]

■ 2. In § 40.14, in the introductory text, remove the word “urine” before the word specimen and in paragraph (e), remove “40.35 of this part” and add “40.36” in its place.

Subpart C [Amended]

■ 3. In the heading for subpart C, remove the word “Urine” and add the word “Specimen” in its place.

§ 40.81 [Amended]

■ 4. In § 40.81, in paragraph (a), remove the word “required”.

§ 40.83 [Amended]

■ 5. In § 40.83, in paragraphs (d), (e)(3), and (g)(2), remove “40.97(a)(3)” and add “40.97(b)(3)” in its place and in paragraph (f)(2), remove “40.97(a)” and add “40.97(b)” in its place.

§ 40.97 [Amended]

■ 6. In § 40.97(c)(1)(i)(M), remove “(a)” and add “(b)” in its place and in paragraph (c)(2), remove “(b)” and add “(c)” in its place.

§ 40.113 [Removed]

■ 7. Remove § 40.113.

§ 40.145 [Amended]

■ 8. In § 40.145, in paragraphs (e)(2), (h)(1) introductory text, (h)(1)(ii), (h)(2) introductory text, and (h)(2)(ii), remove “§ 40.93(b)” and add “§ 40.88(b)” in its place.

§ 40.159 [Amended]

■ 9. In § 40.159, in paragraph (a)(1), remove “§ 40.91(e) and § 40.96(b)” and add “§ 40.87(e) and § 40.90(b)” in its place.

§ 40.169 [Removed]

■ 10. Remove § 40.169.

§ 40.189 [Removed]

■ 11. Remove § 40.189.

§ 40.191 [Amended]

■ 12. In § 40.191, in paragraphs (a)(2) and (3), remove “§ 40.72(e)” and add “§ 40.72(d)(3)” in its place.

§ 40.207 [Amended]

■ 13. In § 40.207, in paragraph (d), remove “*i.e.*,” in the parenthetical and add “*e.g.*,” in its place.

§ 40.217 [Removed]

■ 14. Remove § 40.217.

§ 40.245 [Amended]

■ 15. In § 40.245, in paragraph (a)(6)(ii), remove the word “employee” and add the word “employer” in its place.

§ 40.291 [Amended]

■ 16. In § 40.291, in the last sentence of paragraph (a)(1) introductory text, remove the second occurrence of “must be”.

§ 40.313 [Removed]

■ 17. Remove § 40.313.

Signed pursuant to authority delegated at 49 CFR 1.27(c) in Washington, DC.

Subash Iyer,
Acting General Counsel.

[FR Doc. 2024–12749 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 40**

[Docket DOT–OST–2021–0093]

RIN 2105–AE94

Procedures for Transportation Workplace Drug and Alcohol Testing Programs**AGENCY:** Office of the Secretary, Department of Transportation (DOT).**ACTION:** Direct final rule.

SUMMARY: The U.S. Department of Transportation (DOT) is taking direct final action to revise DOT's drug testing procedures rule, which became effective on June 1, 2023, to provide temporary qualification requirements for mock oral fluid monitors, provide for consistent privacy requirements by identifying which individuals may be present during an oral fluid collection, and clarify how collectors are to specify that a sufficient volume of oral fluid was collected.

DATES: This final rule is effective on August 5, 2024, without further notice unless DOT receives adverse comment by July 22, 2024. If DOT receives adverse comment on any of the provisions in this direct final rule, it will publish a timely withdrawal in the **Federal Register** informing the public that the provisions of the rule on which adverse comment were received will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. DOT–OST–2021–0093, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. DOT 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. For additional submission methods and general guidance on making effective comments, please visit <https://www.transportation.gov/regulations/rulemaking-process>.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, Deputy Director, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone number 202–366–3784; ODAPCwebmail@dot.gov.

SUPPLEMENTARY INFORMATION:**I. Why is DOT using a direct final rule?**

DOT is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment on any of the provisions of the rule. However, in the “Proposed Rules” section of this issue of the **Federal Register**, we are publishing a separate document containing the same amendments that serves as the proposed rule to amend the procedures for DOT's drug testing program (49 CFR part 40) if adverse comments are received on any of the provision in this direct final rule. Any parties interested in commenting must do so at this time. We will not institute a second comment period on this action. For further information about commenting on this rule, see the **ADDRESSES** section.

If DOT receives adverse comment on any of the provisions, we will publish in the **Federal Register** a timely withdrawal of the provision or provisions that are the subject of the comments, informing the public that the provision(s) of the direct final rule on which DOT received adverse comment will not take effect unless and until DOT addresses public comments in any subsequent final rule.

II. What is DOT including in this direct final rule?

DOT published a final rule amending the procedures for its drug testing program (49 CFR part 40) on May 2, 2023 (88 FR 27596) (May 2023 final rule). The May 2023 final rule went into effect on June 1, 2023. The final rule authorized oral fluid drug testing as an additional methodology for employers to use as a means of achieving the safety goals of the program. We have determined instances in which the text of various aspects of the procedures as amended by the final rule need to be further amended due to unforeseen circumstances rendering it impossible to comply with requirements for mock oral fluid collection observers, consistency with regard to privacy during testing, and a need to clarify the means by which oral fluid collectors specify that a sufficient volume of oral fluid was collected.

Section 40.35 What training requirements must a collector meet for oral fluid collection?

The May 2023 final rule established qualification requirements for oral fluid collector qualifications in § 40.35 that mirrored as closely as possible existing urine collector qualifications in § 40.33. All the qualification training requirements (*i.e.*, basic information,

qualification training, initial proficiency demonstration, refresher training, error correction training, and documentation) are identical. Regarding the mock collections specified in § 40.35(c), we required oral fluid collectors to demonstrate proficiency in collections by completing five consecutive error-free mock collections for each device they will use. These mock collections must be monitored and evaluated by a ‘qualified collector’ who has demonstrated the necessary knowledge, skills, and abilities by—(i) regularly conducting DOT drug test collections for a period of at least one year; (ii) conducting collector training under this part for at least one year; or (iii) successfully completing a “train the trainer” course.

Once the Department of Human and Health Services (HHS) certifies its first oral fluid laboratory, oral fluid testing devices will be available, but individuals wanting to be oral fluid collectors will not be able to be qualified because there are no currently qualified oral fluid collectors per § 40.35(c)(2) with the additional qualifications at § 40.35(c)(2)(i), (ii) or (iii) to monitor and evaluate the trainee's mock collections. We did not intend to create a factual impossibility. We meant for the oral fluid monitors for the mock proficiency demonstrations to be proficient as oral fluid collectors.

The regulatory flexibility we provide in this direct final rule will allow individuals sufficiently knowledgeable in part 40's oral fluid collection requirements and familiar with an oral fluid testing device of their choosing to observe the mock collections and attest in writing that the mock collections are ‘error free’. As a reminder, individuals meeting the criteria in § 40.35(c)(2)(ii) or (iii) should be prepared to provide any course material and/or certificates of successful completion to an employer or DOT representative upon request.

To facilitate the training of oral fluid collectors, we have amended the regulation to authorize individuals to monitor mock oral fluid collections without meeting the requirement of being a qualified oral fluid collector specified in § 40.35. To ensure the proficiency of the collection monitor, however, this regulatory flexibility will apply only to those individuals meeting the knowledge, skills, and abilities in § 40.35(c)(2)(ii) or (iii).¹ With regard to

¹ We note that the knowledge, skills, and abilities in § 40.35(c)(i) require regularly conducting DOT drug test collections (in this case, for oral fluids) for at least one year. This is not possible because until HHS certifies an oral fluid laboratory(ies), oral fluid is not a permissible means of collection. We have determined that, in contrast to paragraphs (c)(ii)

the knowledge, skills, and abilities in § 40.35(c)(2)(ii), we are waiving the requirement that individuals conducting oral fluid collector training have at least one year of experience conducting collector training, but we expect those individuals to have a thorough understanding of part 40 and to be well versed in the course content they are teaching. The course content must meet the requirements in § 40.35(b), and individuals conducting training should maintain good records (for example, the course content for the instructor and student, the duration of the training, the dates the course was taught, who attended the course and any certificate of successful completion you may have provided students, etc.) to demonstrate that they conducted the training. This is no different than what would be expected of those conducting urine collection training today. Individuals conducting this training would be eligible to observe oral fluid mock collections during the period of regulatory relief.

This regulatory flexibility will sunset one year after HHS publishes a **Federal Register** notice that it certified the first oral fluid drug testing laboratory. So that all are aware of the effective date of the regulatory flexibility, we will publish a **Federal Register** document specifying the date the first oral fluid laboratory is certified by HHS and the effective date that individuals observing mock collections (*i.e.*, monitors) will need to comply with the qualified collector requirements in § 40.35(c)(2) established in the May 2023 final rule.

We want to emphasize that while individuals may become qualified as oral fluid collectors after the first laboratory is HHS certified for oral fluid drug testing, oral fluid specimens cannot be collected and DOT oral fluid testing cannot be implemented until HHS certifies at least two laboratories (one to serve as a primary laboratory, and a second to serve as a split specimen laboratory). As of the publication of this direct final rule, HHS has not yet certified any laboratories for oral fluid drug testing. Upon certification, oral fluid laboratories will be added to the list of HHS-certified laboratories at <https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list>.

and (c)(iii), there is no way for an individual to otherwise possess the knowledge, skills, and abilities in paragraph (c)(i) such that the individual could competently observe mock collections. As a result, those who want to act as monitors specified in subparagraph (c)(2)(i) must still become qualified collectors and meet the one-year requirement of regularly conducting DOT oral fluid drug test collections before they can act as monitors.

Section 40.73 How is an oral fluid specimen collected? (persons allowed in testing room)

DOT intended in the May 2023 final rule that the procedures for oral fluid testing parallel the alcohol testing procedure found in § 40.223(b), which requires the breath alcohol technician (BAT) or screening test technician (STT) to prohibit anyone other than the BAT or STT, the employee, or a DOT representative to witness the testing process. Such a provision also affords privacy to the employee being tested. In this direct final rule, DOT is correcting the inadvertent omission of this provision from its oral fluid testing requirements.

Thus, we are adding a new paragraph to the regulation instructing the oral fluid collector not to allow anyone other than the collector, the employee being tested, or a DOT agency representative to witness the testing process. This instruction will afford the employee privacy during testing and parallels the alcohol testing procedure found in § 40.223(b).

Section 40.73 How is an oral fluid specimen collected? (specification of the collection of a sufficient amount of oral fluid)

The current § 40.73(c)(2) requires the oral fluid collector to ensure that a sufficient specimen volume is collected. To be more specific and provide our interpretation of how collectors ensure that a sufficient volume is collected, we are requiring the collector to also check the 'volume indicator(s) observed' box in Step 2 of the CCF. To do so, in this direct final rule we are adding language to § 40.73(c)(2) to instruct the collector to document in Step 2 of the CCF that they observed the volume indicator(s) during the collection.

III. Regulatory Notices and Analyses

This rule is a non-significant rule for purposes of Executive Order (E.O.) 12886, as supplemented by E.O. 13563 and amended by E.O. 14094 and will not impose any significant costs or have impacts beyond those analyzed in the May 2, 2023, final rule. DOT has determined that the regulatory analyses conducted for the May 2, 2023, final rule remain applicable to this direct final rule. DOT makes these statements on the basis that, as technical amendments that correct or clarify existing regulatory provisions, specifically to establish temporary requirements to qualify an initial group of mock oral fluid collection observers, establish privacy requirements during an oral fluid collection, and clarify how

collectors are to specify that a sufficient volume of oral fluid was collected, this direct final rule will not impose any significant costs or have impacts beyond those analyzed in the May 2, 2023, final rule.

DOT concludes that it has good cause to waive prior opportunity for notice and comment to 5 U.S.C. 553(b)(B) as unnecessary unless adverse comment is received by July 22, 2024. These amendments correct a factual impossibility with regard to mock collection observers, incorporate privacy considerations consistent with DOT regulations on alcohol testing, and clarify how collectors are to demonstrate compliance with the existing regulation that requires collection of a sufficient amount of oral fluid. DOT believes these amendments merely clarify and operationalize the final rule published on May 2, 2023, and are noncontroversial. The amendments do not make significant substantive changes to Part 40.

With regard to the added language in § 40.35 for monitors of mock oral fluid collections, DOT explained that the final rule published in May 2023 inadvertently created a factual impossibility. The temporary allowance in this direct final rule will be in effect until one year after HHS certifies an oral fluid laboratory, during which time individuals could become qualified oral fluid collectors. DOT believes that individuals monitoring collections under this final rule will be able to monitor collections with the same level of proficiency as qualified collectors meeting the knowledge, skills, and abilities set forth in § 40.35.

With regard to the added instruction in § 40.73 to the oral fluid collector not to allow anyone other than the collector, the employee being tested, or a DOT agency representative to witness the testing process, DOT is correcting the inadvertent omission of this provision from its oral fluid testing requirements to afford a commensurate level of privacy to all employees subject to testing.

With regard to the requirement for the collection of a sufficient specimen volume, the requirement established in this direct final rule to check the 'volume indicator(s) observed' box in Step 2 of the collection form is intended only to clarify how collectors ensure that a sufficient volume is collected as required by the regulation.

Based on the preceding discussion and the description of the measures in this direct final rule, DOT determined that the opportunity for prior notice and comment is unnecessary and contrary to the public interest, and DOT publishes

the amendments in this direct final rule. For these same reasons, DOT waives the 30-day delay in effective date for this rule pursuant to 5 U.S.C. 553(d)(3).

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. DOT will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. This rule does not constitute a major rule as defined in 5 U.S.C. 804(2).

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons stated in the preamble, DOT amends 49 CFR part 40 and the specified DOT agency regulations as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority for part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

■ 2. In § 40.35, revise paragraph (c)(2) and add paragraph (c)(3) to read as follows:

§ 40.35 What training requirements must a collector meet for oral fluid collection?

* * * * *

(c) * * *

(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between you and the qualified collector, who must attest in writing that the mock collections are “error-free.” Except as provided in paragraph (c)(3) of this section, this person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by—

(i) Regularly conducting DOT drug test collections for a period of at least one year;

(ii) Conducting collector training under this part for at least one year; or

(iii) Successfully completing a “train the trainer” course.

(3) As the person monitoring and evaluating the collector’s five mock collections pursuant to paragraphs (c)(1) and (2) of this section, you need not be a qualified oral fluid collector to do so if you meet the necessary knowledge, skills, and abilities in paragraph (c)(2)(ii) or (iii) until otherwise specified (one year after HHS publishes a **Federal Register** notification of the first certified oral fluid drug testing laboratory (HHS notification)). Furthermore, the one-year requirement in (c)(2)(ii) is not applicable until otherwise specified (one year after the HHS notification).

* * * * *

■ 3. In § 40.73, add paragraph (a)(1) and a reserved paragraph (a)(2) and revise paragraph (c)(2) to read as follows:

§ 40.73 How is an oral fluid specimen collected?

* * * * *

(a) * * *

(1) As the oral fluid collector, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process.

(2) [Reserved]

* * * * *

(c) * * *

(2) The collector must ensure the collection is performed correctly (*i.e.*, using the oral fluid device in the manner described by its manufacturer), that the collection device is working properly, and that a sufficient specimen volume is collected. Check the “Volume indicator(s) Observed” box in Step 2 of the Federal CCF to document that you observed the volume indicator(s) during the collection.

* * * * *

Signed pursuant to authority delegated at 49 CFR 1.27(c) in Washington, DC.

Subash Iyer,

Acting General Counsel.

[FR Doc. 2024–12747 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 231215–0305; RTID 0648–XE044]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From Virginia to Rhode Island

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Virginia is transferring a portion of its 2024 commercial summer flounder quota to the State of Rhode Island. This adjustment to the 2024 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) quota transfer provisions. This announcement informs the public of the revised 2024 commercial quotas for Virginia and Rhode Island.

DATES: Effective June 20, 2024, through December 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.111. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102, and the final 2024 allocations were published on December 21, 2023 (88 FR 88266).

The final rule implementing amendment 5 to the FMP, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: (1) the transfers or combinations would not preclude the overall annual quota from being fully harvested; (2) the transfers address an unforeseen variation or contingency in the fishery; and (3) the transfers are consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

Virginia is transferring 3,799 pounds (lb; 1,723 kilograms (kg)) to Rhode Island through a mutual agreement between the states. This transfer was requested to repay landings made by an

out-of-state permitted vessel under a safe harbor agreement. The revised summer flounder quotas for 2024 are: Virginia, 1,895,757 lb (859,901 kg); and Rhode Island, 1,382,306 lb (627,003 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens

Act. This action is required by 50 CFR 648.102(c)(2)(i) through (iv), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act and is exempted from review under Executive Order 12866.

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

Dated: June 14, 2024.

Karen H. Abrams,

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

[FR Doc. 2024–13533 Filed 6–20–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 89, No. 120

Friday, June 21, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-1692; Project Identifier MCAI-2024-00050-T]

RIN 2120-AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC-8-401 and -402 airplanes. This proposed AD was prompted by a report of an in-flight event where isolation valve caution messages were received. This proposed AD would require inspecting the fuse/shuttle valve serial numbers, and replacing certain fuse/shuttle valves, as specified in a Transport Canada AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 5, 2024.

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

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1692; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888-663-3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca. You may find this material on the Transport Canada website at tc.canada.ca/en/aviation. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1692.

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

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516-228-7300; email: 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2024-1692; Project Identifier MCAI-2024-00050-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency

will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516-228-7300; email: 9-avs-nyaco-cos@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF-2024-01, dated January 11, 2024 (Transport Canada AD CF-2024-01) (also referred to as the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC-8-401 and DHC-8-402 airplanes. The MCAI states that an in-service event was reported where the crew received a number two isolation valve (ISO #2) caution message followed by a number one isolation valve (ISO #1) caution message. The landing gear was extended via an alternate extension system as the crew prepared for landing. Upon landing, the crew used the emergency brake to stop the airplane. The airplane stopped safely within the runway limits.

Subsequent maintenance activity discovered an external leak from the main landing gear (MLG) brake assembly, and it was found that the fuse/shuttle valve assembly did not function properly. Further investigation revealed that the fuse/shuttle valve

assembly failure resulted from a factory assembly error, which occurred on a limited number of fuse/shuttle valves.

The assembly error can cause valve deformation leading to premature wear, and eventually fuse/shuttle valve failure. This condition, if not corrected, could result in the loss of powered landing gear extension/retraction, outboard and inboard spoilers, nose wheel steering, and normal braking, and possibly a runway excursion.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–1692.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF–2024–01 specifies procedures for inspecting the fuse/shuttle valve serial numbers, and if any fuse/shuttle valve assemblies with the listed serial numbers are found, replacing the affected fuse/shuttle valves.

This material is reasonably available because the interested parties have access to it through their normal course

of business or by the means identified in **ADDRESSES** section.

FAA’s Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in Transport Canada AD CF–2024–01 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD

process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate Transport Canada AD CF–2024–01 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF–2024–01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by Transport Canada AD CF–2024–01 AD for compliance will be available at *regulations.gov* under Docket No. FAA–2024–1692 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 54 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × \$85 per hour = \$85	\$0	\$85	\$4,590

The FAA estimates the following costs to do any necessary on-condition action that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
5 work-hours × \$85 per hour = \$425 per fuse/shuttle valve	\$64,453 per fuse/shuttle valve assembly	\$64,878

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2024–1692; Project Identifier MCAI–2024–00050–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 5, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes, certificated in any category, as identified in Transport Canada AD CF–2024–01, dated January 11, 2024 (Transport Canada AD CF–2024–01).

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls; 29, Hydraulic Power; and 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by a report of an in-flight event where isolation valve caution messages were received. The FAA is issuing this AD to address certain fuse/shuttle valves. The unsafe condition, if not addressed, could result in the loss of powered landing gear extension/retraction, outboard and inboard spoilers, nose wheel steering, normal braking, and possibly a runway excursion.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and

compliance times specified in, and in accordance with, Transport Canada AD CF–2024–01.

(h) Exceptions to Transport Canada AD CF–2024–01

(1) Where Transport Canada AD CF–2024–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Transport Canada AD CF–2024–01 refers to hours air time, this AD requires using flight hours.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Additional Information

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

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2024–01, dated January 11, 2024.

(ii) [Reserved]

(3) For Transport Canada AD CF–2024–01, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca; website tc.canada.ca/en/aviation.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the

availability of this material at the FAA, call 206–231–3195.

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

Issued on June 14, 2024.

James D. Foltz,

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

[FR Doc. 2024–13559 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AB71

Evidence of Disability

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule; request for comments.

SUMMARY: The Railroad Retirement Board (RRB) proposes to amend its regulations to designate additional acceptable medical sources in disability claims under the Railroad Retirement Act. This change recognizes the evolution of how medical care and treatment are delivered and aligns the RRB's acceptable medical sources with recently amended regulations of the Social Security Administration (SSA). Additionally, the changes clarify existing RRB policy regarding how evidence from medical sources, other than those designated as acceptable medical sources, will be evaluated.

DATES: Submit comments on or before August 20, 2024.

ADDRESSES: You may submit comments, identified by RIN 3220–AB71, through any of the following methods:

1. Internet—Send inquiries via email to SecretarytotheBoard@rrb.gov.

2. Fax—(312) 751–7102.

3. Mail—Secretary to the Board, Railroad Retirement Board, 844 N Rush Street, Chicago, Illinois 60611–1275.

Do not submit the same comment multiple times or by more than one method. Regardless of which method you choose, please indicate that your comments refer to RIN number 3220–AB71.

Caution: You should be careful to include in your comments only information that you wish to make publicly available as comments are posted without change with any personal information provided. The RRB strongly urges you not to include in your comments any personal

information, such as Social Security numbers or medical information.

FOR FURTHER INFORMATION CONTACT:

Peter J. Orlowicz, Senior Counsel, (312) 751-4922, TTD (312) 751-4701, Peter.Orlowicz@rrb.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The RRB proposes to amend § 220.46 of its regulations to designate additional acceptable medical sources (AMS) in disability claims under the Railroad Retirement Act. Although the RRB will accept and evaluate evidence from any relevant source, including medical sources not designated as an AMS, the RRB requires evidence about a claimant's impairment from an AMS to adjudicate a claim of disability. Currently, AMSs consist of licensed physicians, licensed osteopaths, licensed or certified psychologists, licensed optometrists (for the limited purpose of measuring visual acuity and visual fields), and persons authorized to furnish a copy or summary of the records of a medical facility.

Both the RRB and federal courts have long recognized the equivalence between entitlement to disability insurance benefits under section 223 of the Social Security Act and entitlement to a disability annuity based on inability to engage in any regular employment under section 2(a)(1)(v) of the Railroad Retirement Act. *Bowers v. Railroad Retirement Board*, 922 F.2d 1485, 1488 (D.C. Cir. 1992); *Goodwin v. Railroad Retirement Board*, 546 F.2d 1169, 1172 (5th Cir. 1977); *Romaker v. Railroad Retirement Board*, 733 F.2d 639 (8th Cir. 1984) (collecting cases). As a result, the RRB carefully examines when the SSA modifies its own rules regarding disability claims and medical evidence and may independently adopt SSA's rationales and supporting evidence as equally persuasive when applied to disability under the Railroad Retirement Act.

Additionally, in some instances the RRB must make its own independent determinations whether an individual could currently be entitled to disability insurance benefits under section 223 of the Social Security Act. This is also referred to as establishing a period of disability. These determinations are necessary for the RRB to determine who must be certified to the Commissioner of Social Security as a qualified railroad retirement beneficiary entitled to Medicare hospital insurance benefits under section 7(d)(2) of the Railroad Retirement Act and section 226(a)(2)(B) of the Social Security Act. In these cases, the RRB must apply the

regulations of the SSA when making its determination. 20 CFR 220.35. The RRB treats any application for an employee disability annuity under the Railroad Retirement Act as a simultaneous application for a period of disability. 20 CFR 220.36(b)(6)(i). Accordingly, reducing discrepancies between RRB rules and SSA rules regarding evaluation of disability, including in identification of AMSs, reduces the likelihood of disability adjudicator confusion over where the standards differ and promotes consistent outcomes between the RRB and the SSA across the same medical evidence.

II. Proposing To Add New Acceptable Medical Sources

As relevant to the RRB's proposed changes to 20 CFR 220.46, the SSA has revised its rules regarding medical evidence in disability claims under the Social Security Act to expand the list of AMSs who can establish the existence of a medically determinable impairment on two occasions. First, on October 9, 1998, the SSA proposed to revise its regulations to add podiatrists as AMSs for foot impairments or foot and ankle purposes, depending on the scope of practice in the State the podiatrist practices in. The SSA also proposed adding qualified speech-language pathologists as AMSs for speech and language impairments. 63 FR 54417. The rule was finalized on June 1, 2000. 65 FR 4950. Second, on September 9, 2016, the SSA proposed to revise its regulations to add audiologists and Advanced Practice Registered Nurses (a category that includes nurse practitioners) as AMSs. 81 FR 62560. The rule was finalized on January 18, 2017. 82 FR 5844.

The RRB shares the sense of the SSA, as reflected in the supplementary information for their proposed rule on Sep. 9, 2016 (81 FR 62560, 62568), that medical evidence in disability cases is increasingly originating from primary care providers who do not meet the current RRB definition of an AMS due to the evolving ways medical care is being delivered in the United States. For the same reasons identified by the SSA in their October 9, 1998, proposed rule (63 FR 54417), as modified by the responses to comments articulated in the June 1, 2000, final rule (65 FR 34950), and in their September 9, 2016, proposed rule (81 FR 62560, 62568), as modified by the responses to comments articulated in the January 18, 2017, final rule (82 FR 5844, 5845), the RRB proposes to recognize the following medical sources as AMSs:

(1) Licensed or certified school psychologists, or other licensed or

certified individuals with another title who performs the same function as a school psychologist in a school setting, for impairments of intellectual disability, learning disabilities, and borderline intellectual functioning only;

(2) Licensed podiatrists, for impairments of the foot or of the foot and ankle, depending on the scope of practice in the State in which the podiatrist practices;

(3) Qualified speech-language pathologists, for speech and language impairments only, and when either licensed by a State professional licensing agency, fully certified by a State education agency where the individual practices, or holding a Certificate of Clinical Competence in Speech-Language Pathology from the American Speech-Language-Hearing Association;

(4) Licensed audiologists, for impairments of hearing loss, auditory processing disorders, and balance disorders when such disorders are within the individual's licensed scope of practice;

(5) Licensed Advanced Practice Registered Nurses or other licensed advance practice nurses with another title, within the individual's scope of practice (this category includes, but is not limited to, Certified Nurse Midwives, Nurse Practitioners, Certified Registered Nurse Anesthetists, and Clinical Nurse Specialists); and

(6) Licensed Physician Assistants, for impairments within the individual's licensed scope of practice.

As articulated in the SSA rulemakings, these medical sources are generally professionally licensed, certified, or otherwise qualified by external authorities to a high and generally consistent level to be considered an AMS for the purposes of evaluating disability claims.

The RRB also seeks to clarify that, consistent with SSA policy, psychologists are required to be licensed at an independent practice level to be considered an AMS, but school psychologists are not subject to this requirement.

Finally, the RRB maintains its existing inclusion of individuals authorized to furnish a copy or summary of the records of a medical facility, when such copy or summary is certified as accurate by the appropriate records custodian or by an authorized employee of the RRB, the SSA, the Department of Veterans Affairs, or a State agency. Under our definitions, AMSs are individuals, not institutions; a medical practice or hospital cannot be an AMS. By permitting authorized records custodians to be treated as AMSs, as a

matter of administrative convenience and efficiency the RRB could accept a group of records from the Department of Veterans Affairs or from a large multi-physician medical practice without having to request records from each individual medical practitioner participating in a claimant's care. The persuasive weight assigned to evidence received in this way would still be evaluated according to the factors outlined in 20 CFR 220.14 for disability from a claimant's regular railroad occupation and in 20 CFR 220.46 for disability from all regular employment.

III. Clarification of Existing RRB Policy for Evaluating Non-AMS Evidence

In its current regulation, the RRB distinguishes between AMS and all other sources, but does not have a separate discussion of non-AMS medical sources. In order to better articulate how the RRB actually evaluates non-AMS medical sources, the RRB proposes to add a new paragraph (b) to 20 CFR 220.46, which adopts the SSA's definition of "medical source" other than the enumerated AMSs in § 220.46(a) and explains that the RRB will continue to accept and consider evidence about a claimant's impairments from non-AMS medical sources, but the presence of a medically determinable impairment must be established with objective evidence from an AMS. This is not a change from current practice since the current regulation at 20 CFR 220.46(e)(3) lists "other practitioners" as a source that the RRB may accept evidence from.

The RRB also proposes to amend its discussion about evidence from treating medical sources to change the nomenclature from "treating physician" to "treating medical source". As discussed in part II above, the RRB acknowledges the increasing frequency of health care being provided by non-physicians. This nomenclature change recognizes this evolution without any substantive change to the way evidence from treating medical sources will be evaluated.

Finally, with the proposed insertion of the discussion of other non-AMS medical sources at 20 CFR 220.46(b), the RRB proposes to delete the mention of other practitioners from 20 CFR 220.46(e) and revise the list of other sources to more closely align with the list of examples in the SSA's regulations. The list of other sources is illustrative only and is non-exclusive, so no substantive change to the scope of other sources is intended by this change.

Regulatory Analysis

Executive Order 12866, as Supplemented by Executive Order 13563

The RRB, with the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, no regulatory impact analysis is required.

Executive Order 13132 (Federalism)

This proposed 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, the RRB believes that this proposed rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

The RRB certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities because the rulemaking affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This proposed rule imposes no reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

List of Subjects in 20 CFR Part 220

Disability benefits, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend 20 CFR part 220 as follows:

PART 220—DETERMINING DISABILITY

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

■ 2. Amend § 220.46 by:

- a. Revising paragraph (a);
- b. Redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f) respectively;
- c. Adding new paragraph (b); and
- d. Revising newly redesignated paragraphs (e) and (f).

The revisions and addition read as follows:

§ 220.46 Medical evidence.

(a) *Acceptable medical sources.* The Board needs reports about the claimant's impairment(s) from acceptable medical sources. Acceptable medical sources are—

- (1) Licensed physicians (medical or osteopathic doctors);
- (2) Licensed or certified psychologists at the independent practice level;
- (3) Licensed or certified school psychologists, or other licensed or certified individuals with another title who perform the same function as a school psychologist in a school setting (for impairments of intellectual disability, learning disabilities, and borderline intellectual functioning only);

(4) Licensed optometrists (for impairments of visual disorders, or for the measurement of visual acuity and visual fields only, depending on the scope of practice in the State in which the optometrist practices);

(5) Licensed podiatrists (for impairments of the foot only, or foot and ankle only, depending on the scope of practice in the State in which the podiatrist practices);

(6) Qualified speech-language pathologists (for speech or language impairments only.) For this source, *qualified* means that the speech-language pathologist must be licensed by the State professional licensing agency, or be fully certified by the State education agency in the State in which the speech-language pathologist practices, or hold a Certificate of Clinical Competence in Speech-Language Pathology from the American Speech-Language-Hearing Association;

(7) Licensed audiologists (for impairments of hearing loss, auditory processing disorders, and balance disorders within the licensed scope of practice only);

(8) Licensed Advanced Practice Registered Nurses or other licensed advance practice nurses with another title (for impairments within the individual's licensed scope of practice only);

(9) Licensed Physician Assistants (for impairments within the individual's licensed scope of practice); or

(10) Persons authorized to furnish a copy or summary of the records of a medical facility. Generally, the copy or summary should be certified as accurate by the custodian or by any authorized employee of the Railroad Retirement Board, Social Security Administration, Department of Veterans Affairs, or State agency.

(b) *Other medical sources.* Individuals who are licensed as healthcare workers by a State and are working within the

scope of practice permitted under State or Federal law, other than acceptable medical sources identified in paragraph (a) of this section, are other medical sources. Examples include licensed clinical social workers, naturopaths, and chiropractors. The Board will accept and consider evidence from other medical sources about the claimant's impairment(s) and the effect on the claimant's ability to work, but the presence of a medically determinable physical or mental impairment must be established with objective medical evidence from an acceptable medical source as defined in paragraph (a) of this section.

* * * *

(e) *Evidence from treating medical sources.* A statement by or the opinion of the claimant's treating medical source will not determine whether the claimant is disabled. However, the medical evidence provided by a treating medical source will be considered by the Board in making a disability decision. A treating medical source is a medical source to whom the claimant has been going for treatment on a continuing basis. The claimant may have more than one treating medical source. The Board may use consulting physicians or other medical consultants for specialized examinations or tests, to obtain more complete evidence, and to resolve any conflicts. A consulting physician is a doctor (often a specialist) to whom the claimant is referred for an examination once or on a limited basis. (See § 220.50 for an explanation of when the Board may request a consultative examination.)

(f) *Information from non-medical sources.* Information from other sources may also help the Board understand how an impairment affects the claimant's ability to work. Other sources include—

- (1) Public and private social welfare agency personnel;
- (2) Family members, caregivers, friends, and neighbors of the claimant;
- (3) Educational personnel such as teachers, counselors, and daycare center workers;
- (4) Railroad and nonrailroad employers; and,
- (5) The claimant themselves.

Dated: June 14, 2024.

By Authority of the Board.

Stephanie Hillyard,
Secretary to the Board.

[FR Doc. 2024–13554 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2024–0400]

RIN 1625–AA09

Drawbridge Operation Regulation; Townsend Gut, Southport, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the operating schedule that governs the Southport (SR27) Bridge at mile 0.7 across Townsend Gut between Boothbay Harbor and Southport, ME. The bridge owner, Maine Department of Transportation (ME DOT), has submitted a request to allow the bridge to remain closed to vessel traffic. ME DOT is conducting rehabilitation of the swing bridge and the bridge will be unable to open to marine traffic due to an operational imbalance while the work is being conducted. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before July 22, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0400 using Federal Decision Making Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Gary Croot, First Coast Guard District, Project Officer, telephone 206–815–1364, email Gary.T.Croot@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
ME DOT Maine Department of Transportation

II. Background, Purpose and Legal Basis

The Southport Swing Bridge carries Maine State Route 27 across Townsend Gut at mile 0.7 between Boothbay Harbor, ME and Southport, ME. The bridge has a vertical clearance of 10.0 feet at Mean High Water and 52.0 feet horizontal clearance when in the closed position. Waterway users include recreational boaters and commercial fishing vessels.

The existing drawbridge operating regulation is 33 CFR 117.537 and requires the bridge to open on request, except that from April 29 through September 30, between 6 a.m. and 6 p.m. the draw shall open on signal on the hour and half hour only, after an opening request is given.

ME DOT is requesting a temporary rulemaking to allow the bridge to remain in the closed to navigation position so they can conduct bridge rehabilitation which includes replacing the bridge deck, and electrical and mechanical systems upgrades. The bridge will be unable to open to marine traffic due to an operational imbalance while the work is being conducted.

III. Discussion of Proposed Rule

The Coast Guard is proposing to stay 33 CFR 117.537 from 12:01 a.m. September 30, 2024, through 11:59 p.m. on May 30, 2025, and adding a new temporary section that allows the bridge to remain in the closed to navigation position during that same time period. Vessels that can pass under the bridge while in the closed position may do so. Vessels that are too large to pass under the bridge while in the closed position may navigate around Southport Island.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

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 proposed 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 ability of vessels to use an alternate route. Vessels that are able to pass under the bridge while in the closed position may continue to do so.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the

distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a

significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2024–0400 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 00170.1. Revision No. 01.3.

■ 2. Stay § 117.537 from 12:01 a.m. on September 30, 2024, through 11:59 p.m. on May 30, 2025.

■ 3. Add § 117.T538 to read as follows:

§ 117.T538 Townsend Gut.

The draw shall not be required to open from 12:01 a.m. on September 30, 2024, through 11:59 p.m. on May 30, 2025.

M.E. Platt,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2024–13472 Filed 6–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AS08

Loan Guaranty: Adjustable Rate Mortgages, Hybrid Adjustable Rate Mortgages, and Temporary Buydown Agreements

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its rules on interest rates for adjustable rate mortgage (ARM) loans and hybrid adjustable rate mortgage (h-ARM) loans. The proposed rule would ensure VA's existing interest rate regulation reflects current statutory requirements regarding these loans, in a way that makes the loans a more viable, safe product for Veterans. The proposed rule would also solidify requirements for temporary buydown agreements to help Veterans temporarily reduce their interest rates and, in effect, lower their monthly mortgage payments for a specific period of time.

DATES: Comments must be received on or before August 20, 2024.

ADDRESSES: Comments must be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing,

inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on www.regulations.gov as soon as possible after they have been received. VA will not post on www.regulations.gov public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an 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 plain language summary (not more than 100 words in length) of this proposed rule is available at www.regulations.gov, under RIN 2900–AS08(P).

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Assistant Director for Regulations, Legislation, Engagement and Training, and Terry Rouch, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background and Legal Authority

VA's home loan guaranty program assists eligible Veterans¹ to purchase, construct, improve, or refinance a home. Since the benefit was initially introduced in 1944,² Congress has enacted laws expanding the types of loans VA may guarantee. Additionally, sections 3703(c), 3710, and 3720 further provide the Secretary broad discretion in regulating the terms and conditions of loans, establishing underwriting standards, and consenting to modified loan terms such as interest rates. 38 U.S.C. 3703, 3710, and 3720. Lastly,

¹ The term “Veteran” is more expansive for the home loan program than for some other VA benefits. In addition to Veterans defined at 38 U.S.C. 101, the term includes active duty service members, members of the National Guard and Selected Reserve, surviving spouses, and spouses of those individuals who are determined missing in action or prisoners of war. See 38 U.S.C. 101, 3701, and 3702. For more information, please visit VA's website at <https://www.va.gov/housing-assistance/home-loans/eligibility/>.

² Servicemen's Readjustment Act of 1944, Public Law 78–346, 58 Stat. 284.

under 38 U.S.C. 501, “[t]he Secretary has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department.” Based on these authorities, VA proposes to amend 38 CFR part 36 as discussed below.

A. Adjustable Rate Mortgages and Hybrid Adjustable Rate Mortgages

Two types of loans VA may guarantee are ARM loans pursuant to 38 U.S.C. 3707 and h-ARM loans pursuant to 38 U.S.C. 3707A. Initially, Congress allowed VA to guarantee ARM and h-ARM loans under temporary programs, but VA's authority was eventually made permanent.³

B. Temporary Buydown Agreements

A temporary buydown agreement is commonly included in a mortgage contract and involves using up-front funds deposited into an escrow account to temporarily reduce the interest rate, effectively lowering the monthly mortgage payment for a specific period lasting anywhere from one to three years. These agreements are often used as a marketing tool for lenders, sellers, and builders, as they provide the Veteran with a lower payment at the beginning of their loan. The up-front funds deposited into an escrow account may be funded by the seller, lender, builder, or Veteran.

VA has in recent years permitted the use of temporary buydown agreements⁴

³ In 1992, Congress authorized VA to guarantee ARM loans beginning in fiscal year (FY) 1993. Veterans Home Loan Program Amendments of 1992, Public Law 102–547, sec. 3(a)(1), 106 Stat. 3633, 3634. This authority, which expired at the end of FY 1995, was later extended through FY 2008, then through FY 2012, and then, in 2012, made permanent. Veterans Benefits Improvement Act of 2004, Public Law 108–454, sec. 404, 118 Stat. 3598, 3616; Veterans' Benefits Improvement Act of 2008, Public Law 110–389, sec. 505, 122 Stat. 4145, 4176; Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law 112–154, sec. 208, 126 Stat. 1165, 1179. Legislation authorizing VA to guarantee h-ARM loans was first enacted in 2002. Veterans Benefits Act of 2002, Public Law 107–330, title III, sec. 303(a), 116 Stat. 2820, 2825. The statutory authority, codified at 38 U.S.C. 3707A, expired at the end of FY 2005 but was later extended through FY 2008, and then through FY 2012. Veterans Benefits Improvement Act of 2004, Public Law 108–454, sec. 405, 118 Stat. 3616–3617; Veterans' Benefits Improvement Act of 2008, Public Law 110–389, sec. 505, 122 Stat. 4176. In 2012, Congress made permanent VA's authority to guarantee h-ARM loans. Public Law 112–154, sec. 209, 126 Stat. 1179.

⁴ When temporary buy-down agreements were still considered novel, VA was concerned that a Veteran's payment of the up-front escrows could be considered a “cash-advance fee,” in violation of the regulation at 38 CFR 36.4313. VA published administrative guidance explaining the position. See Circular 26–18–4, “Policy Reminder for Lender's Payment or Credit of Veterans Costs in VA

and proposes to amend 38 CFR part 36 as discussed below to codify the terms and conditions VA finds acceptable.

II. Discussion of Proposed Changes

VA is proposing changes to regulations in 38 CFR part 36 that would define ARM loans, h-ARM loans, and temporary buydown agreements, as well as outline requirements for guarantee. Through this proposed rulemaking, VA is looking to provide clarity in the regulations to improve Veterans' and lenders' understanding of VA requirements for guarantee of these loan products.

A. Definitions and Clarifying or Conforming Amendments

1. Defining ARM Loans and h-ARM Loans

In 38 CFR 36.4301, VA proposes to define an "adjustable rate mortgage loan" as "[a] loan for the purpose of acquiring, constructing, or refinancing a single-family dwelling unit with an interest rate that may change on an annual basis" and "hybrid adjustable rate mortgage loan" as "[a] loan for the purpose of acquiring, constructing, or refinancing a single-family dwelling unit with an interest rate that is fixed for a period of time, after which the interest rate may change on an annual basis." While "adjustable rate mortgage loan" and "hybrid adjustable rate mortgage loan" are commonly used terms in the housing finance industry, VA notes that many lending programs consider a h-ARM loan to be a subset or type of ARM loan.⁵ For purposes of VA-guaranteed loans, each loan type is distinct and subject to separate statutory requirements.⁶ Thus, VA proposes to add definitions for these terms to avoid confusion among Veterans and lenders.

2. Conforming Amendments Related to Proposed ARM Loan and h-ARM Loan Definitions

VA's current regulations do not differentiate between ARM and h-ARM loans and refer only to "an adjustable rate mortgage." Because VA is proposing to provide specific definitions for each term in § 36.4301, VA is also proposing amendments in 38 CFR 36.4306(a)(3)(i)(H), 36.4306(b)(4),

36.4307(a)(3), 36.4312(a), and 36.4340(b)(2)(iv). The purpose of these proposed changes is to ensure that any regulation applicable to both ARM and h-ARM loans identifies them both in the rule text. Since the requirements apply to both ARM and h-ARM loans, in § 36.4306(a)(3)(i)(H), VA is proposing to add "loan or a hybrid adjustable rate mortgage loan" after "adjustable rate mortgage," and in § 36.4306(b)(4), VA is proposing to add "or hybrid adjustable rate" after "adjustable rate." For the same reason, in § 36.4307(a)(3), VA is proposing to add "loan or a VA-guaranteed hybrid adjustable rate mortgage loan" after "adjustable rate mortgage," and in § 36.4312(a), VA is proposing to add "loan or hybrid adjustable rate mortgage loan" after "adjustable rate mortgage." Lastly, in § 36.4340(b)(2)(iv), VA is proposing to add "or hybrid adjustable rate" after "adjustable rate."

3. Paragraph Headings

To enhance the readability of § 36.4312, VA proposes adding paragraph headings. Specifically, for paragraph (a), VA proposes to add the paragraph heading "General." For paragraphs (b), (c), and (d), VA proposes to add the paragraph headings "Discount points," "Excess interest charges," and "Adjustable rate mortgage loans and hybrid adjustable rate mortgage loans," respectively.

4. Authority Citations

Finally, VA proposes to remove the paragraph-specific authority citations in paragraphs (a), (b), and (c), and amend the authority citation at the end of § 36.4312.

B. Requirements for ARM Loans and h-ARM Loans

Current 38 CFR 36.4312(d) outlines certain guarantee requirements for adjustable rate mortgage loans, effective October 1, 2003. However, such requirements do not distinguish between ARM loans and h-ARM loans. VA proposes to clarify in the introductory text to paragraph (d) that the requirements outlined thereafter apply to both loan types by deleting the current text and inserting "Adjustable rate mortgage loans and hybrid adjustable rate mortgage loans that comply with the requirements of this paragraph (d) are eligible for guaranty."

1. Section 36.4312(d)(1) Interest Rate Index

Both 38 U.S.C. 3707(b)(1) and 3707A(c)(1) require VA to specify interest rate adjustment provisions that "correspond to a specified national

interest rate index approved by the Secretary, information on which is readily accessible to mortgagors from generally available published sources." VA's current regulation at § 36.4312(d)(1) specifies that changes in the interest rate correspond to changes in the weekly average yield on 1 year (52 weeks) Treasury bills adjusted to a constant maturity.

While VA is not proposing any changes to the current interest rate index used by lenders for ARM loans and h-ARM loans, VA is proposing to amend existing paragraph (d)(1) for length and readability. VA believes that the industry name of the interest rate index and its publication source should be sufficient for lenders and other program participants to identify the interest rate index and to refer to appropriate online resources on the internet to find out additional particulars if necessary.

2. Section 36.4312(d)(2) Frequency of Interest Rate Changes

Current § 36.4312(d)(2) outlines requirements regarding the frequency of interest rate changes, stating that such adjustments must occur annually except for the first adjustment, which may occur no sooner than 36 months from the date of the first mortgage payment. A retrospective review of VA's regulatory changes for this section reveals that this section was amended, effective May 2, 2005, to implement guarantee requirements for h-ARM loans.⁷ The amendments mirrored the then-existing regulatory requirements for ARM loans except for the requirement that the first adjustment occur no sooner than 36 months from the date of the first mortgage payment, as opposed to annually for ARM loans. Notably, Congress reauthorized VA's guarantee for ARM loans in 2004, including the requirement that interest rate changes occur on an annual basis, between the publication of the proposed and final rule for h-ARM loan requirements.⁸ The elimination of the requirements for ARM loans appeared to be inadvertent, as VA continued to guarantee such loans following the regulatory requirements in place prior to May 2, 2005.

VA proposes to correct this error and spell out the frequency of interest rate change requirements for both ARM loans and h-ARM loans in paragraph (d)(2). Specifically, VA proposes to divide paragraph (d)(2) into four

Home Loans" (Feb. 23, 2018), https://www.benefits.va.gov/HOMELANS/documents/circulars/26_18_4.pdf. Upon better understanding of the buydown arrangements, however, and upon learning that the position could prejudice Veterans' position in the marketplace, VA allowed the Circular to expire (Jan. 1, 2020) without renewal.

⁵ Daniel Liberto, *Adjustable-Rate Mortgage (ARM): What It Is and Different Types*, Investopedia (Apr. 11, 2023), <https://www.investopedia.com/terms/a/arm.asp>.

⁶ See 38 U.S.C. 3707 and 3707A.

⁷ See 70 FR 22596 (May 2, 2005); 68 FR 58293 (Oct. 9, 2003).

⁸ See Veterans Benefits Improvement Act of 2004, Public Law 108-454, sec. 404-405, 118 Stat. 3616-3617.

paragraphs, incorporating existing language applicable to both ARM loans and h-ARM loans and adding the interest rate change requirements for ARM loans. Paragraph (d)(2)(i) would state that any interest rate adjustments for ARM loans must occur on an annual basis starting from the date of the Veteran's first scheduled monthly mortgage payment due date.⁹ Paragraph (d)(2)(ii) would state that the first interest rate adjustment for h-ARM loans must not occur sooner than 36 months from the date of the Veteran's first scheduled monthly mortgage payment due date.¹⁰ Thereafter, for h-ARM loans, any interest rate adjustments would occur on an annual basis.¹¹ For example, if a Veteran closed on an ARM loan on June 15, and the first payment due date on the loan was scheduled for August 1, any future adjustment in the interest rate would occur on August 1. In the case of a h-ARM loan with a three-year fixed interest rate, the first adjustment in the interest rate would occur on August 1 three years after the first mortgage payment due date; any subsequent adjustments would occur annually on August 1.

Paragraph (d)(2)(iii) would contain existing language from § 36.4312(d)(2) with minor adjustments for consistency with other amendments. Specifically, it would state that “[t]he adjusted rate will become effective the first day of the month following the rate adjustment date. The first monthly mortgage payment at the new rate will be due on the first day of the following month.”

Finally, paragraph (d)(2)(iv) would contain existing language from § 36.4312(d)(2), with minor changes to clarify the lender's required actions in setting the new interest rate. VA notes that the language in proposed paragraph (d)(2)(iv) was amended in 2015 as part of VA's final rule on adjustable rate mortgage notification requirements and look-back period.¹² VA's amendments in 2015 were to align VA's look-back requirements with the Truth in Lending Act (TILA), as revised by the Consumer Financial Protection Bureau (CFPB) in the 2013 TILA servicing rule.¹³

3. Section 36.4312(d)(3) Method of Rate Changes

VA proposes to amend the text under paragraph (d)(3) to replace “adjustments to the borrower's monthly payments” with “adjustments to the [V]eteran's

scheduled monthly payment amount.” VA believes the clarification that an interest rate change shall only be implemented through an adjustment in the scheduled monthly payment amount would help avoid confusion for stakeholders. As currently written, “adjustments to the borrower's monthly payments” could be interpreted as allowing a lender to implement the interest rate change by adjusting other attributes of the borrower's monthly payment—for example, by changing the number of monthly payments to two.

4. Section 36.4312(d)(4) Initial Rate and Magnitude of Changes

VA is proposing changes to paragraph (d)(4) for clarity and to align § 36.4312 with current requirements for ARM and h-ARM loans. To improve the readability of this paragraph, VA proposes to amend the introductory text in paragraph (d)(4) to state that “[t]he lender and the [V]eteran must agree upon the initial interest rate. Future adjustments in the interest rate must be based upon changes in the interest rate index, subject to the following conditions and limitations:”.

VA proposes to remove the term “annual” and replace with “future.” VA is proposing this amendment because while “annual” interest rate adjustments occur in ARM loans, for h-ARM loans, the adjustments are “annual,” but only after the initial fixed interest rate period of at least three years. Therefore, VA determined use of the term “future” was more appropriate for this introductory text. VA also proposes to replace “adjustments in the interest rate shall correspond to annual changes in the interest rate index” with “adjustments in the interest rate must be based upon changes in the interest rate index” because this is a more accurate description of future adjustments. Specifically, lenders must derive and calculate future adjustments in the interest rate using the applicable interest rate index at the time of the adjustment.¹⁴

In addition to the above changes to the introductory text, VA proposes the following amendments to paragraph (d)(4). First, VA proposes revisions to paragraph (d)(4)(i) to state that, for adjustable rate mortgage loans, no single annual adjustment to the interest rate would result in a change in either direction of more than 1 percentage point from the interest rate in effect for the period immediately preceding that adjustment.¹⁵ Index rate changes in excess of 1 percentage point would not

be carried over for inclusion in an adjustment in a subsequent year.¹⁶ Adjustments to the interest rate over the entire term of the loan would be limited to a maximum increase of 5 percentage points from the initial interest rate.¹⁷

VA also proposes to redesignate current paragraph (d)(4)(ii) as (d)(4)(iv) and insert new paragraphs (d)(4)(ii) and (d)(4)(iii). In proposed new paragraph (d)(4)(ii), VA would outline that for h-ARM loans that have an initial interest rate fixed for less than 5 years: no single annual adjustment to the interest rate would result in a change in either direction of more than 1 percentage point from the interest rate in effect for the period immediately preceding that adjustment; index rate changes in excess of 1 percentage point would not be carried over for inclusion in an adjustment in a subsequent year; and adjustments to the interest rate over the entire term of the loan would be limited to a maximum increase of 5 percentage points from the initial interest rate.¹⁸

In proposed new paragraph (d)(4)(iii), VA would outline that for h-ARM loans that have an initial interest rate fixed for 5 or more years: no single annual adjustment to the interest rate will result in a change in either direction of more than 2 percentage points from the interest rate in effect for the period immediately preceding that adjustment; index rate changes in excess of 2 percentage points will not be carried over for inclusion in an adjustment in a subsequent year; and adjustment to the interest rate over the entire term of the loan is limited to a maximum increase of 6 percentage points from the initial interest rate.¹⁹ Finally, in redesignated paragraph (d)(4)(iv), VA proposes minor clarifying edits for improved comprehension.

5. Section 36.4312(d)(5) Interest Rate for Underwriting Purposes

VA proposes to redesignate current paragraphs (d)(5) and (d)(6) to paragraphs (d)(6) and (d)(7), respectively, and add a new paragraph (d)(5) to outline requirements pertaining to underwriting ARM loans and h-ARM loans. While VA prescribes underwriting guidelines for guaranteed loans at 38 CFR 36.4340, specific guidance is needed to ensure that lenders understand how to evaluate a Veteran's ability to repay a loan where the monthly mortgage payment may be subject to future increases associated

⁹ See 38 U.S.C. 3707(b)(2).

¹⁰ See 38 U.S.C. 3707A(b)(1).

¹¹ See 38 U.S.C. 3707A(c)(2).

¹² See 80 FR 48254 (Aug. 12, 2015).

¹³ *Id.*; 78 FR 10902 (Feb. 14, 2013).

¹⁴ See 38 U.S.C. 3707(b)(1) and 3707A(c)(1).

¹⁵ See 38 U.S.C. 3707(b)(3).

¹⁶ *Id.*

¹⁷ See 38 U.S.C. 3707(b)(4).

¹⁸ See 38 U.S.C. 3707A(b)(2)–(3), (c).

¹⁹ *Id.*

with an increase in the interest rate.²⁰ In proposing specific underwriting guidelines for ARM and h-ARM loans, VA considered factors such as lenders' use of constant maturity treasury (CMT) rates in establishing initial interest rates for ARM and h-ARM loans; the potential that a Veteran's mortgage payment could increase at a rate greater than anticipated increases in the Veteran's income, especially for ARM loans; and the underwriting standards applicable to adjustable rate mortgages within the Federal Housing Administration's (FHA's) Section 251 Adjustable Rate Mortgage program.²¹

Accordingly, in proposed new paragraph (5), VA would outline that ARM loans subject to underwriting must be evaluated at an interest rate not lower than 1 percentage point above the initial interest rate.²² VA proposes this requirement because the interest rate for an ARM loan could potentially increase by as much as 1 percentage point after only 12 months. Therefore, requiring the lender to consider the Veteran's ability to repay using the higher interest rate ensures that the Veteran would be able to adjust to the increased monthly mortgage payment. VA notes that this underwriting requirement is a floor, not a ceiling. Thus, lenders may, when underwriting ARM loans, evaluate the borrower using an even higher initial interest rate depending on other applicable credit and risk factors.

For h-ARM loans subject to underwriting, VA is proposing in new paragraph (d)(5) that they be evaluated at an interest rate not lower than the initial interest rate. Given the delayed interest rate adjustments, as well as the annual and maximum interest rate adjustments for h-ARM loans, VA believes there is less immediate concern for a Veteran's ability to repay the guaranteed loan at a higher interest rate. Therefore, VA is not proposing to require lenders to underwrite h-ARM loans at an interest rate that is above the initial interest rate. As with ARM loans, VA is not requiring lenders to underwrite h-ARM loans at the initial rate but is instead setting an interest rate floor for evaluating the Veteran under 38 CFR 36.4340. If desired, lenders may, when underwriting h-ARM loans, evaluate the borrower using an initial interest rate that is higher depending on other applicable credit and risk factors.

6. Section 36.4312(d)(6) Pre-Loan Disclosure

In redesignated paragraph (d)(6), VA proposes amendments to align the pre-loan disclosure requirements with the CFPB's pre-loan disclosure requirements ("Loan Estimate").²³ While developing this proposed rule, VA realized that all but one of its current pre-loan disclosure requirements under current paragraph (d)(5) are covered by the disclosure requirements of the loan estimate. Under the CFPB regulations at 12 CFR 1026.37, lenders are required to provide a loan estimate to borrowers of ARM and h-ARM loans. However, the requirement for the lender to obtain a signature from the borrower acknowledging the receipt of the loan estimate is optional.²⁴ And so, in redesignated paragraph (6), VA is proposing to include an additional requirement for the lenders to obtain the Veteran's signature acknowledging the receipt of the disclosure and to retain the signed disclosure in the loan file. VA is proposing the additional requirement for the lender to retain the signed disclosure in the loan file to ensure that such disclosures are available for VA's compliance and audit purposes.²⁵ In sum, VA is proposing to revise its current pre-loan disclosure requirements to state that the lender must provide the Veteran with disclosures in accordance with the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) at 12 CFR 1026.37(b)(6)(ii) and (j). The lender must make a copy of this disclosure, signed by the Veteran acknowledging the receipt of the disclosure, a part of the lender's permanent record on the loan.

7. Section 36.4312(d)(7) Post-Closing Disclosures

To further clarify the timing and purpose of its post-loan closing disclosure requirements in proposed redesignated paragraph (d)(7), VA proposes to change the paragraph's heading from "Disclosures" to "Post-closing disclosures." VA also proposes to replace the term "borrower" with "veteran" and revise the last sentence for consistency with other paragraphs in this section.

C. Requirements for Temporary Buydown Agreements

VA is proposing to add a new paragraph (e) under § 36.4312 that

would outline requirements for temporary buydown agreements. In the proposed introductory text in paragraph (e), VA would state that temporary buydown agreements that comply with the requirements of this paragraph (e) may be established to temporarily reduce loan payments for up to the first 36 monthly payments of the loan. VA's proposed maximum period of 36 monthly payments is consistent with current industry standards for these types of agreements. Typically, temporary buydowns are established for one-, two-, or three-year periods.²⁶ While the buydown agreement can be structured in various ways, the most common structures are a 3–2–1 and 2–1 buydown agreement.²⁷ In a 3–2–1 buydown, the loan interest rate is reduced by 3 percent in the first year, 2 percent in the second year, and 1 percent in the third year.²⁸ Starting in year four, the loan interest rate agreed upon in the mortgage note would be charged for the remainder of the mortgage term.

1. Section 36.4312(e)(1) General Terms and Conditions

In proposed paragraph (e)(1)(A), VA would prohibit lenders from using temporary buydown agreements as a cash-advance on principal, such as through subsidizing payments through an above market interest rate, discount points, or a combination of discount points and above market interest rate. In proposed paragraph (e)(1)(B), VA would clarify that any temporary buydown funds provided by the Veteran must not be included in the loan amount. In other words, the Veteran cannot borrow the monies used to fund the buydown account.

2. Section 36.4312(e)(2) Documenting the Agreement

In proposed paragraph (e)(2), VA would require lenders to provide Veterans with a clear, written explanation of the temporary buydown agreement, including a description of the number of monthly payments for which the assistance will run, the total payment assistance amount, and the monthly payment schedule reflecting the amount of each monthly buydown payment and the Veteran's monthly payment. VA would also require a copy

²⁶ Julia Kagan, *Buydown: Definition, Types, Examples, and Pros & Cons*, Investopedia (May 26, 2023), available at <https://www.investopedia.com/terms/b/buydown.asp>.

²⁷ *Id.*

²⁸ Julia Kagan, *3–2–1 Buydown Mortgage: Meaning, Pros and Cons, FAQs*, Investopedia (Apr. 26, 2023), available at <https://www.investopedia.com/terms/1/3-2-1-buydown.asp>.

²⁰ See 38 U.S.C. 3707(c) and 3707A(d).

²¹ *Id.* See also 24 CFR 203.49; *Single Family Housing Policy Handbook* (Handbook 4000.1), II.A.8.f.vii., Oct. 31, 2023, <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsgghdbk1223.pdf>.

²² See 38 U.S.C. 3707(c).

²³ 12 CFR 1026.37.

²⁴ 12 CFR 1026.37(n).

²⁵ See 38 CFR 36.4333(c).

of the buydown agreement, signed by the Veteran, to be made a part of the lender's permanent record on the loan. This proposed requirement would ensure the Veteran receives and acknowledges the terms and conditions of the temporary buydown agreement. It would also make certain such agreements are available for VA compliance and audit purposes.²⁹ VA is proposing that the lender must make a copy of the buydown agreement, signed by the Veteran, a part of the lender's permanent record on the loan.

3. Section 36.4312(e)(3) Acceptable Loan Types

In proposed paragraph (e)(3), VA would state that temporary buydown agreements would only be permitted for fixed rate mortgage loans. This proposed limitation is consistent with other federal housing agency policy for these types of agreements.³⁰

4. Section 36.4312(e)(4) Interest Rate for Underwriting Purposes

VA recognizes that the purpose of a temporary buydown agreement is to help Veterans with their monthly payments in the initial years of the loan. To that extent, it is understood and expected that once the term of the temporary buydown is over, the Veteran will be able to make the monthly mortgage payments based on the interest rate of the loan. Therefore, in proposed paragraph (e)(4), VA would require lenders to underwrite loans with temporary buydown agreements using the interest rate stated on the mortgage note. VA would also provide that temporary buydown agreements may be treated as a compensating factor when underwriting a loan pursuant to § 36.4340, if there are indications that the Veteran's income used to support the loan application will increase to cover the yearly increases in loan payments or that the buydown plan may be used to offset a short-term debt.

5. Section 36.4312(e)(5) Escrow Account

VA believes that it is extremely important that the temporary buydown funds used to supplement and effectively reduce the Veteran's monthly mortgage payment during the agreement period are securely held by the holder in a separate escrow account and used solely for the intended purpose of paying part of the borrower's monthly

mortgage payment. Therefore, VA is proposing, in proposed paragraph (e)(5), the requirement that holders secure temporary buydown funds in a separate escrow account and that such funds be used only to pay the monthly buydown payments in accordance with the temporary buydown agreement.

In developing this rule, VA contemplated whether such an escrow account should be held by the holder or by a third-party escrow agent. To avoid potential delays in timely processing of monthly buydown payments, VA decided to propose that the holders hold the escrow accounts. However, VA is interested in receiving comments on whether such an escrow account should be held by a third-party escrow agent, and if so, why.

In addition to the above, in proposed paragraph (e)(5), VA would outline how the temporary buydown funds would be treated in the event of a loan termination or assumption during the agreement period. Specifically, VA proposes that in situations where the loan is terminated during the agreement period, for example due to a foreclosure or prepayment, the funds must be credited against any outstanding indebtedness. If a new borrower assumes the loan during the agreement period, VA proposes that any remaining temporary buydown funds be used as initially intended. Therefore, proposed paragraph (e)(5) would provide that if the loan is assumed during the agreement period, the holder must continue to pay out the monthly buydown payments on behalf of the new borrower in accordance with the temporary buydown agreement.

6. Section 36.4312(e)(6) Frequency and Magnitude of Buydown Payment Changes

Consistent with current industry practice,³¹ proposed paragraph (e)(6) would provide that any reduction in the amount of the monthly buydown payment must be reflected in the temporary buydown agreement and must occur only on an annual basis following the date of the first monthly mortgage payment due date. Additionally, proposed paragraph (e)(6) would state that no reduction will result in an increase of the Veteran's monthly payment that corresponds to an increase of more than 1 percentage point in the interest rate of the loan.

D. Information Collection Approvals

VA also proposes to amend the Office of Management and Budget (OMB) control numbers listed at the end of 38 CFR 36.4312. Specifically, VA proposes to delete the current number listed, which references the information collection requirement under CFPB's regulations pertaining to ARM and h-ARM loans. Consistent with VA's discussion in the below Paperwork Reduction Act section, VA proposes to list the OMB control numbers assigned to those VA information collections approved by OMB. The first, OMB control number 2900-0515, is an already approved collection pertaining to lenders' and holders' recordkeeping requirements. The second is a new information collection explained below in further detail; as such, no control number has yet been assigned by OMB.

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 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

²⁹ See 38 CFR 36.4333.

³⁰ See Department of Housing and Urban Development (HUD) Handbook 4000.1, Federal Housing Administration (FHA) Single Family Housing Policy Handbook, 4000.1(II)(A)(8)(f)(vi), 463 (Jan. 18, 2023), <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsg-011823.pdf>.

³¹ Julia Kagan, *Buydown: Definition, Types, Examples, and Pros & Cons*, Investopedia (May 26, 2023), available at <https://www.investopedia.com/terms/b/buydown.asp>.

proposed rule would only impose a rule familiarization cost to lenders, estimated at \$10.04 per lender, regardless of size. As previously noted, VA has relied on its statutory authority to guarantee ARM and h-ARM loans and loans with temporary buydown agreements. As such, VA does not anticipate the amendments would result in changes to lenders' processes. 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 provisions constituting collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that do not require revision. Specifically, the collection of information pertaining to recordkeeping requirements under 38 CFR 36.4312 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0515.

This proposed rule also includes provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collection of information it approves. VA 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. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the new collection of information contained in this rulemaking should be submitted through www.regulations.gov. Comments should be sent within 60

days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: www.reginfo.gov/public/do/PRAMain.

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on new collection of information in—

- Evaluating whether the new collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the new collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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.

The new collection of information associated with this rulemaking contained in 38 CFR 36.4312 is described immediately following this paragraph, under its respective title.

Title: Interest Rates 38 CFR 36.4312.

OMB Control No: 2900–XXXX (New/TBD).

CFR Provision: 38 CFR 36.4312.

• *Summary of collection of information:* The new collection of information in proposed provision 38 CFR 36.4312 pertains to VA's proposed requirements for lenders to obtain the Veteran's signature on pre-loan disclosures for ARM and h-ARM loans. While developing this proposed rule, VA realized that all but one of its current pre-loan disclosure requirements are covered by the disclosure requirements of the loan estimate. Under the CFPB regulations at 12 CFR 1026.37, lenders are required to provide a loan estimate to borrowers of ARM and h-ARM loans. However, the requirement for the lender to obtain a signature from the borrower acknowledging the receipt of the loan

estimate is optional.³² VA is proposing to include an additional requirement for the lenders to obtain the Veteran's signature acknowledging the receipt of the disclosure and to retain the signed disclosure in the loan file. The proposed changes to 38 CFR 36.4312 would also require lenders to prepare temporary buydown agreements with certain required elements, as proposed in VA's rule, and obtain the Veteran's signature on such agreements.

• *Description of need for information and proposed use of information:* The rule would require lenders to provide Veterans with a clear, written explanation of ARM and h-ARM loan terms and temporary buydown agreements. VA is requiring the signature on the pre-disclosure statement to help ensure that Veteran borrowers are adequately informed of pre-loan disclosures in the loan closing process (as covered under the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) at 12 CFR 1026.37(b)(ii) and (j)). These agreements will be available for VA's compliance and audit purposes.

• *Description of likely respondents:* Veterans obtaining ARM or h-ARM loans or loans with temporary buydown agreements and lenders offering such loans.

• *Estimated number of respondents:* Temporary Buydown Agreements—500 loans per year
ARM and h-ARM loans—4,888 loans each year

• *Estimated frequency of responses:* One time per loan.

• *Estimated average burden per response:*

Temporary Buydown Agreements—10 minutes per lender to prepare temporary buydown agreement; 5 minutes per Veteran to understand and sign agreement

ARM and h-ARM loans—5 minutes per veteran to understand and sign pre-disclosure form

• *Estimated total annual reporting and recordkeeping burden:* By multiplying the annual number of respondents and the burden per response, VA estimates a total burden of 450 hours per year for Veterans and 84 hours per year for lenders.

• *Estimated cost to respondents per year:* VA estimates the total information collection burden cost to be \$17,578 per year (84 hours × \$40.62 + 450 hours × \$31.48 per hour).

* To estimate the total information collection burden cost for Veterans, VA used the U.S. Bureau of Labor Statistics (BLS) mean hourly wage for hourly

³² 12 CFR 1026.37(n).

wage for “all occupations” of \$31.48 per hour.³³ The mean hourly wage of lenders is \$40.62 based on BLS wage code—“13–2072 Loan Officers.”³⁴

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on June 13, 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 36 as set forth below:

PART 36—LOAN GUARANTY

- 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

Subpart B—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

- 2. Amend § 36.4301 by adding definitions of *Adjustable rate mortgage loan* and *Hybrid adjustable rate mortgage loan* in alphabetical order to read as follows:

§ 36.4301 Definitions.

* * * * *

Adjustable rate mortgage loan. A loan for the purpose of acquiring, constructing, or refinancing a single-family dwelling unit with an interest rate that may change on an annual basis.

* * * * *

Hybrid adjustable rate mortgage loan. A loan for the purpose of acquiring, constructing, or refinancing a single-family dwelling unit with an interest

rate that is fixed for a period of time, after which the interest rate may change on an annual basis.

* * * * *

§ 36.4306 [Amended]

- 3. Amend § 36.4306 by:

- a. In paragraph (a)(3)(i)(H), adding “loan or a hybrid adjustable rate mortgage loan” after “adjustable rate mortgage”; and
- b. In paragraph (b)(4), adding “or hybrid adjustable rate” after “adjustable rate”.

§ 36.4307 [Amended]

- 4. Amend § 36.4307(a)(3) by adding “loan or a VA-guaranteed hybrid adjustable rate mortgage loan” after “adjustable rate mortgage”.
- 5. Amend § 36.4312 by:
- a. Revising the last sentence in paragraph (a);
- b. Adding paragraph headings to paragraphs (a), (b), and (c);
- c. Removing the authority citations immediately following paragraphs (a), (b), and (c);
- d. Revising paragraph (d);
- e. Adding paragraph (e);
- f. Revising the OMB citation at the end of the section; and
- g. Revising the authority citation at the end of the section. The revisions and additions read as follows:

§ 36.4312 Interest rates.

(a) *General.* * * * This paragraph does not apply in the case of an adjustable rate mortgage loan or hybrid adjustable rate mortgage loan being refinanced under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) with a fixed rate loan.

(b) *Discount points.* * * *

(c) *Excess interest charges.* * * *

(d) *Adjustable rate mortgage loans and hybrid adjustable rate mortgage loans.* Adjustable rate mortgage loans and hybrid adjustable rate mortgage loans must comply with the requirements of this paragraph (d) to be eligible for guaranty.

(1) *Interest rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on 1 year (52 weeks) Treasury bills adjusted to a constant maturity. The weekly average 1 year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System.

(2) *Frequency of interest rate changes.*

(i) For adjustable rate mortgage loans, any interest rate adjustments must occur on an annual basis starting from the date of the veteran’s first scheduled monthly mortgage payment due date.

(ii) For hybrid adjustable rate mortgage loans, the first adjustment must not occur sooner than 36 months from the date of the veteran’s first scheduled monthly mortgage payment due date. Thereafter, any interest rate adjustments must occur on an annual basis.

(iii) The adjusted rate will become effective the first day of the month following the rate adjustment date. The first monthly mortgage payment at the new rate will be due on the first day of the following month.

(iv) To set the new interest rate, the lender will determine the change between the initial (*i.e.*, base) index figure and the current index figure. The lender must use as the initial index figure the most recent figure available before the date of the note. For loans where the date of the note is before January 10, 2015, the lender must use as the current index figure the most recent index figure available 30 days before the date of each interest rate adjustment. For loans where the date of the note is on or after January 10, 2015, the lender must use as the current index figure the most recent index figure available 45 days before the date of each interest rate adjustment.

(3) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the veteran’s scheduled monthly payment amount.

(4) *Initial rate and magnitude of changes.* The lender and the veteran must agree upon the initial interest rate. Future adjustments in the interest rate must be based upon changes in the interest rate index, subject to the following conditions and limitations:

(i) For adjustable rate mortgage loans, no single annual adjustment to the interest rate will result in a change in either direction of more than 1 percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index rate changes in excess of 1 percentage point will not be carried over for inclusion in an adjustment in a subsequent year.

Adjustments to the interest rate over the entire term of the loan is limited to a maximum increase of 5 percentage points from the initial interest rate.

(ii) For hybrid adjustable rate mortgage loans that have an initial interest rate fixed for less than 5 years, no single annual adjustment to the interest rate will result in a change in either direction of more than 1 percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index rate changes in excess of 1 percentage point will not be carried over for inclusion in an adjustment in a subsequent year.

³³ U.S. BLS, *Occupational Employment and Wage Statistics, May 2023 National Occupational Employment and Wage Estimates United States*, available at https://www.bls.gov/oes/current/oes_nat.htm#13-0000.

³⁴ U.S. BLS, *Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2023*, available at <https://www.bls.gov/oes/current/oes132072.htm>.

Adjustments to the interest rate over the entire term of the loan is limited to a maximum increase of 5 percentage points from the initial interest rate.

(iii) For hybrid adjustable rate mortgage loans that have an initial interest rate fixed for 5 or more years, no single annual adjustment to the interest rate will result in a change in either direction of more than 2 percentage points from the interest rate in effect for the period immediately preceding that adjustment. Index rate changes in excess of 2 percentage points will not be carried over for inclusion in an adjustment in a subsequent year. Adjustments to the interest rate over the entire term of the loan is limited to a maximum increase of 6 percentage points from the initial interest rate.

(iv) At each interest rate adjustment date, changes in the interest rate index, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8½ percent.

(5) *Interest rate for underwriting purposes.* In cases where a lender must evaluate a veteran's loan application pursuant to the underwriting standards at § 36.4340, for adjustable rate mortgage loans, lenders must use an interest rate not lower than 1 percentage point above the initial interest rate. For hybrid adjustable rate mortgage loans, lenders must use an interest rate not lower than the initial interest rate. When underwriting adjustable rate mortgage loans and hybrid adjustable rate mortgage loans, lenders may adjust the initial interest rate higher for other applicable credit and risk factors.

(6) *Pre-loan disclosure.* The lender must provide the veteran with disclosures in accordance with the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) at 12 CFR 1026.37(b)(6)(ii) and (j). The lender must make a copy of this disclosure, signed by the veteran acknowledging the receipt of the disclosure, a part of the lender's permanent record on the loan.

(7) *Post-closing disclosures.* The lender must provide the veteran with disclosures in accordance with the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) at 12 CFR 1026.20(c) and (d). The lender must make a copy of these disclosures

a part of the lender's permanent record on the loan.

(e) *Temporary buydowns.* Temporary buydown agreements that comply with the requirements of this paragraph (e) may be established to temporarily reduce loan payments for up to the first 36 monthly payments of the loan.

(1) *General terms and conditions.* (A) Lenders are prohibited from using temporary buydown agreements as a cash-advance on principal, such as through subsidizing payments through an above market interest rate, discount points, or a combination of discount points and above market interest rate.

(B) Any temporary buydown funds provided by the veteran must not be included in the loan amount.

(2) *Documenting the agreement.* Lenders must provide veterans with a clear, written explanation of the temporary buydown agreement, including a description of the number of monthly payments for which the assistance will run, the total payment assistance amount, and the monthly payment schedule reflecting the amount of each monthly buydown payment and the veteran's monthly payment. The lender must make a copy of the buydown agreement, signed by the veteran, a part of the lender's permanent record on the loan.

(3) *Acceptable loan types.* Temporary buydown agreements are only permitted for fixed rate mortgage loans.

(4) *Interest rate for underwriting purposes.* Lenders must underwrite the loan at the interest rate stated on the mortgage note. Temporary buydown agreements may be treated as a compensating factor when underwriting a loan pursuant to § 36.4340, if there are indications that the veteran's income used to support the loan application will increase to cover the yearly increases in loan payments or that the buydown plan may be used to offset a short-term debt.

(5) *Escrow account.* Holders must secure temporary buydown funds in a separate escrow account. Such funds must be used only to pay the monthly buydown payments in accordance with the temporary buydown agreement. If the loan is terminated during the agreement period, for example due to a foreclosure or prepayment, the funds must be credited against any outstanding indebtedness. If the loan is assumed during the agreement period, the holder must continue to pay out the monthly buydown payments on behalf of the new borrower in accordance with the temporary buydown agreement.

(6) *Frequency and magnitude of buydown payment changes.* Any reduction in the amount of the monthly

buydown payment must be reflected in the temporary buydown agreement and will occur only on an annual basis following the date of the first monthly mortgage payment due date. No reduction will result in an increase of the veteran's monthly payment that corresponds to an increase of more than 1 percentage point in the interest rate of the loan.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0515 and XXXX-XXXX)

(Authority: 38 U.S.C. 3703(c), 3707, 3707A, 3710(g), and 3720)

§ 36.4340 [Amended]

■ 6. Amend § 36.4340(b)(2)(iv) by adding “or hybrid adjustable rate” after “adjustable rate”.

[FR Doc. 2024-13389 Filed 6-20-24; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT-OST-2021-0093]

RIN 2105-AE94

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Transportation (DOT) is proposing to revise its drug and alcohol testing procedures final rule published on May 2, 2023, to provide temporary qualification requirements for mock oral fluid monitors, provide for consistent privacy requirements by identifying which individuals may be present during an oral fluid collection, and clarify how collectors are to specify that a sufficient volume of oral fluid was collected. In the “Rules and Regulations” section of this issue of the **Federal Register**, DOT is simultaneously publishing the revision of DOT's drug testing regulation as a direct final rule without a prior proposed rule. If DOT receives no adverse comment, it will not take further action on this proposed rule.

DATES: Comments must be received on or before July 22, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. DOT-OST-2021-0093, at <https://www.regulations.gov/>. Follow the online

instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. DOT 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. For additional submission methods and general guidance on making effective comments, please visit <https://www.transportation.gov/regulations/rulemaking-process>.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, Deputy Director, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone number 202–366–3784; ODAPCwebmail@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Why is DOT using this proposed rule?

DOT proposes to revise DOT's drug testing regulation, Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR part 40) to amend unforeseen circumstances rendering it impossible to comply with requirements in the final rule, address privacy concerns, and clarify how collectors are to specify that sufficient volume of oral fluid was collected. DOT also published a direct final rule in this issue of the **Federal Register** because it views this revision as a noncontroversial action and anticipates no adverse comment. DOT explains its reasons for the direct final rule in the preamble to that rule. If DOT receives no adverse comment, it will not take further action on this proposed rule. If DOT receives adverse comment on any of the provisions of the proposed rule, DOT will withdraw those provision(s) of the direct final rule and those provision(s) of the rule will not take effect. DOT will address public comments in any subsequent final rule to finalize those provisions based on this proposed rule. DOT does not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section.

II. General Information

DOT published a final rule amending the procedures for its drug testing program (49 CFR part 40) on May 2, 2023 (88 FR 27596) (May 2023 final rule). The May 2023 final rule went into effect on June 1, 2023. The final rule authorized oral fluid drug testing as an additional methodology for employers

to use as a means of achieving the safety goals of the program. We have determined instances in which the text of various aspects of the procedures as amended by the final rule need to be further amended due to unforeseen circumstances that have rendered it impossible to comply with requirements for mock oral fluid collection observers, consistency with regard to privacy during testing, and a need to clarify the means by which collectors specify that a sufficient volume of oral fluid was collected.

Section 40.35 What training requirements must a collector meet for oral fluid collection?

The May 2023 final rule established qualification requirements for oral fluid collector qualifications in § 40.35 that mirrored as closely as possible existing urine collector qualifications in § 40.33. All the qualification training requirements (*i.e.*, basic information, qualification training, initial proficiency demonstration, refresher training, error correction training, and documentation) are identical. Regarding the mock collections specified in § 40.35(c), we required oral fluid collectors to demonstrate proficiency in collections by completing five consecutive error-free mock collections for each device they will use. These mock collections must be monitored and evaluated by a 'qualified collector' who has demonstrated the necessary knowledge, skills, and abilities by—(i) regularly conducting DOT drug test collections for a period of at least one year; (ii) conducting collector training under this part for at least one year; or (iii) successfully completing a "train the trainer" course.

Once the Department of Human and Health Services (HHS) certifies its first oral fluid laboratory, oral fluid testing devices will be available. At this time, however, individuals wanting to be oral fluid collectors are not able to be qualified because there are no currently qualified oral fluid collectors per § 40.35(c)(2) with the additional qualifications at § 40.35(c)(2)(i), (ii), or (iii) to monitor and evaluate the trainee's mock collections. We did not intend to create a factual impossibility. We meant for the oral fluid monitors for the mock proficiency demonstrations to be proficient as oral fluid collectors.

The regulatory flexibility we propose to provide in this action will allow individuals sufficiently knowledgeable in part 40's oral fluid collection requirements and familiar with an oral fluid testing device of their choosing to observe the mock collections and attest in writing that the mock collections are

'error free'. As a reminder, individuals meeting the criteria in § 40.35(c)(2)(ii) or (iii) should be prepared to provide any course material and/or certificates of successful completion to an employer or DOT representative upon request.

To facilitate the training of oral fluid collectors, we propose to amend the regulation to authorize individuals to monitor mock oral fluid collections without meeting the requirement of being a qualified oral fluid collector specified in § 40.35. To ensure the proficiency of the collection monitor, however, this regulatory flexibility would apply only to those individuals meeting the knowledge, skills, and abilities in § 40.35(c)(2)(ii) or (iii).¹ With regard to the knowledge, skills, and abilities in § 40.35(c)(2)(ii), we propose to waive the requirement that individuals conducting oral fluid collector training have at least one year of experience conducting collector training, but we expect those individuals to have a thorough understanding of part 40 and to be well versed in the course content they are teaching. The course content must meet the requirements in § 40.35(b), and individuals conducting training should maintain good records (for example, the course content for the instructor and student, the duration of the training, the dates the course was taught, who attended the course and any certificate of successful completion you may have provided students, etc.) to demonstrate that they conducted the training. This is no different than what would be expected of those conducting urine collection training today. Individuals conducting this training would be eligible to observe oral fluid mock collections during the period of regulatory relief.

This proposed regulatory flexibility would sunset one year after HHS publishes a **Federal Register** notice that it certified the first oral fluid drug testing laboratory. So that all are aware of the effective date of the regulatory flexibility, we would publish a **Federal Register** document specifying the date the first oral fluid laboratory is certified

¹ We note that the knowledge, skills, and abilities in § 40.35(c)(i) require regularly conducting DOT drug test collections (in this case, for oral fluids) for at least one year. This is not possible because until HHS certifies an oral fluid laboratory(ies), oral fluid is not a permissible means of collection. We have determined that, in contrast to paragraphs (c)(ii) and (c)(iii), there is no way for an individual to otherwise possess the knowledge, skills, and abilities in paragraph (c)(i) such that the individual could competently observe mock collections. As a result, those who want to act as monitors specified in subparagraph (c)(2)(i) must still become qualified collectors and meet the one-year requirement of regularly conducting DOT oral fluid drug test collections before they can act as monitors.

by HHS and the effective date that individuals observing mock collections (*i.e.*, monitors) would need to comply with the qualified collector requirements in § 40.35(c)(2) established in the May 2023 final rule.

We want to emphasize that while individuals may become qualified as oral fluid collectors after the first laboratory is HHS certified for oral fluid drug testing, oral fluid specimens cannot be collected and DOT oral fluid testing cannot be implemented until HHS certifies at least two laboratories (one to serve as a primary laboratory, and a second to serve as a split specimen laboratory). As of the publication of this action, HHS has not yet certified any laboratories for oral fluid drug testing. Upon certification, oral fluid laboratories currently will be added to the list of HHS-certified laboratories at <https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list>.

Section 40.73 How is an oral fluid specimen collected? (persons allowed in testing room)

DOT intended in the May 2023 final rule that the procedures for oral fluid testing parallel the alcohol testing procedure found in § 40.223(b), which requires the breath alcohol technician (BAT) or screening test technician (STT) to prohibit anyone other than the BAT or STT, the employee, or a DOT representative to witness the testing process. Such a provision also affords privacy to the employee being tested. In this action, DOT is correcting the inadvertent omission of this provision from its oral fluid testing requirements.

Thus, we propose to add a new paragraph to the regulation instructing the oral fluid collector not to allow anyone other than the collector, the employee being tested, or a DOT agency representative to witness the testing process. This instruction would afford the employee privacy during testing and parallels the alcohol testing procedure found in § 40.223(b).

Section 40.73 How is an oral fluid specimen collected? (specification of the collection of a sufficient amount of oral fluid)

The current § 40.73(c)(2) requires the oral fluid collector to ensure that a sufficient specimen volume is collected. To be more specific and provide our interpretation of how collectors ensure that a sufficient volume is collected, we propose to require the collector to also check the ‘volume indicator(s) observed’ box in Step 2 of the CCF. To do so, in this action we propose to add language to § 40.73(c)(2) to instruct the collector

to document in Step 2 of the CCF that they observed the volume indicator(s) during the collection.

III. Regulatory Notices and Analyses

This rule is a non-significant rule for purposes of Executive Order (E.O.) 12886, as supplemented by E.O. 13563 and amended by E.O. 14094 and will not impose any significant costs or have impacts beyond those analyzed in the May 2, 2023, final rule. DOT has determined that the regulatory analyses conducted for the May 2, 2023, final rule remain applicable to this action. DOT makes these statements on the basis that, as a series of technical amendments that correct or clarify existing regulatory provisions, specifically to establish temporary requirements to qualify an initial group of mock oral fluid collection observers, establish privacy requirements during an oral fluid collection, and clarify how collectors are to specify that a sufficient volume of oral fluid was collected, this action will not impose any significant costs or have impacts beyond those analyzed in the May 2, 2023, final rule.

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found at the entry for RIN 2105–AE94 in the Department’s significant rulemaking report, available at <https://www.transportation.gov/regulations/report-on-significant-rulemakings>.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons stated in the preamble, DOT amends 49 CFR part 40 as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority citation for part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

■ 2. In § 40.35, revise paragraph (c)(2) and add paragraph (c)(3) to read as follows:

§ 40.35 What training requirements must a collector meet for oral fluid collection?

* * * * *

(c) * * *

(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between

you and the qualified collector, who must attest in writing that the mock collections are “error-free.” Except as provided in paragraph (c)(3) of this section, this person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by—

(i) Regularly conducting DOT drug test collections for a period of at least one year;

(ii) Conducting collector training under this part for at least one year; or

(iii) Successfully completing a “train the trainer” course.

(3) As the person monitoring and evaluating the collector’s five mock collections pursuant to paragraphs (c)(1) and (2) of this section, you need not be a qualified oral fluid collector to do so if you meet the necessary knowledge, skills, and abilities in paragraph (c)(2)(ii) or (iii) until otherwise specified (one year after HHS publishes a **Federal Register** notification of the first certified oral fluid drug testing laboratory (HHS notification)). Furthermore, the one-year requirement in (c)(2)(ii) is not applicable until otherwise specified (one year after the HHS notification).

* * * * *

■ 3. In § 40.73, add paragraph (a)(1) and a reserved paragraph (a)(2) and revise paragraph (c)(2) to read as follows:

§ 40.73 How is an oral fluid specimen collected?

* * * * *

(a) * * *

(1) As the oral fluid collector, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process.

(2) [Reserved]

* * * * *

(c) * * *

(2) The collector must ensure the collection is performed correctly (*i.e.*, using the oral fluid device in the manner described by its manufacturer), that the collection device is working properly, and that a sufficient specimen volume is collected. Check the “Volume indicator(s) Observed” box in Step 2 of the Federal CCF to document that you observed the volume indicator(s) during the collection.

* * * * *

Signed pursuant to authority delegated at 49 CFR 1.27(c) in Washington, DC.

Subash Iyer,
Acting General Counsel.

[FR Doc. 2024–12748 Filed 6–20–24; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 240614–0162; RTID 0648–XD848]

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2024–2025 Annual Specifications and Management Measures for Pacific Sardine

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2024 through June 30, 2025. This proposed rule would prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest would be allowed only for use as live bait, in minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The proposed harvest specifications for 2024–2025 include an overfishing limit of 8,312 metric tons (mt), an annual catch limit of 6,005 mt, and an annual catch target of 5,500 mt. This proposed rule is intended to conserve, manage, and rebuild the Pacific sardine stock off the coasts of Washington, Oregon, and California.

DATES: Comments must be received by July 8, 2024.

ADDRESSES: A plain language summary of this rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0040>. You may submit comments on this document, identified by NOAA–NMFS–2024–0040, by the following method:

- **Electronic Submissions:** Submit all public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2024–0040 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record

and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Katie Davis, West Coast Region, NMFS, (323) 372–2126, Katie.Davis@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (i.e., off the U.S. west coast states of California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The CPS FMP and its implementing regulations require NMFS to set annual reference points and management measures for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) control rules in the FMP, are used to set required reference points, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*). Additionally, the CPS FMP requires management measures for the Pacific sardine fishery, such as catch restrictions, in the Pacific sardine rebuilding plan implemented by Amendment 18 to the CPS FMP (86 FR 33142, June 24, 2021).

The NMFS Southwest Fisheries Science Center (SWFSC) conducts annual stock assessments for Pacific sardine, alternating between benchmark assessments in 1 year and update assessments the following 2 years. Benchmark assessments are evaluated by a stock assessment review (STAR) panel, which provides a report to the Pacific Fishery Management Council (Council) documenting its findings on the technical merits. During public meetings each year, the Council, including the Council’s CPS Management Team (Team), CPS Advisory Subpanel (Subpanel), and Scientific and Statistical Committee (SSC), review the estimated biomass and the status of the fishery in these stock assessments, and recommend applicable reference points, catch limits, and management measures. Following Council review and public comment, the Council recommends these harvest

specifications and management measures and any in-season accountability measures to NMFS, who then reviews the Council’s recommendations to ensure they are consistent with the CPS FMP and all applicable laws. Following that review, NMFS publishes annual specifications in the **Federal Register** to establish annual reference points (e.g., the OFL, ABC, and annual catch limit (ACL)) and management measures for each Pacific sardine fishing year. The OFL is an annual catch amount that corresponds to the estimate of (annual) fishing mortality corresponding to maximum sustainable yield (MSY). The ABC is set below the OFL and is a reference point that incorporates a scientific uncertainty buffer against overfishing. For Pacific sardine, the ABC is based on a percentage reduction (BUFFER) of the OFL as determined by an SSC evaluation of scientific uncertainty (sigma σ) and the Council’s risk policy (P^*). In cases where the SSC quantifies scientific uncertainty (sigma, σ) associated with estimating an OFL, the percentage reduction that defines the ABC buffer can be determined by translating the estimated σ to a range of probability of overfishing (P^*) values.

The CPS FMP control rules, as they apply to annual reference points, use the following formulas:

$$\text{OFL} = \text{Biomass} * E_{\text{MSY}} *$$

DISTRIBUTION

$$\text{ABC} = \text{Biomass} * \text{BUFFER} * E_{\text{MSY}} *$$

DISTRIBUTION

Biomass. The estimated stock biomass of Pacific sardine ages 1 and older, in metric tons.

E_{MSY} . The exploitation rate for deterministic equilibrium maximum sustainable yield. Since 2014, the SSC has used a temperature-recruitment relationship based on a running 3-year average of the California Cooperative Oceanic Fisheries Investigations (CalCOFI) temperature index to calculate an E_{MSY} for Pacific sardine.

DISTRIBUTION. The average portion of the Pacific sardine biomass estimated to be in the U.S. EEZ off the Pacific coast. DISTRIBUTION is currently defined in the CPS FMP as 87 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

BUFFER. The percentage reduction of the OFL as determined by the SSC’s evaluation of scientific uncertainty (sigma) and the Council’s risk policy (P^*).

During the 2019–2020 fishing year, the estimated biomass of Pacific sardine

dropped below its 50,000-mt minimum stock size threshold (MSST), which triggered an overfished determination process. NMFS declared the stock overfished on June 26, 2019, and notified the Council of this determination on July 9, 2019. A rebuilding plan for Pacific sardine was finalized on June 24, 2021 (86 FR 33142). The rebuilding plan (Amendment 18 to the CPS FMP) stipulates that reference points (*i.e.*, the OFL, ABC, and ACL) are to continue to be set annually based on annual stock assessments, the control rules in the FMP, and best scientific information available recommendations from the Council's SSC. The rebuilding plan also includes the following management measures that restrict harvest: (1) prohibition of the primary directed fishery when the biomass is at or below 150,000 mt; (2) automatic reduction in incidental allowances in other CPS fisheries to no more than 20 percent by weight when the biomass is at or below 50,000 mt; and (3) other accountability measures the Council may recommend.

Proposed Reference Points and Management Measures

At the Council's April 2024 meeting, the Council's SSC reviewed a STAR panel report on the SWFSC's 2024 benchmark stock assessment, as well as the assessment itself, titled "Assessment of the Pacific sardine resource (*Sardinops sagax*) in 2024 for U.S. management in 2024–2025," and

concluded that the 2024 benchmark assessment for Pacific sardine is the best scientific information available for the management of Pacific sardine. During their review, the SSC noted major improvements from the 2020 benchmark assessment, including an updated habitat model for assigning fishery catch and survey biomass to the northern and southern subpopulations of sardine. However, the SSC applied a category 2d sigma, instead of a category 1, as some past full assessments have been categorized. The result of a category 2d sigma determination compared to a category 1 is that it equates to a larger scientific uncertainty buffer, and therefore a lower ABC. During the discussion of the appropriate category, the SSC discussed potential uncertainty in the relationship between sardine productivity and ocean temperatures used to calculate E_{MSY} as well as uncertainty in the strength of the 2023 year-class represented in the stock assessment.

Based on the 2024 benchmark stock assessment, the associated estimated age 1+ biomass of 58,614 mt, and the control rule formulas in the FMP, NMFS is proposing, as the Council recommended, an OFL of 8,312 mt, an ABC of 6,005 mt, and an ACL of 6,005 mt. The proposed OFL and ABC were based on the control rules in the FMP and on recommendations from the Council's SSC and their determination of best scientific information available for calculating the OFL and

recommended precautionary buffer for the ABC.

According to the CPS FMP, the catch limit for the primary directed fishery is determined using the FMP-specified HG formula. This Pacific sardine HG control rule, the primary mechanism for setting the primary directed fishery catch limit, includes a CUTOFF parameter, the lowest level of estimated biomass at which directed harvest is allowed (*i.e.*, a biomass level of 150,000 mt). This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Because the biomass estimate used this year (*i.e.*, 58,614 mt) is below that value, the formula results in an HG of zero, and no Pacific sardine are available for the primary directed fishery during the 2024–2025 fishing season. As noted previously, the rebuilding plan also includes a prohibition of the primary directed fishery when the biomass is at or below 150,000 mt. This is the 10th consecutive year that the primary directed fishery is closed.

Pacific sardine catch during the 2024–2025 fishing season is therefore prohibited unless it is harvested as part of the live bait, Tribal,¹ or minor directed fisheries, as incidental catch in other fisheries, or as part of exempted fishing permit (EFP) activities. For these types of harvests, NMFS is proposing, as the Council recommended, an annual catch target (ACT) of 5,500 mt for the 2024–2025 fishing year.

TABLE 1—OVERFISHING LIMIT (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), HARVEST GUIDELINE (HG), AND ANNUAL CATCH LIMIT (ACL) CALCULATIONS AS ESTABLISHED UNDER AMENDMENT 13 TO THE CPS FMP

Harvest specification and formula parameters	Value
BIOMASS (ages 1+, mt)	58,614
BUFFER P_{star} (Category 2)	0.7224
Calculated E_{MSY}	0.163
DISTRIBUTION (U.S.)	0.87
2024–2025 Pacific sardine annual specifications	
OFL = BIOMASS * E_{MSY} * DISTRIBUTION	8,312
ABC = BIOMASS * BUFFER _{0.40} * E_{MSY} * DISTRIBUTION	6,005
HG	0
ACL = ABC	6,005
ACT	5,500

The proposed annual harvest limits and management measures were developed in the context of NMFS' July 2019 declaration that the Pacific sardine stock was overfished and June 2021 approval of a rebuilding plan for the stock.

The following are the additional proposed management measures and in-season accountability measures for the 2024–2025 Pacific sardine fishing year:

(1) If landings in the live bait fishery reach 3,000 mt of Pacific sardine, then

a per-trip limit of 1 mt of Pacific sardine would apply to the live bait fishery;

(2) An incidental per-landing limit of 30 percent (by weight) of Pacific sardine applies to other CPS primary directed fisheries (*e.g.*, Pacific mackerel);

¹ For the 2024–2025 fishing year, the Quinault Indian Nation has not requested a Tribal set-aside, and therefore none is proposed.

(3) If the ACT of 5,500 mt is attained, then a per-trip limit of 1 mt of Pacific sardine would apply to all CPS fisheries (*i.e.*, (1) and (2) would no longer apply); and

(4) An incidental per-landing allowance of 2 mt of Pacific sardine would apply to non-CPS fisheries until the ACL is reached.

In addition to the management measures and in-season accountability measures listed in the previous paragraphs, Pacific sardine catch in the minor directed fishery for finfish remains limited to 1 mt per trip per day, and 1 trip per day by any vessel, per regulations at 50 CFR 660.511(d)(2).

At the April 2024 meeting, the Council also recommended that NMFS approve two EFP proposals requesting an exemption from the prohibition to directly harvest sardine during their discussion of sardine management measures. Those EFP proposals include a total amount of up to 670 mt, and will be reviewed and potentially approved by NMFS through a separate process.

All sources of catch including any fishing occurring as part of an EFP, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries and minor directed fishing, would be accounted for against the ACT and ACL.

The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** to announce when catch reaches the incidental limits, as well as any changes to allowable incidental catch percentages or trip limits. Additionally, to ensure that the regulated community is informed of any closure, NMFS would make announcements through other means available, including emails to fishermen, processors, and State fishery management agencies.

Court Order in *Oceana, Inc., v. Raimondo, et al.*

On April 22, 2024, shortly before NMFS finalized this proposed rule, the U.S. District Court for the Northern District of California (the Court) issued an order in *Oceana, Inc., v. Raimondo, et al.*, No. 5:21-cv-05407-VKD (N.D. Cal., filed July 14, 2021), a case that challenged NMFS' approval of Amendment 18 to the CPS FMP (*i.e.*, the sardine rebuilding plan) and the June 23, 2023 final rule that set harvest specifications and management measures for the 2023–2024 sardine fishing year (88 FR 41040) (2023 Final Rule). In that order, the Court found that some aspects of Amendment 18 and the 2023 Final Rule violate the MSA and

remanded them to NMFS. Specifically, the Court found that NMFS' reliance on the temperature-recruitment relationship based on the 3-year running average CalCOFI temperature index was not supported by the administrative record. The Court did not, however, vacate Amendment 18 or the 2023 Final Rule. The Court also did not issue an order on remedy, and instead ordered the parties to submit proposals regarding what further proceedings are necessary to identify an appropriate remedy. As of this writing, remedy proceedings are ongoing.

Because the 2023 Final Rule set harvest specifications and management measures that end on June 30, 2024, NMFS must publish new specifications and management measures by July 1, 2024 to avoid a lapse in regulations governing the fishery. Without specifications and management measures in place, the Pacific sardine fishery would be unregulated. NMFS is therefore proposing harvest specifications and management measures for the upcoming fishing season as recommended by the Council. This proposed rule is consistent with the rebuilding plan, which is still effective, and it would maintain the status quo and ensure that management measures are in place to constrain catch during the 2024–2025 fishing season in furtherance of NMFS' goal to conserve, manage, and rebuild the Pacific sardine population.

In making a preliminary determination that the harvest specifications and management measures proposed in this action would prevent overfishing, rebuild the stock, and are supported by the best scientific information available, NMFS considered the recent order from the Court as well as ongoing discussions at the Council regarding E_{MSY} . As they did the previous year, the SSC recommended revisiting the analysis and assumptions underlying an E_{MSY} based on CalCOFI temperatures; however, they also recommended its use as best available science for setting the 2024–2025 OFL and ABC. The SSC discussed the uncertainty surrounding E_{MSY} when considering their choice of the appropriate uncertainty buffer (sigma) for the ABC. NMFS has determined that the SSC appropriately accounted for any scientific uncertainty and gaps in scientific information used to calculate the recommended reference points through their recommendation of Category 2 sigma; which is a larger buffer than would have been associated with a Category 1 sigma.

The calculated CalCOFI-based E_{MSY} value for this year is 0.163 and represents the lowest E_{MSY} in 10 years. The decline in E_{MSY} this year compared to the last 3 years is the result of a high temperature record year in 2020 falling out of the running 3-year average temperature used to calculate E_{MSY} . This effect was also observed between 2014 and 2017 when a very large marine heatwave off the Pacific coast caused unprecedented changes in the ocean environment, and the 2015 annual CalCOFI temperature was the highest in 40 years. This situation triggered the application of the maximum allowed E_{MSY} value of 0.25, instead of the calculated E_{MSY} , to prevent potentially excessive E_{MSY} values.

Although NMFS believes there is additional support for using a CalCOFI-based E_{MSY} in setting this year's specifications (as described in the previous paragraphs), to the extent the use of CalCOFI is precluded this year because of the Court's order, NMFS considered alternatives to using the CalCOFI-based E_{MSY} . Currently, no other analysis is known of relationships between Pacific sardine recruitment and an environmental variable on which to base E_{MSY} ; however, past analyses have calculated a static E_{MSY} of 0.18 when the effects of temperature on productivity are ignored. NMFS considers this static E_{MSY} of 0.18 as the only available alternative for setting Pacific sardine specifications without the use of the CalCOFI temperature index. However, the Council's recommended E_{MSY} of 0.163 is a lower and therefore more conservative value than the static E_{MSY} . Therefore, even if the use of a CalCOFI-based E_{MSY} is precluded this year, NMFS believes it is still appropriate to use the lower, more conservative E_{MSY} of 0.163 for this year's specifications on a stock that is rebuilding while the methodology for determining E_{MSY} is under review.

Additionally, although this action proposes an ACL equal to the ABC at 6,005 mt, as envisioned by the FMP, NMFS has preliminarily determined that as a result of the closure of the directed fishery and additional management measures, landings of the northern subpopulation of Pacific sardine will remain very low and are unlikely to exceed 2,200 mt, similar to what has occurred over the last 3 full fishing years (see table 2).

TABLE 2—LANDINGS OF NORTHERN AND SOUTHERN SUBPOPULATIONS OF PACIFIC SARDINE (2020–2023), IN METRIC TONS (mt)

Fishing year	2020–2021	2021–2022	2022–2023
ACL	4,288	3,329	4,274
Total Landings of northern and southern subpopulation	2,276	1,772	1,619
Landings of northern subpopulation	657	298	517

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public participation in this action pursuant to Administrative Procedure Act section 553(c) (5 U.S.C. 553(c)), while also ensuring that the final specifications are in place for the start of the Pacific sardine fishing year on July 1, 2024. Annual harvest specifications and management measures for Pacific sardine are based on an annual stock assessment, which is usually finalized in early Spring and reviewed by the Council and its advisory bodies during the Council's regularly-scheduled meeting in April. NMFS received the recommendations from the Council that form the basis for this rule following the Council's April 2024 meeting. The Council provided an opportunity for public comment at that meeting, as it does every year before adopting the recommended harvest specifications and management measures for the proceeding fishing year. The subject of this proposed rule—the establishment of the reference points—is considered a routine action, because they are calculated annually based on the framework control rules in the FMP, and in accordance with management measures required by the Pacific sardine rebuilding plan, which has been in place since 2021. A prolonged comment period and subsequent potential delay in implementation past the start of the 2024 fishing year would be contrary to the public interest, as it could create confusion in the Pacific sardine industry around current specifications and management measures. Such a delay would effectively open the fishery without the restrictions necessary to manage harvest rates in compliance with the Pacific sardine rebuilding plan.

This proposed rule is exempt from review under Executive Order 12866 because it is a routine rule that would

implement regulations for less than 1 year.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with the Tribal representative on the Council who has agreed with the provisions that apply to Tribal vessels.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the reasons provided below.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The purpose of this proposed rule is to conserve and rebuild the Pacific sardine stock by preventing overfishing, while still allowing limited harvest opportunity among differing fishery sectors. This will be accomplished by implementing the 2024–2025 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast. The small entities that would be affected by the proposed action are the vessels that would be expected to participate in the primary directed Pacific sardine fishery as part of the Pacific coast CPS small purse seine fleet. In 2014 (*i.e.*, the last year that a directed fishery for Pacific sardine was allowed) there were approximately 81 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast, with that total comprising 58 vessels in the Federal CPS limited entry fishery off California (south of lat. 39° N) and a combined 23 vessels in Oregon and Washington's State Pacific sardine fisheries. NMFS

does not collect or have access to information about affiliation between vessels or affiliation between vessels and processing entities in this fishery, or receipts in Alaska, Hawai'i, or international fisheries, so it is possible that some impacted entities may exceed \$11 million in ex-vessel revenue or another size-standard threshold. Based on available data, the average annual Pacific coast revenue per vessel for all west coast vessels, including those described above potentially affected by this rule, was well below the threshold level of \$11 million as of 2024.

Therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule is considered to equally affect all of these small entities in the same manner. Therefore, this rule would not create disproportionate costs between small and large vessels/businesses.

The CPS FMP and its implementing regulations require NMFS to annually set an OFL, ABC, ACL, and HG or annual catch target for the Pacific sardine fishery based on the specified harvest control rules in the FMP applied to the current stock biomass estimate for that year. The derived annual HG is the level typically used to manage the principal commercial sardine fishery and is the harvest level NMFS typically uses for profitability analysis each year. As stated above, the CPS FMP dictates that when the estimated biomass drops below a certain level (150,000 mt), the HG is zero. Because there is again no directed fishing for the 2024–2025 fishing year, as has been the case for the last 10 years, this proposed rule will not change the potential profitability compared to the previous fishing year or years following the closure of the directed fishery. Additionally, the proposed 2024–2025 ACL is still expected to account for the various fishery sector needs (*i.e.*, live bait, incidental catch in other CPS fisheries, EFPs, and minor directed fisheries).

The revenue derived from harvesting Pacific sardine is typically only one of the sources of fishing revenue for the commercial vessels that participate in this fishery. As a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation.

From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and, in particular, squid, making Pacific sardine only one component of a multi-species CPS fishery. Additionally, some sardine vessels that operate off of Oregon and Washington also fish for salmon in Alaska or squid in California during the times of the year when sardine are not available. The purpose of the incidental catch limits proposed in this action are to ensure the vessels impacted by a prohibition on directly harvesting sardine can still access these other profitable fisheries while minimizing Pacific sardine harvest.

CPS vessels typically rely on multiple species for profitability because abundance of Pacific sardine, like the other CPS stocks, is highly associated with ocean conditions and seasonality. Variability in ocean conditions and season results in variability in the timing and location of CPS harvest throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time. Therefore, as abundance levels and markets fluctuate, the CPS fishery as a whole has relied on a group of species for its annual revenues.

Therefore, the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an

Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed action.

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

Dated: June 14, 2024.

Samuel D. Rauch, III,

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

[FR Doc. 2024–13530 Filed 6–20–24; 8:45 am]

BILLING CODE 3510–22–P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2024–0013]

Notice of Request To Renew an Approved Information Collection: Foodborne Illness Outbreak Investigation Survey for FSIS Public Health Partners

AGENCY: Food Safety and Inspection Service (FSIS), Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to renew an approved information collection regarding partner collaboration in response to illness outbreaks associated with FSIS-regulated food products.

This information collection continues to inform FSIS partner outreach efforts to effectively investigate and prevent foodborne illnesses. There are no changes to the existing information collection. The approval for this information collection will expire on November 30, 2024.

DATES: Submit comments on or before August 20, 2024.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- **Mail:** Send to Docket Clerk, U.S. Department of Agriculture, Food Safety

and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.

- **Hand- or Courier-Delivered Submittals:** Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2024–0013. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call 202–720–5046 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

SUPPLEMENTARY INFORMATION:

Title: Foodborne Illness Outbreak Investigation Survey for FSIS Public Health Partners.

OMB Number: 0583–0175.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, and properly labeled.

FSIS is requesting renewal of an approved information collection regarding partner collaboration in response to illness outbreaks associated with FSIS-regulated food products. This information collection continues to inform FSIS partner outreach efforts to effectively investigate and prevent foodborne illnesses. There are no changes to the existing information collection. The approval for this

information collection will expire on November 30, 2024.

FSIS's Office of Public Health Science (OPHS) provides the scientific leadership necessary for the support of science-based food safety programs and policies implemented to reduce foodborne illnesses and deaths associated with FSIS-regulated products. As part of OPHS, the Applied Epidemiology Staff (AES) collaborates with public health partners in local, state, and federal government agencies to detect, respond to, and prevent foodborne illnesses, outbreaks, and food adulteration events. Effective communication between partners facilitates rapid investigation and control measures.

To promote successful partnerships, FSIS administers a series of surveys regarding foodborne illness outbreak investigations to its partners, including employees of state, territorial, and local governments. This also occurs as part of the after-action review process. The results of these surveys help FSIS prioritize outreach efforts. Surveys are conducted as needed, including as part of foodborne illness outbreak after-action reviews.

FSIS has made the following estimates based upon an information collection assessment:

Respondents: FSIS partners, including employees of state, territorial, and local governments.

Estimated Number of Annual Surveys: 20.

Estimated Number of Respondents per Survey: 10.

Estimated Participation Time per Survey in Minutes: 20.

Estimated Total Burden on Respondents: 67 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical

utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance

program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/forms/electronic-forms>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

- (1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410;
- (2) *Fax*: (833) 256-1665 or (202) 690-7442; or
- (3) *Email*: program.intake@usda.gov.

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Paul Kiecker,
Administrator.

[FR Doc. 2024-13631 Filed 6-20-24; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Idaho Panhandle Resource Advisory Committee will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural

Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Idaho Panhandle National Forests within Kootenai, Bonner, Boundary, Shoshone, and Benewah counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on July 8, 2024, 9 a.m. to 4:30 p.m., Pacific Daylight Time (PDT).

Written and Oral Comments: Anyone wishing to provide in-person or virtual oral comments must pre-register by 11:59 p.m. PDT on July 5, 2024. Written public comments will be accepted by 11:59 p.m. PDT on July 5, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person at the Interagency Natural Resource Center, located at 3232 West Nursery Way, Coeur d'Alene, Idaho 83815. The public may also join the meeting virtually via video conference. Committee information and details about accessing the meeting virtually can be found on the advisory committee website at <https://www.fs.usda.gov/main/ipnf/workingtogether/advisorycommittees> or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to patrick.lair@usda.gov or via mail (postmarked) to Patrick Lair, 3232 West Nursery Way, Coeur d'Alene, Idaho 83815. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. PDT, Friday, July 5, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to patrick.lair@usda.gov or via mail (postmarked) to Patrick Lair, 3232 West Nursery Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT:

Timothy Gilloon, Designated Federal Officer, at 208-765-7223 or email at timothy.gilloon@usda.gov; or Patrick Lair, Resource Advisory Committee Coordinator, at 208-765-7211 or email at patrick.lair@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss Title II project proposals;
2. Make funding recommendations on Title II projects;
3. Approve meeting minutes; and
4. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. To be scheduled on the agenda, individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at 202-720-2600 (voice and TTY) or USDA through the Federal Relay Service at 800-877-8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: June 14, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024-13477 Filed 6-20-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE**Rural Utilities Service**

[DOCKET#: RUS-24-TELECOM-0019]

Notice of Funding Opportunity for the Broadband Technical Assistance Program for Fiscal Year 2024

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announces the acceptance of applications for the Broadband Technical Assistance (BTA) Program for fiscal year (FY) 2024. The BTA Program provides competitive cooperative agreement funding to eligible entities to receive or deliver broadband technical assistance and training that promotes the expansion of broadband into rural areas. Examples of broadband technical assistance projects may include conducting feasibility studies, completing network designs, and developing broadband financial assistance applications. This announcement lists the information needed to submit an application.

DATES: Applications must be submitted through www.grants.gov/ and received no later than August 20, 2024 to be eligible for funding under this funding opportunity. Late or incomplete applications will not be eligible for funding.

ADDRESSES: All applications must be submitted electronically at www.grants.gov.

FOR FURTHER INFORMATION CONTACT:

Laurel Leverrier, Assistant Administrator, Telecommunications Program, Rural Utilities Service, United States Department of Agriculture, telephone: (202) 720-9556, email: Laurel.Leverrier@usda.gov.

SUPPLEMENTARY INFORMATION:**Overview**

Federal Awarding Agency Name: USDA, RD, Rural Utilities Service.

Funding Opportunity Title:

Broadband Technical Assistance.

Announcement Type: Notice of Funding Opportunity.

Funding Opportunity Number: RUS-BTA-2024.

Assistance Listing Number: 10.752.

Dates: Applications must be submitted through www.grants.gov/ and received no later than August 20, 2024 to be eligible for funding under this opportunity. Late or incomplete applications will not be eligible for funding under this opportunity.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at rd.usda.gov/priority-points):

- Creating More and Better Market Opportunities; Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure.

- Advancing Racial Justice, Place-Based Equity, and Opportunity; Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Addressing Climate Change and Environmental Justice; Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

Rural Partners Network (RPN): In addition, the Agency encourages applicants to work with the RPN. The RPN is an all-of-government program that demonstrates to rural America that the federal government can work differently to serve their unique needs in a way that is community-centered and locally-driven. The RPN is a recognition by the Biden Administration that it is time to do more for rural communities. Applicants to this funding opportunity are encouraged to include RPN Community Networks in their proposals by identifying Community Networks as collaborative partners or recipients of service. The RPN is supported by over 20 federal agencies and regional commissions, so including RPN Community Networks can help facilitate coordination with other federal

agencies that fund broadband technical assistance (*i.e.*, NTIA, ARC, EDA) to ensure complimentary efforts and reduce the chance of duplicative awards. Please visit www.rural.gov/community-networks for more information on locations of the 36 RPN Community Networks spanning ten states and Puerto Rico. To access specific contact information for prospective network participants to determine fit, please contact RuralPartnersNetwork@usda.gov.

A. Program Description

1. Purpose of the Program

The BTA Program provides financial assistance to eligible entities to receive or deliver broadband technical assistance and training. Program funds must be used to support broadband technical assistance activities that promote the expansion of broadband into rural areas. Broadband technical assistance activities include, but are not limited to, project planning and community engagement, financial sustainability, environmental compliance, construction and engineering planning, accessing federal resources, and data collection and reporting.

All applicants should carefully review and prepare their applications according to instructions in the FY 2024 BTA Application Guide (Application Guide) and program resources available on the program website at: www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program. Expenses incurred prior to submission of an application will be at the applicant's own risk.

2. Statutory and Regulatory Authority

The Rural eConnectivity Program is authorized under 7 U.S.C. 901 *et seq.*, and Public Law 115–141, Section 779 (2018). This BTA NOFO will use technical assistance funds appropriated under the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58).

3. Definitions

The terms and conditions provided in this NOFO are applicable to and for the purposes of this NOFO only. Unless otherwise provided in the award documents, all financial terms not defined herein shall have the meaning as defined by Generally Accepted Accounting Principles.

Administrator means the Administrator of RUS, or the Administrator's designee.

Applicant means an entity requesting funding under this NOFO.

Application means the Applicant's request for federal funding, which may be approved in whole or in part by RUS.

Award documents mean, as applicable, all associated award agreements.

Award means a cooperative agreement entered into under this NOFO.

Awardee means an eligible entity that has applied and been awarded federal assistance under this part.

Broadband technical assistance refers to activities that support broadband expansion into eligible rural areas and predevelopment planning activities, which may include, but are not limited to, project planning and community engagement, financial sustainability, environmental compliance, construction planning and engineering, accessing federal resources, and data collection and reporting.

Cooperative agreement is the instrument used to fund the support of RD's goals of increasing rural economic growth. In a cooperative agreement, federal employees participate more closely in project activities, often working side-by-side with the cooperator.

Distressed communities are identified as communities whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. The most distressed tier of the index are those communities with a score over 80. A GIS layer identifying distressed communities can be found at www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.

Indirect costs are costs that are not readily identified with a particular grant, contract, project function or activity, but are necessary for the general operation of the organization and the conduct of activities it performs.

Rural area means any area, as confirmed by the most recent decennial Census of the U.S., which is not located within a city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants; and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the most recent decennial Census.

Socially Vulnerable Communities means rural communities with a Social Vulnerability Index (SVI) with a score of 0.75 or higher are eligible. For the purposes of this NOFO, Puerto Rico, Guam, American Samoa, the Northern

Mariana Islands, Palau, the Marshall Islands, the Federated States of Micronesia, the U.S. Virgin Islands, and Hawaiian Census Tribal areas are considered Socially Vulnerable Communities. A GIS layer identifying socially vulnerable communities can be found at <https://www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program>.

Tribe means the term as defined in the Federally Recognized Indian Tribe List Act of 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792). An American Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Tribe List Act of 1994 (25 U.S.C. 5131).

Tribal entity includes all entities falling under the eligible legal structures, including but not limited to: tribal owned corporations, tribal enterprises, subsidiaries of tribally-owned corporations and enterprises, tribal authorities, tribal utilities, intertribal non-profits and associations, Alaska Native Corporations and Alaska Native entities within the State of Alaska recognized by and eligible to receive services from the U.S. Department of the Interior's Bureau of Indian Affairs, Native Hawaiian organizations including Homestead Associations, State recognized tribes/nonprofits, and individually-owned Native American entities.

Tribal Land means any area identified by the U.S. Department of Interior as Tribal Land. A GIS layer of most Tribal Lands can be found on the RUS mapping tool located at: www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.

4. Application of Awards

Applications will be reviewed for eligibility and completeness based on Sections C and D of this NOFO. Applications determined to be eligible and complete will be further evaluated based on criteria outlined in Section E. All applications will be competitively scored and ranked. Notifications will be sent to Applicants' in accordance with Section F of this NOFO.

B. Federal Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: FY 2024.

Available Funds: The Agency estimates that approximately \$25 million is available for funding under this NOFO. RUS may, at its discretion,

increase the total level of funding available from any available funding source provided the awards meet the requirements of the statute which made the funding available to the Agency.

Award Amounts: The minimum and maximum award amounts vary by funding category. The Agency reserves the right to make the applicant an offer that varies in amount or scope from the applicant's original request.

Funding Categories: Applicant must choose one of the following funding categories to be considered for funding:

- **Technical Assistance Providers.** The Agency estimates that up to \$15 million is available. The minimum award amount is \$100,000 and the maximum award amount is \$1,000,000. Entities submitting an application under this funding category must propose to deliver broadband technical assistance that will benefit rural communities.

- **Technical Assistance Recipients.** The Agency estimates that up to \$10 million is available. The minimum award amount is \$50,000 and the maximum award amount is \$500,000. Entities submitting an application under this funding category must be beneficiaries of broadband technical assistance.

Anticipated Award Date: Awards are anticipated to be made by December 31, 2024.

Period of Performance: Two-year period, beginning the date funds are released.

Renewal or Supplemental Awards: Not Applicable.

Type of Assistance Instrument: Cooperative Agreement. RD is authorized to administer cooperative agreement awards in accordance with 7. U.S.C. 2204b(b)(4) for BTA.

C. Eligibility Information

1. Eligible Applicants

Only entities legally organized as one of the following are eligible for financial assistance:

- (a) Federally recognized Tribes and Tribal entities;
- (b) States or local governments, including any agency, subdivision, instrumentality, or political subdivision thereof;
- (c) A territory or possession of the U.S.;
- (d) An institution of higher education (including 1862 Land-Grant Institutions, 1890 Land-Grant Institutions, 1994 Land-Grant Institutions, Hispanic-Serving Institutions, and Historically Black Colleges and Universities);
- (e) Nonprofit organizations with 501(c)(3) IRS status;
- (f) Cooperatives or mutual organizations;

- (g) Corporations; or
- (h) Limited Liability Companies or Limited Liability Partnerships.

2. Project Eligibility

(a) To be eligible for funding assistance, the proposed project must promote the expansion of broadband services into eligible rural areas.

(b) Award funds may be used to assist eligible entities in identifying and planning for the following purposes to deliver broadband services to rural areas:

- (i) Identify resources to finance broadband facilities from public and private sources;
- (ii) Prepare feasibility studies, financial forecasts, market surveys, environmental studies, and technical design information to support broadband services;
- (iii) Prepare reports and surveys necessary to support the need for broadband services, the price range and to request financial assistance;
- (iv) Analyze and improve operations related to the management of broadband facilities (*i.e.*, implement automation, adopt new software, conduct training, etc.) and to the efficiency of the entity.

(c) The proposed project must include a component that allows for active participation and substantial involvement by RD in the applicant's project proposal. Examples of measurable substantial involvement include, but are not limited to the following:

- (i) Joint convenings of community members, partners, and stakeholders;
- (ii) Joint delivery of training for RD programs; and
- (iii) The development of training sessions and outreach materials;

It is the intent of the proposed project to engage RD staff in broadband technical assistance activities, and it is the responsibility of the applicant to identify specific tasks where RD staff can provide measurable, substantial involvement in the project. If such tasks are not identified, the application will not be eligible for funding.

(d) A certification from the appropriate Tribal official is required if a project is being proposed by a non-tribal applicant over or on Tribal Lands. The appropriate Tribal official is the Tribal Council of the Tribal Government with jurisdiction over the Tribal Lands at issue. Any non-tribal applicant that fails to provide a certification to administer a project on Tribal Lands will not be considered for funding.

3. Cost Sharing or Matching

There are no cost sharing or matching requirements associated with this funding opportunity.

D. Application and Submission Information

1. Address To Request Application Package

Application and supporting materials are available at [Grants.gov](https://www.grants.gov). Applications must contain all required information. To apply electronically, applicants must follow the instructions for this funding announcement at [Grants.gov](https://www.grants.gov).

2. Content and Form of Application Submission

(a) A fully completed application is required to be considered eligible for funding. For an application to be considered complete, the applicant must complete and submit all forms, information, and supporting documentation described below.

(i) Written narrative proposal. The written proposal should be assembled into one or more pdf file(s) and should conform to the order in which the evaluation criteria are presented in Section E. The completed pdf file(s) should be uploaded into [Grants.gov](https://www.grants.gov) as an attachment to the application. The maximum limit for the written narrative section is 25 pages. Information exceeding 25 pages for the written narrative may not be considered for evaluation by the scoring panel. The written narrative proposal must clearly identify the funding category chosen.

(ii) Standard Form (SF) 424,

"Application for Federal Assistance."

(iii) SF 424B, "Assurances—Non-

Construction Programs."

(iv) The Agency reserves the right to contact applicants to seek clarification on submitted materials or request additional information.

(b) The Application Guide provides specific, detailed instructions for each item of a complete application. The Agency emphasizes the importance of including every item and strongly encourages applicants to follow the instructions carefully, using the examples and illustrations in the Application Guide.

3. System for Award Management and Unique Entity Identifier

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25 (www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25). In order to register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at sam.gov/content/entity-registration.

(b) Each applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Each applicant must ensure they complete the Financial Assistance General Representations and Certifications in SAM.

(d) Applicants must provide a valid UEL in its application, unless determined exempt under 2 CFR 25.110.

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEL. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Dates and Times

Applications must be submitted through *Grants.gov* and received no later than August 20, 2024 to be eligible for funding under this opportunity. Late or incomplete applications will not be eligible for funding.

Grants.gov requires some credentialing and online authentication procedures that may take several business days to complete. Therefore, the applicant should complete the registration, credentialing, and authorization procedures at *Grants.gov* in order to submit an application. Instructions on all required passwords, credentialing, and software are available on *Grants.gov*. If system errors or technical difficulties occur, use the customer support resources available at the *Grants.gov* website.

The Agency will not consider new scoring or eligibility information that is submitted after the application deadline. RUS reserves the right to ask applicants for clarifying information and additional verification of assertions in the application.

5. Intergovernmental Review

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

6. Funding Restrictions

In addition to costs identified as unallowable by 2 CFR part 200, award funds cannot be used to pay for the following types of expenses (this is not a comprehensive list of unallowable costs, see 2 CFR part 200).

(a) Construction (in any form).

(b) Activities serving communities in a non-rural area or those with existing broadband access.

(c) Duplicative project costs funded by another federal award.

(d) Indirect Costs.

7. Other Submission Requirements

Applications must be submitted electronically using *Grants.gov*. No other form of application will be accepted. RUS will not accept applications through mail or courier delivery, in-person delivery, email, or fax. RUS will approve no more than one application per applicant. If an applicant submits more than one application for different projects, then the Agency will only consider the application with the highest score. If an applicant submits more than one application for the same project, then the Agency will only consider the latest submission.

E. Application Review Information

1. Evaluation Criteria

The Agency will review each eligible, complete application based on the evaluation criteria identified in this section. The written narrative proposal addressed in Section D of this NOFO must address the criteria in the following order:

(a) Project Work Plan (up to 30 points). The applicant can receive up to 30 points for providing a detailed project work plan that demonstrates the soundness of the proposed broadband technical assistance approach. The scoring criterion will be based on the following:

(i) *Work Plan Approach*. The work plan approach should identify and detail project objectives, rural communities to be served, project key goals, partnerships developed or to be developed, and anticipated deliverables of the project. Applicants must list all rural communities that will benefit from the broadband technical assistance project and describe characteristics of the communities being served including information such as population size, population density, poverty rate, and other economic indicators. Communities may be defined at various geographic scales, including but not limited to, census blocks, towns, cities, and counties.

(ii) *Work Plan Implementation*. Applicants should include details on how the technical assistance will be provided and how it will lead to expanded broadband service in rural areas. Applicants should detail major task(s), involvement of key personnel,

time period of task(s), substantial involvement of RD staff, and expected deliverables.

(iii) *Budget and Work Plan Alignment*.

A detailed budget and budget justification must be provided. The budget justification should align with the tasks detailed in the workplan. Discuss how the budget specifically supports the proposed activities discussed in the project key tasks (as described above). The format of the budget's narrative can be in a chart, spreadsheet, table, etc., but it should be readable on letter-size, printable pages. The information needs to be presented in such a way that the reviewers can readily understand what expenses are incurred to support the project. Statement(s) of work for any subcontractors and consultants must be included as part of the application.

(b) Organizational capacity (up to 20 points). All applicants must demonstrate the capacity to deliver and/or support broadband technical assistance activities. The applicant can receive up to 20 points based on organizational capacity and qualifications. The maximum 20 points for this criterion will be based on the following:

(i) The applicant's proposal must demonstrate that the applicant has identified appropriate key personnel, both in terms of number of personnel and qualifications of personnel and should provide specific detail of qualifications of key personnel relating to broadband technical assistance. Capacity of personnel to access data for needs assessments and access to planners and other technical experts will be evaluated.

(ii) Applicants that are technical assistance providers must specify the number of years of providing broadband technical assistance, detail experience in providing broadband technical assistance to rural communities, identify types of rural communities previously served, and detail experience in performance evaluation.

(c) Rurality (up to 20 points). Points will be awarded for serving the least dense rural areas as measured by the population of the communities served.

(d) Economic Need (up to 20 points). Economic need is based on the county poverty percentage of the communities proposed to be served in the application. The percentages must be determined by utilizing the U.S. Census Small Area Income and Poverty Estimates (SAIPE) Program. Communities located in geographic areas, for which no SAIPE data exist, will be determined to have an average SAIPE poverty percentage of 30 percent.

SAIPE data can be found on the program website.

(e) Creating More and Better Markets (10 points). Projects located in or serving a rural community whose economic well-being ranks in the most distressed tier of the Distressed Communities Index are eligible for 10 points. The most distressed tier of the index are those communities with a score over 80. A list of Distressed Communities can be found at: www.rd.usda.gov/media/file/download/fy24distressedcommunityindexlist.xlsx. Points will be awarded for projects serving at least one distressed community.

(f) Projects advancing Racial Justice, Place-Based Equity, and Opportunity (10 points). Projects that meet one of the criteria below will receive 10 points.

(i) Projects proposing to serve at least one rural community with a Social Vulnerability Index (SVI) with a score of 0.75 or higher are eligible. For the purposes of this NOFO, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, Palau, the Marshall Islands, the Federated States of Micronesia, the U.S. Virgin Islands, and Hawaiian Census Tribal areas are considered Socially Vulnerable Communities. A GIS layer identifying the Socially Vulnerable Communities can be found using the mapping tool available at: www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.

(ii) Projects that promote the expansion of broadband service on Tribal Lands. Tribal Lands will be identified in GIS layers included in the BTA mapping tool available at: www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.

(iii) Projects proposed by a federally recognized Tribe, including Tribal instrumentalities and entities that are wholly owned by Tribes.

(iv) Projects from or benefiting an RPN community network. A GIS layer identifying RPN community networks can be found using the mapping tool available at: www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.

(g) Performance measures (up to 10 points). The applicant can receive up to 10 points based on the proposed performance measures to evaluate the progress and impact of the proposed project.

Performance measures should be based on the applicant's proposal and must include a description for how the

results of the technical assistance will be measured and the benchmarks to be used for measuring effectiveness. Indicators to be used should be specific and be quantifiable.

2. Review and Selection Process

Applications are ranked by the final score. RUS selects applications based on those rankings, subject to the availability of funds. RUS will approve no more than one application per applicant. If an applicant submits more than one application for different projects, then the Agency will only consider the application with the highest score. If an applicant submits more than one application for the same project, then the Agency will only consider the latest submission. The Agency has the authority to limit the number of applications selected in any one state or for any one project during a fiscal year. An application receiving fewer points can be selected over a higher scoring application if there are insufficient funds available to cover the costs of the higher scoring application.

The Agency reserves the right to offer the applicant less than the amount of funding requested.

F. Federal Award Administration Information

1. Federal Award Notices

RUS notifies applicants whose projects are selected for awards by mailing or emailing a copy of an award letter. The receipt of an award letter does not authorize the applicant to commence performance under the award. The award letter will include an agreement that contains all the terms and conditions for the cooperative agreement. An applicant must execute and return the agreement, accompanied by any additional items required by the agreement, within the number of days specified in the selection notice letter.

2. Administrative and National Policy Requirements

The items listed in this NOFO, the Application Guide, and program resources implement the appropriate administrative and national policy requirements, which include but are not limited to:

(a) Using Form SF 270, "Request for Advance or Reimbursement," to request reimbursements (along with the submission of receipts for expenditures and any other documentation to support the request for reimbursement).

(b) Submitting an annual project performance activity report, no later than January 31st of the year following the year in which all or any portion of

the award is first advanced and continuing in subsequent years until completion of the project.

(c) Ensuring that records are maintained to document all activities and expenditures utilizing program funds and matching funds (receipts for expenditures are to be included in this documentation).

(d) Providing a final project performance report, no later than one hundred twenty (120) days after the expiration date, termination of the award, the project completion, or the final disbursement of the award by the awardee, whichever event occurs last.

(e) Complying with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations, and any successor regulations:

(i) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

(ii) 2 CFR parts 180 and 417 (Government-wide Nonprocurement Debarment and Suspension).

(iii) Complying with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." For information on limited English proficiency and agency-specific guidance, go to www.LEP.gov.

(iv) Accountability and Compliance with Civil Rights Laws. The regulation found at 7 CFR part 1901 subpart E (www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1901/subpart-E) contains policies and procedures for implementing the regulations of the Department of Agriculture issued pursuant to title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, title IX, section 504 of the Rehabilitation Act of 1973, Executive Order 13166, Executive Order 11246, and the Equal Credit Opportunity Act of 1974, as they relate to RD. Nothing herein shall be interpreted to prohibit preference to American Indians on Indian Reservations.

The policies contained in this subpart apply to recipients. As recipients of federal financial assistance, awardees are required to comply with the applicable federal, state and local laws. Title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act prohibits discrimination by recipients of federal financial assistance. Recipients are required to adhere to specific outreach activities. These outreach activities include contacting community organizations and leaders that include minority leaders; advertising in local newspapers and other media throughout the entire

service area; and including the nondiscrimination slogan, "This is an Equal Opportunity Program."

Discrimination is prohibited by Federal Law, in methods that may include, but not be limited to, advertisements, public broadcasts, and printed materials, such as brochures and pamphlets.

By completing the Financial Assistance Representations and Certifications in SAM, recipients affirm that they will operate the program free from discrimination. The recipient will maintain the race and ethnic data on the board members and beneficiaries of the program. The recipient will provide alternative forms of communication to persons with limited English proficiency. The Agency will conduct Civil Rights Compliance Reviews on recipients to identify the collection of racial and ethnic data on program beneficiaries. In addition, the compliance review will ensure that equal access to the program benefits and activities are provided for persons with disabilities and language barriers.

3. Reporting

(a) Performance Reporting. All recipients of financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting the program objectives. Success of the project can be demonstrated by identifying the progress achieved in securing financing to bring broadband service to the eligible rural area. Project performance reports should include, but are not limited to, the following:

(i) A comparison of actual accomplishments to the objectives established for that period;

(ii) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(iii) Objectives and timetable established for the next reporting period.

(iv) Activities demonstrating the coordination with the State Broadband Office.

(b) Recipient and sub-recipient reporting. The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act) in the event the applicant receives funding, unless such applicant is exempt from such reporting requirements pursuant to 2 CFR 170.110(b). The reporting requirements under the Transparency Act are found at 2 CFR part 170 (www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-170).

(c) Accounting Requirements: Agency accounting requirements include compliance with Accounting Principles Generally Accepted in the United States, (GAAP), as well as compliance with the requirements of the applicable regulations: 2 CFR part 200 subpart E, Cost Principles, and 48 CFR part 31 Federal Acquisition Regulations Contract Cost Principles, and when applicable, 48 CFR part 30 Cost Accounting Standards. Awardees subject to non-GAAP or other accounting requirements should provide reconciling schedules with annual reporting. The Administrator may modify the accounting requirements if it is deemed necessary.

G. Federal Awarding Agency Contacts

1. *Website:* www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program. The BTA website maintains up-to-date resources and contact information for the Program.

2. For inquiries regarding eligibility concerns, please contact program staff at www.usda.gov/reconnect/contact-us. Other inquiries, please contact Christopher Proctor, Technical Assistance Branch Chief, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email Christopher.Proctor@usda.gov, telephone: (202) 619-1739.

H. Other Information

1. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the program, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572-0160.

2. National Environmental Policy Act

All recipients under this notice are subject to the requirements of 7 CFR part 1970.

However, awards for technical assistance and training under this notice are classified as a Categorical Exclusion according to 7 CFR 1970.53(b), and usually do not require any additional documentation. RUS will review each application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist RUS with this determination.

3. USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at www.usda.gov/sites/default/files/documents/ad-3027.pdf, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(a) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(b) *Fax:* (833) 256-1665 or (202) 690-7442; or

(c) Email: program.intake@usda.gov.

4. Equal Opportunity for Religious Organizations

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* USDA will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(c) A faith-based organization may not use direct Federal financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by USDA, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2024-13691 Filed 6-20-24; 8:45 am]

BILLING CODE 3410-15-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the Utah Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that

the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual, public briefing via Zoom at 2:00 p.m. MT on Monday, July 8, 2024. The purpose of the briefing is to collect testimony on the topic, *The Civil Rights Implications of Disparate Outcomes in Utah's K-12 Education System*.

DATES: Monday, July 8, 2024, from 2:00 p.m.–4:00 p.m. Mountain Time.

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual):

https://www.zoomgov.com/webinar/register/WN_CWEJ3euhQAGvZoRHxdQH-Q

Join by Phone (Audio Only): (833) 435-1820 USA Toll-Free; Meeting ID: 161 817 7129

FOR FURTHER INFORMATION CONTACT:

David Barreras, Designated Federal Officer, at dbarreras@usccr.gov or (202) 656-8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at dbarreras@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via

www.facadatabase.gov under the Commission on Civil Rights, Utah Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at lschiller@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Panelist Presentations & Committee Q&A
- III. Public Comment
- IV. Closing Remarks
- V. Committee Business
- VI. Adjournment

Dated: June 14, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-13529 Filed 6-20-24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual, public briefing via Zoom at 1:00 p.m. ET on Friday, August 23, 2024. The purpose of this briefing is to hear testimony from impacted individuals on the topic, *Civil Rights and the Child Welfare System in North Carolina*.

DATES: Friday, August 23, 2024, from 1:00 p.m.–3:30 p.m. Eastern Time.

ADDRESSES: The briefing will be held via Zoom Webinar.

Registration Link (Audio/Visual):

https://www.zoomgov.com/webinar/register/WN_GcFuteCBQQGE5KMnCrNrjA

Join by Phone (Audio Only): (833) 435-1820 USA Toll-Free; Meeting ID: 160 374 0449

FOR FURTHER INFORMATION CONTACT:

Victoria Moreno, Designated Federal Officer, at vmoreno@usccr.gov or (434) 515-0204.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the

public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at vmoreno@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at lschiller@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Panelist Presentations
- III. Committee Q&A
- IV. Public Comment
- V. Adjournment

Dated: June 14, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-13518 Filed 6-20-24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual, public briefing via Zoom at 11:00 a.m. ET on Wednesday, August 7, 2024. The purpose of this briefing is to hear testimony from policy and government officials on the topic, *Civil Rights and the Child Welfare System in North Carolina*.

DATES: Wednesday, August 7, 2024, from 11:00 a.m.-1:30 p.m. Eastern Time.

ADDRESSES: The briefing will be held via Zoom Webinar.

Registration Link (Audio/Visual):

https://www.zoomgov.com/webinar/register/WN_mQKb8qW8Sfq_TMqWJCLBMg

Join by Phone (Audio Only): (833) 435-1820 USA Toll-Free; Meeting ID: 161 189 2451

FOR FURTHER INFORMATION CONTACT:

Victoria Moreno, Designated Federal Officer, at vmoreno@usccr.gov or (434) 515-0204.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at vmoreno@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at lschiller@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Panelist Presentations
- III. Committee Q&A
- IV. Public Comment
- V. Adjournment

Dated: June 14, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-13520 Filed 6-20-24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual, public briefing via Zoom at 12:00 p.m. ET on Friday, July 12, 2024. The purpose of this briefing is to hear testimony from researchers and academics on the topic, *Civil Rights and the Child Welfare System in North Carolina*.

DATES: Friday, July 12, 2024, from 12:00 p.m.-2:30 p.m. Eastern Time.

ADDRESSES: The briefing will be held via Zoom Webinar.

Registration Link (Audio/Visual):

<https://www.zoomgov.com/webinar/>

register/WN_1VLZVBOoQA2cOw7E5STqvA

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 434 3656

FOR FURTHER INFORMATION CONTACT:

Victoria Moreno, Designated Federal Officer, at vmoreno@usccr.gov or (434) 515–0204.

SUPPLEMENTARY INFORMATION:

This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at vmoreno@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at lschiller@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Panelist Presentations
- III. Committee Q&A
- IV. Public Comment

V. Adjournment

Dated: June 14, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–13514 Filed 6–20–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual, public briefing via Zoom at 12:00 p.m. ET on Wednesday, July 24, 2024. The purpose of this briefing is to hear testimony from advocates and community organizations on the topic, *Civil Rights and the Child Welfare System in North Carolina*. In addition, the Committee will hold a short business meeting at the conclusion of the briefing.

DATES: Wednesday, July 24, 2024, from 12:00 p.m.–2:30 p.m. Eastern Time.

ADDRESSES: The briefing will be held via Zoom Webinar.

Registration Link (Audio/Visual):

https://www.zoomgov.com/webinar/register/WN_ykuq7WXHSNGz4at9KeuhTA

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 160 341 6661

FOR FURTHER INFORMATION CONTACT:

Victoria Moreno, Designated Federal Officer, at vmoreno@usccr.gov or (434) 515–0204.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free

telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at vmoreno@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at lschiller@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Panelist Presentations
- III. Committee Q&A
- IV. Public Comment
- V. Business Meeting
- VI. Adjournment

Dated: June 14, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–13516 Filed 6–20–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Friday July 19, 2024 from 1:00 p.m.–2:00 p.m. Eastern time. The purpose of

the meeting is to continue discussing their report regarding the Rising Use of Artificial Intelligence in Education. Friday July 19, 2024 from 1:00 p.m.–2:00 p.m. Eastern time.

ADDRESSES:

Registration (Audio/Visual): <https://shorturl.at/TXAqm>.

Telephone (Audio Only): (833) 435–1820 Toll Free; Meeting ID: 161 247 4876.

FOR FURTHER INFORMATION CONTACT:

Melissa Wojnaroski, DFO, at mwojnaroski@usccr.gov or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to these discussions. Committee meetings are available to the public through the above listed online registration link (audio/visual) or teleconference phone line (audio only). An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided. Individuals requiring other accommodations may contact Corrine Sanders at csanders@usccr.gov 10 days prior to the meeting to make their request.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to csanders@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (202) 618–4158.

Records generated from this meeting may be inspected and reproduced as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email address.

Agenda

- I. Welcome & Roll Call
- II. Discussion
- III. Public Comment
- IV. Next
- V. Adjournment

Dated: June 14, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–13515 Filed 6–20–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of meeting.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the Florida Advisory Committee. The meeting, scheduled for Tuesday, June 18, 2024, at 11:00 a.m. ET, has been cancelled. The notice is in the **Federal Register** on Wednesday, May 15, 2024, in FR Document Number 2024–10652 on pages 42422–42423.

FOR FURTHER INFORMATION CONTACT:

Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov or (202) 770–1856.

Dated: June 14, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–13513 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; High-Frequency Surveys Program/Household Pulse Survey

On March 27, 2024, the Department of Commerce received clearance from the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 to conduct Phase 4.1 of the Household Pulse Survey (OMB No. 0607–1029, Exp. 01/31/27). The Department is committed to ensuring that the data collected by the Household Pulse Survey continue to meet information needs as they may evolve. This notice serves to inform of the Department's intent to request clearance from OMB to make some revisions to the Household Pulse Survey questionnaire. To ensure that the data collected by the Household Pulse Survey continue to meet emergent information needs as they evolve, the Department submits the following Request for Revision to an Existing Collection for a revised Phase 4.2

questionnaire to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

Phase 4.2 includes new questions on access to transportation and the internet and reinstated questions on the shortage of critical items. There are also revisions to the response options for the ages of children question and revisions to the text of the school enrollment question. The question asking if there are any babies or infants in the household and unemployment insurance items were removed. We are also including a test of several different ways of collecting income and expense information to determine which options best lower respondent burden and increase response rates in internet mode. The results of this test will be for internal use only.

It is the Department's intention to commence data collection using the revised instrument on or about July 23, 2024. We invite 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. Public comments were previously requested via the **Federal Register** on February 15, 2024 (OMB No. 0607–1029) during a 30-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: High Frequency Surveys

Program/Household Pulse Survey.

OMB Control Number: 0607–1029.

Form Number(s): None.

Type of Request: Regular submission, Request for a Revision of a Currently Approved Collection.

Number of Respondents: 264,600.

Average Hours per Response: .333 (20 minutes).

Burden Hours: 88,112.

Needs and Uses: The High-Frequency Surveys Program was established as a natural progression from the creation of the Household Pulse Survey. The Census Bureau developed the Household Pulse Survey to produce near real-time data in a time of urgent and acute need to inform federal and state action in response to the Covid-19 pandemic. Changes in the measures over time provided insight into individuals' experiences on social and economic dimensions during the period of the pandemic. It has evolved to include content on other emergent social and economic issues facing

households and is designed to supplement the federal statistical system's traditional benchmark data products with a new data source that provides relevant and timely information based on a high-quality sample frame, data integration, and cooperative expertise.

Affected Public: Households.

Frequency: Households will be selected once to participate in a 20-minute survey.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 8(b), 182 and 193.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0607–1029.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–13668 Filed 6–20–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–34–2024]

Foreign-Trade Zone (FTZ) 29, Notification of Proposed Production Activity; Catalent Pharma Solutions, LLC (Catalent); (Nonsteroidal Antiandrogen Tablets); Winchester, Kentucky

Catalent submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Winchester, Kentucky within FTZ 29. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on June 11, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board.

The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via www.trade.gov/ftz.

The proposed finished products include: nonsteroidal antiandrogen tablets (duty-free).

The proposed foreign-status materials/components include: apalutamide (active pharmaceutical ingredient) (duty rate of 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is July 31, 2024.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact Kolade Osho at Kolade.Osho@trade.gov.

Dated: June 14, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–13534 Filed 6–20–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: USGoBuy, LLC, 6804 NE 79th Ct., Building A, Portland, OR 97218, Respondent; Order Activating Suspended Portion of Civil Penalty and Activating Suspended Denial of Export Privileges Against USGoBuy, LLC

On June 17, 2021, then-Acting Assistant Secretary of Commerce for Export Enforcement, Kevin J. Kurland signed an order (the "June 17, 2021 Order") approving the terms of a settlement agreement (the "Settlement Agreement") between the Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), and USGoBuy, LLC ("USGoBuy" or "the Company"). USGoBuy is a package forwarding company based in Portland, Oregon that offers a service that allows non-U.S.-based customers to purchase items online from U.S. retailers and have those items shipped to the Company's warehouse in Oregon. USGoBuy then consolidates various items ordered by its customers and re-packages the items for export from the United States. USGoBuy also offers a "BuyForMe" service in which it purchases U.S.-origin items on behalf of its customers, and then exports the items to a foreign addressee and address provided by the customer.

The Settlement Agreement and the June 17, 2021 Order relate to an enforcement action brought by BIS against USGoBuy for exporting riflescopes, items classified under Export Control Classification Number ("ECCN") 0A987.a, controlled for Crime Control reasons, to China and the United Arab Emirates, without seeking or obtaining the licenses required for these exports, in violation of the Export Administration Regulations (the "Regulations").¹

The Settlement Agreement and June 17, 2021 Order imposed on USGoBuy a civil penalty of \$20,000. USGoBuy was required to pay \$5,000 of this amount to the Department of Commerce by July 17, 2021. Payment of the remaining \$15,000 was suspended for a probationary period of three years from the date of the June 17, 2021 Order, after which it would be waived, provided that during this three-year probationary period, USGoBuy paid the \$5,000 non-suspended portion of the civil penalty, committed no other violation of the Regulations, and completed an independent, external audit (the "Export Compliance Audit" or "Audit").

The June 17, 2021 Order required that the Export Compliance Audit cover the 12-month period after the June 17, 2021 Order and be in substantial compliance with the Export Compliance Program sample audit module published by BIS. To the extent USGoBuy identified any violations of the Regulations through the Audit, the June 17, 2021 Order required USGoBuy to promptly provide supporting documentation related to the violations and a detailed plan of corrective actions to be taken.

In addition, the June 17, 2021 Order also imposed a three-year denial of USGoBuy's export privileges under the Regulations. This denial order was suspended pursuant to section 766.18(c) of the Regulations, subject to the same probationary conditions described above. According to the June 17, 2021 Order, if USGoBuy failed to make full and timely payment of the non-suspended penalty, did not complete the audit and submit the results as required by the Settlement Agreement, or if USGoBuy committed additional violations of the Regulations during the three-year probationary period, BIS could modify or revoke the suspended

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2024). The violations at issue in the Settlement Agreement occurred in 2015. The Regulations governing those violations are found in the 2015 version of the Code of Regulations (15 CFR parts 730–774). The 2024 Regulations set forth the procedures that apply to this matter.

denial order and activate against USGoBuy a denial order including a denial period of up to three years.

BIS has brought to my attention that following the imposition of the June 17, 2021 Order, USGoBuy failed to implement corrective actions in response to the 2015 violations and committed additional violations of the Regulations during the probationary period in violation of the June 17, 2021 Order.² Moreover, even after identifying violations that occurred during the probationary period, USGoBuy failed to implement corrective actions to address those additional violations.

Specifically, through the Export Compliance Audit, the results of which USGoBuy submitted over 18 months after the June 17, 2021 Order, USGoBuy identified significant continued deficiencies in its export compliance program, including with respect to identifying items for which export authorization may be required and related recordkeeping requirements under the Regulations. The Company also identified through the Audit 176 instances in which the Company failed to submit Electronic Export Information as required by the Regulations and additional exports for which the Company failed to maintain adequate records as required by the Regulations. Despite identifying these continued deficiencies through the Audit, USGoBuy did not implement corresponding corrective actions to address the findings of its Audit as required by the June 17, 2021 Order. Most notably, the Company did not implement adequate enhancements designed to appropriately identify items in the packages it exports that may require export authorization from BIS and a corresponding process to either refrain from exporting such items or to seek appropriate authorization.

Separately, in November 2022, Homeland Security Investigations (“HSI”) intercepted a shipment of an item to USGoBuy on behalf of one of the Company’s customers. The item required authorization for export from the United States to China. After intercepting the shipment, HSI replaced the item with one that did not require authorization, and added conspicuous markings to the outside of the package indicating that authorization to export the package was required. HSI then allowed the package to continue in transit to USGoBuy. Despite the conspicuous export control markings on

the package, USGoBuy exported the package to China on the same day it received it without attempting to obtain authorization. This event illustrates that despite being subject to a suspended three-year denial order, USGoBuy did not have in place appropriate export clearance procedures to prevent an unauthorized export even where a package had explicit export control markings notifying USGoBuy that export authorization was required.

As a result of the conduct described above, USGoBuy has violated the probationary conditions relating to the suspension of the denial of their export privileges. In accordance with sections 766.17(c) and 766.18(c) of the Regulations, by letter dated May 15, 2024 (the “Notice Letter”), I provided USGoBuy with notice of my preliminary determination that the Company violated the probationary conditions of the June 17, 2021 Order and included a summary of the facts on which I based my preliminary determination, which are also outlined above. The Notice Letter provided the Company with an opportunity to respond and to show why I should not activate the \$15,000 suspended penalty amount, issue an active three-year denial order against them, or take both actions.

In response, USGoBuy submitted a written submission to me on May 30, 2024, which I fully considered. In the response, USGoBuy did not dispute any of the facts outlined above that form the basis of my determination that the Company violated the probationary conditions related to the suspended penalties in this matter. In addition, USGoBuy provided no explanation as to why it failed to implement adequate compliance controls after the June 17, 2021 Order or after the findings from the Audit. USGoBuy did outline in its response certain compliance enhancements that it implemented in May 2024, but these enhancements do not appear reasonably designed to address the Company’s past violations or to identify and prevent future potential misconduct. As a result, the Company’s response did not provide a sufficient showing as to why I should not activate the suspended penalties in this matter.

Based on the totality of circumstances here, I have determined within my discretion that it is appropriate to activate a denial order for a period of three years.

It is therefore ordered:

First, for a period of three years from the date of this Order, USGoBuy, LLC, with a last known address of 6804 NE 79th Ct., Building A, Portland, OR 97218, and when acting for or on its

behalf, its successors, assigns, representatives, agents, or employees (hereinafter collectively referred to as “Denied Persons”), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item

² USGoBuy also only paid the \$5,000 non-suspended portion of its monetary penalty on October 19, 2021—over 90 days after the date established in the June 17, 2021 Order.

subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

Fourth, any license issued pursuant to the Act or Regulations in which USGoBuy has an interest of the date of this Order is hereby revoked.

Fifth, this Order shall be served on USGoBuy, and shall be published in the **Federal Register**.

This Order is effective immediately.

Matthew S. Axelrod,
Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2024–13508 Filed 6–20–24; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–853]

Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty Petition: Large Top Mount Combination Refrigerator-Freezers From Thailand

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable June 14, 2024.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Extension of Initiation of Investigation *The Petition*

On May 30, 2024, the U.S. Department of Commerce (Commerce) received an antidumping duty petition on imports of large top mount combination refrigerator-freezers (refrigerators) from Thailand, filed in proper form on behalf of Electrolux Consumer Products, Inc. (the

petitioner), a domestic producer of refrigerators.¹

Determination of Industry Support for the Petition

Section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), requires that a petition be filed by or on behalf of the domestic industry. To determine that the petition has been filed by or on behalf of the industry, section 732(c)(4)(A) of the Act requires that the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) if there is a large number of producers, determine industry support using a statistically valid sampling method to poll the industry.

Extension of Time

Section 732(c)(1)(A) of the Act provides that within 20 days of the filing of an antidumping duty petition, Commerce will determine, *inter alia*, whether the petition has been filed by or on behalf of the U.S. industry producing the domestic like product. Section 732(c)(1)(B) of the Act provides that the deadline for the initiation determination, in exceptional circumstances, may be extended by 20 days in any case in which Commerce must “poll or otherwise determine support for the petition by the industry.” Because the Petition has not established that the domestic producers or workers accounting for more than 50 percent of total production support the Petition, in accordance with section 732(c)(4)(D) of the Act, Commerce has determined that it should poll the industry and extend the time period for determining whether to initiate the investigation in order to further examine the issue of industry support.

Commerce will need additional time to gather and analyze additional information regarding industry support.

¹ See Petitioner’s Letter, “Petition for the Imposition of Antidumping Duties,” dated May 30, 2024 (Petition).

Therefore, it is necessary to extend the deadline for determining the adequacy of the Petition for a period not to exceed 40 days from the filing of the Petition. As a result, in accordance with section 732(c)(1)(B) of the Act, Commerce’s initiation determination will now be due no later than July 9, 2024.

International Trade Commission Notification

Commerce will contact the U.S. International Trade Commission (ITC) and will make this extension notice available to the ITC.

Dated: June 14, 2024.

James Maeder,
Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–13593 Filed 6–20–24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–123]

Certain Corrosion Inhibitors From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain producers and exporters of certain corrosion inhibitors from the People’s Republic of China (China) received countervailable subsidies during the period of review (POR) January 1, 2022, through December 31, 2022.

DATES: Applicable June 21, 2024.

FOR FURTHER INFORMATION CONTACT: Ted Pearson, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202)-482–2631.

Background

On April 3, 2024, Commerce published in the **Federal Register** the preliminary results of the 2022 administrative review of the countervailing duty order on corrosion inhibitors from China and invited comments from interested parties.¹ For

¹ See *Certain Corrosion Inhibitors from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part, 2022*, 89 FR 23001 (April 3, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.² Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order are corrosion inhibitors from China. For a full description of the scope of the order, see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. The topics discussed and the issues raised by parties to which we responded in the Issues and Decision Memorandum are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duties Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Changes Since the Preliminary Results

Based on comments received from interested parties, we made certain changes to the calculations for Anhui Trust Chem Co., Ltd. (ATC) and Nantong Botao Chemical Co., Ltd. (Botao) for the benchmark for ocean freight. For a discussion of these changes, see the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found to be countervailable, we determine that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.³ For a full description of the methodology underlying Commerce's conclusions,

² See Memorandum, "Decision Memorandum for the Final Results of the Administrative Review of the Countervailing Duty Order on Certain Corrosion Inhibitors from the People's Republic of China; 2022," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

³ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

including any determination that relied upon the use of adverse facts available pursuant to sections 776(a) and (b) of the Act, see the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides the basis for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate the all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

There are three companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. In this review, the rates for ATC and Botao were above *de minimis* and not based entirely on facts available. Therefore, we are applying to the non-selected companies the average of the net subsidy rates calculated for ATC and Botao, which we calculated using the publicly-ranged sales data submitted by ATC and Botao.⁴

Final Results of Review

We find the following net countervailable subsidy rates exist for the period January 1, 2022, through December 31, 2022:

⁴ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010).

Company	Subsidy rate (percent <i>ad valorem</i>)
Anhui Trust Chem Co., Ltd. ⁵	19.09
Nantong Botao Chemical Co., Ltd. ⁶	16.63
Gold Chemical Limited	18.40
Jiangyin Delian Chemical Co., Ltd.	18.40
Kanghua Chemical Co., Ltd. ⁷	18.40

Disclosure

We intend to disclose the calculations and analysis performed for these final results of review within five days of any public announcement or, if there is no public announcement, within five days after the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Assessment

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the companies listed above for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent

⁵ As discussed in the *Preliminary Results* PDM, Commerce finds the following companies to be cross-owned with ATC: Nanjing Trust Chem Co., Ltd.; and Jiangsu Trust Chem Co., Ltd.

⁶ As discussed in the *Preliminary Results* PDM, Commerce finds the following companies to be cross-owned with Botao: Rugao Connect Chemical Co., Ltd.; Rugao Jinling Chemical Co., Ltd.; and Nantong Yutu Group Co., Ltd.

⁷ Formerly known as Nantong Kanghua Chemical Co., Ltd. See *Certain Corrosion Inhibitors from the People's Republic of China: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 88 FR 1357 (January 10, 2023).

company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: June 12, 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.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Non-Selected Companies Under Review
- V. Subsidies Valuation
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Analysis of Programs
- VIII. Discussion of the Issue
Comment: Whether Commerce Should Modify the Benchmark for Ocean Freight
- IX. Recommendation

[FR Doc. 2024–13594 Filed 6–20–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting of a Federal advisory committee.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold an in-person meeting on Tuesday July 16, 2024 at the U.S. Department of Commerce in Washington, DC. The

meeting is open to the public with registration instructions provided below. This notice sets forth the schedule and proposed topics for the meeting.

DATES: The meeting is scheduled for Tuesday, July 16, 2024 from 12:00 p.m. to 3:00 p.m. Eastern Standard Time (EST). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EST on Wednesday, July 10, 2024. Members of the public must register by that date to participate.

ADDRESSES: The meeting will be held in-person in the Commerce Research Library at the U.S. Department of Commerce Herbert Clark Hoover Building, 1401 Constitution Avenue NW, Washington, DC 20230. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted via email to Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration, at Megan.Hyndman@trade.gov. This meeting has a limited number of spaces for members of the public to attend in-person. Requests to participate in-person will be considered on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–823–1839; email: Megan.Hyndman@trade.gov).

SUPPLEMENTARY INFORMATION: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered through August 16, 2024.

On Tuesday, July 16, 2024 from 12:00 p.m. to 3:00 p.m. EST, the ETTAC will hold the ninth meeting of its current charter term. During the meeting, committee members will present the recommendation topics the ETTAC has submitted this charter and hear an update from key agencies on U.S. government activities. An agenda will be made available one week prior to the meeting upon request to Megan Hyndman. The meeting will be open to

the public and time will be permitted for public comment before the close of the meeting. Members of the public seeking to attend the meeting are required to register by Wednesday, July 10, at 5:00 p.m. EST, via the contact information provided above. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at Megan.Hyndman@trade.gov or (202) 823–1839 no less than one week prior to the meeting. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Wednesday, July 10, 2024, at 5:00 p.m. EST to ensure transmission to the members before the meeting. Draft minutes will be available within 30 days of this meeting.

Dated: June 13, 2024.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2024–13675 Filed 6–20–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–104]

Alloy and Certain Carbon Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Ningbo Dongxin High-Strength Nut Co., Ltd. (Ningbo Dongxin), the sole mandatory respondent in this review and an exporter of alloy and certain carbon steel threaded rod (steel threaded rod) from the People's Republic of China (China), sold subject merchandise in the United States at prices below normal value during the period of review April 1, 2022, through March 31, 2023.

DATES: Applicable June 21, 2024.

FOR FURTHER INFORMATION CONTACT: Claudia Cott, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4270.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2024, Commerce published the preliminary results of the 2022–2023 administrative review of the antidumping duty order on steel threaded rod from China in the **Federal Register** and invited interested parties to comment.¹ We received no comments from interested parties on the *Preliminary Results* and have made no changes to the *Preliminary Results*. Accordingly, no decision memorandum accompanies this **Federal Register** notice. The *Preliminary Results* are hereby adopted in these final results. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order²

The merchandise covered by the Order is alloy and certain carbon steel threaded rod from China. For a complete description of the scope of the order, see the *Preliminary Results*.³

China-Wide Entity

As stated in the *Preliminary Results*, because no party requested a review of the China-wide entity in this review, the China-wide entity is not under review and the China-wide entity's rate, *i.e.*, 48.91 percent, is not subject to change.⁴

Final Results of Review

We determine that the following weighted-average dumping margin exists for the period April 1, 2022, through March 31, 2023, for the mandatory respondent:

Exporter	Weighted-average dumping margin (percent)
Ningbo Dongxin High-Strength Nut Co., Ltd	35.10

Disclosure

Normally, Commerce discloses to interested parties the calculations of the

final results of an administrative review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes to the *Preliminary Results*, there are no calculations to disclose.

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered this review. Because Ningbo Dongxin's weighted-average dumping margin is not zero or *de minimis*, *i.e.*, less than 0.50 percent, we intend to instruct CBP to liquidate entries at the importer-specific assessment rate for antidumping duties calculated based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).⁵ These final results of administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by these final results of this review and for future deposits of estimated duties, where applicable.⁶

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results of review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of this notice of final results of administrative review for all shipments of steel threaded rod from China entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided in section 751(a)(2)(C) of the Act: (1) for the subject merchandise exported by the

company listed above that has a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this administrative review, *i.e.*, 35.10 percent; (2) for previously investigated or reviewed Chinese and non-Chinese exporters of subject merchandise not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity, *i.e.*, 48.91 percent;⁷ and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results of this review in

¹ See *Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2022–2023*, 89 FR 35069 (May 1, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Antidumping Duty Order*, 85 FR 19929 (April 9, 2020) (*Order*).

³ See *Preliminary Results* PDM at 2–3.

⁴ See *Preliminary Results*, 89 FR at 35071.

⁵ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8102–03 (February 14, 2012).

⁶ See section 751(a)(2)(C) of the Act.

⁷ See *Order*, 85 FR at 19930, adjusted for export subsidies as outlined in *Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2021–2022*, 88 FR 18117 (March 27, 2023).

accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: June 13, 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. 2024–13555 Filed 6–20–24; 8:45 am]

BILLING CODE 3510–DS–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; Commercial Operator's Annual Report (COAR)

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite 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. Public comments were previously requested via the **Federal Register** on January 22, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Commercial Operator's Annual Report (COAR).

OMB Control Number: 0648–0428.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 57.

Average Hours per Response: 8 hours.

Total Annual Burden Hours: 456 hours.

Needs and Uses: The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting renewal of the currently approved information collection for the Commercial Operator's Annual Report (COAR). No revisions were made to this collection.

The COAR is a State of Alaska report that is required to be completed and submitted by direct marketers, catcher processors, catcher exporters, buyer

exporters, shore-based processors, and floating processor permit holders pursuant to Alaska Administrative Code (5 AAC 39.130) and Federal regulations at 50 CFR 679. Under 50 CFR 679.5(p), NMFS requires motherships and catcher processors that are issued a Federal fisheries permit to annually complete and submit the appropriate sections of the COAR.

The COAR is used to gather statewide fish and shellfish information describing buying (ex-vessel) and production (wholesale or retail) activities. The information collected in the COAR is used to determine the value of Alaska's fisheries resources and products. NMFS uses the COAR database in annual Federal publications on the value of U.S. commercial fisheries, in the annual NMFS Stock Assessment and Fishery Evaluation reports for the groundfish fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska, and in periodic reports that describe the fisheries and that serve as reference documents to management agencies, the industry, and others.

The mothership and catcher processor data, when added to the COAR information collected from shoreside processors and stationary floating processors required under State of Alaska requirements, yield a complete data base of equivalent annual product value information for all respective processing sectors. The information also provides a consistent time series according to which groundfish resources may be managed more efficiently. Use of the information generated by the COAR is coordinated between NMFS and the Alaska Department of Fish and Game (ADF&G).

The COAR must be submitted by April 1 to the ADF&G for the previous year's activity for all operations that are required to submit a COAR. NMFS requires the owner of a mothership or catcher processor to annually complete and submit the appropriate forms of the COAR, whether the processor operated that year or not. If no receipt or production took place for that year, the owner submits only the COAR certification page.

The COAR requires submission of information on seafood purchasing, production, and both ex-vessel and wholesale values of seafood products. The buying information is reported by species, harvest area, area of purchase, condition of fisheries resources at the time of purchase, type of gear used in the harvest, pounds purchased, and ex-vessel value. The ex-vessel value includes any post-season adjustments or bonuses paid after the fish was

purchased. The production information is reported by species, area of processing, process type (e.g., frozen, canned, smoked), product type (e.g., fillets, surimi, sections), net weight of the processed product, and the first wholesale value.

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0428.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–13583 Filed 6–20–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE037]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Surfclam and Ocean Quahog Advisory Panel will hold a public webinar meeting. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Wednesday, July 10, 2024, from 9 a.m. until 11:30 a.m.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at www.mafmc.org.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Advisory Panel to develop a fishery performance report (FPR) for Atlantic surfclam and ocean quahog. The intent of the FPR is to facilitate a venue for structured input from the Advisory Panel for the specifications processes. The FPR will be used by the MAFMC's Scientific and Statistical Committee and Council when reviewing specifications for the 2025 fishing year.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526-5251, at least 5 days prior to the meeting date.

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

Dated: June 17, 2024.

Diane M. DeJames-Daly,

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

[FR Doc. 2024-13662 Filed 6-20-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE038]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Monday, July 8, 2024, from 4 p.m. to 7 p.m. For agenda details, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: The meeting will be held via webinar. Webinar connection,

agenda items, and any additional information will be available at www.mafmc.org/council-events.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331 or on their website at www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss recent performance of the summer flounder, scup, and black sea bass commercial and recreational fisheries and develop Fishery Performance Reports. These reports will be considered by the Scientific and Statistical Committee, the Monitoring Committee, Mid-Atlantic Fishery Management Council, and Atlantic States Marine Fisheries Commission when setting 2025 catch and landings limits for black sea bass, reviewing 2025 catch and landings limits for summer flounder and scup, and reviewing other management measures for all three species.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526-5251, at least 5 days prior to the meeting date.

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

Dated: June 17, 2024.

Diane M. DeJames-Daly,

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

[FR Doc. 2024-13663 Filed 6-20-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE046]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils (Councils) will hold a public meeting of their joint Northeast Trawl Advisory Panel.

DATES: The meeting will be held on Thursday, July 11, 2024, from 9 a.m. to 5 p.m. For agenda details, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: This meeting will be conducted in person with a virtual option available.

Meeting address: The meeting will be held at the New Bedford Port Authority, 123 MacArthur Dr., New Bedford, MA 02740; telephone: (508) 961-3000.

Webinar registration details will be posted to the calendar at www.mafmc.org prior to the meeting.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The Councils' Northeast Trawl Advisory Panel will meet to review recent developments related to relevant fishery surveys, the Research to Rule infographic, and discuss potential next steps and future application of the recently completed restrictor rope research. The Northeast Trawl Advisory Panel will also discuss offshore wind and the ongoing effort to design an Industry Based Multispecies Bottom Trawl Survey pilot project. They will also take a tour of the Vineyard Wind South Terminal.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526-5251 at least 5 days prior to the meeting date.

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

Dated: June 17, 2024.

Diane M. DeJames-Daly,

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

[FR Doc. 2024-13664 Filed 6-20-24; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

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

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete product(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* July 21, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

In accordance with 41 CFR 51-5.3(b), the Committee intends to add this services requirement to the Procurement List as a mandatory purchase only for the U.S. Department of State at United States Section of the International Water Commission, Rio Rico, AZ with the proposed qualified nonprofit agency as the authorized source of supply. Prior to adding the service to the Procurement List, the Committee will consider other pertinent information, including information from Government personnel and relevant comments from interested parties regarding the Committee's intent to geographically limit this services requirement.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Janitorial Service

Mandatory for: US Department of State, United States Section of the International Water Commission, Rio Rico, AZ

Designated Source of Supply: J.P. Industries, Inc., Tucson, AZ

Contracting Activity: International Boundary and Water Commission: U.S.-Mexico, Intl Boundary Water Comm US Mex

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 4010-01-250-5428—Assembly, Chain, Single Leg, HEMTT, 12' L

Designated Source of Supply: NEWVIEW Oklahoma, Inc, Oklahoma City, OK

Contracting Activity: DLA Aviation, Richmond, VA

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024-13639 Filed 6-20-24; 8:45 am]

BILLING CODE 6353-01-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. EDT, Friday, June 28, 2024.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.cftc.gov/>.

FOR FURTHER INFORMATION CONTACT:

Christopher Kirkpatrick, 202-418-5964.

Authority: 5 U.S.C. 552b.

Dated: June 18, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024-13763 Filed 6-18-24; 4:15 pm]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. EDT, Monday, June 24, 2024.

PLACE: CFTC Headquarters Conference Center, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The Commodity Futures Trading Commission ("Commission" or "CFTC") will hold this meeting to consider the following matters:

- Order Granting Conditional Substituted Compliance in Connection with Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan;

- Order Granting Conditional Substituted Compliance in Connection with Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealer Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico;

- Order Granting Conditional Substituted Compliance in Connection with Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the United Kingdom Prudential Regulation Authority; and

- Order Granting Conditional Substituted Compliance in Connection with Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Regulation in the European Union.

- Application of ForecastEx LLC for Registration as a Derivatives Clearing Organization.

- Application of ForecastEx LLC for Registration as a Designated Contract Market.

The agenda for this meeting will be available to the public and posted on the Commission's website at <https://www.cftc.gov>. Members of the public are free to attend the meeting in person, or have the option to listen by phone or view a live stream. Instructions for listening to the meeting by phone and connecting to the live video stream will be posted on the Commission's website.

In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202-418-5964.

Authority: 5 U.S.C. 552b.

Dated: June 17, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024-13744 Filed 6-18-24; 4:15 pm]

BILLING CODE 6351-01-P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB-2024-0026]

Agency Information Collection Activities; Comment Request

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) requests the Office of Management and Budget's (OMB's) approval of a new information collection titled "Consumer Complaint Survey."

DATES: Written comments are encouraged and must be received on or before July 22, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 435-7278, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Complaint Survey.

OMB Control Number: 3170-00XX.

Type of Review: New information collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 9,200.

Estimated Total Annual Burden Hours: 1,840.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act charges the CFPB with researching, analyzing, and reporting on topics relating to the CFPB’s mission including consumer behavior, consumer awareness, and developments in markets for consumer financial products and services. To improve its understanding of consumers and institutional actors in financial markets, the CFPB makes use of data collected through the complaint process. The CFPB seeks to enhance the utility of these data by better understanding the broader population of consumers who experience issues with their financial products and services.

The CFPB proposes to collect data with two new surveys intended to identify factors that influence a consumer’s decision to use the complaint process. The initial pilot survey will focus on consumers who have experienced issues with their credit cards and will include a sample

of people who have used the CFPB’s complaint process, and another sample of people who experienced similar issues but did not file a complaint with the CFPB. This design (known as a case-control study) will allow us to identify key factors that are associated with submitting regulatory complaints.

The pilot survey will inform a second survey which will focus on a broader range of products and services. The second survey will (to the extent feasible) cover additional products about which consumers can submit complaints to the CFPB including (but not limited to) mortgages, vehicle loans, bank accounts, and debts owed to third-party debt collectors. Both surveys will collect data about factors that may play a role in consumer’s decision to submit a complaint. These include information about their use of a given product, the problems they encountered when using a given product, their attitudes and perceptions towards the product and its offeror, as well as demographic information.

Request for Comments: The CFPB published a 60-day **Federal Register** notice on March 6, 2024 (89 FR 15981) under Docket Number: CFPB–2024–0007. The CFPB is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the CFPB’s estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2024-13634 Filed 6-20-24; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA BoV)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open Federal advisory committee meeting; in person.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, the Department of Defense announces that the following Federal advisory committee meeting will take place.

DATES: The meeting will be held on Friday, July 26, 2024, Time 9:00 a.m.–11:00 a.m. Members of the public wishing to attend the meeting will be required to show a government photo ID upon entering in order to gain access to the meeting location. All members of the public are subject to security screening.

ADDRESSES: The meeting will be held at the West Point Military Reservation, Barth Hall, Camp Buckner, West Point, New York 10996.

FOR FURTHER INFORMATION CONTACT: Mr. David Nagle, the Designated Federal Officer for the committee, in writing at: Secretary of the General Staff, United States Military Academy ATTN: David Nagle, 646 Swift Road, West Point, NY 10996; by email at: david.nagle@westpoint.edu or BoV@westpoint.edu; or by telephone at (845) 938-3716.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150. The USMA BoV provides independent advice and recommendations to the President of the United States on matters related to morale, discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and any other matters relating to the Academy that the Board decides to consider.

Purpose of the Meeting: This is the 2024 Summer Meeting of the USMA BoV. Members of the Board will be provided updates on Academy issues. Agenda: Introduction; Board Business: Approval of the Minutes from the March 2024 BoV Meeting, select Fall meeting date; Open Discussion; Superintendent’s Remarks; Line of Effort (LOE) 1: Develop Leaders of Character Who Live Honorably, Lead Honorably, and Demonstrate Excellence; LOE 4: Continuously Transform Toward Preeminence.

Public’s Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165 and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are

requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mr. Nagle, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting, and members of the public attending the committee meeting will not be permitted to present questions from the floor or speak to any issue under consideration by the committee. Because the committee meeting will be held in a Federal Government facility security screening is required. A DoD government photo ID is required to enter the installation. Without a DoD ID, members of the public must first go to the Visitor Control Center in the West Point Visitor Center and undergo a background check before being allowed access to the installation. Members of the public should park at the West Point Motor Pool, located on New York State Route 293 across from the entrance to Camp Buckner. Transportation will be provided from the Motor Pool to Barth Hall. A government employee will escort members of the public to and from Barth Hall. Barth Hall is handicap accessible. Please note that all vehicles and persons entering the installation are subject to search and/or an identification check. Any person or vehicle refusing to be searched will be denied access to the installation. Members of the public should allow at least an hour for security checks, movement to the Motor Pool, and transportation to Barth Hall. For additional information about public access procedures, contact Mr. Nagle at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mr. Nagle, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone

number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Official at least seven business days prior to the meeting to be considered by the committee. The Designated Federal Official will review all timely submitted written comments or statements with the committee Chairperson and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date may not be provided to the committee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting. However, the committee Designated Federal Official and Chairperson may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the committee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

James W. Satterwhite Jr.,
Army Federal Register Liaison Officer.
 [FR Doc. 2024–13688 Filed 6–20–24; 8:45 am]
BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0063]

Submission for OMB Review; Comment Request

AGENCY: Office of the Department of Defense Chief Information Officer (CIO), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open

for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372–7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Cybersecurity Maturity Model Certification (CMMC) Enterprise Mission Assurance Support-Service (eMASS) Instantiation Information Collection; OMB Control Number 0704–0676.

Type of Request: New.

Accreditation Body Submission of C3PAO Information in eMASS

Number of Respondents: 1.
Responses per Respondent: 240.
Annual Responses: 240.
Average Burden per Response: 5 minutes.
Annual Burden Hours: 20.

C3PAO Submission of Assessment Data and Results in eMASS

Number of Respondents: 10,942.
Responses per Respondent: 1.
Annual Responses: 10,942.
Average Burden per Response: 15 minutes.
Annual Burden Hours: 2,735.5.

Total

Number of Respondents: 10,943.
Annual Responses: 11,182.
Annual Burden Hours: 2,756.
Needs and Uses: The CMMC Program provides for the assessment of contractor implementation of cybersecurity requirements to enhance confidence in contractor protection of unclassified information within the DoD supply chain. CMMC contractual requirements are implemented under a Title 48 acquisition rule, with associated rulemaking for the CMMC Program requirements (e.g., CMMC Scoring Methodology, certificate issuance, information accessibility) under a Title 32 program rule (32 Code of Federal Regulations (CFR) Part 170). The CMMC Title 32 program rule includes two separate information collection requests (ICR), one for the CMMC Program and this one for CMMC eMASS.

The CMMC instantiation of eMASS is the electronic collection mechanism for collecting CMMC program data, which provides the Department of Defense (DoD) visibility of the CMMC Levels 2 and 3 certification assessment results.

This information collection is necessary to support the implementation of the CMMC assessment process for CMMC Level 2 and Level 3 certification assessments, as

defined in 32 CFR 170.17 and 170.18 respectively.

The CMMC Level 2 certification assessment process is conducted by Certified Assessors, employed by CMMC Third-Party Assessment Organizations (C3PAOs). During the assessment process, Organizations Seeking Certification's hire C3PAOs to conduct the third-party assessment required for certification. The CMMC Certified Assessors upload assessment data: pre-assessment and planning material (date and level of the assessment; C3PAO name and unique identifier; name and business contact information for each Assessor; all industry CAGE codes associated with the information systems addressed by the CMMC Assessment Scope; name, date, and version of the system security plan (SSP); the Title 32 program rule (32 CFR part 170)), final assessment reports (assessment result for each requirement objective; POA&M usage and compliance, as applicable; and list of artifact names, the return values of the hashing algorithm, and the hashing algorithm used), and appropriate CMMC certificates of assessment (certification date, as applicable) into the CMMC instantiation of eMASS.

The CMMC Level 3 certification assessment process is conducted by the Defense Contract Management Agency (DCMA) Defense Industrial Base Cybersecurity Assessment Center (DIBCAC). DCMA DIBCAC assessors upload assessment data: pre-assessment and planning material (date and level of the assessment; name and business contact information for each Assessor; all industry CAGE codes associated with the information systems addressed by the CMMC Assessment Scope; name, date, and version of the system security plan (SSP); the Title 32 program rule (32 CFR part 170)), final assessment reports (assessment result for each requirement objective; POA&M usage and compliance, as applicable; and list of artifact names, the return values of the hashing algorithm, and the hashing algorithm used), and appropriate CMMC certificates of assessment (certification date, as applicable) into the CMMC instantiation of eMASS.

The Accreditation Body provides the CMMC Program Management Office with current data on C3PAOs and Assessors, including authorization and accreditation records and status using the CMMC instantiation of eMASS.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DoD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: June 14, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-13468 Filed 6-20-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates; Correction

AGENCY: Defense Human Resources Activity, Department of Defense (DoD).

ACTION: Notice of revised per diem rates in non-foreign areas outside the Continental United States (OCONUS); correction.

SUMMARY: On Wednesday, June 12, 2024, DoD published a notice in the **Federal Register** announcing the per diem rates that were effective on June 1, 2024. Subsequent to publication, DoD discovered a typographical error in the table. This notice corrects that error.

DATES: This correction takes effect June 21, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Wells, 571-372-1322, debbie.l.wells.civ@mail.mil.

SUPPLEMENTARY INFORMATION: On Wednesday, June 12, 2024 (89 FR 49864-49867), the notice titled Revised Non-Foreign Overseas Per Diem Rates is corrected as follows:

On page 49867, in the table, in the Effective date column, in the fourth date from the top of the table, "04/01/2024" is corrected to read "06/01/2024".

Dated: June 17, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-13661 Filed 6-20-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

National Security Education Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Security Education Board will take place.

DATES: Open to the public on Monday, June 24, 2024 from 9:00 a.m. to 4:00 p.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be held at 1350 Eye Street NW, Washington, DC 22205. Please contact Ms. Alison Patz by phone, (571) 329-3894, or email (alison.m.patz.civ@mail.mil) for information about attending the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Alison Patz, (571) 329-3894 (Voice), alison.m.patz.civ@mail.mil (Email). Mailing address is National Security Education Program (NSEP), 4800 Mark Center Drive, Suite 08G08, Alexandria, VA 22350-7000. Website: <https://dlmseo.org/Governance/NSEP>.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the National Security Education Board was unable to provide public notification required by 41 CFR 102-3.150(a) concerning its June 24, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the "Federal Advisory Committee Act" or "FACA"), 5 U.S.C. 552b (commonly known as the "Government in the Sunshine Act"), and 41 CFR 102-3.140 and 102-3.150.

Purpose of the Meeting: The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements

established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

Agenda: Monday, June 24, 2024 from 9:00 a.m. to 4:00 p.m. the NSEB will begin an open session with opening remarks by Alternate Designated Federal Officer, Ms. Alison Patz, and the Honorable Shawn Skelly, Assistant Secretary of Defense for Readiness, who will Chair the meeting. The NSEB will receive briefings on the NSEB Statutory Responsibilities and Program Updates, the class of 2024 Boren Scholars and Fellows, and Department of Defense Language Roadmap. The meeting will continue with a mission highlight from Project Global Officer, followed by working group discussion. The meeting's final session will be an overview of the Boren Awards Alumni Survey. General discussion and closing remarks by the Chair and the DFO will adjourn the meeting.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public, subject to the availability of space.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Alison Patz at alison.m.patz.civ@mail.mil (email) or (571) 329–3894 (voice) no later than Thursday, June 20, 2024, so that appropriate arrangements can be made.

Written Statements: This meeting is being held under the provisions of the FACA of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150. Pursuant to 41 CFR 102–3.140 and sections 10(a)(3) of the FACA of 1972, the public or interested organizations may submit written statements to the Department of Defense National Security Education Board about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of the planned meeting. All written statements shall be submitted to the point of contact at the email address or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section, and this individual will ensure that the written statements are provided to the membership for their consideration. Statements being submitted in response to the agenda items mentioned in this notice must be received by the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may

not be provided to or considered by the NSEB until its next meeting.

Dated: June 13, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–13637 Filed 6–20–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0063]

Submission for OMB Review; Comment Request

AGENCY: Office of the Department of Defense Chief Information Officer (CIO), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372–7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Cybersecurity Maturity Model Certification (CMMC) Program Reporting and Recordkeeping Requirements Information Collection; OMB Control Number 0704–0677.

Type of Request: New.

Level 2 Certification Assessments

Number of Respondents: 10,942.

Responses per Respondent: 1.

Annual Responses: 10,942.

Average Burden per Response: 525.955 hours.
Annual Burden Hours: 5,754,999.61.

Level 3 Certification Assessments

Number of Respondents: 213.

Responses per Respondent: 1.

Annual Responses: 213.

Average Burden per Response: 79.01 hours.

Annual Burden Hours: 16,829.13.

Total

Number of Respondents: 11,155.

Annual Responses: 11,155.

Annual Burden Hours: 5,771,829.

Needs and Uses: The CMMC Program provides for the assessment of contractor implementation of cybersecurity requirements to enhance confidence in contractor protection of unclassified information within the DoD supply chain. CMMC contractual requirements are implemented under a Title 48 acquisition rule, with associated rulemaking for the CMMC Program requirements (e.g., CMMC Scoring Methodology, certificate issuance, information accessibility) under a Title 32 program rule (32 Code of Federal Regulations (CFR) part 170). The Title 32 program rule includes two separate information collection requests (ICR), this one for the CMMC Program and one for CMMC eMASS.

This information collection is necessary to support the implementation of the CMMC assessment process for Levels 2 and 3 certification assessment, as defined in 32 CFR 170.17 and 170.18 respectively.

Level 2 Certification Assessments

The Level 2 certification assessment process is conducted by CMMC Certified Assessors, employed by CMMC Third-Party Assessment Organizations (C3PAOs). During the assessment process, Organizations Seeking Certification (OSCs) hire C3PAOs to conduct the third-party assessment required for certification. The Level 2 Certification Assessment information collection reporting and recordkeeping requirements are included in the Title 32 program rule with the exception of the requirement for the OSC to upload the affirmation in SPRS that is included in the Title 48 acquisition rule. Additionally, the information collection requirements for the CMMC instantiation of eMASS are addressed in a separate Title 32 program rule information collection request (ICR). OSCs follow the procedures defined in 32 CFR 170.17 to prepare for Level 2 certification assessment. Certified Assessors assigned by C3PAOs follow the requirements and procedures defined in 32 CFR 170.17 to conduct CMMC assessments on defense contractor information systems to determine conformance with the information safeguarding requirements associated with Level 2 certification assessment to validate implementation of the 110 security requirements from NIST SP 800–171 Rev 2. C3PAOs must generate and collect pre-assessment and

planning material (contact information for the OSC, information about the C3PAO and assessors conducting the assessment, the level of assessment planned, the CMMC Model and Assessment Guide versions, and assessment approach), artifact information (list of artifacts, hash of artifacts, and hashing algorithm used), final assessment reports, appropriate CMMC certificates of assessment, and assessment appeal information. C3PAOs submit the data they generate and collect into the CMMC instantiation of eMASS. The information collection required for this submission is addressed in a separate CMMC eMASS ICR for the Title 32 program rule. OSCs may have a POA&M at Level 2 certification assessment as addressed in 32 CFR 170.21. C3PAOs perform a POA&M closeout assessment. The C3PAO process to conduct a POA&M closeout assessment, when applicable, is the same as the initial assessment with the same information collection requirements. OSCs must retain artifacts used as evidence for the assessment for the duration of the validity period of the certificate of assessment, and at minimum, for six years from the date of certification assessment as addressed in 32 CFR 170.17(c)(4). The OSC is responsible for compiling relevant artifacts as evidence and having knowledgeable personnel available during the assessment. The organizational artifacts are proprietary to the OSC and will not be retained by the assessment team unless expressly permitted by the OSC. To preserve the integrity of the artifacts reviewed, the OSC creates a hash of assessment evidence (to include a list of the artifact names, the return values of the hashing algorithm, and the hashing algorithm used) and retains the artifact information for six years. The information obtained from the artifacts is an information collection and is provided to the C3PAO for uploading into the CMMC instantiation of eMASS. If an OSC does not agree with the assessment results, it may formally dispute the assessment and initiate an Assessment Appeal process with the C3PAO who conducted the assessment. C3PAOs submit assessment appeals using eMASS. Appeals are tracked in the CMMC instantiation of eMASS and any resulting changes to the assessment results are uploaded into the CMMC instantiation of eMASS. C3PAOs maintain records for a period of six years of monitoring, education, training, technical knowledge, skills, experience, and authorization of each member of its personnel involved in inspection

activities; contractual agreements with OSCs; any working papers generated from Level 2 certification assessments; and organizations for whom consulting services were provided as addressed in 32 CFR 170.9(b)(10).

Level 3 Certification Assessments

The Level 3 certification assessment process is conducted by the Defense Contract Management Agency (DCMA) Defense Industrial Base Cybersecurity Assessment Center (DIBCAC). The Level 3 certification assessment information collection reporting and recordkeeping requirements are included in the Title 32 program rule except for the requirement for the OSC to upload the affirmation in SPRS that is included in the Title 48 acquisition rule. OSCs follow procedures as defined in 32 CFR 170.18 to prepare for Level 3 certification assessment. DCMA DIBCAC assessors follow requirements and procedures as defined in 32 CFR 170.18 to conduct CMMC assessments on defense contractor information systems to determine conformance with the information safeguarding requirements associated with CMMC Level 3. This is an assessment to validate the implementation of the 24 selected security requirements from NIST SP 800–172. Because DCMA DIBCAC is a government entity, there are no public information collection requirements. DCMA DIBCAC must generate and collect pre-assessment and planning material (contact information for the OSC, information about the assessors conducting the assessment, the level of assessment planned, the CMMC Model and Assessment Guide versions, and assessment approach), artifact information (list of artifacts, hash of artifacts, and hashing algorithm used), final assessment reports, appropriate CMMC certificates of assessment, and assessment appeal information. DCMA DIBCAC submits the data it generates and collects into the CMMC instantiation of eMASS. OSCs may have a POA&M at CMMC Level 3 as addressed in 32 CFR 170.21. DCMA DIBCAC performs a POA&M closeout assessment. The DCMA DIBCAC process to conduct a POA&M closeout assessment, when applicable, is the same as the initial assessment with the same information collection requirements. OSCs must retain artifacts used as evidence for the assessment for the duration of the validity period of the certificate of assessment, and at minimum, for six years from the date of certification assessment as addressed in 32 CFR 170.18(c)(4). The OSC is responsible for compiling relevant artifacts as evidence and having

knowledgeable personnel available during the assessment. Assessors will not permanently retain assessment artifacts. To preserve the integrity of the artifacts reviewed during the assessment, the OSC creates a hash of assessment evidence (to include a list of the artifact names, the return values of the hashing algorithm, and the hashing algorithm used) and retains the artifact information for six years. The information obtained from the artifacts is an information collection and DCMA DIBCAC uploads the information into the CMMC instantiation of eMASS (addressed in a separate CMMC eMASS ICR for the Title 32 program rule); the artifacts themselves are not an information collection. If an OSC does not agree with the assessment results, it may formally dispute the assessment and initiate an Assessment Appeal process with DCMA DIBCAC. DCMA DIBCAC submits assessment appeals using eMASS. Appeals are tracked in the CMMC instantiation of eMASS and any resulting changes to the assessment results are uploaded into CMMC eMASS. DCMA DIBCAC maintains records for a period of six years of monitoring, education, training, technical knowledge, skills, experience, and authorization of each member of its personnel involved in inspection activities and working papers generated from Level 3 certification assessments.

Accreditation Body and CMMC Assessor and Instructor Certification Organizations (CAICOs)

The Accreditation Body provides all plans related to potential sources of revenue, to include but not limited to: fees, licensing, processes, membership, and/or partnerships to the Government CMMC PMO as addressed in 32 CFR 170.8(b)(13).

CAICOs maintain records for a period of six years of all procedures, processes, and actions related to fulfillment of the requirements set forth in 32 CFR 170.10(b)(9).

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Sehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy

for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: June 14, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-13464 Filed 6-20-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10853-043]

Otter Tail Power Company; Notice of Application for 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:* Non-capacity Amendment of License.

b. *Project No:* 10853-043.

c. *Date Filed:* September 29, 2023, and supplemented November 21, 2023, and June 4, 2024.

d. *Applicant:* Otter Tail Power Company (licensee).

e. *Name of Project:* Otter Tail River Hydroelectric Project.

f. *Location:* The project is located on the Otter Tail River in Otter Tail County, Minnesota, and does not occupy federal land. The project's five developments, from upstream to downstream, are: (1) Friberg; (2) Hoot; (3) Central; (4) Pishah; and (5) Dayton Hollow.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Michael Olson, Otter Tail Power Company, 215 South Cascade Street, Fergus Falls, MN 56537, (218) 739-8411, mjolson@otpc.com and Laura Cowan, Kleinschmidt Associates, P.O. Box 278, 400 Historic Drive, Strasburg, PA 17579, (717) 983-4065, Laura.Cowan@KleinschmidtGroup.com.

i. *FERC Contact:* Jeremy Jessup, (202) 502-6779, Jeremy.Jessup@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:* July 15, 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>. 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, Maryland 20852. The first page of any filing should include the docket number P-10853-043. 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 licensee is proposing to amend Article 401 of the license to continue operating in a run-of-river mode, with reservoir levels as

close to target levels as practicable, but adding an operating band of ± 0.5 foot for reservoir elevations except during flood conditions, at all five developments of the project. The licensee states that it has historically managed reservoir levels as close to target levels as practicable, and within ± 0.5 foot of the target elevations, except during flood conditions. The licensee explains that continuous management of reservoir levels at the exact target elevation is not possible due to natural variability from wave run-up, precipitation events, etc. The licensee states the proposal would not change run-of-river operation, existing project facilities, the project boundary, or project management and need for project power, nor is there any ground disturbance associated with the amendment.

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, 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: June 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-13521 Filed 6-20-24; 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: ER24-2263-000.

Applicants: Avista Corporation, Idaho Power Company, MATL LLP, NorthWestern Corporation, NV Energy, Inc., Portland General Electric Company, Puget Sound Energy, Inc., PacifiCorp.

Description: § 205(d) Rate Filing: Avista Corporation submits tariff filing per 35.13(a)(2)(iii): 2024 Northern Grid Funding Agreement to be effective 1/1/2024.

Filed Date: 6/12/24.

Accession Number: 20240612-5186.

Comment Date: 5 p.m. ET 7/3/24.

Docket Numbers: ER24-2264-000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: RS 271-Revised O&M Agreement with REC Advanced Silicon to be effective 6/13/2024.

Filed Date: 6/12/24.

Accession Number: 20240612-5208.

Comment Date: 5 p.m. ET 7/3/24.

Docket Numbers: ER24-2265-000.

Applicants: Northern States Power Company (Minnesota).

Description: Notice of cancellation of an interconnection and interchange agreement of Northern States Power Company, a Minnesota corporation.

Filed Date: 6/12/24.

Accession Number: 20240612-5257.

Comment Date: 5 p.m. ET 7/3/24.

Docket Numbers: ER24-2266-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 5981; Queue No. AG1-386 (amend) to be effective 8/13/2024.

Filed Date: 6/13/24.

Accession Number: 20240613-5024.

Comment Date: 5 p.m. ET 7/5/24.

Docket Numbers: ER24-2267-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1628R26 Western Farmers Electric Cooperative NITSA NOAs) to be effective 6/1/2024.

Filed Date: 6/13/24.

Accession Number: 20240613-5036.

Comment Date: 5 p.m. ET 7/5/24.

Docket Numbers: ER24-2268-000.

Applicants: Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Duke Energy Florida, LLC submits tariff filing per 35.13(a)(2)(iii): Revisions to Joint OATT (Removal of Sch. 3A, Revisions to Attachments E and I) to be effective 9/1/2024.

Filed Date: 6/13/24.

Accession Number: 20240613-5057.

Comment Date: 5 p.m. ET 7/5/24.

Docket Numbers: ER24-2269-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 7290; Queue No. AC1-098/AC1-099/AC2-084 to be effective 8/13/2024.

Filed Date: 6/13/24.

Accession Number: 20240613-5091.

Comment Date: 5 p.m. ET 7/5/24.

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: June 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-13526 Filed 6-20-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice To Hold Proceeding in Abeyance

	Docket Nos.
Midcontinent Independent System Operator, Inc	EL15-68-003.
Otter Tail Power Co. v. Midcontinent Independent System Operator, Inc	EL15-36-003, ER16-696-004.
Midcontinent Independent System Operator, Inc	EL15-68-003, EL15-68-004.
Otter Tail Power Co. v. Midcontinent Independent System Operator, Inc	EL15-36-003, EL15-36-004.
Midcontinent Independent System Operator, Inc	ER16-696-004, ER16-696-005, ER18-2513-000.

In *American Clean Power Ass'n v. FERC*, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission certain orders¹ concerning transmission owner (TO) Initial Funding² in the Midcontinent Independent System Operator, Inc. (MISO) region.³ The *American Clean Power* remand proceeding is pending before the Commission.

On June 13, 2024, the Commission issued the Order to Show Cause finding that the existing open access transmission tariffs of certain regional transmission organizations and independent system operators, including MISO, appear to be unjust, unreasonable, and unduly discriminatory or preferential because they include provisions for transmission owners to unilaterally elect TO Initial Funding.⁴

Upon consideration, given the common issues raised in the *American Clean Power* remand proceeding and the Order to Show Cause proceeding, notice is hereby given that the *American Clean Power* remand proceeding is held in abeyance pending the outcome of the Order to Show Cause proceeding.

Dated: June 13, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–13525 Filed 6–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–2258–000]

Lockhart CL ESS II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of

Lockhart CL ESS II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 3, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>).

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.

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: June 13, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–13522 Filed 6–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice To Hold Proceeding in Abeyance

Docket Nos.

PPL Electric Utilities Corporation	ER21–2282–000.
PJM Interconnection, L.L.C	ER21–2282–001.
PPL Electric Utilities Corporation	ER22–2114–000.
PJM Interconnection, L.L.C	ER21–2282–000, ER21–2282–001 (consolidated).
PPL Electric Utilities Corporation	ER22–2114–001.
PJM Interconnection, L.L.C	ER21–2282–000, ER21–2282–001 (consolidated).

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,158 (2018); *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,233 (2019).

² Under TO Initial Funding, the transmission owner unilaterally elects to initially fund the network upgrade capital costs that it incurs to provide interconnection service to the

interconnection customer, and the transmission owner subsequently recovers the network upgrade capital costs through charges that provide a return on and of these network upgrade capital costs from the interconnection customer. *Midcontinent Indep. Sys. Operator, Inc.*, 187 FERC ¶ 61,170, at P 1 n.1 (2024) (Order to Show Cause).

³ *American Clean Power Ass'n v. FERC*, 54 F.4th 722, 728 (2022) (*American Clean Power* remand proceeding).

⁴ Order to Show Cause, 187 FERC ¶ 61,170 at P 1.

On November 19, 2021, the Commission issued an order in the above-captioned dockets, which accepted and suspended PJM Interconnection, L.L.C.'s (PJM) filing concerning transmission owner (TO) Initial Funding¹ for five months, to become effective February 1, 2022, subject to refund and the outcome of paper hearing procedures.² The PJM Paper Hearing procedures are pending before the Commission. The Commission also accepted and suspended PJM's two additional filings, which included ministerial tariff revisions related to those being considered in the PJM Paper Hearing procedures, subject to refund and the outcome of the PJM Paper Hearing procedures, and consolidated those proceedings with the ongoing PJM Paper Hearing procedures (collectively, PJM Consolidated Proceedings).³

On June 13, 2024, the Commission issued the Order to Show Cause finding that the existing open access transmission tariffs of certain regional transmission organizations and independent system operators, including PJM, appear to be unjust, unreasonable, and unduly discriminatory or preferential because they include provisions for transmission owners to unilaterally elect TO Initial Funding.⁴

Upon consideration, given the common issues raised in the PJM Paper Hearing procedures, the PJM Consolidated Proceedings, and the Order to Show Cause proceeding, notice

is hereby given that the PJM Paper Hearing procedures and the Consolidated PJM Proceedings are held in abeyance pending the outcome of the Order to Show Cause proceeding.

Dated: June 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–13524 Filed 6–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–2257–000]

Lockhart CL ESS I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Lockhart CL ESS I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 3, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human

Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: June 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–13523 Filed 6–20–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–131]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS) Filed June 10, 2024 10 a.m. EST

Through June 14, 2024 6 p.m. EST Pursuant to 40 CFR 1506.9.

¹ Under TO Initial Funding, the transmission owner unilaterally elects to initially fund the network upgrade capital costs that it incurs to provide interconnection service to the interconnection customer, and the transmission owner subsequently recovers the network upgrade capital costs through charges that provide a return on and of these network upgrade capital costs from the interconnection customer. *Midcontinent Indep. Sys. Operator, Inc.*, 187 FERC ¶ 61,170, at P 1 n.1 (2024) (Order to Show Cause).

² *PPL Elec. Utils. Corp.*, 177 FERC ¶ 61,123, at PP 2, 24, 57 (2021) (PJM Paper Hearing procedures). Also, on December 20, 2022, the Commission accepted and suspended certain ministerial conforming tariff revisions related to those being considered in the PJM Paper Hearing procedures, to become effective January 3, 2023 and December 31, 9998, as requested, subject to refund and the outcome of the PJM Paper Hearing procedures, and consolidated that proceeding with the ongoing PJM Paper Hearing procedures. *PPL Elec. Util. Corp.*, 181 FERC ¶ 61,245, at P 1 (2022). On April 4, 2024, the Commission accepted and suspended additional ministerial conforming tariff revisions changing the December 31, 9998 effective date to October 5, 2023, subject to refund and the outcome of the PJM Paper Hearing procedures, and consolidated that proceeding with the ongoing PJM Paper Hearing procedures. *PPL Elec. Util. Corp.*, 187 FERC ¶ 61,010 (2024).

³ See *supra* note 2.

⁴ Order to Show Cause, 187 FERC ¶ 61,170 at P 1.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20240106, Final, USAF, TX, T-7A Recapitalization at Laughlin Air Force Base, Texas, Review Period Ends: 07/22/2024, Contact: Chinling Chen 210-652-4400.

EIS No. 20240107, Final, APHIS, CA, California Wildlife Damage Management EIR-EIS, Review Period Ends: 07/22/2024, Contact: Jeffrey Flores 916-979-2675.

EIS No. 20240108, Final Supplement, BLM, CO, Proposed Resource Management Plan and Final Supplemental Environmental Impact Statement for Colorado River Valley Field Office and Grand Junction Field Office, Review Period Ends: 07/22/2024, Contact: Heather Sauls 970-878-3855.

EIS No. 20240109, Final, BLM, CA, Proposed Northwest California Integrated Resource Management Plan (NCIP), Review Period Ends: 07/22/2024, Contact: Chad Endicott 530-224-2140.

EIS No. 20240110, Draft, USFS, NAT, Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System, Comment Period Ends: 09/20/2024, Contact: Jennifer McRae 202-791-8488.

EIS No. 20240111, Draft Supplement, FTA, MN, METRO Blue Line Light Rail Extension Project, Comment Period Ends: 08/05/2024, Contact: Anthony Greep 312-353-1645.

EIS No. 20240112, Draft, CHSRA, CA, Link Union Station Project Draft Environmental Impact Statement/ Supplemental Environmental Impact Report, Comment Period Ends: 08/09/2024, Contact: Stefan Galvez-Abadia 916-324-1541.

Dated: June 17, 2024.

Nancy Abrams,

Associate Director, Office of Federal Activities.

[FR Doc. 2024-13596 Filed 6-20-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0741; FR ID 227055]

Information Collection Being Reviewed by the Federal Communications Commission

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 (PRA) of 1995, the Federal Communications Commission (FCC or the 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. **DATES:** Written PRA comments should be submitted on or before August 20, 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 Nicole Ongele, FCC, via email PRA@fcc.gov and to nicole.ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418-2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

OMB Control Number: 3060-0741.
Title: Accelerating Wireline Broadband Deployment by Removing

Barriers to Infrastructure Investment, GN Docket No. 17-84.

Form Number(s): N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and

Responses: 4,688 respondents; 471,548 responses.

Estimated Time per Response: 0.5-4.5 hours.

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

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 222 and 251.

Total Annual Burden: 473,068 hours.

Total Annual Cost: No cost.

Needs and Uses: Section 251 of the Communications Act of 1934, as amended, 47 U.S.C. 251, is designed to accelerate private sector development and deployment of telecommunications technologies and services by spurring competition. Section 222(e) is also designed to spur competition by prescribing requirements for the sharing of subscriber list information. These information collection requirements are designed to help implement certain provisions of sections 222(e) and 251, and to eliminate operational barriers to competition in the telecommunications services market. Specifically, these information collection requirements will be used to implement (1) local exchange carriers' ("LECs") obligations to provide their competitors with dialing parity and non-discriminatory access to certain services and functionalities; (2) incumbent local exchange carriers' (ILECs) duty to make network information disclosures; and (3) numbering administration. In November 2017, the Commission adopted new rules concerning certain information collection requirements implemented under section 251(c)(5) of the Act, pertaining to network change disclosures. Most of the changes to those rules applied specifically to a certain subset of network change disclosures, namely notices of planned copper retirements. In addition, the changes removed a rule that prohibits incumbent LECs from engaging in useful advanced coordination with entities affected by network changes. In June 2018, the Commission revised its network change disclosure rules to (1) revise the types of network changes that trigger an incumbent LEC's public notice obligation, and (2) extend the force majeure provisions applicable to copper retirements to all types of network changes. The changes were

aimed at removing unnecessary regulatory barriers to the deployment of high-speed broadband networks.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024–13649 Filed 6–20–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 226599]

Information Collection Being Reviewed by the Federal Communications Commission

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 (PRA) of 1995, the Federal Communications Commission (FCC or the 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.

DATES: Written PRA comments should be submitted on or before August 20, 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 Nicole Ongele, FCC, via email PRA@fcc.gov and to nicole.ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection

of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–XXXX.

Title: Section 9.10(t), Interim 911

Requirements for Supplemental Coverage from Space.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities.

Number of Respondents and

Responses: 59 respondents; 59 responses.

Estimated Time per Response: 49 hours.

Frequency of Response: One-time and annual reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this collection is contained in sections 1, 2, 4(i), 4(j), 4(o), 251(e), 303(b), 303(g), 303(r), 316, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 154(o), 251(e), 303(b), 303(g), 303(r), 316, 403, and section 4 of the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, sections 101 and 201 of the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, as amended 47 U.S.C. 615a, 615a–1, 615b, 615c.

Total Annual Burden: 2,891 hours.

Total Annual Cost: No Cost.

Needs and Uses: In an effort to facilitate the process of terrestrial providers taking steps to ensure their subscribers' access to the 911 system in areas where they use SCS arrangements to expand coverage to their end-users and thus comply with the new *Interim 911 Requirements for Supplemental Coverage from Space* as established in Section 9.10(t), the Commission adopted certain information collection requirements for those CMRS providers.

Annual Reporting Requirement.

Under Section 9.10(t)(3), each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user subscribers must maintain records of all SCS 911 voice calls and SCS 911 text messages received on its network and received at its emergency call center. By October 15 of each year, each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user

subscribers must submit a report to the Commission regarding SCS 911 voice calls and 911 text messages, and its emergency call center data, current as of September 30 of that year. These reports must include, at a minimum: (i) The name and address of the CMRS provider, the address of that CMRS provider's emergency call center, and the contact information of the emergency call center; (ii) The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the network of the CMRS provider that provides SCS service to its end-user subscribers during each month during the relevant reporting period; (iii) The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the emergency call center each month during the relevant reporting period; (iv) The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the emergency call center each month during the relevant reporting period that required forwarding to a PSAP and how many did not require forwarding to a PSAP; (v) The aggregate number of SCS 911 voice calls that were routed using location information that met the timeliness and accuracy thresholds defined in paragraphs (s)(3)(i)(A) and (B) of this section; (vi) The aggregate number of SCS 911 voice calls and SCS 911 text messages that were routed using location information that did not meet the timeliness and accuracy thresholds defined in paragraphs (s)(3)(i)(A) and (B) of this section; and (vii) an explanation of how the SCS deployment, including network architecture, systems, and procedures, will support routing SCS 911 voice calls and SCS 911 text messages to the geographically appropriate PSAP with sufficient location information in compliance with paragraph (t)(2) of this section. The Commission would use the data generated by this annual information collection to monitor CMRS provider compliance as well as analyze the growth and development of 911 system access for end-users.

One-Time Privacy Certification Requirement. Under Section 9.10(t)(4), CMRS providers that utilize SCS arrangements to expand their coverage areas for providing service to their end-user subscribers must certify on a one-time basis that neither they nor any third party they rely on to obtain location information or associated data used for compliance with paragraph (t)(2)(i) or (ii) will use such location information or associated data for any non-911 purpose, except with prior express consent or as otherwise

permitted or required by law. The certification must state that the CMRS provider and any third parties it relies on to obtain location information or associated data used for compliance with paragraph (t)(2)(i) or (ii) have implemented measures sufficient to safeguard the privacy and security of such location information or associated data. CMRS providers that utilize SCS arrangements to expand their coverage areas for providing service to their end-user subscribers must submit this one-time certification in the Commission's Electronic Comment Filing System on the due date of the first report made under paragraph (t)(3) of this section. The Commission would use the data generated by this annual information collection to monitor CMRS provider compliance as well as analyze the growth and development of 911 system access for end-users.

One-time Subscriber Notification Requirement. Under Section 9.10(t)(5), each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user subscribers shall specifically advise every subscriber, both new and existing, in writing prominently and in plain language, of the circumstances under which 911 service for all SCS 911 calls, or SCS 911 text messages may not be available via SCS or may be in some way limited by comparison to traditional enhanced 911 service.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024-13648 Filed 6-20-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Capital Assessments and Stress Testing Reports (FR Y-14A/Q/M; OMB No. 7100-0341).

DATES: Comments must be submitted on or before August 20, 2024.

ADDRESSES: You may submit comments, identified by FR Y-14A/Q/M, by any of the following methods:

- **Agency Website:** <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at

<https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- **Email:** regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.

- **FAX:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M-4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all

comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Capital Assessments and Stress Testing Reports.

Collection identifier: FR Y-14A/Q/M.

OMB Control Number: 7100-0341.

General description of collection: The FR Y-14A, FR Y-14Q, and FR Y-14M reports (FR Y-14 reports) are used to set firms' stress capital buffer (SCB)

requirements, support the supervisory stress test models, and collect company-run stress test results. The data are also used to support the supervision and regulation of these financial institutions.

Proposed revisions: The Board proposes to revise the FR Y-14 reports to implement various changes to the reports that would collect more granular information on lending to nondepository financial institutions (NDFIs), improve the timeliness and coverage of the Board's collections of counterparty credit risk data, remove data fields deemed no longer necessary, and make other minor revisions and instructional clarifications. For the FR Y-14Q and FR Y-14M, the proposed revisions would be effective for the September 30, 2024, as-of date submissions, and for the FR Y-14A, the December 31, 2024, as-of date submissions.

General

FR Y-14 Q&A System

Firms that report the FR Y-14 frequently have questions on the reporting requirements. In order to promote the accuracy and consistency of the FR Y-14 reports, the Board developed a Q&A system where firms could submit questions to receive clarification on reporting the FR Y-14. Due to the volume of questions received and the detailed scenarios described in some questions, the Board is limited in its ability to address all submitted questions, and firms occasionally do not receive responses in a timely manner. Often, revisions to the FR Y-14 address outstanding questions or otherwise make previous questions no longer applicable. Moreover, during the revision process, the public is provided the opportunity to comment on various aspects of the FR Y-14 that are unclear. Therefore, unanswered questions that predate the most recent FR Y-14 revisions may become obsolete.

In connection with this proposal, the Board encourages the submission of comments regarding any aspects of the FR Y-14 instructions that may be unclear. Upon receipt of public comments following the proposal, the Board intends to answer relevant unaddressed questions and retire unanswered questions in the system submitted prior to publication of the initial notice. Firms will continue to have the opportunity to submit questions related to the FR Y-14 to the Federal Reserve.

Question 1: Given that revisions to the FR Y-14 often address outstanding questions, what are the advantages or disadvantages to retiring the

outstanding questions in the FR Y-14 Q&A system following the receipt of public comments?

Supporting Documentation

Firms currently use Intralinks to submit supporting documentation for certain FR Y-14A/Q/M schedules to the Board. Intralinks is being replaced by One Agile Supervision Solution (OASiS), and firms will be required to submit supporting documentation through OASiS instead of Intralinks for the 2024 supervisory stress test. Therefore, the Board proposes to update all references to Intralinks in the FR Y-14A/Q/M instructions to reflect the transition to OASiS.

Historical Data

New reporters of the FR Y-14 are currently required to provide historical reports of the FR Y-14Q PPNR and Retail schedules, providing reports for all periods from when it first submits the FR Y-14 back to March 2009 and January 2007, respectively. Firms began reporting the FR Y-14 in 2012, and this historical data requirement enabled the Board to understand how a firm's retail and PPNR schedules had performed in the years preceding the initial submissions, to appropriately project its losses in the supervisory stress test. However, given the passage of time, firm-level historical data from as far in the past as 2007 or 2009 is less relevant to modeling a firm's losses in the stress test. Additionally, firms that join the FR Y-14 panel may face significant burdens to produce the required historical data. Therefore, the Board proposes to modify this requirement in the FR Y-14Q instructions such that new reporters, or existing reporters that must begin filing a Retail schedule, would be required to provide historical reports only for the five years preceding the first quarter that the firm is subject to reporting. This change would reduce reporting burden, align with the original spirit of the FR Y-14 historical reporting requirements, and make the reporting requirement consistent for all firms regardless of when they begin reporting.

Question 2: The Board has not established a process through which a firm may request an exemption from an FR Y-14 historical data reporting requirement. What would be the advantages and disadvantages of establishing such a process? In particular, would such a process be appropriate even if the changes to the historical data reporting requirements described above are adopted? If a process for requesting an exemption is established, what factors, such as the unavailability of data, cost of providing

data, or materiality of data, should the Board consider in acting in these types of requests? In addition, what would be an appropriate deadline for the filing of such requests (for example, one month, three months, or six months prior to the date on which the data would be due)?

Question 3: As an alternative to the proposed requirement to provide five years of historical data, what would be the advantages and disadvantages of requiring historical data from a different number of years, such as 2 years or 10 years?

Exploratory Market Shocks

The supervisory stress test includes a global market shock (GMS) component that applies to covered companies with substantial trading exposures and is calculated using a large set of shocks to market risk factors.¹ The losses associated with the GMS are included in a firm's losses under the severely adverse scenario, and consequently, generally feed into their ultimate SCB requirement. Currently, the use of a single GMS limits the Board's ability to capture and test a firm's resilience to a range of risks, which is the purpose of the supervisory stress test. Exploratory market shocks are informative to supervisory efforts and help bolster the safety, soundness, and resiliency of the financial system. Consistent with the nature of exploratory market shocks and their information-serving purposes, the losses associated with any exploratory market shocks would not contribute to firms' capital requirements. Therefore, to expand risk identification beyond the current GMS framework, the Board proposes to revise the FR Y-14 instructions to require firms to submit relevant data with respect to all market shocks that the Board may conduct in a given year, including any exploratory market shocks. Firms currently subject to the GMS component of the supervisory stress test would be required to report FR Y-14 information related to any exploratory market shocks. For purposes of estimating the burden associated with the FR Y-14, the Board estimates that it would conduct two exploratory market shocks per year. However, the number of exploratory market shocks conducted may vary from year to year.

Collection of Supplemental CECL Information

The FR Y-14A, "Collection of Supplemental CECL Information" is a one-time submission required from

¹ See Board of Governors of the Federal Reserve System, 2023 Stress Test Scenarios (February 2023), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230209a1.pdf>.

firms that have adopted ASU 2016–13, which collects certain information reflecting the current expected credit losses (CECL) methodology. This collection was implemented to identify the effect and timing of the adoption of CECL and the associated transition provisions, as provided by section 301 of the regulatory capital rules. As all firms have now adopted ASU 2016–13, this supplemental collection is not needed on a go-forward basis for modeling or analytic purposes. Therefore, the Board proposes to remove the “Collection of Supplemental CECL Information” from the FR Y–14A.

Other Revisions

For Comprehensive Capital Analysis and Review (CCAR) submissions of FR Y–14A, Schedule A (Summary), under both the internal stress scenario as well as the supervisory severely adverse scenario, firms are currently instructed to report alternative capital actions, which the firms would expect to take if the stress scenario were realized. Per the Board’s capital rule, the maximum payout amount is a function of a firm’s eligible retained income and capital ratios.² However, upon a request of the Board-regulated institution, the Board may approve additional distributions if it determines that the distribution would not be contrary to the purposes of this capital rule, or to the safety and soundness of the Board-regulated institution.³ To accurately monitor firms’ capital ratios and plans under the internal stress scenario and the supervisory severely adverse scenario, the Board proposes to instruct firms to report the CCAR submissions of Schedule A inclusive of capital actions for which the firm expects to request prior approval under 12 CFR 217.11.

Net charge-offs are generally defined to be gross of write-downs. FR Y–14A, Schedule A.1.a (Income Statement), line item 114 (“Total Net Charge-offs during the quarter”) instructs firms to report as defined in the FR Y–9C, Schedule HI–B (Charge-Offs and Recoveries on Loans and Leases and Changes in Allowances for Credit Losses), Part I (Charge-offs and Recoveries on Loans and Leases), line item 9 (Total), column A (Charge-offs) minus column B (Recoveries) and is derived as the sum of Schedule A.1.a., items 114a–d. However, FR Y–9C, Schedule HI–B, Part I, line item 9, column A is charge-offs gross of write downs, and Column B is recoveries. The calculation defined in the instructions for line item 114a (“Net charge-offs during the quarter on loans and leases”) is

FR Y–9C, Schedule HI–B, Part II (Changes in Allowances for Credit Losses), Column A (Loans and leases held for investment, item 3 (Charge-offs) minus item 2 (Recoveries), where item 3 is charge-offs net of write-downs. This creates an inconsistency between how firms are instructed to report line item 114, which is done as reported on the FR Y–9C, and its sum as a total of line items 114a–d. For alignment and accurate reporting, the Board proposes to revise the instructions for the FR Y–14A, Schedule A.1.a line item 114a to be gross of write downs and line item 114 to be the total of the components, 114a–d.

FR Y–14A, Schedule A.7.a, item 36 (“Provisions for Unfunded Off-Balance Sheet Credit Exposures”) instructs firms to report the provision for credit losses on off-balance sheet exposures normally reported as one of the items in FR Y–9C, Schedule HI, item 7.d (“Other noninterest expense”). Prior to implementation of the CECL methodology, provisions for off-balance sheet exposures were recorded as other noninterest expense. However, CECL incorporates provisions for off-balance sheet exposures in provisions for loan and lease losses. The FR Y–9C has been updated to reflect this standard. As a result, the FR Y–9C, Schedule HI, item 7.d is no longer relevant for item 36 on FR Y–14A, Schedule A.7.a. To ensure consistency between reports, the Board proposes to update the instructions for item 36 to reference the FR Y–9C, Schedule HI–B, Part II, item M7 (“Provisions for credit losses on off-balance sheet credit exposures”).

On January 26, 2023, the Board adopted a final rule to implement the Adjustable Interest Rate (LIBOR) Act.⁴ The rule established benchmark replacements for certain contracts governed by U.S. law to address references to LIBOR, which ceased to exist after June 30, 2023. The Board therefore proposes to revise the FR Y–14 to remove or replace all references to LIBOR in a manner consistent with the rule.

Counterparty

Submission of Fourth Quarter Data

Unstressed submissions of FR Y–14Q, Schedule L (Counterparty) are currently collected four times per year. Three of the as-of dates are the last calendar days of the first, second, and third quarters. The fourth is the Board provided as-of date for the GMS component of the supervisory stress test, which must fall between October 1 of the previous

calendar year and March 1 of the year of the supervisory stress test.⁵ These requirements can result in a timing gap between the unstressed submissions for the first and third quarters of up to 6 months. This timing gap can result in the Board not having up-to-date data on firms’ counterparty credit risks. The absence of important data has been noted during times of instability, when it is important to have reliable, timely data. To address this limitation and create consistency in reporting frequency, the Board proposes to require an additional unstressed Schedule L submission as of the last calendar day of the fourth quarter. Consistent with the due date for the other FR Y–14Q schedules as of the fourth quarter, this submission would be due 52 days after the calendar quarter-end. A stressed and unstressed Schedule L would still be submitted as-of the Board-provided GMS date, as is currently required.

Reporting Scope and Frequency for Firms Subject to Category I Standards

The FR Y–14Q instructions set several materiality thresholds to determine the frequency and scope of reporting for several schedules. Only firms subject to Category I, II, or III standards and that, as of two quarters preceding the reporting quarter, have on average for four quarters, aggregate trading assets and liabilities of \$50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets, must submit FR Y–14Q, Schedule L. Firms with trading operations below the materiality threshold are not required to report Schedule L. As a result, certain U.S. GSIBs do not file the complete Schedule L.

Category I standards apply to firms that qualify as U.S. global systemically important banks (GSIBs), given the risk their individual failure poses to the broader financial system. For the U.S. GSIBs that are not currently required to report Schedule L, the minimal data on their counterparty credit exposures is not sufficiently frequent or comprehensive to provide meaningful risk monitoring when a financial market stress event occurs.

To ensure that data on all U.S. GSIB counterparty risks, including credit valuation adjustment and counterparty default risks, will be available in a timely manner, the Board proposes to revise the threshold for Schedule L reporting to be inclusive of all firms subject to Category I standards. The reporting threshold would remain

² 12 CFR 217.11(a)(2)(ii).

³ 12 CFR 217.11(c)(1)(vi).

⁴ 88 FR 5204 (January 26, 2023).

⁵ 12 CFR 252.54(b)(2)(i).

unchanged for firms subject to Category II, III, and IV standards.

Reporting of Counterparties Under the Firm-Generated Scenario

FR Y-14Q, Schedule L.5 (Derivatives and Securities Financing Transactions Profile) collects information on a firm's top counterparties associated with securities financing transactions (SFTs) and/or derivative positions at the level of positions netting. Specifically, Schedule L.5.1 (Derivative and SFT information by counterparty legal entity and netting set/agreement) is intended to identify the counterparties to these types of positions under ranking methodologies and the associated exposures. Schedule L.5 is submitted yearly under the stressed conditions as prescribed in the Board-provided scenario. Firms are also required to generate their own stress scenario, but the related exposures are not collected on Schedule L.5. To have more information on a firm's view of its own risk profile, the Board proposes to require the reporting of Schedule L.5 under the firm-generated stress scenario. This revision would require a new ranking methodology to be reported on Schedule L.5 under which a firm ranks its top 25 counterparties by stressed net current exposure (net CE) under the firm-generated scenario and the reporting of the related exposures on sub-schedules L.5.2-L.5.4.

Assumptions Associated With the Reporting of CVA Sensitivities

FR Y-14Q, Schedule L.4 (Aggregate and Top 10 CVA Sensitivities by Risk Factor) collects sensitivity information of aggregate asset-side CVA based on changes in underlying risk factors. Generally, a sensitivity refers to a 1-unit change in the risk factor, and a slide refers to a larger change in the risk factor. However, Schedule L.4 does not specify the assumptions under which to calculate the CVA which results in inconsistent reporting across firms and hinders data comparisons. Additionally, the other CVA sub-schedules (L.1, L.2, and L.3) specify that the data are to be reported using the Board-provided scenario and specifications (*i.e.*, margin period of risk of 10 business days, keeping CSA thresholds flat, no gains from netting, and no credit downgrade triggers). To increase the consistency of reporting and to better assess the impact of the market shock scenario across firms, the Board proposes to specify that the CVA sensitivities on Schedule L.4 must be reported using the Federal Reserve provided specifications.

Netting When Calculating Net CE

FR Y-14Q, Schedule L collects information on net CE for SFT agreements in a firm's portfolio. Generally, if a firm does not have a close-out netting agreement with a counterparty on its SFT portfolio, the firm is not allowed to take a netting benefit across the transactions but can net exposures across multiple legs within a single transaction when calculating net CE. However, the instructions for reporting net CE are ambiguous regarding netting practices. To clarify the reporting of net CE in Schedule L, the Board proposes to revise the instructions to describe how a firm can net exposures when calculating net CE for SFTs. This revision would address questions and issues raised in FR Y-14 Q&As #Y140001627 and #Y140001614.

Removal of Fields Deemed No Longer Necessary

FR Y-14Q, Schedule L.5.1 (Derivative and SFT information by counterparty legal entity and netting set/agreement) collects information about a firm's top counterparties associated with SFTs and/or derivative positions at the level of position netting under different ranking methodologies. The collection of these data supports both stress test modeling and supervisory monitoring of counterparty exposures. Over time, several items on Schedule L.5.1 have been identified as providing minimal value in these supervisory activities. These items are:

- Threshold CP
- Threshold BHC or IHC or SLHC
- Minimum Transfer Amount CP
- Minimum Transfer Amount BHC or IHC or SLHC
- CDS Reference Entity Type
- 5Y CDS Spread (bp)

Additionally, the item "Downgrade Trigger Modeled?" on Schedule L.1.a (Top consolidated/parent counterparties comprising 95% of firm unstressed credit valuation adjustment (CVA), ranked by unstressed CVA) and L.1.b (Top consolidated/parent counterparties comprising 95% of firm stressed CVA, ranked by Federal Reserve Severely Adverse Scenario stressed CVA for the CCAR quarter) is no longer necessary as firms are instructed to report 'NA' in this field. To reduce burden and ensure the Board only collects necessary data, the Board proposes to retire all the items discussed in this sub-section from Schedule L.

Other FR Y-14Q, Schedule L Revisions

Firms are required to identify the type of non-cash collateral or initial margin

that were either posted or received for SFT and derivative agreements in the "Non-Cash Collateral Type" field, per the general instructions for Schedule L.5.1. However, the "Non-Cash Collateral Type" instructions do not specify if this field applies to both derivatives and SFTs. To remove ambiguity, the Board proposes to clarify that the "Non-Cash Collateral Type" field pertains to both SFTs and derivatives. This revision would address questions and issues raised in FR Y-14 Q&A #Y140001591.

On FR Y-14Q, Schedule L.5, firms are instructed to rank their top 25 counterparties with positive net CE for each of the ranking methodologies. However, in some cases, a firm may not have 25 counterparties with positive net CE. For clarity, the Board proposes to specify that if a firm has less than 25 applicable counterparties for a given ranking methodology, then it should only report the applicable counterparties, and should not report additional counterparties with zero net CE. This revision would address questions and issues raised in FR Y-14 Q&A #Y140001595.

Net CE is calculated at the counterparty netting agreement level where it is possible for an underlying netting agreement to cover both fair-value and accrual SFT agreements. Schedule L currently pertains to both fair-value and accrual SFTs, however the instructions only mention fair-value SFTs when calculating Net CE. To reduce ambiguity, the Board proposes to clarify that, when a netting agreement covers both fair-value and accrual SFTs, a firm should combine both types of SFTs for purposes of reporting Net CE and CVA metrics in Schedule L.

The FR Y-14Q, Schedule L.5.1 "Agreement Type" field requires firms to identify the derivative agreement type when at least one of the netting sets associated with the counterparty has a legally enforceable collateral agreement. For derivatives, allowable entries are "Derivatives 1-way CSA [Credit Support Annex]", "Derivatives 2-way SCSA [Standard Credit Support Annex]", "Derivatives 2-way old CSA", or "Derivatives Centrally Cleared". However, the instructions do not currently provide definitions for these agreement types. The Board proposes to clarify that firms should use the International Swaps and Derivatives Association, Inc., publication of the 2013 Standard Credit Support Annex for the basis of classifying derivatives as SCSA and use Old-CSA for agreements made prior to this publication when reporting this field.

Wholesale

FR Y–14Q, Schedule H (Wholesale) collects loan-level information on corporate and commercial real estate loans and leases to support the supervisory stress test and risk analyses. The data collected includes details on the obligor and loan itself, and the financial health of the obligor. The following proposed revisions would enhance Schedule H to address growing financial stability risks, improve the quality of collected data, and address new accounting standards.

Reporting Treatment of Nondepository Financial Institutions

U.S. bank exposures to NDFIs have grown rapidly over the past five years and reached about \$2 trillion in the fourth quarter of 2022.⁶ This growth poses risks to banks, as certain NDFIs operate with very high leverage and are dependent on credit from the banking sector. Currently, data on exposures to NDFIs are limited on the FR Y–14, as banks report minimal information about these obligors, relative to other corporate borrowers. This lack of data hinders staff's ability to consistently measure, monitor, and model the risks stemming from these exposures under stress.

The FR Y–14 report currently does not require firms to report certain financial information (such as total assets, total liabilities, short term debt or net income) on NDFI obligors, which results in a material data gap. As a result, less than half of the total committed exposure on the corporate loan schedule include data on the financial health of the obligor. This lack of data means the stress test models may not accurately capture risks associated with loans to NDFIs. Similarly, this lack of data reduces the consistency of measurement and monitoring of these exposures for supervisory purposes. To understand the financial conditions of NDFI borrowers, the Board proposes to require the reporting of fields 52 through 82 on Schedule H.1, the “Obligor Financial Data Section”, for NDFIs.

Currently the FR Y–14 lacks the necessary granularity to classify the business type of NDFI obligors that borrow from firms and the associated risks. As the various business types of NDFIs pose different types of risks to banks, these data are necessary to consistently measure and monitor the risks NDFIs pose to firms and to ensure

that the supervisory stress test is appropriately calibrated for loans to NDFIs. To understand banks' exposures to various NDFI types, the Board proposes to add a “NDFI Entity Type” field to Schedule H.1 in which firms would have multiple options to specify the NDFI type (e.g., credit fund, broker-dealer, special purpose entity, etc.) to which the facility was extended.

Question 4: Which, if any, of the financial data fields (fields 52 through 82) would be especially difficult to provide for NDFI obligors due to differences in financial statement frameworks or other obstacles?

Reporting of Financial Sponsors

The role of financial sponsors has contributed to the growth of NDFI activities in the corporate sector over the past several years. A financial sponsor is any person, including any subsidiary of such person, whose principal business activity is acquiring, holding, and selling investments in otherwise unrelated companies that each are distinct legal entities with separate management, books, records, and bank accounts, whose operations are not integrated with one another and whose financial condition and creditworthiness are independent of the other companies so owned by such person. While the proposed revisions to Schedule H described above would collect information on lending to NDFIs and the associated risks, they would not increase insight into equity investments in the corporate sector where NDFIs are increasing their activities. To address this data gap, the Board proposes to introduce three new fields on FR Y–14Q, Schedule H.1 to capture if the obligor is controlled by a financial sponsor, and if so, that financial sponsor's legal name and legal entity identifier. These fields would inform the Board of lending to companies controlled by a NDFI, a noted gap of insights into firm activities with NDFIs.

Additional Options for the Reporting of Security Type

FR Y–14Q, Schedule H.1 item 36 (“Security Type”) requires firms to report the predominant security type for collateral other than or in addition to real estate. There are currently seven options that can be reported for this field. The majority of wholesale loans are secured by collateral, which serves as the primary source of repayment. Further, collateral is a key risk transmitter from NDFIs to firms and provides an additional insight into the NDFI's activities. The lack of granularity in this field diminishes the Board's understanding of this characteristic of

the obligor's facility, as the options provided are not comprehensive. To better define the collateral underlying the loan, the Board proposes to add twelve additional response options to the “Security Type” field, covering an array of known collateral types, and implement an “Other Security Type” field to capture the full range of collateral types.

Reporting of Fee Information

The data collected by Schedule H includes pricing characteristics of each loan and sources of lender income, such as the facility's interest rate. However, a facility's fees can also be a significant source of lender income and risk. Fee information is not currently captured on Schedule H. The fee structure is a component of the overall loan pricing, an indicator of lender tolerance, and a contributor to the fair value of loans. The lack of fee data constrains the Board's supervisory risk assessment process and obscures the pricing characteristics of the facilities reported. To increase insight into this aspect of a loan's pricing and riskiness, the Board proposes to add five fields to Schedule H.1 and Schedule H.2 to capture the facility's fee structure.

Reporting of Collateral Market Value

On Schedule H.1, one of the fields used to gain insight into the financial health of the obligor is “Collateral Market Value”, line item 93, which requires the reporting of collateral market value for facilities that require ongoing or periodic valuation of collateral if the value has been updated in the firm's internal risk management systems. Per the current instructions, this field is only reported for collateral that is market-based. These specifications result in infrequent reporting of this field, severely limiting its usefulness in evaluating firm risk. To increase the understanding of a loan's risk characteristics, the Board proposes to modify the instructions of the “Collateral Market Value” field to require the reporting of collateral valuations for all facilities with commitments based on collateral.

Loan Covenant Violation Information

Loan covenants appear in many commercial loan contracts and circumscribe specific actions a borrower may take (nonfinancial covenants) or thresholds for cash flow or balance sheet variables (financial covenants). Breaching a covenant can put a borrower into technical default and may give the lender the right to modify the terms of the agreement. Covenant violations can increase a lender's

⁶ See Board of Governors of the Federal Reserve System, *Financial Stability Report* (May 2023), <https://www.federalreserve.gov/publications/files/financial-stability-report-20230508.pdf>.

bargaining power and can provide broad opportunity to renegotiate contract terms when the lender's internal cost of funds rises. Thus, covenant violations could lead to a reduction in the existing stock of credit, potentially affecting a large segment of borrowers. Information regarding loan covenants provides additional details regarding the lender's perspective of loan riskiness.

Additionally, details on a covenant violation would increase the Board's understanding of a firm's ability to renegotiate a credit relationship, change its exposure to a given borrower, or provide early warning signs of future loan performance. However, FR Y-14Q, Schedule H.1 does not capture covenant details. Therefore, the Board proposes to introduce a field to capture if a loan covenant exists, whether the covenant has been violated, and, if so, whether the agreement has been amended.

Loan Amortization Reporting

FR Y-14Q, Schedule H.2 requires the reporting of the number of months to fully amortize a loan or indication of a non-standard amortization schedule in line item 20 ("Amortization"). However, there is not equivalent data collected for corporate loans on Schedule H.1, and so the Board proposes to add an identical item to Schedule H.1. The current expected credit losses (CECL) methodology requires additional consideration of amortization periods to accurately quantify the lifetime of a loan and balance run off. Therefore, receiving amortization information on Schedule H.1 would provide data to more accurately model provisions for corporate loans in the stress test.

Troubled Debt Restructurings

FR Y-14Q, Schedule H.2 collects information on loans that have been modified as a troubled debt restructuring (TDR). Additionally, line item 10 ("Origination Date") indicates that firms should generally not update the origination date if the modification made is a TDR. In March 2022, the Financial Accounting Standards Board (FASB) issued new accounting guidance, ASU No. 2022-02, which eliminated the recognition of TDRs. In addition, ASU 2022-02 introduced accounting disclosures for loan modifications to borrowers experiencing financial difficulty (LMBEFDs). This guidance went into effect January 1, 2023, for firms that have adopted ASU No. 2016-13. Consistent with ASU 2022-02, the Board proposes to introduce a new field to Schedule H.1 and Schedule H.2 to capture loans modified as LMBEFDs for firms that have adopted ASU 2016-13. The Board

also proposes to retire item 49 as it is no longer needed under ASU 2022-02. Additionally, the Board proposes to add LMBEFDs to line item 10 to indicate that LMBEFDs are generally not considered a major loan modification, as currently indicated for TDRs.

Units of Size for Property Size Reporting

Beginning with the June 30, 2023, as-of date, the Board added two options, "Healthcare" and "Warehouse/Distribution" to the "Property Type" field on the FR Y-14Q, Schedule H.2.⁷ Schedule H.2, line item 39 ("Property Size") collects data on the size of the property securing the facility and specifies the unit of size in which to report this field based on the property type. The instructions currently do not specify how to report this field for the new healthcare and warehouse/distribution property types. Therefore, the Board proposes to specify that item 39 should be reported in square feet when reporting the size of healthcare and warehouse/distribution property types.

Unused Commitments

The instructions to FR Y-14Q, Schedule H require firms to include any unused commitments that are reported on FR Y-9C, Schedule HC-L (Derivatives and Off-Balance-Sheet Items) that would be reported in the relevant FR Y-9C category if such loans were drawn (including all undrawn commitments extended to non-consolidated variable interest entities and commitments to commit as defined in the FR Y-9C). Schedule H is intended to capture all unused commitments where the firm has extended terms that the borrower has accepted and are either in writing or otherwise legally binding. The current Schedule H language is ambiguous as to how to account for undrawn commitments, which can result in inconsistencies across reports. To ensure consistent reporting across firms and to eliminate ambiguity, the Board proposes to update the Schedule H language to be clear about which commitments must be reported.

Removal of Fields Deemed No Longer Necessary

On FR Y-14Q, Schedule H.1 (Corporate), item 43 ("Interest Income Tax Status"), firms report the tax status of interest income for Federal or State Income Tax purposes. The allowable values are "Taxable" or "Tax Exempt," as determined by whether the interest income received by the firm is tax exempt. The Board has determined that

information on the tax status of interest income is no longer relevant for modeling or monitoring purposes, therefore, the Board proposes to retire item 43 from Schedule H.1.

Retail

Alignment Between Loan-Level and Portfolio-Level First Lien Schedules

Currently, FR Y-14M, Schedule A.2 (Domestic First Lien Closed-end 1-4 Family Residential Portfolio Level Table) captures total principal balance and cumulative write-downs within a firm's domestic first-lien portfolio but does not capture total debt from loans involuntarily terminated, total net recoveries, or total credit enhancements received. While Schedule A.1 (Domestic First Lien Closed-end 1-4 Family Residential Loan Level Table) collects these data for individual loans, the absence of these data on Schedule A.2 limits the Board's insight into charge-off and recovery information at the portfolio level. The current granularity of the collection prohibits the calculation of write-downs in a specific month or the timing of the loan termination. Therefore, the Board proposes to add the fields "Total Debt from Loans Involuntarily Terminated," "Total Net Recoveries," and "Total Credit Enhancements Received" to Schedule A.2. The instructions for these fields would replicate the language currently used for the related fields on Schedule A.1.

Owner-Occupied Nonfarm Nonresidential Loans

FR Y-14Q, Schedule A.9 (U.S. Small Business) instructs firms to report "scored" or "delinquency managed" domestic small business loans as included in FR Y-9C, Schedule HC-C (Loans and Lease Financing Receivables) line items 2.a, 2.b, 3, 4.a, 4.b, 7, 9.a, 9.b.2, and 10.b. A key differentiating factor between corporate loans and small business loans is how the firm evaluates the creditworthiness of the borrower. For small business lending, firms rely on the credit score of the borrower (scored) and/or use delinquency management. Therefore, scored or delinquency managed owner-occupied nonfarm nonresidential (NFNR) loans as reported in line item 1.e.1 in the FR Y-9C, Schedule HC-C are small business loans and should be reported as such on Schedule A.9. However, the Schedule A.9 instructions do not reference the corresponding FR Y-9C line item. Further, FR Y-14Q, Schedule M (Balances) does not distinguish between wholesale and retail owner-occupied NFNR loans, as

⁷ 87 FR 52560 (August 26, 2022).

there is only one line item under which to report all owner-occupied NFNR loans. To eliminate reporting ambiguity, the Board proposes to specify that scored or delinquency managed owner-occupied NFNR loans, as reported in the FR Y-9C, Schedule HC-C, line item 1.e.1, should be reported on Schedule A.9. The Board also proposes to specify that scored owner-occupied NFNR loans be reported as small business loans (line item 2.b) on Schedule M.1 and to add a line item to Schedule M.2 for scored owner-occupied NFNR loans. The existing owner-occupied NFNR field (line item 1.b.3.a) on schedule M.1 would specify that it is only intended to capture the wholesale loan balance. For completeness, the Board proposes to enable the reporting of column F ("Scored Loans") for line item 7.d.1 ("Domestic Owner Occupied NFNR") on FR Y-14Q, Schedule K (Supplemental). The Board proposes to also clarify that column F applies only to owner-occupied NFNR loans. These revisions would ensure scored owner-occupied NFNR loans are reported properly across the FR Y-14Q.

Reporting of International and Domestic Credit Card Loans

The instructions for FR Y-14Q, Schedule A.3 (International Credit Card) require firms to report small business and corporate credit card loans that are issued to non-U.S. addressees, as defined in the FR Y-9C, Schedule HC-C, item 4.b ([Loans] To non-U.S. addressees), which only accounts the loans for which the borrower is non-U.S. domiciled. However, reporting international loans determined by borrower domicile is inconsistent with the other international retail sub-schedules and the Balances schedule. All other FR Y-14Q retail schedules and the Balances schedule instruct firms to report international loans as determined by the location of the holding office. The use of borrower domicile as the defining criteria for loans in Schedule A.3 results in credit card loans issued by international offices to U.S. addresses being reflected only in Schedule M, which does not provide any loan details. To align reporting standards of international loans across all FR Y-14 schedules and ensure the Board has the data needed to project loan performance in the stress test, the Board proposes to define all international credit card loans by office location, not borrower domicile. This revision would supersede the guidance issued in FR Y-14 Q&As #Y14000700, #Y140001258, #Y140001176, and #Y14000994, and these Q&As would be

updated to point to the new instructions.

Further, to avoid ambiguity, the Board proposes to revise the FR Y-14Q retail schedule instructions to clarify that only loans held in foreign offices should be reported on the international sub-schedules. Additionally, to avoid a reporting gap or confusion in the "Geography" field, the Board proposes to add "United States" to Region 1 for all international retail sub-schedules. These revisions would be consistent with the proposed revision that would provide that international loans are classified as such based on the location of the office that holds the loan balance.

Relatedly, and for completeness in the collection of credit card loan data, the Board proposes to incorporate loans issued by domestic offices to international domiciles on FR Y-14M, Schedule D (Credit Cards). Currently, the FR Y-14M defines domestic credit card loans by office location but does not account for loans issued by domestic offices to international addressees. This revision would close this reporting gap and instruct firms to report all credit card loans held in domestic offices, issued to both U.S. and non-U.S. addressees.

Revenue and Loss Sharing Agreements

As mentioned in the *2023 Supervisory Stress Test Methodology* document, the Board adjusts projected credit card losses to reflect agreements with private entities to share a portion of both revenues and losses generated by a specific credit card portfolio.⁸ Currently, the Board collects the data used to make this adjustment through a supplemental data collection. The Board proposes to formalize this supplemental collection by requiring the reporting of all revenue and loss sharing agreements (RLSAs) on FR Y-14M, Schedule D (Domestic Credit Card). Schedule D currently only collects data on RLSAs with the Federal Deposit Insurance Corporation (FDIC). This revision would require firms to report all accounts that are a part of any RLSA on Schedule D.1 (Domestic Credit Card Loan Level Table), line item 70 ("Loss Share"). Additionally, the Board would add two line items to Schedule D.2 (Domestic Credit Card Portfolio Level Table) to collect information on the dollar amount received or credited for credit losses associated with RLSAs. Incorporating this supplemental collection would ensure reporting of

⁸ See Board of Governors of the Federal Reserve System, *2023 Supervisory Stress Test Methodology* (June 2023), <https://www.federalreserve.gov/publications/files/2023-june-supervisory-stress-test-methodology.pdf>.

RLSAs is standardized and all firms receive consistent treatment in the supervisory stress test.

Troubled Debt Restructurings

FR Y-14M, Schedule A.1 and Schedule B.1 (Domestic Home Equity Loan/Line Level Table) collect information on loans that have been modified as a troubled debt restructuring (TDR). Specifically, line item 96 ("Troubled Debt Restructuring Flag") on Schedule A.1 and line item 55 ("Troubled Debt Restructuring Date") on Schedule B.1 are reported by firms that have made a loan modification classified as a TDR, as defined in the FR Y-9C Glossary. However, as discussed above, ASU 2022-02 eliminated the recognition of TDRs and introduced accounting disclosures for LMBEFDs. This guidance went into effect January 1, 2023, for firms that have adopted ASU No. 2016-13. Consistent with ASU 2022-02, the Board proposes to introduce a new field to each Schedule A.1 and Schedule B.1 to capture LMBEFDs for firms that have adopted ASU 2016-13. The Board also proposes to retire the existing TDR fields as they are no longer needed under ASU 2022-02.

Removal of Fields Deemed No Longer Necessary

The Board proposes to remove three items from FR Y-14M, Schedule D.1 (Domestic Credit Card Loan Level Table) that are inconsistently reported and therefore provide reduced value in supervisory stress test modeling and related analyses. Specifically, the Board proposes to remove item 42 ("Behavioral Score"), item 111 ("Behavioral Score Name Version"), and item 114 ("Date Co-Borrower was Added"). Items 42 and 114 are firms' internal estimates that are difficult to compare across firms due to inconsistencies in how they are recorded. Similarly, item 114 is infrequently reported which results in limited value for modeling or analysis.

Line item 77 "Modification Type" on the FR Y-14M, Schedule B.1 allows the reporting of multiple types of modifications to a loan. One of the reportable codes in this field is "99 = Other," which captures cases when the loan modification type is unknown. As the "Modification Type" field covers all possible modification action types, the Board proposes to remove line item 90 "Other Modification Action Type" from Schedule B.1. Item 90 captures the loans under unknown modification types but is no longer needed by the Board.

Other Revisions

The instructions for FR Y-14M, Schedule A.1 and Schedule B.1 “Workout Type Completed” fields, line items 77 and 61 respectively, require firms to leave these items blank if the loan has never been in loss mitigation. To align the instructions for the workout type fields, the Board proposes to clarify that the “Workout Type Started” fields on these schedules (Schedule A.1, line item 143 and Schedule B.1, line item 120), should also be left blank if the loan has never been in loss mitigation.

The Board previously adopted revisions to expand the circumstances under which firms would report the “Principal Deferred” and “Principal Write-Down” items on FR Y-14M, Schedule B.1; however, the instructions for “Principal Deferred” were not revised to reflect this.⁹ Specifically, the revision intended to expand reporting requirements for loans deferred due to loss mitigation activities. These revisions were adopted and implemented for the corresponding fields on the FR Y-14M, Schedule A.1. For consistency, the Board proposes to update the instructions for the FR Y-14M, Schedule B.1 line item 59 (“Principal Deferred”) and to expand reporting requirements to loans deferred due to loss mitigation activities. For completeness, the Board proposes to clarify the instructions for the “Principal Write-Down” field on the FR Y-14M, Schedule B.1 to indicate the line item should be coded “Y” if adjustment to the unpaid principal balance has occurred through modification or loss mitigation activities.

Firms are required to report quarter-end balances for charge cards with a pay-over-time feature under line item 3.b (“Charge Cards”) on FR Y-14Q, Schedule M (Balances). The Board has received questions asking if the corresponding line item on FR Y-14A, Schedule A.1.b (Balances) should also reflect charge cards with a pay-over-time feature. For consistency and clarity, the Board proposes to specify that charge cards with a pay-over-time feature should be reported in line item 36 (“Charge Cards”) on FR Y-14A, Schedule A.1.b.

Balances

Information on shared-loss agreements (SLAs) with the FDIC has historically been reported on the FR Y-9C, which collected data on the balances of a portfolio covered by such agreements. These data have been used

to monitor the impact of SLAs on a firm’s loan and lease losses. However, in connection with a recent statutorily mandated review, the Board removed most of these items from the FR Y-9C.¹⁰ To ensure that the Board continues to receive this information and that SLAs are reflected appropriately in the supervisory stress test, the Board proposes to create a new FR Y-14Q, Schedule M (Balances) sub-schedule to collect data on loans and leases covered by SLAs with the FDIC. This collection would be substantially similar to the data previously collected by the FR Y-9C. However, collecting the information through the FR Y-14, rather than the FR Y-9C, would ensure that only firms subject to the supervisory stress test are required to report the information.

Trading

Small Business Investment Companies

FR Y-14Q, Schedule F (Trading) is designed to capture profit/loss sensitivities to positions firms hold in their trading books, private equity investments, fair value option (FVO) loan hedges, and certain other assets under fair value accounting. Private equity includes all equity related investments such as common, preferred, and convertible securities. Currently, investments in small business investment companies (SBICs) are reported under the “Other Unspecified Sector/Industry” industry group in the “Unspecified Sector/Industry” sector.¹¹ This item is meant to capture the carry value of instruments not easily categorized into one of the specified industries and sectors, investments in several sectors, and for which there is insufficient detail to break out the carry value of the holding into component sectors. However, given the unique characteristics of SBICs that distinguish them from general private equity exposures, the Board proposes to add “SBIC Interests” as an industry group to capture funded and unfunded equity interests in SBICs.

Capital

The instructions for FR Y-14Q, Schedule D (Capital) line item M1 (“Taxes paid through the as-of date of the current fiscal year”) require firms to report the amount of taxes paid during the fiscal year, through the as-of date, that are included in Schedule D, line item 17 (“Amount to be deducted from common equity tier 1 due to deduction threshold”). The reference to line item 17 is erroneous, as this item was

modified during an update to the form and instructions. To correct this error and restore the original intent of item M1, the Board proposes to remove the reference to line item 17 from the instructions to clarify that firms should report taxes paid through the as-of date of the current fiscal year.

FR Y-14A, Schedule A.1.d (Capital), line item 56 (“Unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available for sale equity exposures includable in tier 2 capital”) previously captured unrealized gains on AFS equity securities that were recognized in AOCI. However, ASU 2016-01 reclassified unrealized gains on AFS equity securities to be reflected in the retained earnings component of equity capital. To address the new accounting standard, the Board proposes to retire item 56, as what was previously captured in this item is already reflected in retained earnings.

Firms are required to submit a version of FR Y-14A, Schedule C (Regulatory Capital Instruments) at the time the firm seeks approval for additional capital distributions pursuant to 12 CFR 225.8(j) or within 15 days after making any capital distribution approved pursuant to that section or a capital distribution in excess of the firm’s final planned capital distributions. These Schedule C submissions are referred to as “Incremental” submissions. In FR Y-14 Q&A #Y140001459, the Board clarified that an Incremental submission is required if a firm makes a distribution such that the dollar amount exceeds the firm’s final planned capital distribution, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue, even if that change is not reflected on Schedule C. The Board proposes to add language to incorporate that response and clarify that these Incremental submissions are required.

Securities

Reporting of Market Value

Firms are required to report the market value of the security being hedged on FR Y-14Q, Schedule B.2 (Securities), line item 4 (“Market Value”). Currently, the instructions for this field instruct firms to report amortized cost when reporting a security that contains trade lots or holdings that are not part of the hedging relationship. Since this field is intended to capture the market value of the security, the reference to amortized cost is erroneous and duplicative since amortized cost is reported in line item 3 (“Amortized Cost”). To correct this

⁹ 87 FR 52560 (August 26, 2022).

¹⁰ 88 FR 18315 (March 28, 2023).

¹¹ See 13 CFR part 107 for the definition of SBICs.

erroneous reference, the Board proposes to revise the language from “amortized cost” to “market value” in the instructions for line item 4.

Hedge Designations

FR Y–14Q, Schedule B.2, item 15 (ASU 2017–12 Hedge Designations) currently captures ASU 2017–13 hedge designations allowed in conjunction with partial-term hedging election in ASC 815–20–25–12b(2)(ii). On March 28, 2022, the FASB issued ASU 2022–01, which established the portfolio layer method to allow multiple hedged layers of a closed portfolio, rather than just a single layer as currently allowed. To be consistent with ASU 2022–01, the Board proposes to revise item 15 to reflect the updated portfolio layer method of hedge accounting.

Removal of Field Deemed No Longer Necessary

FR Y–14Q, Schedule B.2 (Investment Securities with Designated Accounting Hedges), item 11 (“Hedged Cash Flow”) collects information on the type of cash flow associated with the hedge if it is a cash flow hedge. The Board has determined that this variable is not needed for modeling or monitoring purposes, the Board proposes to retire item 11 from Schedule B.2.

Supplemental

FR Y–14Q, Schedule K (Supplemental) is intended to capture gaps in the data collected between the FR Y–14 and FR Y–9C, and firms generally do not need to complete all fields in the schedule. Specifically, Column A (Immaterial Portfolios) captures the carrying value of loans in immaterial or excluded portfolios that were not reported elsewhere on the FR Y–14Q of FR Y–14M because they did not meet the materiality thresholds. These instructions currently do not specify whether these portfolios need to be reported on Schedule K if they were only reported on one of the FR Y–14Q or FR Y–14M. Since Schedule K is intended to capture gaps in collected data, portfolios that are reported on either the FR Y–14Q or the FR Y–14M should not be reported on the schedule, and the Board proposes to clarify this existing expectation in the instructions.

Additionally, the instructions for Column D (Outstanding Balance of Commercial Real Estate and Corporate loans under \$1M in committed balance) tell firms to report the outstanding balance of CRE and corporate loans with under \$1 million in committed balance for each of the categories that had been excluded from FR Y–14Q, Schedule H based solely on commitment size.

Column D is intended to capture the sum of the outstanding balance for these loans with under \$1 million in committed balance in a portfolio that is reported on Schedule H. Column A is intended to capture the balance of immaterial portfolios, not reported on Schedule H. To remove ambiguity, the Board proposes to clarify that column D should only be reported for loans that are included in a portfolio reported on Schedule H but were excluded based solely on commitment size.

Frequency: Annually, quarterly, and monthly.

Respondents: Bank holding companies (BHCs), U.S. intermediate holding companies of foreign banking organizations (IHCs), and covered savings and loan holding companies (SLHCs) with \$100 billion or more in total consolidated assets, as based on (1) the average of the firm’s total consolidated assets in the four most recent quarters as reported quarterly on the firm’s Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) or (2) the average of the firm’s total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm’s FR Y–9Cs, if the firm has not filed an FR Y–9C for each of the most recent four quarters.

Total estimated number of respondents: 38.

Total estimated change in burden: 21,962 hours.

Total estimated annual burden hours: 848,900.

Board of Governors of the Federal Reserve System, June 14, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–13798 Filed 6–20–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and 225.41 of the Board’s Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at

the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board’s Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than July 8, 2024.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri, 64198–0001. Comments can also be sent electronically to KCApplicationComments@kc.frb.org:

1. *Kathryn Shaun Thompson and Matthew Thompson, both of Canton, Oklahoma;* to form the Thompson Family Control Group, a group acting in concert, to retain voting shares of Canton Bancshares, Inc., and thereby indirectly retain voting shares of Community State Bank of Canton, both of Canton, Oklahoma.

2. *Steven Bond, Canton, Oklahoma;* to retain voting shares of Canton Bancshares, Inc., and thereby indirectly retain voting shares of Community State Bank of Canton, both of Canton, Oklahoma.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–13686 Filed 6–20–24; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000–0061; Docket No. 2024–0053; Sequence No. 12]

**Information Collection; Federal
Acquisition Regulation Part 47:
Transportation Requirements**

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning Federal Acquisition Regulation (FAR) part 47, transportation requirements. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through November 30, 2024. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by August 20, 2024.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through <https://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov.

Instructions: All items submitted must cite OMB Control No. 9000–0061, Federal Acquisition Regulation Part 47: Transportation Requirements.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or zenaida.delgado@gsa.gov.

SUPPLEMENTARY INFORMATION:**A. OMB Control Number, Title, and Any Associated Form(s)**

9000–0061, Federal Acquisition Regulation Part 47: Transportation Requirements.

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the following requirements in FAR part 47:

- FAR 52.247–2, Permits, Authorities, or Franchises.

The clause requires an offeror to indicate whether it has the proper authorization from the Federal Highway Administration (or other cognizant regulatory body) before it can be allowed to move material under any contract for regulated freight transportation or transportation-related services. The offeror may also be requested to furnish a copy of the authorization before moving material under the contract. The contracting officer and transportation office review the information to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, or franchises that are needed to transport the supplies.

- FAR 52.247–6, Financial Statement.
- This provision requires an offeror to furnish the Government with a current certified statement of the offeror's financial condition and such data as the Government may request with respect to the offeror's operations. The contracting officer uses this information to determine whether a potential awardee is responsible in accordance with FAR part 9.

- FAR 52.247–48, F.o.b. Destination—Evidence of Shipment.

This clause requires the contractor to retain and make available to the Government for review, as necessary, evidence of free on board (f.o.b.) destination shipment documentation for a period of three years after final payment of the contract. The Government may request this information from the contractor while

auditing a contract or to resolve disputes.

- FAR 52.247–51, Evaluation of Export Offers.

This provision requires an offeror to nominate a port/terminal of loading they recommend for the purposes of evaluation of their offer and indicate whether the prices proposed are based on f.o.b. origin or f.o.b. destination. The contracting officer uses the information to ensure that offers are evaluated and awards are made on the basis of the lowest laid down cost to the Government at the overseas port of discharge.

- FAR 52.247–52, Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.

This clause directs the contractor to provide the Government certain information regarding shipments to DoD air or water terminal transshipment points. The Government transportation office uses this information to support applications for export release and to prepare the Transportation Control and Movement Document (TCMD).

- FAR 52.247–53, Freight Classification Description.

When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, this provision requests an offeror provide the full Uniform Freight Classification (rail) description, or the National Motor Freight Classification description applicable to the supplies. The contracting officer uses this information to determine the proper freight for supplies.

- FAR 52.247–57, Transportation Transit Privilege Credits.

This clause allows the offeror to identify any transportation charges, including any transit charges, that the offeror will agree to pay, subject to reimbursement by the Government. The contracting officer uses this information to ensure consideration of an offeror's transit credits when evaluating an f.o.b. origin price for shipping supplies to the designated Government destinations.

- FAR 52.247–60, Guaranteed Shipping Characteristics.

This clause requires the offeror to provide details on the shipping container(s) to be used for each part or component that is packed or packaged separately. The contracting officer uses this information to determine transportation costs for evaluation purposes.

- FAR 52.247–63, Preference for U.S.-Flag Air Carriers.

In the event that a contractor selects a carrier other than a U.S.-flag air carrier for international air transportation during performance of the contract, this clause requires the contractor to include a statement regarding the unavailability of U.S.-Flag Air Carriers on vouchers involving such transportation. The Government uses the information provided on the voucher to ensure compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), which requires the Government and its contractors and subcontractors to use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available.

- FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

This clause requires a contractor to provide the contracting officer and the Maritime Administration's one legible copy of rated on-board ocean bill of lading for each shipment made by the contractor or its subcontractors. The Government uses this information to ensure compliance with the Cargo Preference Act of 1954.

- FAR 52.247-67, Submission of Transportation Documents for Audit.

This clause requires the contractor to submit for prepayment audit transportation documents on which the United States will assume freight charges that were paid by the contractor under a cost-reimbursement contract or by the contractor's first-tier subcontractor (for a cost-reimbursement subcontract). For freight shipment bills under \$100 are to be retained on-site by the contractor and made available for on-site audits. The Government uses this information to conduct a prepayment audit of transportation charges on a cost-reimbursement contract when reimbursement of transportation as a direct charge to the contract or subcontract is authorized. The prepayment audit is required to comply with agency prepayment audit programs established pursuant to 31 U.S.C. 3726.

- FAR 52.247-68, Report of Shipment (REPSHIP).

This clause requires contractors to send an advance notice of shipment to the consignee transportation officer to be received at least 24 hours before the arrival of the shipment, unless otherwise directed by a contracting officer. The Government uses this information to alert the receiving activity of certain shipments. The advance notice facilitates arrangements

for transportation control, labor, space, and use of materials handling equipment at destination. The timely receipt of notices by the consignee transportation office precludes the Government from incurring demurrage and vehicle detention charges.

- FAR 47.303 Clauses for Standard Delivery Terms.

The following FAR clauses require the contractor to (as appropriate to the delivery terms specified in the contract): Prepare or provide special annotation on a Government or commercial bill of lading; provide an ocean bill of lading or airway bill; annotate commercial shipping documents; distribute copies of the bill of lading; provide applicable transportation receipts; assist in obtaining documents for exportation or importation destinations; and/or obtain insurance documents:

FAR 52.247-1, Commercial Bill of Lading Notations

FAR 52.247-29, F.o.b. Origin

FAR 52.247-30, F.o.b. Origin,

Contractor's Facility

FAR 52.247-31, F.o.b. Origin, Freight Allowed

FAR 52.247-32, F.o.b. Origin, Freight Prepaid

FAR 52.247-33, F.o.b. Origin, With Differentials

FAR 52.247-34, F.o.b. Destination

FAR 52.247-35, F.o.b. Destination,

Within Consignee's Premises

FAR 52.247-36, F.a.s. Vessel, Port of Shipment

FAR 52.247-37, F.o.b. Vessel, Port of Shipment

FAR 52.247-38, F.o.b. Inland Carrier, Point of Exportation

FAR 52.247-41, C. & f. Destination

FAR 52.247-42, C.i.f. Destination

FAR 52.247-43, F.o.b. Designated Air Carrier's Terminal, Point of Exportation

FAR 52.247-44, F.o.b. Designated Air Carrier's Terminal, Point of Importation

FAR 52.247-65, F.o.b. Origin, Prepaid Freight—Small Package Shipments

The contracting officer and the Government transportation office use this information in awarding and administering contracts to ensure: (1) Acquisitions are made on the basis most advantageous to the Government; and (2) supplies arrive in good order and condition and on time at the required place.

C. Annual Burden

Respondents: 16,114.

Recordkeepers: 849.

Total Annual Responses: 348,766.

Total Burden Hours: 27,502 (25,936 reporting hours + 1,566 recordkeeping hours).

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202-501-4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control No. 9000-0061, Federal Acquisition Regulation Part 47: Transportation Requirements.

Janet Fry,

*Director, Federal Acquisition Policy Division,
Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy, Office of
Governmentwide Policy.*

[FR Doc. 2024-13679 Filed 6-20-24; 8:45 am]

BILLING CODE 6820-EP-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0262; Docket No. 2024-0001; Sequence No. 6]

Information Collection; General Services Administration Acquisition Regulation; Identification of Products with Environmental Attributes

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of an information collection requirement regarding identification of products with environmental attributes.

DATES: *Submit comments on or before:* August 20, 2024.

ADDRESSES: Submit comments identified by Information Collection 3090-0262; Identification of Products with Environmental Attributes to: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "Information Collection 3090-0262, Identification of Products with Environmental Attributes". Select the link "Submit a Comment" that corresponds with "Information Collection 3090-0262, Identification of Products with Environmental Attributes". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-0262, Identification of Products with Environmental Attributes" on your attached document. If your comment cannot be submitted using <https://>

www.regulations.gov, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite Information Collection 3090–0262, Identification of Products with Environmental Attributes, in all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Torberntsson, Program Analyst, General Services Acquisition Policy Division, GSA, via email to adina.torberntsson@gsa.gov or 720–475–0568.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration requires contractors holding Multiple Award Schedule Contracts to identify in their GSA price lists those products that they market commercially that have environmental attributes in accordance with GSAR clause 552.238–78. The identification of these products will enable Federal agencies to maximize the use of these products and meet the responsibilities expressed in statutes and executive order.

B. Annual Reporting Burden

Respondents: 934.
Responses per Respondent: 1.
Annual Responses: 934.
Hours per Response: 1.
Total Burden Hours: 934.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division by calling 202–501–4755 or emailing

GSARegSec@gsa.gov. Please cite OMB Control No. 3090–0262, Identification of Products with Environmental Attributes, in all correspondence.

Jeffrey A. Koses,

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

[FR Doc. 2024–13682 Filed 6–20–24; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–0592]

Human User Safety in New and Abbreviated New Animal Drug Applications; 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) #278 entitled “Human User Safety in New and Abbreviated New Animal Drug Applications.” This guidance is intended for sponsors interested in pursuing the approval, or conditional approval, of new animal drugs (including new generic animal drugs). This guidance addresses general principles of human user safety (HUS) assessment for new animal drugs, sources of data, mitigation strategies for proposed new animal drugs, potential recommendations to address HUS concerns, and how HUS information should be submitted to the Center of Veterinary Medicine (CVM).

DATES: The announcement of the guidance is published in the **Federal Register** on June 21, 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–2023–D–0592 for “Human User Safety in New and Abbreviated New Animal Drug Applications.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this

information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV-6), 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 requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Karen Sussman, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 7500 Standish Pl., Rockville MD 20855, 240-402-0876, karen.sussman@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 5, 2023 (88 FR 20170), FDA published the notice of availability for a draft guidance entitled “Human User Safety in New and Abbreviated New Animal Drug Applications” giving interested persons until June 5, 2023, to comment on the draft guidance. FDA received one comment submission on the draft guidance, and the comments in that submission were considered as the guidance was finalized. The final guidance was revised to clarify recommendations regarding the use of non-animal based or other alternative methods to demonstrate user safety, use of labeling language to address risks to the human user, and elements of drug handling prior to administration. Other editorial changes were also made to improve clarity. The guidance

announced in this notice finalizes the draft guidance dated April 2023.

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 “Human User Safety in New and Abbreviated New Animal Drug Applications.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 511 have been approved under OMB control number 0910-0117; the collections of information in 21 CFR part 514 have been approved under OMB control number 0910-0032; and the collections of information in 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.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: June 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-13655 Filed 6-20-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-0008]

Request for Nominations From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representatives and Request for Nominations for Nonvoting Industry Representatives on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on its public advisory committees for the Center for Drug Evaluation and Research (CDER) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on CDER’s public advisory committees. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by July 22, 2024 (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by July 22, 2024.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nominations should be sent to Nicholas Marsh (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives may be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal at: <https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm> or by mail to Division of Advisory Committee and Consultant Management, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2418, Silver Spring, MD 20993-0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA’s website

at: <https://www.fda.gov/AdvisoryCommittees/default.htm>.

FOR FURTHER INFORMATION CONTACT:

Nicholas Marsh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2418, Silver Spring, MD 20993–0002, 240–402–5357, nicholas.marsh@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The Agency intends to add a nonvoting industry representative to the following advisory committees:

I. CDER Advisory Committees

A. Anesthetic and Analgesic Drug Products Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

B. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

C. Gastrointestinal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal diseases.

D. Medical Imaging Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

E. Obstetrics, Reproductive and Urologic Drugs Advisory Committee (Formerly Bone, Reproductive and Urologic Drugs Advisory Committee)

Reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics, gynecology, urology, and related specialties.

F. Pharmaceutical Science and Clinical Pharmacology Advisory Committee

Reviews and evaluates scientific, clinical, and technical issues related to the safety and effectiveness of drug products for use in the treatment of a broad spectrum of human diseases.

G. Pharmacy Compounding Advisory Committee

Provides advice on scientific, technical, and medical issues concerning drug compounding.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner of Food and Drugs will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*) and 21 CFR part 14, relating to advisory committees.

Dated: June 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–13672 Filed 6–20–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0180]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection titled Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications.

DATES: Either electronic or written comments on the collection of information must be submitted by August 20, 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 August 20, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your

comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA-2018-N-0180 for "Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications." 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:

JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-3794, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's

estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications

OMB Control Number 0910-0810—Extension

This information collection supports Food and Drug Administration (FDA, us or we) programs. Under section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)), FDA is authorized to conduct educational and public information programs.

Under this umbrella generic FDA's Center for Tobacco Products (CTP) conducts research and uses a variety of media to inform and educate stakeholders (e.g., the public, tobacco retailers, and health professionals) about the risks of tobacco use, how to quit using tobacco products, and FDA's role in regulating tobacco.

To ensure that these educational and public information programs have the highest potential to be received, understood, and accepted by those for whom they are intended, CTP conducts research to understand and identify and develop health messages relating to the control and prevention of disease. In conducting such research, FDA uses quantitative methods for studies about tobacco products, including but not limited to surveys, experimental studies, quasi-experimental studies and the collection and analysis of digital metrics. These studies are used to collect information related to foundational research informing message development; formative pretesting of tobacco communication messages and other materials directed at consumers; understanding the impact of tobacco public education materials in the digital environment; awareness of and receptivity to tobacco public education materials; and developing and testing survey measures to inform future research. This type of research may involve: (1) assessing audience knowledge, attitudes, intentions, behaviors, and other characteristics for the purpose of determining the need for and developing health messages, communication strategies,

dissemination strategies, and public information programs; (2) testing health messages, strategies, and program components while they are in developmental form to assess audience comprehension, reactions, and perceptions, as well as after they have been disseminated to consumers; and (3) adding to the tobacco control, public health communication, and regulatory science knowledge base. Quantitative studies play an important role in exploring areas of research and gathering information because they can be used to summarize a population of interest on key variables or reveal systematic relationships between variables.

This foundational research has helped FDA to understand audiences and inform message development and the testing of messages in communicating the risks of tobacco use, how to quit using tobacco products, and FDA's role

in regulating tobacco. Obtaining this information has allowed FDA to improve messages, materials and implementation strategies while revisions are still affordable and possible.

The voluntary information collected serves the primary purpose of providing FDA information about various measures of ad performance including, but not limited to, message comprehension, perceived effectiveness, emotional responses and knowledge, attitudes, and behavioral intentions to assess the ability of messages, advertisements, and materials to reach and successfully communicate with their intended audiences. Additionally, this information collection provides FDA with insights into how to best measure public education message performance. Quantitative testing of messages and other materials with a sample of the target audience allows

FDA to refine and assess messages, advertisements, and materials directed at consumers.

In addition, quantitative information is collected under this umbrella generic by FDA to track changes in response to policy and regulatory actions and to expand the tobacco regulatory science base by providing information on changing behaviors, knowledge and attitudes about tobacco products, including post-marketing surveillance of tobacco products. In addition, quantitative information is collected by FDA to track changes in response to policy and regulatory actions and to expand the tobacco regulatory science base by providing information on changing behaviors, knowledge, and attitudes about tobacco products, including postmarketing surveillance of tobacco products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Screener	1,360,000	1	1,360,000	0.083 (5 minutes)	113,334
Self-Administered Surveys	204,000	1	204,000	0.33 (20 minutes)	68,000
Informed Consent/Assent	204,000	1	204,000	.033 (2 minutes)	6,800
Total	1,768,000	.....	.....	.....	188,134

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

Our estimated burden for the information collection reflects an overall increase of 96,269 hours and a corresponding increase of 1,106,692 responses. We attribute this adjustment to the number of study responses used during the current approval and now estimated for the next 3 years. A greater number of quantitative studies will be conducted over the next 3 years due to the need to develop new creative messages and content. Recent years have seen a dramatic change in media. With the shift to digital media, FDA must adapt to communicate effectively in a digital environment. As digital tobacco use prevention/interventions are still in their infancy, we must better understand the types of digital channels available. To impact public health outcomes, we need to understand how to reach our intended audience. New foundational studies are needed (including those on digital metrics, measurement, and implementation) to support activities and initiatives that will enable the public to receive evidence-based, timely, and clear health

communication and education. As a result, we have adjusted our burden estimate and revised the number of respondents to the information collection.

Dated: June 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–13644 Filed 6–20–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–2803]

Sandoz Inc., et al.; Withdrawal of Approval of 20 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 20 abbreviated

new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of July 22, 2024.

FOR FURTHER INFORMATION CONTACT:

Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 301–796–3471, Martha.Nguyen@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The applicants listed in table 1 have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process in § 314.150© (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

TABLE—ANDAS FOR WHICH APPROVAL IS WITHDRAWN

Application No.	Drug	Applicant
ANDA 040118	Carisoprodol, Aspirin and Codeine Phosphate Tablets, 325 milligrams (mg), 200 mg, and 16 mg.	Sandoz Inc., 100 College Rd. West, Princeton, NJ 08540.
ANDA 040291	Fluorouracil Injection, 50 mg/milliliters (mL)	Fresenius Kabi USA, LLC, Three Corporate Dr., Lake Zurich, IL 60047.
ANDA 071849	Morphine Sulfate Injectable, 0.5 mg/mL	Hospira, Inc., 275 North Field Dr., Building H1-3S, Lake Forest, IL 60045.
ANDA 074133	Metoprolol Tartrate Injectable, 1 mg/mL	Do.
ANDA 076648	Nitrofurantoin (Monohydrate/Macrocrystals) Capsules, 75 mg, and 25 mg.	Aurobindo Pharma USA Inc., 279 Princeton-Hightstown Rd., East Windsor, NJ 08520.
ANDA 077387	Ondansetron Hydrochloride (HCl) Preservative Free Injection, Equivalent to (EQ) 2 mg base/mL.	American Regent, Inc., 5 Ramsey Rd., Shirley, NY 11967.
ANDA 077582	Ondansetron HCl Injectable, EQ 2 mg base/mL	Do.
ANDA 079039	Ondansetron HCl Injection, EQ 2 mg base/mL	Do.
ANDA 087440	Dexamethasone Sodium Phosphate Injection, EQ 4 mg phosphate/mL.	Do.
ANDA 088388	Mepivacaine HCl and Levonordefrin Injection, 0.05 mg/mL; 2%.	ICON Clinical Research, LLC, U.S. Agent for Deproco, Inc., 4130 ParkLake Ave., Suite 400, Raleigh, NC 27612.
ANDA 090578	Ampicillin and Sulbactam For Injection, EQ 10 grams(g) base/vial and EQ 5 grams (g) base/vial.	EAS Consulting Group, LLC, U.S. Agent for Astral SteriTech Pvt. Ltd., 1700 Diagonal Rd., #750, Alexandria, VA 22314.
ANDA 090579	Ampicillin and Sulbactam For Injection, EQ 1 g base/vial, EQ 500 mg base/vial, EQ 2 g base/vial, and EQ 1 g base/vial.	Do.
ANDA 090723	Duloxetine HCl Capsules, Delayed-Release Pellets, EQ 20 mg base, EQ 30 mg base, and EQ 60 mg base.	Marksans Pharma, Inc., U.S. Agent for Marksans Pharma Ltd., 150 Motor Pkwy., Suite 401, 4th Floor, Rm. 430, Hauppauge, NY 11788.
ANDA 207266	Bupivacaine HCl Injectable, 0.75%	Baxter Healthcare Corp., One Baxter Pkwy., Deerfield, IL 60015.
ANDA 207794	Busulfan Injection, 6 mg/mL	Nexus Pharmaceuticals, Inc., 400 Knightsbridge Pkwy., Lincolnshire, IL 60069.
ANDA 209068	Chlorthalidone Tablets, 25 mg and 50 mg	Elity LLC, U.S. Agent for Sunny Pharmtech Inc., 175 SW 166th Ave., Pembroke Pines, FL 33027.
ANDA 212223	Captopril Tablets, 12.5 mg, 25 mg, 50 mg, and 100 mg	Pharmobedient Consulting, LLC, U.S. Agent for Seton Pharmaceuticals, LLC, 642 North East 3rd Ave., Fort Lauderdale, FL 33304.
ANDA 212287	Piperacillin and Tazobactam For Injection, EQ 2 g base/vial, EQ 250 mg base/vial, EQ 3 g base/vial, EQ 375 mg base/vial, EQ 4 g base/vial, and EQ 500 mg base/vial.	EAS Consulting Group, LLC.
ANDA 212721	Cefepime HCl For Injection, EQ 1 g base/vial and EQ 2 g base/vial.	Do.
ANDA 213552	Succinylcholine Chloride Injection, 20 mg/mL	Nexus Pharmaceuticals, Inc.

Therefore, approval of the applications listed in table 1, and all amendments and supplements thereto, is hereby withdrawn as of July 22, 2024. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from table 1. Introduction or delivery for introduction into interstate commerce of products listed in table 1 without an approved new drug application or ANDA violates sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)). Drug products that are listed in table 1 that are in inventory on July 22, 2024 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: June 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-13660 Filed 6-20-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-D-1275]

Demonstrating Bioequivalence for Type A Medicated Articles Containing Active Pharmaceutical Ingredient(s) Considered To Be Poorly Soluble in Aqueous Media, That Exhibit Little to No Systemic Bioavailability, and Are Locally Acting; 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) #279 entitled “Demonstrating Bioequivalence

for Type A Medicated Articles Containing Active Pharmaceutical Ingredient(s) Considered to be Poorly Soluble in Aqueous Media, That Exhibit Little to No Systemic Bioavailability, and Are Locally Acting.” This final guidance describes an approach to satisfy the requirements for the completion of the Bioequivalence technical section for generic Type A medicated articles (TAMAs) containing poorly soluble, locally acting, active pharmaceutical ingredients (APIs) that have little to no systemic absorption, and for which blood level studies are not considered appropriate to demonstrate product bioequivalence. The suggested approach described in this guidance uses a combination of in vitro and in vivo data to support a determination of bioequivalence to address the unique challenges associated with demonstrating bioequivalence of TAMAs containing poorly soluble, locally acting APIs that have little to no systemic absorption.

DATES: The announcement of the guidance is published in the **Federal Register** on June 21, 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-2023-D-1275 for “Demonstrating Bioequivalence for Type A Medicated Articles Containing Active Pharmaceutical Ingredient(s) Considered to be Poorly Soluble in Aqueous Media, That Exhibit Little to No Systemic Bioavailability, and Are Locally Acting.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov>

and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV-6), 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 requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Ian Hendricks, Center for Veterinary Medicine (HFV-172), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-402-0853, Ian.Hendricks@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 8, 2023 (88 FR 37551), FDA published the notice of availability for a draft guidance entitled “Demonstrating Bioequivalence for Type A Medicated Articles Containing Active Pharmaceutical Ingredient(s) Considered to be Poorly Soluble in Aqueous Media, That Exhibit Little to No Systemic Bioavailability, and Are Locally Acting,” giving interested persons until August 7, 2023, to comment on the draft guidance. In response to a request for an extension, we extended the comment period for the draft guidance to October 16, 2023 (August 16, 2023, 88 FR 55702).

FDA received two comment submissions on the draft guidance and those comments were considered as the guidance was finalized. For example, we revised the final guidance to clearly state that it does not cover APIs that are systemically absorbed because they are already addressed in other guidances. In addition, several editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated June 8, 2023.

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 “Demonstrating Bioequivalence for Type A Medicated

Articles Containing Active Pharmaceutical Ingredient(s) Considered to be Poorly Soluble in Aqueous Media, That Exhibit Little to No Systemic Bioavailability, and Are Locally Acting.” 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.

III. Electronic Access

Persons with access to the internet may obtain the guidance at [https://www.fda.gov/animal-veterinary/](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: June 17, 2024.
Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2024–13690 Filed 6–20–24; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2023–N–4066; FDA–2023–N–0918; FDA–2023–N–4259; FDA–2023–N–4849; and FDA–2021–N–0471]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have

been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at <https://www.reginfo.gov/public/do/PRAMain>. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
FDA Recall Regulations	0910–0249	6/30/2027
Food Labeling Regulations	0910–0381	5/31/2027
Export Certificates for FDA Regulated Products	0910–0498	6/30/2027
Food Allergen Labeling and Reporting	0910–0792	6/30/2027
Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption—Agricultural Water	0910–0816	6/30/2027

Dated: June 17, 2024.
Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2024–13638 Filed 6–20–24; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–0154]

Considerations in Demonstrating Interchangeability With a Reference Product: Update; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft

guidance for industry entitled “Considerations in Demonstrating Interchangeability With a Reference Product: Update.” This draft guidance describes considerations regarding a switching study or studies intended to support a demonstration that a proposed therapeutic protein product is interchangeable with a reference product for the purposes of submitting a marketing application or supplement under the Public Health Service Act (PHS Act). After considering any comments received in the docket for this draft guidance, we intend to revise the final guidance for industry entitled “Considerations in Demonstrating Interchangeability With a Reference Product” issued on May 14, 2019, to amend sections in that document regarding the subject addressed in this draft guidance.

DATES: Submit either electronic or written comments on the draft guidance

by August 20, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA-2017-D-0154 for “Considerations in Demonstrating Interchangeability With a Reference Product: Update.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed

except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Mustafa Unlu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 1139, Silver Spring, MD 20993, 301-796-3396; 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 draft guidance for industry entitled “Considerations in Demonstrating Interchangeability With a Reference Product: Update.” This draft guidance describes considerations regarding a switching study or studies intended to support a demonstration that a proposed therapeutic protein product is interchangeable with a reference product for the purposes of submitting a marketing application or supplement under section 351(k) of the PHS Act (42

U.S.C. 262(k)). After considering any comments received in the docket for this draft guidance, we intend to revise the final guidance for industry entitled “Considerations in Demonstrating Interchangeability With a Reference Product” (Interchangeability Guidance) issued on May 14, 2019 (84 FR 21342) to amend sections in that document regarding the subject addressed in this draft guidance.

FDA issued the Interchangeability Guidance before receiving and reviewing any biologics license applications submitted under section 351(k) of the PHS Act for a proposed interchangeable biosimilar product. Since publication of the Interchangeability Guidance, experience has shown that for the products approved as biosimilars to date, the risk in terms of safety or diminished efficacy is insignificant following single or multiple switches between a reference product and a biosimilar product. Accordingly, FDA’s scientific approach to when a switching study or studies may be needed to support a demonstration of interchangeability has evolved.

This draft guidance is not intended to be finalized as a standalone guidance. Instead, the recommendations in this draft guidance, when finalized, are intended to revise the Interchangeability Guidance and to replace sections in that document, such as sections VI.A and VII, to reflect FDA’s current thinking regarding the subject addressed in this guidance. FDA is issuing this draft guidance to seek public comment through the accompanying docket.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). 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 for the submission of a biologics license application or supplemental application under section 351(k) of the PHS Act have been approved under OMB control number 0910-0718. The collections of information in 21 CFR part 312 for the

submissions of investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 for the submissions of new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 for the submissions of biologics license application and supplemental applications have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/biologics-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: June 13, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–13429 Filed 6–20–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0020]

SpecGX, LLC, et al.; Withdrawal of Approval of 30 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on March 29, 2024. The document announced the withdrawal of approval of 30 abbreviated new drug applications (ANDAs) from multiple applicants, withdrawn as of April 29, 2024. The document indicated that FDA was withdrawing approval of the following ANDAs after receiving withdrawal requests from Target Health LLC, U.S. Agent for CASI Pharmaceuticals, Inc., 450 Commerce Blvd., Carlstadt, NJ 07072: ANDA 076280, Tizanidine Hydrochloride (HCl) Tablets, Equivalent to (EQ) 2 milligrams (mg) base and EQ 4 mg base; ANDA 077021, Cilostazol Tablets, 100 mg; ANDA 077310, Cilostazol Tablets, 50 mg; ANDA 077517, Ondansetron HCl Tablets, EQ 4 mg base, EQ 8 mg base,

and EQ 24 mg base; ANDA 206672, Entecavir Tablets, 0.5 mg and 1 mg; and ANDA 209550, Tenofovir Disoproxil Fumarate Tablets, 300 mg. Before FDA withdrew the approval of these ANDAs, Target Health LLC, informed FDA that it did not want the approval of the ANDAs withdrawn. Because Target Health LLC, timely requested that approvals of ANDAs 076280, 077021, 077310, 077517, 206672, and 209550 not be withdrawn, the approvals are still in effect. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT:

Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 301–796–3471, Martha.Nguyen@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Friday, March 29, 2024 (89 FR 22155), appearing on page 22155 in FR Doc. 2024–06730, the following correction is made:

On page 22155, in the table, the entries for ANDAs 076280, 077021, 077310, 077517, 206672, and 209550 are removed.

Dated: June 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–13658 Filed 6–20–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0710]

Circumstances That Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection; Guidance for Industry, Revision 1; 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 entitled, “Circumstances That Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection.” The FDA Reauthorization Act of 2017 (FDARA) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) so that, as is the case with a drug, a device is deemed to be adulterated if the owner, operator, or agent of the factory, warehouse, or establishment at which the device is manufactured, processed, packed, or held delays, denies, or limits an FDA

inspection. This final guidance describes, for both drugs and now devices, the types of behaviors (actions, inactions, and circumstances) that FDA considers to constitute delaying, denying, or limiting inspection, or refusing to permit entry or inspection. This guidance finalizes the draft guidance of the same title issued on December 16, 2022, and supersedes the October 2014 final guidance entitled, “Circumstances That Constitute Delaying, Limiting, or Refusing a Drug Inspection.”

DATES: The announcement of the guidance is published in the **Federal Register** on June 21, 2024.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–

2013–D–0710 for “Circumstances That Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection.” 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 a single hard copy of the guidance entitled “Circumstances That Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection” to the Office of Policy, Compliance and Enforcement, Office of Regulatory Affairs, Food and Drug Administration,

12420 Parklawn Drive, Element Building, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lola Burford, Office of Regulatory Affairs, Division of Operational Policy, Food and Drug Administration, 12420 Parklawn Drive, Element Building, Rockville, MD 20857, Lola.Burford@fda.hhs.gov, 240–402–5865.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) added section 501(j) to the FD&C Act (21 U.S.C. 351(j)) to deem adulterated a drug that “has been manufactured, processed, packed, or held in any factory, warehouse, or establishment and the owner, operator, or agent of such factory, warehouse, or establishment delays, denies, or limits an inspection, or refuses to permit entry or inspection.” Section 707(b) of FDASIA required the Food and Drug Administration to issue guidance that defined the circumstances that would constitute delaying, denying, or limiting inspection, or refusing to permit entry or inspection, for purposes of section 501(j). In the **Federal Register** of October 22, 2014 (79 FR 63130), FDA announced the availability of a guidance for industry entitled, “Circumstances That Constitute Delaying, Denying, Limiting, or Refusing a Drug Inspection” (hereinafter, 2014 guidance).

Subsequently, on August 18, 2017, FDARA (Pub. L. 115–52) was signed into law. Section 702 of FDARA amended the scope of section 501(j) of the FD&C Act to provide that, as the case with drugs, devices are deemed to be adulterated if an FDA inspection is delayed, denied, limited, or refused by the owner, operator, or agent of the establishment at which the device is manufactured, processed, packed, or held. This final guidance supersedes the 2014 final guidance to incorporate devices and to explain the circumstances that FDA would consider to constitute delaying, denying, or limiting inspection, or refusing to permit entry or inspection, resulting in a drug or device manufactured in the facility being deemed adulterated.

This final guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). FDA considered the comments received on the draft guidance and did not make substantial changes from the draft to the

final guidance. This final guidance represents the current thinking of FDA on “Circumstances That Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection” 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

This guidance contains no collection of information. 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 draft guidance at either <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/search-general-and-cross-cutting-topics-guidance-documents> or <https://www.regulations.gov>. Persons unable to download an electronic copy of “Circumstances That Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection” may send an email request to ORAPolicyStaffs@fda.hhs.gov to receive an electronic copy of the document.

Dated: June 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–13674 Filed 6–20–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0783]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Establishment Registration and Product Listing for Manufacturers of Human Blood and Blood Products and Licensed Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the

collection of information by July 22, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. The OMB control number for this information collection is 0910–0052. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Establishment Registration and Product Listing for Manufacturers of Human Blood and Blood Products and Licensed Devices

OMB Control Number 0910–0052—Extension

This information collection helps support implementation of section 510 of the Federal Food Drug and Cosmetic Act (21 U.S.C. 360), as well as related Agency regulations in part 607 (21 CFR

part 607) and forms. All owners or operators of establishments that manufacture human blood and blood products are required to register with FDA, unless they are exempt under § 607.65. A list of every blood product manufactured, prepared, or processed for commercial distribution must also be submitted, among other information. Establishments must register within 5 days after beginning operations or submission of a biologics license application and register annually between October 1 and December 31.

The regulations set forth procedures and requirements pertaining to establishment registration and product listing for manufactures of human blood and blood products and licensed devices, including initial registration and product listing, annual registration, product listing updates and waiver requests. Owners or operators of certain establishments that engage in the manufacture of blood products must register and submit a list of every blood product in commercial distribution (§ 607.20(a)). Initial and subsequent registrations and product listings must be submitted electronically through FDA’s Center for Biologics Evaluation and Research (CBER) Blood Establishment Registration and Product Listing system through the FDA Industry Systems page available at <https://www.access.fda.gov>. More information about the electronic blood establishment registration (eBER) system is available at: [https://www.fda.gov/vaccines-blood-biologics/biologics-establishment-registration/blood-establishment-registration-and-](https://www.fda.gov/vaccines-blood-biologics/biologics-establishment-registration/blood-establishment-registration-and-product-listing)

product-listing. Online instructions are available at: <https://www.fda.gov/media/116432/download?attachment>. The Form FDA 2830 previously associated with this information collection is no longer in use.

FDA may grant a request for waiver of this requirement prior to the date on which the information is due (§ 607.22(a)). Waiver requests must be submitted in writing and must include, among other information, the specific reasons why electronic registration is not reasonable for the registrant.

Establishment registration and product listing information assists FDA in its inspections of facilities, among other uses, and its collection is essential to the overall regulatory scheme designed to ensure the safety of the Nation’s blood supply.

Description of Respondents: Respondents to this collection of information are human blood and plasma donor centers, blood banks, certain transfusion services, other blood product manufacturers, independent laboratories that engage in quality control and testing for registered blood product establishments and manufacturers of devices licensed under section 351 of the Public Health Service Act.

In the **Federal Register** of March 12, 2024 (89 FR 17856), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
607.20(a), 607.21, 607.22, 607.25, 607.40; Initial registration and submission of product listing.	176	1	176	1	176
607.21, 607.22, 607.25, 607.26, 607.31, 607.40; Annual registration.	2,545	1	2,545	0.5 (30 minutes)	1,273
607.21, 607.25, 607.30(a), 607.31, 607.40; Product listing update.	42	1	42	0.25 (15 minutes)	10
607.22(b); Written waiver request	1	1	1	1	1
Total .....	.....	.....	.....	.....	1,460

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

Based on our evaluation of calendar year 2022 data from CBER’s Blood Establishment Registration and Product Listing system, we have adjusted the currently approved burden estimate we attribute to establishment registration and product listing to reflect a decrease in product listing updates and an

increase in the number of initial registrations. Our estimated burden for the information collection reflects an overall decrease of 36 hours.

Dated: June 17, 2024.
Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2024–13643 Filed 6–20–24; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Resources and Services Administration****Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Black Lung Clinics Program Performance Measures**

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than August 20, 2024.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland, 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Joella Roland, the HRSA

Information Collection Clearance Officer, at (301) 443-3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Black Lung Clinics Program Performance Measures, OMB No. 0915-0292—Revision

Abstract: The Black Lung Clinics Program (BLCP) is authorized under sec. 427(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 937(a)) and accompanying regulations (42 CFR part 55a). The purpose of the BLCP is to reduce the morbidity and mortality associated with occupationally related coal mine dust lung disease through the screening, diagnosis, and treatment of active, inactive, retired, and/or disabled coal miners. HRSA currently collects information about BLCP awards using an OMB-approved set of performance measures and seeks to extend the approved collection. There are no proposed changes to the performance measures; however, there is a 45-hour decrease in estimated burden hours due to the streamlining of the data collection process, allowing awardees/respondents to be more efficient in collecting and submitting the data for this information collection request. Collecting this data provides HRSA with information on how well each awardee is meeting the needs of these miners in their communities.

Need and Proposed Use of the Information: Data from the annual report provides quantitative information about the clinics, specifically: (1) the characteristics of the patients they serve (gender, age, disability level, occupation

type); (2) the characteristics of services provided (medical encounters, non-medical encounters, benefits counseling, and outreach); and (3) the number of patients served. These programmatic performance measures enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993. It also ensures that funds are effectively used to provide services that meet the target population's needs. HRSA does not plan to make any changes to the performance measures at this time. The estimated average burden per response has decreased because the data collection process has been streamlined and enabled awardees/respondents to be more efficient in collecting and submitting the data for this information collection.

Likely Respondents: Respondents will be BLCP award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Black Lung Clinics Program Measures	15	1	15	7	105
Total	15	.....	15	.....	105

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the

estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information

technology to minimize the information collection burden.

Maria G. Button,
Director, Executive Secretariat.

[FR Doc. 2024-13653 Filed 6-20-24; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Small Health Care Provider Quality Improvement Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than July 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at paperwork@hrsa.gov or call (301) 443-3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Small Health Care Provider Quality Improvement Program, OMB No. 0915-0387—Revision.

Abstract: This program is authorized by the Public Health Service Act, section 330A(g) (42 U.S.C. 254c(g)). This

authority permits the Federal Office of Rural Health Policy (FORHP) to award Small Health Care Provider Quality Improvement (SHCPQI) grants that expand access to, coordinate, and improve the quality of basic health care services, and enhance the delivery of health care, in rural areas. Specifically, FORHP may award grants to provide for the planning and implementation of SHCPQI activities, including activities related to increasing care coordination, enhancing chronic disease management, and improving patient health outcomes.

The purpose of the SHCPQI Grant Program is to provide support to rural primary care providers for implementation of quality improvement activities. The goal of the program is to promote the development of an evidence-based culture and delivery of coordinated care in the primary care setting. Additional objectives of the program include improved health outcomes for patients, enhanced chronic disease management, and better engagement of patients and their caregivers. Organizations participating in the program are required to use an evidence-based quality improvement model, perform tests of change focused on improvement, and use health information technology (HIT) to collect and report data. HIT may include an electronic patient registry or an electronic health record and is a critical component for improving quality and patient outcomes. With HIT it is possible to generate timely and meaningful data, which helps providers track and plan care. HRSA collects information from grant recipients that participate in this program using an OMB-approved set of performance measures and seeks to extend its approved information collection.

A 60-day notice was published in the **Federal Register** on February 5, 2024, 89 FR 7724–25. There were no public comments.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993. These measures

cover the principal topic areas of interest to FORHP, including: (1) access to care, (2) population demographics, (3) staffing, (4) consortium/network, (5) sustainability, and (6) project specific domains. All measures will speak to FORHP's progress toward meeting the goals set. FORHP collects this information to quantify the impact of grant funding on access to health care, quality of services, and improvement of health outcomes. FORHP uses the data for program improvement and grantees use the data for performance tracking. No changes are proposed from the current data collection effort, but FORHP estimates fewer respondents to align with the current cohort of grantees and an increase in the average burden per response to account for new personnel.

FORHP received feedback from awardees that personnel changes result in additional training needs for new hires, leading to a longer average time to complete the SHCPQI Performance Improvement and Measurement Systems form. As a result of this feedback, the estimated average burden increased from 8 hours to 13.5 hours per response.

Likely Respondents: The respondents will be the grant recipients (program grantees, not patients who receive health care services) of the SHCPQI Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
SHCPQI Performance Improvement and Measurement Systems	21	1	21	13.5	283.5

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Total	21	.....	21	.....	283.5

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–13620 Filed 6–20–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Generic Information Collection Request for Health Resources and Services Administration Stakeholder Gatherings

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate below or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than August 20, 2024.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Umbrella Generic Information Collection Request for Information

Collections Related to HRSA Gatherings, OMB No. 0906–xxxx–New.

Abstract: HRSA conducts gatherings for various purposes, including conferences, meetings, workshops, webinars, trainings, communities of practice, focus groups, and other in-person or virtual gatherings for individuals and organizations that are interested in HRSA programs. To ensure that HRSA has sufficient information to plan, convene, administer, and evaluate the effectiveness of these gatherings, HRSA must collect information from potential attendees, such as contact information, organizational information, logistical information (e.g., preferred delivery methods), accommodation needs, and feedback about the gathering's content. Furthermore, HRSA may conduct a test of knowledge to see what attendees know about the subject matter before or during the meeting or focus group. After the gathering concludes, attendees may be asked to complete an evaluation form and/or a test of knowledge to measure the gathering's effectiveness. In some instances, attendees may also apply and/or submit an abstract for prescreening to be selected for attendance.

An illustrative, but not exhaustive, list of examples of standardized information collection activities related to HRSA gatherings include:

- *Registration Forms:* Information collected includes name, contact information, organization/affiliation, demographic information (age, race or ethnicity, occupation, and location), and attendee accommodation needs.

- *Application Forms for panels, posters, or other presentation formats:* For application forms, information collected also includes title, author(s), organization/affiliation, and presentation abstract, in addition to the information contained in the registration form.

- *Focus Groups:* Information collected includes attendee/presenter responses to standard questions regarding topics posed to smaller groups during HRSA gatherings.

- *Pre-/Post-Gathering Forms:* Information collected includes attendee/presenter preferences, feedback, pre-/post-meeting questions, and tests of

knowledge in response to standard questions.

Need and Proposed Use of the Information: The purpose of collections under this umbrella generic information collection is to gather appropriate information to plan, administer, and evaluate HRSA gatherings. While HRSA can evaluate the general need for and the overall practical utility of such information collection in advance, HRSA may not be able to determine the details of the specific individual collections until a later time. The planning for these gatherings is often on a quick timeline and the standard timeline to comply with a full request under the Paperwork Reduction Act could inhibit HRSA's ability to collect information to inform these activities. The information collected is expected to be voluntary, low-burden, and uncontroversial. Therefore, an umbrella generic is requested to allow for quick turnaround requests for similar information collections related to these activities.

As this Generic Information Collection Request for HRSA Stakeholder Gatherings will focus on the awareness, understanding, attitudes, preferences, or experiences of HRSA customers or other stakeholders (e.g., funding recipients and their delivery partners, potential funding applicants) relating to existing or future services, products, or communication materials, the Fast Track Process should apply to this information collection. Therefore, HRSA requests OMB provide a response on individual generic information collections within 5 business days.

Likely Respondents: Attendees and presenters at HRSA conferences, meetings, workshops, webinars, trainings, communities of practice, and other in-person, virtual, or hybrid gatherings. Attendees and presenters may include HRSA funding recipients, individuals seeking to participate in a HRSA-funded program, members of the public who utilize HRSA-funded resources, contractors, researchers, and other members of the public. Responses to any information collections under this Generic Information Collection Request for HRSA Stakeholder Gatherings are not required to obtain or retain any benefit.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden

hours estimated for this ICR are summarized in the table below. HRSA conducted this estimate based on reviewing burden estimates of forms from previous HRSA gatherings, which were approved under other Umbrella or Regular packages.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Registration Forms	100,000	1	100,000	0.5	50,000
Applications	10,000	1	10,000	1.0	10,000
Pre- and Post-Gathering Forms	200,000	1	200,000	0.5	100,000
Focus Groups	100,000	3	300,000	3.0	900,000
Total	410,000	.....	610,000	.....	1,060,000

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024-13666 Filed 6-20-24; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Rural Health Care Coordination Program Performance Improvement Measures

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on

HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than July 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at paperwork@hrsa.gov or call (301) 443-3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Rural Health Care Coordination Program Performance Improvement Measures, OMB No. 0906-0024—Revision.

Abstract: The Rural Health Care Coordination (Care Coordination) Program is authorized under 42 U.S.C. 254c(e) (section 330A(e) of the Public Health Service Act) to promote rural health care services outreach by improving and expanding the delivery of health care services through comprehensive care coordination strategies addressing a primary focus area: (1) heart disease; (2) cancer; (3) chronic lower respiratory disease; (4) stroke; or (5) maternal health. This authority permits the Federal Office of Rural Health Policy within HRSA to award grants to eligible entities to promote rural health care services

outreach by improving and expanding the delivery of health care services to include new and enhanced services in rural areas, through community engagement and evidence-based or innovative, evidence-informed models. HRSA currently collects information about Care Coordination Program grants using an OMB-approved set of performance measures and seeks to revise that approved collection. The proposed changes to this information collection are a result of award recipient feedback and information gathered from the previously approved Care Coordination Program measures.

A 60-day notice was published in the **Federal Register** on January 17, 2024, 89 FR 2960-2961. There were no public comments.

Need and Proposed Use of the Information: This program needs measures that will enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993. These measures cover the principal topic areas of interest to HRSA, including: (1) access to care; (2) population demographics and social determinants of health; (3) care coordination and network infrastructure; (4) sustainability; (5) leadership and workforce; (6) electronic health record; (7) telehealth; (8) utilization; and (9) clinical measures/improved outcomes. All measures will evaluate HRSA's progress toward achieving its goals.

The proposed changes include additional components under "Access to Care" and "Population Demographic" sections that seek information about the target population, counties served, direct services, and social determinants

of health such as transportation barriers, housing, and food insecurity. Questions about Health Information Technology and Telehealth have been modified to reflect an updated telehealth definition and to improve understanding of how these important technologies are affecting HRSA award recipients. Sections previously titled “Care Coordination” and “Quality Improvement” sections were consolidated into one section titled “Care Coordination and Network Infrastructure” to improve clarity and ease of reporting for respondents. Part of the previous “Care Coordination” section was revised to include a section titled “Utilization” to improve clarity of instructions for related measures. Previously titled “Staffing” section was revised to “Leadership and Workforce Composition” to improve measure clarity and reduce overall burden for respondents by consolidating measures from previously separate “Staffing”, “Quality Improvement” and “Care Coordination” sections. Revised National Quality Forum and Centers for Medicare & Medicaid Services measures were also included to allow uniform collection efforts throughout the Federal Office of Rural Health Policy.

The total number of measures has increased from 40 total measures to 48 total measures since the previous information collection request. Of the 48 measures, 11 measures are designated as “optional” or “complete as applicable”. The measures within Section 6: Electronic Health Record are noted as optional to grantees. In Section 9: “Clinical Measures/Improved Health Outcomes”, grantees are only required to respond to Clinical Measure 1: Care Coordination. Grantees can choose to provide data for Clinical Measures 2–10 if applicable to their projects. The total number of responses has remained at 10 since the previous information collection request. While the new Care Coordination Program grant cycle maintained the same number of award recipients and number of respondents, in consideration of the new cohort of awardees, HRSA has increased the estimated average burden per response. The increase in burden is largely due to the amount of time it takes to build systems to capture and report data at the start of a new project. Recent feedback from grantees indicated that larger networks with multiple members and programs across different organizations also experienced higher burdens due to

the wait time in between responses. The increase in burden hours remains consistent with the proposed changes that better reflect the program scope and intent of the notice of funding opportunity announcement, HRSA–23–125, under which the new cohort of grants was awarded.

Likely Respondents: The respondents would be recipients of the Rural Health Care Coordination Program grants.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Health Care Coordination Program Performance Improvement Measures	10	1	10	48.67	486.70
Total	10	.....	10	.....	486.70

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–13624 Filed 6–20–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Rural Health Care Services Outreach Program Measures

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than August 20, 2024.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft

instruments, email paperwork@hrsa.gov or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Rural Health Care Services Outreach Program Measures, OMB No. 0906–0009–Revision

Abstract: The Rural Health Care Services Outreach Program is authorized by section 330A(e) of the Public Health Service Act (42 U.S.C. 254c(e)) to “promote rural health care services outreach by improving and expanding the delivery of health care services to include new and enhanced services in rural areas.” The goals for the Rural Health Care Services Outreach Program are as follows: (1) expand the

delivery of health care services in rural communities; (2) deliver health care services through a strong consortium, in which every consortium member organization is actively involved and engaged in the planning and delivery of services; (3) utilize and/or adapt an evidence-based or innovative, evidence-informed model(s) in the delivery of health care services; and (4) improve population health and demonstrate health outcomes and sustainability. HRSA collects information from grant recipients that participate in this program using an OMB-approved set of performance measures and seeks to extend its approved information collection.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and

Results Act of 1993. These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy (FORHP), including: (1) access to care, (2) population demographics, (3) consortium/network, (4) sustainability, (5) project specific domains, and (6) clinical measures. All measures will speak to FORHP's progress toward meeting the goals set. FORHP collects this information to quantify the impact of grant funding on access to health care, quality of services, and improvement of health outcomes. FORHP uses the data for program improvement and grantees use the data for performance tracking. No substantive changes are proposed from the current data collection effort; FORHP proposes updating hyperlinks for the clinical measures and including an option for text entry to capture names of counties for the number of counties served measure.

Likely Respondents: The respondents would be recipients of the Rural Health Care Services Outreach Program grants.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Health Care Services Outreach Performance Improvement Measurement System	61	1	61	7.5	457.5
Total	61	.....	61	.....	457.5

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,
Director, Executive Secretariat.
[FR Doc. 2024-13665 Filed 6-20-24; 8:45 am]
BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R13 Review.
Date: July 15-16, 2024.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, 6001 Executive Boulevard, Rockville, MD 20852, 301-451-2854, li.jia@nih.gov.
(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research

Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: June 14, 2024.
Lauren A. Fleck,
Program Analyst, Office of Federal Advisory Committee Policy.
[FR Doc. 2024-13576 Filed 6-20-24; 8:45 am]
BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Primate Aging Database.

Date: July 23, 2024.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 5601 Fishers Lane, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Kaitlyn Noel Lewis Hardell, Ph.D., M.P.H., Scientific Review Officer, National Institute of Aging, 7201 Wisconsin Avenue, Rm. 2E405, Bethesda, MD 20814, (301) 555-1234, kaitlyn.hardell@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 14, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-13556 Filed 6-20-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: July 15, 2024.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National

Institutes of Health, 5601 Fishers Lane, Room 3G31B, Rockville, MD 20852, (Video Assisted Meeting).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31B, Rockville, MD 20852, (240) 669-5060, james.snyder@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 14, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-13558 Filed 6-20-24; 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 Fellowships: Vascular and Hematological Systems, Surgical Sciences, Biomedical Imaging, and Bioengineering.

Date: July 16-17, 2024.

Time: 8:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway Gaithersburg, MD 20877 (In Person).

Contact Person: Courtney Elaine Watkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496-3093, courtney.watkins2@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering, Spinal Cord Injury, and Eye.

Date: July 16, 2024.

Time: 9:00 a.m. to 5:00 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: Pablo M Blazquez Gamez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435-1042, pablo.blazquezgamez@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Human Studies of Diabetes and Obesity.

Date: July 16, 2024.

Time: 12:00 p.m. to 2:00 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: Hui Chen, MD, Scientific Review Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164 Bethesda, MD 20892 301-435-1044, chenhui@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel Resource Development for animal models and biological systems.

Date: July 17, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Sulagna Banerjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (612) 309-2479, sulagna.banerjee@nih.gov.

Name of Committee: Center for Scientific Review, Special Emphasis Panel Member Conflict: Cardiac Sciences.

Date: July 17, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gloria Huei-Ting Su, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-496-0465, gloria.su@nih.gov.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Member Conflict: Topics in Bacterial Virulence.

Date: July 17, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jennifer Chien Villa, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-496-5436, jennifer.villa@nih.gov.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Member Conflict: Topics in Immunology and Infectious Diseases

Date: July 17, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth M Izumi, Ph.D. Scientific Review Officer, NIH Center for Scientific Review, 6701 Rockledge Drive, MSC 7808, Bethesda, MD 20892, 301-496-6980 izumikm@csr.nih.gov.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Bioengineering, Biomaterials, and Instrumentation.

Date: July 17–18, 2024.

Time: 10:00 a.m. to 9:00 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: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD, 20892, 301-408-9694, petersonjt@csr.nih.gov.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Member Conflict: Medical Imaging Investigations.

Date: July 17, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yuanna Cheng, Ph.D., MD Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435-1195 Chengy5@csr.nih.gov.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Member Conflict: Neurodevelopment, neurodegeneration and plasticity.

Date: July 17, 2024.

Time: 11:00 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: Vanessa S Boyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4185, MSC 7850, Bethesda, MD 20892, (301) 402-3726, boycevs@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: June 14, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–13557 Filed 6–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0515]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0082

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) 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: 1625–0082, Navigation Safety Information and Emergency Instructions for Certain Towing Vessels; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before August 20, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0515] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

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.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0515, and must be received by August 20, 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 received will be posted without change to <https://www.regulations.gov>.

www.regulations.gov and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Navigation Safety Information and Emergency Instructions for Certain Towing Vessels.

OMB Control Number: 1625–0082.

Summary: Navigation safety regulations in 33 CFR part 164 help assure that the mariner piloting a towing vessel has adequate equipment, charts, maps, and other publications. For certain inspected towing vessels, under 46 CFR 199.80 a muster list and emergency instructions provide effective plans and references for crew to follow in an emergency situation.

Need: The purpose of the regulations is to improve the safety of towing vessels

and the crews that operate them.

Forms: None.

Respondents: Owners, operators, and masters of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 387,509 hours to 319,419 hours a year, due to a decrease in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: June 10, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–13610 Filed 6–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0514]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0061

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) 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: 1625–0061, Commercial Fishing Industry Vessel Safety Regulations; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before August 20, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0514] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

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.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0514, and must be received by August 20, 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 received 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 in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Commercial Fishing Industry Vessel Safety Regulations.

OMB Control Number: 1625–0061.

Summary: This information collection is intended to improve safety on board vessels in the commercial fishing industry. The requirements apply to those vessels and to mariners on them.

Need: Under the authority of 46 U.S.C. 6104, the Coast Guard promulgated regulations in 46 CFR part 28 to reduce fatalities and accidents in the commercial fishing industry. The rules allowing the collection also provide means of verifying compliance and enhancing safe operation of fishing vessels.

Forms: CG–5587, USCG Commercial Fishing Vessel Safety Examination.

Respondents: Owners, agents, individuals-in-charge of commercial

fishing vessels, and insurance underwriters.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden decreased from 4,832 hours to 3,316 hours a year, primarily due to a decrease in the estimated annual number of citizenship waiver requests.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: June 10, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–13609 Filed 6–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–28]

30-Day Notice of Proposed Information Collection: Public Housing Agency (PHA) 5-Year and Annual Plan, OMB Control No.: 2577–0226

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* July 22, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll-free number) or email:

PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at Colette.Pollard@hud.gov or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 14, 2023 at 88 FR 86667.

A. Overview of Information Collection

Title of Proposal: Public Housing Agency (PHA) 5-Year and Annual Plan.
OMB Control Number: 2577–0226.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number(s): HUD–50075–5Y, HUD–50075–HCV, HUD–50075–HP, HUD–50075–MTW, HUD–50075–SM, HUD–50075–ST, HUD–50077–CR, HUD–50077–CRT–SM, HUD–50077–ST–HCV–HP and HUD–50077–SL.

Description of the need for the information and proposed use: The Public Housing Agency (PHA) Plan was created by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1). There are two different PHA Plans: The Five-Year Plan and the Annual Plan. The Five-Year Plan describes the agency’s mission, long-range goals, and objectives for achieving its mission over a five-year period. The Annual PHA Plan is a comprehensive guide to PHA policies, programs, operations, and strategies for meeting local housing needs and goals. This revision addresses necessary updates to all the forms and the automation of all the PHA Plan forms including the Moving to Work (MTW) Supplement for PHAs that joined the MTW Demonstration under the 2016

Appropriations Act (*i.e.*, MTW Expansion).

PHA Plans are needed to inform the Department of Housing and Urban Development (HUD), residents, and the public of the PHA’s mission and strategy for serving the needs of low income, very low-income, and extremely low-income families in the PHA’s jurisdiction. This information helps provide accountability to the local community for how PHAs spend their funding and implement their policies. The PHA Plan submission also includes various certifications to confirm that PHAs will abide by all federal civil rights laws and that the PHA Plan is consistent with the applicable Consolidated Plan.

PHA plans also allow HUD to monitor the performance of programs and the performance of the public housing agencies that administer them. Since 2000, HUD has taken several steps to reduce the administrative burden of the PHA Plan submission including the use of streamlined plan submissions for certain PHA based on size and performance. For example, the Housing and Economic Reform Act (HERA) removed the requirement for qualified PHAs to submit an annual PHA Plan and to only submit the 5-year Plan. A “qualified PHA” is one that manages 550 or fewer public housing units and vouchers and is not labeled as a troubled public housing agency. Currently, qualified PHA’s must only submit an annual certification to confirm that they are abiding by all federal civil rights laws.

In January 2021 HUD requested from OMB that the PHA Plan collection be reinstated with change. These changes included the addition of a new section to accommodate the anticipated fair housing planning requirements of the 2015 Affirmatively Furthering Fair Housing (AFFH) Rule and the introduction of the MTW Supplement. OMB approved the changes, reinstated the collections and HUD made the new templates available to PHAs on the HUD website as individual word processing files. After publication, HUD made subsequent minor changes to the forms and certifications to remove unnecessary sections, make minor edits and to account for updated or eliminated regulatory citations. Additionally, HUD took steps to automate the MTW supplement in the Housing Information Portal (HIP).

With this current proposed information collection, HUD intends to automate all PHA Plan templates and certifications. While the templates will be automated, the content and required elements will be mostly the same with

a few modifications as needed to account for recent changes in regulations. Modifications to the collection include the following:

(1) HUD is adding an additional element to the HUD-50075-HCV form. The revised HUD-50075-HCV form will include an additional element requiring Section 8 only PHAs to report on their Project Based Voucher (PBV) activities. This template will be used by HCV-only PHA's that administer the Housing Choice Voucher (HCV) program which may also include PBV developments.

(2) HUD is adding an optional feature for PHA's to attach their written Admission and Continued Occupancy Policy (ACOP) or Administrative Plan documents to their Five-Year Plan and Annual Plan submissions. This will create a centralized database of all local PHA policies which currently can only be found at each individual PHA or on their websites.

(3) Section D of the PHA Plan Templates, meant to address the fair housing goals as was originally required by the 2015 Affirmatively Furthering Fair Housing (AFFH) rule, has been removed. This is due to the 2020 Preserving Neighborhood and Community Choice (PNCC) rule rescinding the 2015 AFFH rule which eliminated the requirement for HUD grantees to conduct fair housing planning. On June 10, 2021, HUD published an AFFH interim final rule

(IFR) which does not restore the 2015 AFFH rule for HUD grantees to conduct fair housing planning only that grantees meaningfully certify that they are meeting the Fair Housing Act's AFFH obligation. The language in the HUD certifications have been updated to reflect this change.

(4) Additional edits have been made to the PHA Plan templates as required by the Housing Opportunity Through Modernization Act of 2016 (HOTMA)—Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) Implementation final rule. These edits include the addition of Section B.5 HUD Form 50075-5Y for PHAs to report PBV activities as required by 24 CFR 903.6(c). The HOTMA-HCV rule also required citation updates to account for the redesignation of paragraph (r) of 24 CFR 903.7 as paragraph (s).

(5) Lastly, HUD will now strongly encourage complete electronic submission from all PHAs. Currently, PHA Plan templates are downloaded, edited, and submitted as email attachments which must then be individually uploaded, analyzed, and organized by HUD. Automating the PHA Plan review process more efficient by streamlining the submission and review process thus reducing the administrative burden on both HUD and PHAs. HUD estimates that automating the PHA Plan form will reduce both the

PHA and HUD administrative burden by approximately 25%. Electronic submission and collection of this information will also make future data and policy analysis feasible.

Overall, the burden hours associated with the collection is expected to decrease by 2,024 hours due to the automation of the PHA Plan templates. Additional time may be required in the first year to train PHAs on the system, however, because the Public Housing Portal is an existing HUD system that PHAs use and are familiar with, this burden is expected to reduce in subsequent years. Accordingly, the additional burden of the one-time training is not expected to exceed the time savings created by the system.

Finally, revisions were made to this collection to reflect adjustments in calculations based on the total number of current, active PHAs to date. Since the last approved information collection, the number of active public housing agencies has changed from approximately 3,780 to 3,763. The number of PHAs can fluctuate due to many factors, including but not limited to performance scoring, the merging of two or more PHAs or the termination of the public housing and/or voucher programs due to the Rental Assistance Demonstration (RAD).

Members of affected public: Public Housing Agencies, Developers.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response *	Annual cost
Form HUD-50075-ST [†] .	796	1	796	5.64	4,489.44	\$26.62	\$119,508.89
Form HUD-50075-SM [†] .	202	1	202	2.67	539.74	26.62	14,367.99
Form HUD-50075-HP [†] .	152	1	152	5.26	799.52	26.62	21,283.22
Form HUD-50075-HCV [†] .	246	1	246	4.52	1,111.92	26.62	29,599.31
Form HUD-50075-MTW [†] .	100	1	100	6.50	650	26.62	17,303.00
Form HUD-50077-CR (Qualified PHAs).	2,321	1	2,321	0.16	371.36	26.62	9,885.60
Form HUD-50075-5Y [†] .	3,763	1	3,763/5	1.23 (6.15/5)	4,628.49 (23,142.45/5).	26.62	123,210.40
Total	3,763	1	3,763	25.98	12,590.47	26.62	335,158

* The hourly cost for response assumes a GS-9, Step 5 (\$55,564), Executive Assistant, hourly rate is \$26.62.

[†] Note: The rows representing the burden for each template/respondent type includes the burden of the relevant annual certification forms (HUD-50077-SL, HUD-50077-CR-SM & HUD-50077-ST-HCV-HP).

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have

practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those

who are to respond; including through the use of appropriate automated collection techniques or the forms of information technology, *e.g.*, permitting electronic submission of responses.

(5) 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.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2024–13582 Filed 6–20–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Docket No. BIA–2022–0005–0004;
245A2100DD/AAKC001030/
A0A501010.999900; OMB Control Number
1076–0018, 1076–0020, 1076–0047, 1076–
0094, 1076–0112, 1076–0114, 1076–0120,
1076–0131, 1076–0134, 1076–0135, 1076–
0153, 1076–0160, 1076–0169, 1076–0182,
1076–0183, 1076–0184, 1076–0190, 1076–
0199]

Agency Information Collection Activities; Request for Comment on Fiscal Year 2025 Expirations Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of information collection;
request for comment.

SUMMARY: In accordance with the
Paperwork Reduction Act of 1995, we,

Indian Affairs, are proposing to renew eighteen (18) information collections. We are seeking comments from the public, and other Federal agencies, as part of our continuing effort to minimize burdens and enhance the quality, utility, and clarity of the information to be collected.

DATES: Interested persons are invited to submit comments on or before August 20, 2024.

ADDRESSES: To submit a comment, please visit <https://www.regulations.gov/docket/BIA–2022–0005> or use the search field on <https://www.regulations.gov> to find the “BIA–2022–0005” docket. Please follow the instructions on *Regulations.gov* for submitting a comment; and reference the applicable OMB Control Number within your comment submission.

FOR FURTHER INFORMATION CONTACT: Steven Mullen, Information Collection Clearance Officer, by email at comments@bia.gov or telephone at (202) 924–2650. 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. You may also view each information collection at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us

assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of our estimate of the burden for 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 to be collected; and
- (4) How might the agency 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. We will include or summarize each comment in our request to OMB to approve the information collection request. 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.

Information Collection	OMB Control No.	Expiration date
(1.) Verification of Indian Preference for Employment in BIA and IHS	1076–0160	10/31/2024
(2.) Law and Order on Indian Reservations—Marriage & Dissolution Applications, 25 CFR 11	1076–0094	11/30/2024
(3.) Bureau of Indian Education Adult Education Program	1076–0120	11/30/2024
(4.) Indian Child Welfare Quarterly and Annual Report	1076–0131	11/30/2024
(5.) Reporting System for Public Law 102–477 Demonstration Project	1076–0135	11/30/2024
(6.) Request for Certificate of Degree of Indian or Alaska Native Blood	1076–0153	11/30/2024
(7.) Sovereignty in Indian Education Grant Program	1076–0182	11/30/2024
(8.) Indian Highway Safety Grants	1076–0190	11/30/2024
(9.) Probate of Indian Estates, except for Members of the Osage Nation and the Five Civilized Tribes	1076–0169	12/31/2024
(10.) Tribal Colleges and Universities Grant Application Form, 25 CFR 41	1076–0018	01/31/2025
(11.) Indian Business Incubator Program, 25 CFR 1187	1076–0199	01/31/2025
(12.) Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute	1076–0114	03/31/2025
(13.) Loan Guarantee, Insurance, and Interest Subsidy Program, 25 CFR 103	1076–0020	05/31/2025
(14.) Reindeer in Alaska	1076–0047	05/31/2025
(15.) Tribal Reassumption of Jurisdiction over Child Custody Proceedings, 25 CFR 13	1076–0112	05/31/2025
(16.) Student Transportation Form	1076–0134	05/31/2025

Information Collection	OMB Control No.	Expiration date
(17.) Secretarial Elections	1076-0183	05/31/2025
(18.) Bureau of Indian Affairs Housing Improvement Program	1076-0184	05/31/2025

1. Verification of Indian Preference for Employment in BIA and IHS

Abstract: The BIA is seeking renewal of the approval for the information collection conducted under 25 U.S.C. 43, 36 Stat. 472, inter alia, and implementing regulations, at 25 CFR part 5, regarding verification of Indian preference for employment. The purpose of Indian preference is to encourage qualified Indian persons to seek employment with the BIA and the Indian Health Service (IHS) by offering preferential treatment to qualified candidates of Indian heritage. The BIA collects the information to ensure compliance with Indian preference hiring requirements. The information collection relates only to individuals applying for employment with the BIA and/or IHS. The tribe's involvement is limited to verifying membership information submitted by the applicant. The collection of information allows certain persons who are of Indian descent to receive preference when appointments are made to vacancies in positions with the BIA and the IHS as well as in any unit that has been transferred intact from the BIA to a Bureau or office within the Department of the Interior or the Department of Health and Human Services and that continues to perform functions formerly performed as part of the BIA and the IHS. You are eligible for preference if (a) you are a member of a federally recognized Indian tribe; (b) you are a descendent of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Alaska native; or (d) you possess one-half degree Indian blood derived from tribes that are indigenous to the United States.

Title of Collection: Verification of Indian Preference for Employment in the BIA and the IHS.

OMB Control Number: 1076-0160.

Form Number: BIA 4432.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Qualified Indian persons who are seeking preference in employment with the BIA and the IHS.

Total Estimated Number of Annual Respondents: 5,000 per year, on average.

Total Estimated Number of Annual Responses: 5,000 per year, on average.

Estimated Completion Time per Response: 30 minutes.

Total Estimated Number of Annual Burden Hours: 2,500 hours.

Respondent's Obligation: A response is required to obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$7,640.

2. Law and Order on Indian Reservations—Marriage & Dissolution Applications, 25 CFR 11

Abstract: The Bureau of Indian Affairs (BIA) is seeking renewal of the approval for the information collection conducted under 25 CFR 11.600(c) and 11.606(c). This information collection allows the Clerk of the Court of Indian Offenses to collect personal information necessary for a Court of Indian Offenses to issue a marriage license or dissolve a marriage. Courts of Indian Offenses have been established on certain Indian reservations under the authority vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2, 9, and 13, which authorize appropriations for "Indian judges." The courts provide for the administration of justice for Indian tribes in those areas where the tribes retain jurisdiction over Indians, exclusive of State jurisdiction, but where tribal courts have not been established to exercise that jurisdiction and the tribes has, by resolution or constitutional amendment, chosen to use the Court of Indian Offenses. Accordingly, Courts of Indian Offenses exercise jurisdiction under 25 CFR 11. Domestic relations are governed by 25 CFR 11.600, which authorizes the Court of Indian Offenses to conduct and dissolve marriages.

In order to obtain a marriage licenses in a Court of Indian Offenses, applicants must provide the six items of information listed in 25 CFR 11.600(c), including identifying information, such as a Social Security number, information on previous marriage, relationship to the other applicant, and a certificate of the results of any medical examination required by applicable tribal ordinances or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located. To dissolve a marriage, applicants must provide the six items of information listed in 25 CFR 11.606(c), including information on occupation and residency (to establish jurisdiction), information on whether the parties have lives apart for at least 180 days or if

there is serious marital discord warranting dissolution, and information on the children of the marriage and whether the wife is pregnant (for the court to determine the appropriate level of support that may be required from the non-custodial parent). (25 CFR 11.601) Two forms are used as part of this information collection, the Marriage License Application and the Dissolution of Marriage Application.

Title of Collection: Law and Order on Indian Reservations—Marriage & Dissolution Applications, 25 CFR 11.

OMB Control Number: 1076-0094.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 260 per year, on average.

Total Estimated Number of Annual Responses: 260 per year, on average.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 65 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$6,500 (approximately \$25 per application for processing fees).

3. Bureau of Indian Education Adult Education Program

Abstract: The BIE is seeking renewal of the approval for the information collection conducted under 25 CFR part 46 to manage program resources and for fiscal accountability and appropriate direct services documentation. This information includes an annual report form.

Title of Collection: Bureau of Indian Education Adult Education Program.

OMB Control Number: 1076-0120.

Form Number: BIA-62123.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals (Tribal Adult Education Program Administrators).

Total Estimated Number of Annual Respondents: 70 per year, on average.

Total Estimated Number of Annual Responses: 70 per year, on average.

Estimated Completion Time per Response: 4 hours.

Total Estimated Number of Annual Burden Hours: 280 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per year.

Total Estimated Annual Nonhour Burden Cost: \$200.

4. Indian Child Welfare Quarterly and Annual Report

Abstract: The BIA is seeking to revise the information collection conducted under 25 CFR 23, related to the Indian Child Welfare Act (ICWA). The BIA uses the information to determine the extent of service needs in local Indian communities, assess ICWA program effectiveness, and provide data for the annual program budget justification. The aggregated report is not considered confidential. The form must be completed by Federally recognized Tribes that operate child protection programs. Submission of this information by Federally recognized Tribes allows the BIA to consolidate and review selected data on Indian child welfare cases. The data is useful on a local level, to the Tribes and Tribal entities that collect it, for case management purposes. The data are useful on a nationwide basis for planning and budget purposes.

Title of Collection: Indian Child Welfare Quarterly and Annual Report.

OMB Control Number: 1076–0131.

Form Number: Part A, Part B.

Type of Review: Revision of a currently approved collection.

Proposed Revisions: The BIA propose to revise the existing, consolidated caseload form into two forms—Part A form, and Part B form—in order to facilitate the appropriate Tribal officials filling out each.

Respondents/Affected Public: Federally recognized Tribes or Tribal entities that are operating programs for Tribes.

Total Estimated Number of Annual Respondents: 565 per year, on average.

Total Estimated Number of Annual Responses: 2,260 per year, on average.

Estimated Completion Time per Response: Approximately 30 minutes for Part A—ICWA Data; approximately 30 minutes for Part B—Tribal Child Abuse and Neglect Data.

Total Estimated Number of Annual Burden Hours: 1,130 per year on average.

Respondent's Obligation: A response is required to obtain a benefit.

Frequency of Collection: Four times per year for the Part A—ICWA Data; if applicable, four times per year for Part B—Tribal Child Abuse Neglect Data.

Total Estimated Annual Nonhour Burden Cost: \$0.

5. Reporting System for Public Law 102–477 Demonstration Project

Abstract: This information allows the Division of Workforce Development (DWD), which reports to the BIA—Indian Services, to document satisfactory compliance with statutory, regulatory, and other requirements of the various integrated programs. Public Law 102–477 authorized tribal governments to integrate federally funded employment, training, and related services and programs into a single, coordinated, comprehensive service delivery plan. Funding agencies include the Department of Labor and the Department of Health and Human Services. BIA is statutorily required to serve as the lead agency and provides a single, universal report format for use by tribal governments to report on integrated activities and expenditures. The DWD shares the information collected from these reports with the Department of Labor and the Department of Health and Human Services.

Title of Collection: Reporting System for Public Law 102–477 Demonstration Project.

OMB Control Number: 1076–0135.

Form Number: BIA–8205.

Type of Review: Revision of a currently approved collection.

Proposed Revisions: The BIA propose to revise the existing forms in collaboration with Federal partners and the 477 Tribal Workgroup.

Respondents/Affected Public: Indian tribes participating in Public Law 102–477 and individuals.

Total Estimated Number of Annual Respondents: 258.

Total Estimated Number of Annual Responses: 258.

Estimated Completion Time per Response: Varies from half an hour to six hours.

Total Estimated Number of Annual Burden Hours: 1,017.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once annually for the reporting, and once annually for the job placement and training application.

Total Estimated Annual Nonhour Burden Cost: \$355.

6. Request for Certificate of Degree of Indian or Alaska Native Blood

Abstract: The BIA is seeking renewal of the approval for the information collection conducted under the numerous laws authorizing BIA to administer program services to Indians, provided that the individual possesses a minimum degree of Indian or Alaska

Native blood. When applying for program services authorized by these laws, an applicant must provide acceptable documentation to prove that he or she meets the minimum required degree of Indian or Alaska Native blood. Currently, the BIA certifies an individual's degree of Indian or Alaska Native blood if the individual can provide sufficient information to prove his or her identity and prove his or her descent from an Indian ancestor(s) listed on historic documents approved by the Secretary of the Interior that include blood degree information. To obtain the CDIB, the applicant must fill out an application form and provide supporting documents.

Title of Collection: Request for Certificate of Degree of Indian or Alaska Native Blood.

OMB Control Number: 1076–0153.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 100,000 per year, on average.

Total Estimated Number of Annual Responses: 100,000 per year, on average.

Estimated Completion Time per Response: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 150,000.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: \$2,500,000.

7. Sovereignty in Indian Education Grant Program

Abstract: Indian Tribes and Tribal Organizations may submit proposals to support their efforts to take control and operate BIE-funded schools located on the Tribe's reservation under 25 U.S.C. .2501. Each proposal must include a project narrative, a budget narrative, a work plan outline, and a Project Director to manage the execution of the grant. The Project Directors will participate in monthly collaboration meetings, submit quarterly budget updates, ensure an annual report is submitted at the end of each project year, and ultimately ensure that the tribal education agency fulfills the obligations of the grant.

Title of Collection: Sovereignty in Indian Education Grant Program.

OMB Control Number: 1076–0182.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Indian Tribes and/or Tribal Education Departments.

Total Estimated Number of Annual Respondents: 11 per year.

Total Estimated Number of Annual Responses: 198 per year.

Estimated Completion Time per Response: Ranges from 1 hour to 40 hours.

Total Estimated Number of Annual Burden Hours: 682 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Proposals and Annual reports once per year and Budget Reports are submitted 4 times per year.

Total Estimated Annual Nonhour Burden Cost: \$0.

8. Indian Highway Safety Grants

Abstract: This data collected is a requirement for the BIA Indian Highway Safety Program (IHSP) to fulfil the data obligations of 23 CFR 1300.11 and will be used for review and consideration by the IHSP Selection Committee for consideration of grant awards. This information is collected from Tribal entities concerning population, land base, highway miles and statistical data concerning vehicle fatalities, crashes, traffic enforcement actions and proposed financial data.

Title of Collection: Indian Highway Safety Grants.

OMB Control Number: 1076-0190.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Tribal governments.

Total Estimated Number of Annual Respondents: 485 per year, on average.

Total Estimated Number of Annual Responses: 2,256 per year, on average.

Estimated Completion Time per Response: For applications, 4 hours, on average; for monthly reports, 3-11 hours, on average; and for annual reports, 5-9 hours, on average.

Total Estimated Number of Annual Burden Hours: 15,316 on average.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually for grant applications and annual reports; monthly for reports.

Total Estimated Annual Nonhour Burden Cost: None.

9. Probate of Indian Estates, Except for Members of the Osage Nation and the Five Civilized Tribes

Abstract: The Secretary of the Interior probates the estates of individual Indians owning trust or restricted property in accordance with 25 U.S.C. 372-373. In order to compile the probate file, the BIA must obtain the family heirship data regarding the

deceased from individuals and the tribe. This section contains the procedures that the Secretary of the Interior follows to initiate the probate of the trust estate for a deceased person who owns an interest in trust or restricted property. The Secretary must perform the necessary research of family heirship data collection requests in this part to obtain the information necessary to compile an accurate and complete probate file. This file will be forwarded to the Office of Hearing and Appeals (OHA) for disposition. Responses to these information collection requests are required to create a probate file for the decedent's estate so that OHA can determine the heirs of the decedent and order distribution of the trust assets in the decedent's estate.

Title of Collection: Probate of Indian Estates, Except for Members of the Osage Nation and Five Civilized Tribes.

OMB Control Number: 1076-0169.

Form Number: OHA-7.

Type of Review: Revision of a currently approved collection.

Proposed Revisions: Addition of a form to collect data for heirship finding and family history (OHA-7 form).

Respondents/Affected Public: Indians, businesses, and tribal authorities.

Total Estimated Number of Annual Respondents: 36,906 per year.

Total Estimated Number of Annual Responses: 41,139 per year.

Estimated Completion Time per Response: Varies from 0.5 hours to 45 hours.

Total Estimated Number of Annual Burden Hours: 617,486 per year.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per respondent per year.

Total Estimated Annual Nonhour Burden Cost: \$0.

10. Tribal Colleges and Universities Grant Application Form, 25 CFR 41

Abstract: Each tribally-controlled college or university requesting financial assistance under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (the Act) (25 U.S.C. 1801 *et seq.*), which provides grants to Tribally Controlled Colleges or Universities for the purpose of ensuring continued and expanded educational opportunities for Indian students. Similarly, each Tribally Controlled College or University that receives financial assistance is required by Sec.107(c)(1) of the Act and 25 CFR 41 to provide a report on the use of funds received.

Title of Collection: Tribal Colleges and Universities Grant Application Form, 25 CFR 41.

OMB Control Number: 1076-0018.

Form Number: BIE-62107, BIE-6259, BIE Form 22, and the Third Week Monitoring Form.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Tribal college and university administrators.

Total Estimated Number of Annual Respondents: 29 per year, on average.

Total Estimated Number of Annual Responses: 174 per year, on average.

Estimated Completion Time per Response: Varies from 1 hour to 11 hours.

Total Estimated Number of Annual Burden Hours: 870 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: \$0.

11. Indian Business Incubator Program, 25 CFR 1187

Abstract: This information collection includes items that an applicant must include in an application for an Indian Business Incubator Program (IBIP) grant and that IBIP awardees must include in the annual report. Applicant contents include such items as a description of the reservation communities the incubator will serve, a three-year plan regarding the services to be offered to participating entrepreneurs, among other items, information regarding applicant's experience in conducting assistance programs, and a site description of the location at which the applicant will provide workspace to participants, among other items. The annual report includes a detailed breakdown of the entrepreneurs the incubator has served for the year covered by the report.

Title of Collection: Indian Business Incubator Program, 25 CFR 1187.

OMB Control Number: 1076-0199.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals, Private Sector, Government.

Total Estimated Number of Annual Respondents: 50.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: Ranges from 5 to 35 hours.

Total Estimated Number of Annual Burden Hours: 2,000 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: Occasionally.

Total Estimated Annual Nonhour Burden Cost: \$0.

12. Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute

Abstract: The BIE is requesting approval for the admission forms for Haskell Indian Nations University (Haskell) and Southwest Indian Polytechnic Institute (SIPI). These admission forms are used in determining program eligibility of American Indian and Alaska Native students for educational services. These forms are utilized pursuant to the Blood Quantum Act, Public Law 99–228; the Snyder Act, Chapter 115, Public Law 67–85; and, the Indian Appropriations of the 48th Congress, Chapter 180, page 91, For Support of Schools, July 4, 1884. Submission of these eligibility application forms is mandatory in determining a student's eligibility for educational services. The information is collected on two forms: The Application for Admission to Haskell form and the Application for Admission to SIPI form. Haskell opted to not pursue approval of the Dual Enrollment as a part of this renewal.

Title of Collection: Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute.

OMB Control Number: 1076–0114.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Proposed Revisions: Revised applications to facilitate digital submissions.

Respondents/Affected Public: Students.

Total Estimated Number of Annual Respondents: 2,100 per year, on average.

Total Estimated Number of Annual Responses: 2,100 per year, on average.

Estimated Completion Time per Response: 15 minutes per Haskell application; 30 minutes per SIPI application.

Total Estimated Number of Annual Burden Hours: 800 hours.

Respondent's Obligation: Response is required to obtain a benefit.

Frequency of Collection: Once per year for Haskell; once for SIPI, unless a student has missed more than two consecutive trimesters.

Total Estimated Annual Nonhour Burden Cost: \$11,533.

13. Loan Guarantee, Insurance, and Interest Subsidy Program, 25 CFR 103

Abstract: Submission of this information allows the Office of Indian Economic Development (OIED) to implement the Loan Guarantee, Insurance, and Interest Subsidy

Program, 25 U.S.C. 1451 *et seq.*, the purpose of which is to encourage private lending to individual Indians and Indian organizations by providing lenders with loan guarantees or loan insurance to reduce their potential risk. The information collection allows OIED to determine the eligibility and credit-worthiness of respondents and loans and otherwise ensure compliance with Program requirements. This information collection includes the use of several forms.

Title of Collection: Loan Guarantee, Insurance, and Interest Subsidy Program, 25 CFR 103.

OMB Control Number: 1076–0020.

Form Number: ALD10, CFL10, ISR10, LGA10, LGC10, LIA10, NIL10, NOD10, RG10.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Lenders, including commercial banks, and borrowers, including individual Indians and Indian organizations.

Total Estimated Number of Annual Respondents: 622.

Total Estimated Number of Annual Responses: 1,377.

Estimated Completion Time per Response: Ranging from 0.5 to 2 hours.

Total Estimated Number of Annual Burden Hours: 2,654 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$0.

14. Reindeer in Alaska

Abstract: The Bureau of Indian Affairs (BIA) is seeking renewal of the approval for the information collection conducted under 25 CFR part 243, Reindeer in Alaska, which is used to monitor and regulate the possession and use of Alaskan reindeer by non-Natives in Alaska. The information to be provided includes an applicant's name and address, and where an applicant will keep the reindeer. The applicant must fill out an application for a permit to get a reindeer for any purpose; and is required to report on the status of reindeer annually or when a change occurs, including changes prior to the date of the annual report. This information collection utilizes four forms. A response is required to obtain and/or retain a benefit.

Title of Collection: Reindeer in Alaska.

OMB Control Number: 1076–0047.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Non-Indians who wish to possess Alaskan reindeer.

Total Estimated Number of Annual Respondents: 4 per year, on average (1 respondent for the Sale Permit for Alaska Reindeer, 1 respondent for the Sale Report Form for Alaska Reindeer, 1 respondent for the Special Use Permit for Alaskan Reindeer, and 1 respondent for the Special Use Reindeer Report).

Total Estimated Number of Annual Responses: 4.

Estimated Completion Time per Response: 5 minutes for the Sale Permit and Report forms; and 10 minutes for the Special Use Permit and Report forms, on average.

Total Estimated Number of Annual Burden Hours: 30 minutes.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once a year, on average.

Total Estimated Annual Nonhour Burden Cost: \$0.

15. Tribal Reassumption of Jurisdiction Over Child Custody Proceedings, 25 CFR 13

Abstract: The BIA is seeking to renew the information collection conducted under 25 CFR 13, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, which prescribes procedures by which a federally recognized Tribe that occupies Tribal lands over which a State asserts any jurisdiction pursuant to Federal law may reassume jurisdiction over Indian child proceedings as authorized by the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918. The collection of information will ensure that the provisions of Public Law 95–608 are met. Any federally recognized Tribe that became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. The collection of information provides data that will be used in considering the petition and feasibility of the plan of the Tribe for reassumption of jurisdiction over Indian child custody proceedings. We collect the following information: Full name, address, and telephone number of petitioning Tribe or Tribes; a Tribal resolution; estimated total number of members in the petitioning Tribe of Tribes with an explanation of how the number was estimated; current criteria for Tribal membership; citation to provision in Tribal constitution authorizing the Tribal governing body to exercise jurisdiction over Indian child custody matters; description of Tribal court; copy of any Tribal ordinances or

Tribal court rules establishing procedures or rules for exercise of jurisdiction over child custody matters; and all other information required by 25 CFR 13.11.

Title of Collection: Tribal Reassumption of Jurisdiction over Child Custody Proceedings, 25 CFR 13.

OMB Control Number: 1076–0112.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Tribes who submit Tribal reassumption petitions for review and approval by the Secretary of the Interior.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 8 hours.

Total Estimated Number of Annual Burden Hours: 8 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

16. Student Transportation Form

Abstract: The Student Transportation regulations in 25 CFR part 39, subpart G, contain the program eligibility and criteria that govern the allocation of transportation funds. Information collected from the schools will be used to determine the rate per mile. The information collection provides transportation mileage for Bureau-funded schools, which determines the allocation of transportation funds. This information is collected using a web-based system, Web Education Transportation (Web ET).

Title of Collection: Student Transportation Form.

OMB Control Number: 1076–0134.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Contract and Grant schools; Bureau-operated schools.

Total Estimated Number of Annual Respondents: 183 per year, on average.

Total Estimated Number of Annual Responses: 183 per year, on average.

Estimated Completion Time per Response: Two hours.

Total Estimated Number of Annual Burden Hours: 366 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per year.

Total Estimated Annual Nonhour Burden Cost: \$0.

17. Secretarial Elections

Abstract: Under the Indian Reorganization Act, Tribes have the right to organize and adopt constitutions, bylaws, and any amendments thereto, and ratify charters of incorporation, through elections called by the Secretary of the Interior, according to rules prescribed by the Secretary. See 25 U.S.C. 476, 477, 503. The Secretary's rules for conducting these elections, known as "Secretarial elections," and approving the results are at 25 CFR 81. In most cases, the Tribe requests a Secretarial election; however, an individual voting member of a Tribe may also request a Secretarial election by petition. These rules also establish the procedures for an individual to petition for a Secretarial election. The BIA requires the Tribe to submit a formal request for Secretarial election, including: A Tribal resolution; the document or language to be voted on in the election; a list of all Tribal members who are age 18 or older in the next 120 days (when the election will occur), including their last known addresses, voting districts (if any), and dates of birth, in an electronically sortable format. While much of the information the Tribe prepares for a Secretarial election (e.g., list of members eligible to vote) would be required if the Tribe instead conducted its own Tribal election, the Secretary's rules establish specifics on what a Tribal request or petition for election must contain. These specifics are necessary to ensure the integrity of Secretarial elections and allow the BIA and Tribal personnel the ability to consistently administer elections.

Title of Collection: Secretarial Elections.

OMB Control Number: 1076–0183.

Form Number: Secretarial Election Voter Registration Form.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Tribes and their members.

Total Estimated Number of Annual Respondents: 252,041.

Total Estimated Number of Annual Responses: 252,041.

Estimated Completion Time per Response: Varies from 15 minutes to 40 hours.

Total Estimated Number of Annual Burden Hours: 64,305.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$183,960.

18. Bureau of Indian Affairs Housing Improvement Program

Abstract: Submission of this information allows BIA to determine applicant eligibility for housing services based upon the criteria referenced in 25 CFR 256.9 (repairs and renovation assistance) and 256.10 (replacement housing assistance). Enrolled members of a federally recognized Tribe, who live within a Tribe's designated and approved service area, submit information on an application form.

Title of Collection: Bureau of Indian Affairs Housing Improvement Program.

OMB Control Number: 1076–0184.

Form Number: BIA–6407, Tribal Annual Performance Report (TAPR) Excel workbook, and the Government Performance Results Act (GPRA) Reporting Form.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 12,292 per year, on average.

Total Estimated Number of Annual Responses: 12,523 per year, on average.

Estimated Completion Time per Response: Varies between 15 and 30 minutes.

Total Estimated Number of Annual Burden Hours: 5,185 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per year for the HIP Application, HIP Addendum, and TAPR workbook. Quarterly for the GPRA Reporting form.

Total Estimated Annual Nonhour Burden Cost: \$0.

Authority

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 these information collection actions is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer,
Office of Regulatory Affairs and
Collaborative, Office of the Assistant
Secretary—Indian Affairs.

[FR Doc. 2024–13511 Filed 6–20–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[BLM_CO_FRN_MO4500178689]****Notice of Availability of the Proposed Resource Management Plan and Final Supplemental Environmental Impact Statement for the Colorado River Valley Field Office and Grand Junction Field Office Resource Management Plans, Colorado****AGENCY:** Bureau of Land Management, Department of the Interior.**ACTION:** Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a proposed Resource Management Plan (RMP) and final supplemental Environmental Impact Statement (EIS) for the Colorado River Valley Field Office (CRVFO) and Grand Junction Field Office (GJFO) Resource Management Plans and by this notice is announcing the start of a 30-day protest period of the proposed RMP.

DATES: This notice announces the beginning of a 30-day protest period to the BLM on the proposed RMP. Protests must be postmarked or electronically submitted on the BLM's ePlanning site within 30 days of the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of the proposed RMP and final supplemental EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

ADDRESSES: The proposed RMP and final supplemental EIS is available on the BLM ePlanning project website at <https://eplanning.blm.gov/eplanning-ui/project/2016085/510>. Documents pertinent to this proposal may be examined online at <https://eplanning.blm.gov/eplanning-ui/project/2016085/510> and at the Colorado River Valley and Grand Junction Field Offices.

Instructions for filing a protest with the BLM for the proposed RMP and final supplemental EIS for the CRVFO and GJFO RMPs can be found at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest> and at 43 CFR 1610.5-2.

FOR FURTHER INFORMATION CONTACT:

Heather Sauls, Project Manager; telephone: 970-878-3855; address: BLM Upper Colorado River District, 2518 H Road, Grand Junction, CO 81506; email: ucrd-seis@blm.gov. Individuals in the

United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Sauls. 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 planning area is located in Garfield, Mesa, Eagle, Pitkin, Routt, Rio Blanco, and Montrose Counties, Colorado, and encompasses approximately 1.56 million acres of public land and 1.92 million acres of Federal mineral estate. CRVFO and GJFO management is identified in their respective 2015 RMPs. Apart from fluid mineral leasing decisions, all existing management as described in the CRVFO and GJFO approved RMPs remains in effect.

Purpose and Need for the Planning Effort

The purpose of this supplemental EIS is to broaden the range of alternatives in the 2015 CRVFO and GJFO approved RMPs with respect to the lands that are allocated as open or closed for oil and gas leasing. The purpose is also to provide additional air quality analysis for the fluid mineral management alternatives considered in the 2014 CRVFO final EIS, the 2015 GJFO final EIS, and in this supplemental EIS.

The need for this supplemental EIS is to comply with the settlement agreements in litigation of the CRVFO RMP (*Wilderness Workshop v. BLM*, 16-cv-01822) and subsequent oil and gas leasing in both field offices (*Wilderness Workshop v. BLM*, 18-cv-00987). The need is also to revisit the GJFO RMP as described in the BLM's motion for voluntary remand in litigation associated with the GJFO RMP (*Center for Biological Diversity v. BLM*, 19-cv-02869). The need is also to consider new information and to consider areas with Tribal significance per the Tribal Consultations for Oil and Gas Leasing Handbook, Section 1.3.

Alternatives Considered in the Draft Supplemental EIS

The BLM analyzed two additional alternatives (E and F) in detail in the draft supplemental EIS. The three action alternatives (B through D) and the no action alternative (A) from the 2014 CRVFO and the 2015 GJFO final EISs remain within the range of alternatives considered. Alternative E would close the areas with no-known, low, and medium potential for fluid minerals to

future fluid mineral leasing. Alternative E would also close areas that would be allocated as closed to fluid mineral leasing in alternative C of the 2014 CRVFO and 2015 GJFO final EISs. Alternative E would designate the potential areas of critical environmental concern (ACECs) that were analyzed as closed to leasing in alternative C of the 2014 CRVFO and 2015 GJFO final EISs. Alternative F would close the same areas as alternative E to future fluid mineral leasing, as well as additional areas identified by the public during scoping. Alternative F would designate one FLPMA Section 202 Wilderness Study Area.

The State Director had identified Alternative E as the preferred alternative in the draft supplemental EIS.

Public Involvement

The BLM received a total of 373 letter submissions during the public comment period on the supplemental EIS, including seven letters which contained non-unique, preformulated language that appeared elsewhere in letter submissions. There were 366 unique submissions, from which the BLM derived 407 unique substantive comments.

Most submissions were focused on suggestions for specific alternatives or alternative elements, statements pertaining to the reasonably foreseeable development (RFD) scenario, and detailed input pertaining to various resource topics analyzed in the draft supplemental EIS, such as air quality and climate, social and economic conditions, and special designations.

Changes Between the Draft Supplemental EIS and the Final Supplemental EIS

Based on public comments on the draft supplemental EIS, the BLM has updated the final supplemental EIS and developed several new appendices. The BLM has provided responses to substantive comments in Appendix F. Some comments questioned whether the RFD scenarios remained valid in light of more recent United States Geological Survey (USGS) assessments. In Appendix G, the BLM provided a review of the USGS assessments and a review of recent development trends to explain that the RFDs remain valid. The final supplemental EIS has also been updated with additional information for the socioeconomic and environmental justice impacts analyses. The BLM developed an analysis of the cumulative effects of the simultaneous ongoing planning efforts the BLM is conducting in Colorado, which is included in Appendix J.

Summary of the Proposed RMP

The proposed RMP (Alternative G) in the final supplemental EIS draws from a combination of components from the various alternatives. Alternative G would retain the areas closed to fluid mineral leasing in the 2015 CRVFO and GJFO RMPs (same as alternative B) and would retain the fluid mineral stipulations. Within the CRVFO, areas closed to oil and gas leasing in the 2015 RMP include: all Wilderness Study Areas (WSAs); lands within municipal boundaries; the Upper Colorado River Special Recreation Management Area (SRMA); Blue Hill, Bull Gulch, Deep Creek, and Thompson Creek ACECs; Deep Creek, Flat Tops Addition, Pisgah Mountain, and Thompson Creek lands with wilderness characteristics; Deep Creek and two Colorado River segments found eligible for inclusion in the National Wild and Scenic Rivers System; and all State wildlife areas. Within the GJFO, areas closed to oil and gas leasing in the 2015 RMP include: all WSAs; Bangs, Dolores River, and Palisade Rim SRMAs; Gunnison River Bluffs Extensive Recreation Management Area; Badger Wash, Dolores River Riparian, Juanita Arch, Rough Canyon, Sinbad Valley, The Palisade, and Unaweep Seep ACECs; Bangs, Maverick, and Unaweep lands with wilderness characteristics; Gunnison sage-grouse critical habitat and greater sage-grouse habitat within one mile of an active lek; Grand Junction and Palisade municipal watersheds; and Bureau of Reclamation withdrawal areas.

Alternative G would also close the no-known and low oil and gas development potential areas to future fluid mineral leasing, except for the helium potential area in GJFO, which would remain open to leasing. Medium oil and gas development potential areas would be closed where they are surrounded by low oil and gas development potential areas within the CRVFO. Medium oil and gas development potential areas that are either adjacent to CRVFO high oil and gas development potential areas or surrounded by GJFO high oil and gas development potential areas would remain open for oil and gas leasing. The high potential areas would generally remain open for fluid mineral leasing. Within the high potential and open medium potential areas, there would be areas closed to fluid mineral leasing due to specific resource concerns. Geothermal resources would remain open to leasing, except for those within areas closed to oil and gas leasing due to specific resource concerns, and fluid

mineral stipulations in the approved RMPs would apply.

Alternative G would also close five existing designated ACECs to fluid mineral leasing to protect their relevant and important values, including the Glenwood Springs Debris Flow Hazard Zones and Grand Hogback ACECs in CRVFO and Atwell Gulch, Indian Creek, and Pyramid Rock ACECs in GJFO. Alternative G would expand the existing Grand Hogback ACEC in CRVFO and Pyramid Rock ACEC in GJFO.

Within the CRVFO, Alternative G would designate the Castle Peak Addition lands with wilderness characteristics unit as a wilderness study area and would close to oil and gas leasing the Thompson Divide Withdrawal Area in CRVFO, consistent with the boundary described in Public Land Order No. 7939. Within the GJFO, Alternative G would manage Cone Mountain, Granite Creek, Kings Canyon, Lumsden Canyon, and West Creek units for protection of their wilderness characteristics.

Increased protections for the Roan and Carr Creeks ACECs and Jerry Creek, Mesa/Powderhorn, and Collbran municipal water source areas within the GJFO would be provided through application of No Surface Occupancy stipulations.

Protest of the Proposed RMP

The BLM planning regulations state that any person who participated in the preparation of the RMP and has an interest that will or might be adversely affected by approval of the proposed RMP may protest its approval to the BLM. Protest on the proposed RMP constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an approved RMP.

Instructions for filing a protest with the BLM regarding the proposed RMP may be found online at the website in the **ADDRESSES** section above. All protests must be in writing and mailed to the appropriate address or submitted electronically through the BLM ePlanning project website listed in the **ADDRESSES** section. Protests submitted electronically by any means other than the ePlanning project website or by fax will be invalid unless a hard copy of the protest is submitted.

The BLM will render a written decision on each protest. The decision of the BLM on the protest shall be the final decision of the Department of the Interior. Responses to valid protest issues will be compiled and documented in a Protest Resolution Report made available following the protest resolution online at: [https://](https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports)

www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports. Upon resolution of protests, the BLM will issue a Record of Decision and Approved RMP.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5)

Douglas J. Vilsack,
BLM Colorado State Director.

[FR Doc. 2024–13452 Filed 6–20–24; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CA_FRN_MO4500179115]

Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Redding and Arcata Field Offices Northwest California Integrated Resource Management Plan, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) for the Redding Field Office and Arcata Field Office Northwest California Integrated Resource Management Plan and by this notice is announcing the start of a 30-day protest period of the Proposed RMP.

DATES: This notice announces a 30-day protest period to the BLM on the Proposed RMP beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) of the Proposed RMP/Final EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays. Protests must be postmarked or electronically submitted on the BLM's ePlanning site during the 30-day protest period.

ADDRESSES: The Proposed RMP and Final EIS is available on the BLM ePlanning project website at <https://eplanning.blm.gov/eplanning-ui/project/2012803/510>. Documents pertinent to this proposal may be examined online at <https://eplanning.blm.gov/eplanning-ui/project/2012803/510> and at the Arcata Field Office and Redding Field Office.

Instructions for filing a protest with the BLM for the Proposed Northwest California Integrated Resource Management Plan can be found at <https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest> and at 43 CFR 1610.5–2. The address for filing a protest is: the ePlanning website listed above or BLM Director, Attention: Protest Coordinator (HQ210), Denver Federal Center, Building 40 (Door W–4), Lakewood, CO 80215.

FOR FURTHER INFORMATION CONTACT: Victoria Callahan, Planning and Environmental Specialist, telephone: (707) 825–2315; address: Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, California 95521–4573; email: vslaughter@blm.gov or Chad Endicott, Planning and Environmental Specialist, telephone: (530) 224–2140; address: Bureau of Land Management, Redding Field Office, 6640 Lockheed Drive, Redding, CA 96002–9003; email: cendicott@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Callahan or Mr. Endicott. 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: This document provides notice that the BLM California State Director has prepared a Proposed RMP and Final EIS and provides information announcing the availability on the Proposed RMP and Final EIS. The planning area is in Mendocino, Humboldt, Del Norte, Siskiyou, Trinity, Shasta, Tehama, and Butte counties, California, and encompasses approximately 382,200 acres of public land and approximately 295,100 subsurface acres of Federal mineral estate.

Current Arcata Field Office and Redding Field Office management is identified in their respective 1992 and 1993 RMPs. All existing management as described in the Arcata Field Office and Redding Field Office approved RMPs remains in effect until and unless

replaced or modified by the Northwest California Integrated Resource Management Plan Approved RMP and Record of Decision. Separate management plans guide BLM management for National Monuments, National Conservation Areas, and similar designations within the planning area.

Other non-BLM-administered lands within the planning area include the Six Rivers, Shasta-Trinity, Klamath, Lassen, Plumas, and Mendocino National Forests; Lassen Volcanic and Redwoods National Parks; the Whiskeytown and Smith River National Recreation Areas; the Sacramento Castle Rock and Humboldt Bay National Wildlife Refuges; and Black Butte Lake (managed by the US Army Corps of Engineers). In addition, Tribal lands and reservations for 31 federally recognized Native American Tribes fall within the planning area, and the BLM-administered lands include ancestral territories, sacred sites, gathering areas, and other places important to Tribes. The Bureau of Reclamation manages numerous land holdings and facilities within the planning area, including six hydroelectric dams and lands that are co-managed with the BLM under a memorandum of agreement with the Redding Field Office near the Shasta Dam and Keswick Reservoir. In addition to federally managed lands, there are an extensive number of State of California-managed beaches, parks, wildlife areas, and recreation areas in the planning area. The Arcata Field Office and Redding Field Office have taken these non-BLM-administered lands into account in this planning effort.

In preparing the Proposed RMP, the BLM evaluated in detail four alternatives in the Final EIS, including the No Action Alternative (Alternative A) and three action alternatives (Alternatives B, C, and D) that were based on known resource use and issues in the planning area. Alternative B emphasizes resource connectivity and resiliency. Under Alternative B, the BLM would manage for multiple use and maintenance of corridors of relatively undeveloped areas to provide for connectivity of wildlife and fisheries habitat, and to serve as a resilient refuge from ongoing development and climate change. This, in turn, would provide recreational and aesthetic resources for public enjoyment. Alternative C emphasizes community access and development. Under Alternative C, the BLM would also manage for multiple use and public enjoyment with an emphasis on recreational opportunity and access, travel and utility opportunities, and social and economic

benefits. Alternative D aims to create opportunities for resource uses, such as recreation, motorized and mechanized travel, and livestock grazing, while maintaining ecological function and meeting land capability to protect habitat connectivity. All action alternatives would enable the BLM to manage for multiple use and long-term sustainability and provide for public use and enjoyment of BLM-administered lands.

These action alternatives are analyzed against the No Action Alternative (current management) and comply with the BLM's management responsibilities and regulatory requirements.

The State Director has identified Alternative D as the preferred alternative. Alternative D was found to best meet the State Director's planning guidance and, therefore, was selected as the preferred alternative. By including components of all alternatives considered, Alternative D strikes a balance between the action alternatives to provide community access and development, while ensuring wildlife connectivity and ecosystem resilience.

Public review of the Draft Northwest California Integrated RMP and EIS began on September 29, 2023, and ended on December 28, 2023. The BLM held two virtual and two in-person public meetings across the planning area during the 90-day comment period. Comments received on the Draft RMP and EIS were considered and incorporated in the Proposed RMP and Final EIS as appropriate. Public and cooperating agency comments and further internal BLM review resulted in the addition of clarifying text and refinement of Alternative D, including, but not limited to, updated suitability determinations for six Wild and Scenic Rivers segments, and revised goals, objectives, and management direction for the Riparian Management Areas.

Protest of the Proposed RMP

The BLM planning regulations state that any person who participated in the preparation of the RMP and has an interest that will or might be adversely affected by approval of the Proposed RMP may protest its approval to the BLM Director. Protest on the Proposed RMP constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an approved RMP. Instructions for filing a protest regarding the Proposed RMP with the BLM Director may be found online at <https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest> and at 43 CFR 1610.5–2. All protests must be

in writing and mailed to the appropriate address or submitted electronically through the BLM ePlanning project website, as set forth in the **ADDRESSES** section earlier. Protests submitted electronically by any means other than the ePlanning project website will be invalid unless a protest is also submitted as a hard copy. The BLM Director will render a written decision on each protest. The Director's decision shall be the final decision of the Department of the Interior. Responses to valid protest issues will be compiled and documented in a Protest Resolution Report made available following the protest resolution online at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>. Upon resolution of protests, the BLM will issue a Record of Decision (ROD) and Approved RMP.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5)

Gordon R. Toevs,
Acting State Director.

[FR Doc. 2024–13463 Filed 6–20–24; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–38140;
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 June 8, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by July 8, 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 June 8, 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.

CALIFORNIA

San Diego County

Arnold and Choate's Addition—North Florence Heights Historic District, Roughly bounded by Stephens Street, Eagle Street, Washington Place/Fort Stockton Drive, and Plumbosa Way/Barr Avenue, San Diego, SG100010531

KANSAS

Douglas County

Ninth Street Missionary Baptist Church, 847 Ohio Street, Lawrence, SG100010526

LOUISIANA

Iberville Parish, Towles-Musso House, 775 River Road, St. Gabriel, SG100010517

Lafayette Parish, Travelodge Motel, 1101 West Pinhook Road, Lafayette, SG100010518

Orleans Parish, St. Claude General Hospital, 3419 St. Claude Avenue, New Orleans, SG100010515

Ouachita Parish, Price's Beauty Shop, 2101 Grammont Street, Monroe, SG100010514

Rapides Parish, Shiloh Baptist Church, 930 Washington Street, Alexandria, SG100010516

OHIO

Butler County

Cincinnati, Hamilton, and Dayton Railroad Station, 409 Maple Avenue, Hamilton, SG100010527

Hamilton County

Kerper and Melbourne Terrace Apartments, (Apartment Buildings in Ohio Urban Centers, 1870–1970 MPS), 3066–3092 Kerper Avenue and 3066–3084 Melbourne Terrace, Cincinnati, MP100010530

OKLAHOMA

Pushmataha County

Frisco Railroad Depot, NW corner, intersection of Pine Street and Depot Road, Clayton, SG100010524

PENNSYLVANIA

Berks County

Kutztown Silk Mill, 40 Willow Street, Kutztown, SG100010535

UTAH

Uintah County

Wong Sing Warehouse, 7267 E US–40/191, Fort Duchesne, SG100010522

Weber County

Bramwell, George Walter Jr. and Isabelle, House, 4442 W 2350 North, Plain City, SG100010536

WASHINGTON

King County

Continental Hotel, 315 Seneca Street, Seattle, SG100010525

WISCONSIN

Fond Du Lac County

Little White Schoolhouse, 1074 West Fond du Lac Street, Ripon, SG100010533

An owner objection received for the following resource(s):

CONNECTICUT

Fairfield County

Church Hill Historic District, 293 Elm St; 2 Locust Ave; 4–61 Main St; 183 Oenoke Lane; 5–40 Oenoke Ridge; 0–63 Park Street and Extension; 18–130 and 132 Seminary St; 7–88 St. John Place, New Canaan, SG100010529

A request for removal has been made for the following resource(s):

GEORGIA

Spalding County

Hunt House, 232 S 8th St., Griffin, OT73002142

Additional documentation has been received for the following resource(s):

MINNESOTA

Koochiching County

Oberholtzer, Ernest C., Rainy Lake Islands Historic District (Additional

Documentation), Mallard, Hawk and Crow Islands in Rainy Lake, Ranier vicinity, AD00000570

OHIO

Hamilton County

Union Baptist Cemetery (Additional Documentation), 4933 Cleves Warsaw Pike, Cincinnati, AD02001057

TENNESSEE

Williamson County

Winstead Hill (Additional Documentation), 4023 Columbia Avenue, Franklin vicinity, AD74001930

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

Chief, National Register of Historic Places/
National Historic Landmarks Program.

[FR Doc. 2024–13685 Filed 6–20–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0030]

Notice of Availability of a Draft Environmental Assessment for Commercial Wind Lease Issuance, Site Characterization Activities, and Site Assessment Activities on the Atlantic Outer Continental Shelf in the Gulf of Maine offshore the States of Maine and New Hampshire and the Commonwealth of Massachusetts

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the draft environmental assessment (EA) for the potential issuance of commercial wind energy leases in the Gulf of Maine offshore the States of Maine and New Hampshire and the Commonwealth of Massachusetts. The draft EA analyzes the potential environmental impacts of the site characterization and site assessment activities that are expected to take place if a commercial lease is issued. This notice of availability (NOA) announces the start of the public review and comment period, as well as the dates and times for public meetings on the draft EA. After BOEM holds the public meetings and addresses public comments submitted during the review period, BOEM will publish a final EA. The EA will inform BOEM's decision about whether it will issue commercial wind energy leases.

DATES: BOEM must receive your comments no later than July 22, 2024. BOEM's virtual public meetings will be held on the following dates and times (Eastern Time) indicated:

- Monday July 8, 2024; 1:00 p.m.
- Wednesday July 10, 2024; 5:00 p.m.

Registration for the virtual public meetings is required and may be completed at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. Meeting information will be sent to registrants via their email address provided during registration.

ADDRESSES: The draft EA and detailed information about proposed commercial leases can be found on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. Comments can be submitted in any of the following ways:

- Orally or in written form during any of the public meetings identified in this NOA.
- In written form by U.S. Postal Service or other delivery service: Send your comments and information to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, Mail Stop VAM–OREP, Sterling, VA 20166.

• Through the regulations.gov web portal: Navigate to <http://www.regulations.gov> and search for Docket No. BOEM–2024–0030. Click on the “Comment” button below the document link. Enter your information and comment, then click “Submit Comment”.

For more information about submitting comments, please see “*Information on Submitting Comments*” under the **SUPPLEMENTARY INFORMATION** heading below.

FOR FURTHER INFORMATION CONTACT:

Brandi Sangunett, BOEM, Environment Branch for Renewable Energy, 45600 Woodland Road, Mail Stop VAM–OREP, Sterling, VA 20166, (703) 787–1015 or brandi.sangunett@boem.gov.

SUPPLEMENTARY INFORMATION:

Proposed Action: The draft EA analyzes the proposed action, which is the potential issuance of commercial wind energy leases in the Gulf of Maine offshore the States of Maine and New Hampshire and the Commonwealth of Massachusetts, and the no action alternative. The EA will consider project easements and grants for subsea cable corridors associated with leasing. The EA will also consider the potential environmental impacts associated with site characterization activities (*i.e.*, biological, archaeological, geological, and geophysical surveys and core samples) and site assessment activities

(*i.e.*, installation of meteorological buoys) that are expected to take place following lease issuance. The EA's proposed action does not include the installation of meteorological towers because developers have expressed a preference for the use of meteorological buoys to collect data. In addition to the no-action alternative, other alternatives may be considered, such as exclusion of certain areas.

BOEM will use responses to this notice and the EA public input process to satisfy the public involvement requirements of the National Historic Preservation Act (NHPA), as provided in 36 CFR 800.2(d)(3). Specific to the NHPA, BOEM seeks information from the public on the identification and assessment of potential impacts to cultural resources and historic properties that might be impacted by possible wind energy-related leasing, site characterization, and site assessment activities in the final wind energy area (WEA) in the Gulf of Maine that BOEM identified in a memorandum, dated March 13, 2024, which is available on BOEM's website <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>.

BOEM will also use the analyses in the EA to support its compliance with other environmental statutes (*e.g.*, Coastal Zone Management Act, Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, and Marine Mammal Protection Act).

Wind energy leases do not authorize any activities on the Outer Continental Shelf (OCS). Instead, leases grant lessees the exclusive right to submit plans for BOEM's consideration and approval. Prior to deciding whether to approve any plan for the construction and operation of commercial wind energy facilities, BOEM will prepare a plan-specific environmental analysis and will comply with all consultation requirements. Therefore, this EA will not consider the construction and operation of any commercial wind energy facilities in the final WEA.

BOEM has decided to prepare an EA for this proposed action in order to assist the agency's planning and decision-making (40 CFR 1501.5(b)).

Availability of the draft EA: The draft EA and associated information are available on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. If you require a digital copy on a flash drive or paper copy, BOEM will provide one upon request, if supplies are available. You may request a flash drive or paper copy of the draft EA by contacting

Brandi Sangunett at (703) 787–1015 or brandi.sangunett@boem.gov.

Cooperating Agencies: The following four Federal agencies participated as cooperating agencies in the preparation of the draft EA: the Bureau of Safety and Environmental Enforcement, National Marine Fisheries Service, U.S. Army Corps of Engineers, and U.S. Coast Guard.

Information on Submitting Comments

a. Freedom of Information Act

BOEM will protect privileged or confidential information that you submit when required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly label it and request that BOEM treat it as confidential. BOEM will not disclose such information if BOEM determines under 30 CFR 585.114(b) that it qualifies for exemption from disclosure under FOIA. Please label privileged or confidential information “Contains Confidential Information” and consider submitting such information as a separate attachment.

BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such privileged or confidential information. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

b. Personally Identifiable Information

BOEM discourages anonymous comments. Please include your name and address as part of your comment. You should be aware that your entire comment, including your name, address, and any other personally identifiable information (PII) that you include, may be made publicly available. All comments from identified individuals, businesses, and organizations will be available for public viewing on [regulations.gov](https://www.regulations.gov). Note that BOEM will make available for public inspection all comments, in their entirety, submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

For BOEM to consider withholding your PII from disclosure, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure

of information, such as embarrassment, injury, or other harm. Even if BOEM withholds your information in the context of this notice, your comment is subject to FOIA. If your comment is requested under FOIA, BOEM will withhold your information only if it determines that one of FOIA’s exemptions to disclosure applies. Such a determination will be made in accordance with the Department’s FOIA regulations and applicable law.

c. Section 304 of the NHPA (54 U.S.C. 307103(a))

After consultation with the Secretary, BOEM is required to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under section 304 of NHPA as confidential.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen Baker,

*Chief, Office of Renewable Energy Programs,
Bureau of Ocean Energy Management.*

[FR Doc. 2024–13687 Filed 6–20–24; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Source Imaging Consortium, Inc.

Notice is hereby given that on March 18, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Open Source Imaging Consortium, Inc. (“Open Source Imaging Consortium”) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Centre Hospitalier Universitaire de Liege, Liege, BELGIUM; and Medical VR, Nieuw-Vennep, THE NETHERLANDS, have been added as parties to this venture.

No other changes have been made in either the membership or the planned activity of the group research project. Membership in this group research project remains open, and Open Source

Imaging Consortium intends to file additional written notifications disclosing all changes in membership.

On March 20, 2019, Open Source Imaging Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 12, 2019 (84 FR 14973).

The last notification was filed with the Department on December 29, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024 (89 FR 8243).

Suzanne Morris,

*Deputy Director Civil Enforcement
Operations, Antitrust Division.*

[FR Doc. 2024–13598 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on May 2, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), The Open Group, L.L.C. (“TOG”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Micro Devices, Inc., San Jose, CA; Air Combat Command (USAF), Joint Base Langley-Eustis, VA; ASRock Industrial Computer Corporation, Taipei City, TAIWAN; Byanat LLC, Seeb, SULTANATE OF OMAN; CISO Coach Pty Ltd, Broadbeach Waters, AUSTRALIA; D3Clarity, Inc., Austin, TX; Fortinet, Inc., Sunnyvale, CA; Insulated Wire Inc., Bayport, NY; Johns Hopkins University Applied Physics Laboratory, Laurel, MD; Kovrr, Inc., Wilmington, DE; MagicOrange Group Limited, London, UNITED KINGDOM; ManagingDigital.com, Alton, UNITED KINGDOM; New Horizons Perú S.A., Miraflores, PERU; NTPC Limited, New Delhi, INDIA; Omnetics Connector Corporation, Minneapolis, MN; Peraton Labs Inc., Basking Ridge, NJ; Petrophysical Solutions, Inc., Houston, TX; PIC Wire & Cable, Inc., Waukesha, WI; Rubix For Information Technology, Riyadh, SAUDI ARABIA; Teledyne

Storm Microwave, Woodridge, IL; and Vår Energi ASA, Sandnes, NORWAY, have been added as parties to this venture.

Also, Alberta Health Services, Alberta, CANADA; Alfahive, Inc., Mississauga, CANADA; Analog Devices, Inc., Chelmsford, MA; C3.ai, Inc., Redwood City, CA; digitWin, s.r.o., Bratislava, SLOVAKIA; E-Panzer Security Consulting, Inc., Southlake, TX; Eaton Corporation, Syracuse, NY; ETNIC—Fédération Wallonie-Bruxelles, Bruxelles, BELGIUM; Gainwell Technologies LLC, Conway, AR; II-VI Aerospace & Defense, Inc., Murrieta, CA; INEOS Offshore BCS Limited, London, UNITED KINGDOM; Interica Ltd., Lewes, UNITED KINGDOM; IPT Global, LLC, Houston, TX; Juniper Capital Advisors, L.P.; Houston, TX; Kraken IM, Middlesbrough, UNITED KINGDOM; Lead Dog Technologies, Lindon, UT; Makel Engineering, Inc., Chico, CA; MongoDB, New York, NY; NetApp, Inc., Sunnyvale, CA; Quantic Electronics, LLC, East Providence, RI; QuEST Global Services Pte. Ltd., Singapore, SINGAPORE; Revo Testing Technologies LLC, Houston, TX; Sandvik IT Services AB, Sandviken, SWEDEN; SARL DIGIWAVES, Ouled Fayet, ALGERIA; Softdel Systems Private Limited, Pune, INDIA; SparkCognition, Austin, TX; Supermicro, San Jose, CA; Sval Energi AS, Stavanger, NORWAY; T-EA-M Consulting Ltd., Auckland, NEW ZEALAND; TIBCO Software, Inc., Palo Alto, CA; Tracy A Barkhimer Acquisition Strategies & Consulting, LLC, White Salmon, WA; and Wellsite Software LLC, Houston, TX, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on March 1, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26924).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13650 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—TM Forum, A New Jersey Non-Profit Corporation

Notice is hereby given that, on April 19, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), TM Forum, A New Jersey Non-Profit Corporation (“The Forum”) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Itochu Techno Solutions Corporation, Tokyo, JAPAN; Aira Technologies Inc, Saratoga, CA; Binom d.o.o., Zagreb, CROATIA; AllPoints Fibre, Reading, UNITED KINGDOM; GIP Exyr GmbH, Mainz, GERMANY; Mobicom Corporation, Ulaanbaatar City, MONGOLIA; Netradar, Espoo, FINLAND; Inceptionals, Hamilton, NEW ZEALAND; Xeotech Ltd., Watford, UNITED KINGDOM; Case On IT SL (MedUX), Madrid, SPAIN; HAAMI Digital Consultancy, Dubai, UNITED ARAB EMIRATES; Medulla Consulting LLC, Hallandale Beach, FL; Calvi Business Software B.V., Tilburg, THE NETHERLANDS; Telenity Iletisim Sistemleri San. ve Tic. A.S., Yesilköy Sb. Mah. C Blok Sk. C Blok No: 1, TURKEY; Netadmin System i Sverige AB, Linköping, SWEDEN; Transform & Trust Advisory Ltd, Karkkila, FINLAND; The Borough of Manhattan Community College, New York, NY; Sogetel Inc, Nicolet, CANADA; Nespon, Grapevine, TX; Dell Technologies Inc., Round Rock, TX; Ooredoo Qatar, Doha, QATAR; Innova Solutions Inc, Duluth, GA; and Elaine Maher Distinguished Fellow, Piscataway, NJ, have been added as parties to this venture.

Also, Aesopia, Centurion, SOUTH AFRICA; Akamanta, Fort Lauderdale, FL; ARABIAN NETWORK FOR PROJECTS LTD CO, Riyadh, SAUDI ARABIA; Atos, Bezons Cedex, FRANCE; avataa, Berlin, GERMANY; Beijing BOCO Inter-Telecom Technology Co., Ltd, Beijing, PEOPLE’S REPUBLIC OF CHINA; CACI Ltd, London, UNITED KINGDOM; Carlo Ratti Associati, Torino, ITALY; Centrum Rozwoju Szkol Wyzszych Teb Akademia SP. Z O.O., Poznan, POLAND; Digital Private Limited, Hyderabad, INDIA; Epam

Systems Ltd, Newtown, PA; Expresso Telecom Group, Dakar, SENEGAL; IQ Hive, Auckland, NEW ZEALAND; Istituto di Tecnologie della Comunicazione, Informazione e Percezione (TeCIP) Scuola Superiore Sant’Anna, Pisa, ITALY; MCH Advies & Automatisering B.V., Nieuwegein, THE NETHERLANDS; Meiji University, Tokyo, JAPAN; Metronet, Evansville, IN; Norconsult Telematics, Riyadh, SAUDI ARABIA; ONIS Solutions, San Pedro Garza García, MEXICO; RoboCorp, San Francisco, CA; Salar LLC FZE, Dubai, UNITED ARAB EMIRATES; Scorecard Systems Inc., Stouffville, CANADA; Skyvera, Austin, TX; STC Solutions, Riyadh, SAUDI ARABIA; Tupl, Bellevue, WA; Universidade do Estado de Santa Catarina—UDESC Centro de Ciencias Tecnológicas—CCT, Joinville-SC, BRAZIL; University of Nicosia—Department of Electrical & Computer Engineering, Nicosia, CYPRUS; Upp Corporation Limited, London, UNITED KINGDOM; and WolfTech, Eindhoven, THE NETHERLANDS, have withdrawn as parties to this venture.

Additionally, the following members have changed their names: Inmarsat Global Limited to Viasat, Inc., Carlsbad, CA; B-YOND to Reailize a B-Yond Company, Frisco, TX; Digia Plc to Digia Finland Oy, Basware, FINLAND; Altibox AS to Lyse Tele AS, Stavanger, NORWAY; CSG to CSG Systems, Inc., Greenwood Village, CO; Altron Systems Integration to Altron Digital Business, Gauteng, SOUTH AFRICA; Aria-Networks to AriaNetworks, Bath, UNITED KINGDOM; and GDi LLC to GDi CMT Global LLC, Zagreb, CROATIA.

No other changes have been made to either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on January 17, 2024. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26924).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13622 Filed 6–20–24; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—1EdTech Consortium, Inc.

Notice is hereby given that, on April 29, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), 1EdTech Consortium, Inc. (“1EdTech Consortium”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amelay Corporation S.A (POK), Montevideo, URUGUAY; BluPods Inc. (DBA Actionaly), Madera, CA; Classera For Smart Learning, Jeddah, SAUDI ARABIA; Copyleaks, Stamford, CT; Edmond Public Schools, Edmond, OK; Jefferson County Public Schools, Louisville, KY; Laerdal Labs DC, Washington, DC; and Switch Energy Alliance, Austin, TX, have been added as parties to this venture.

Also, California Dept of Ed, Sacramento, CA; Kaltura, New York, NY; Medway Public Schools, Medway, MA; Owensboro Public Schools, Owensboro, KY; Friday Institute (North Carolina State University) The Friday Institute for Educational Innovation, Raleigh, NC; Nat’l eLearning Center (The National eLearning Center), Riyadh, SAUDI ARABIA; Zoom, San Jose, CA; North Dakota Information Tech (North Dakota Information Technology), Bismarck, ND; Institute for Information Management & Communication, Kyoto University, Kyoto, JAPAN; and New South Wales Dept of Ed, Sydney, AUSTRALIA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 1EdTech Consortium intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, 1EdTech Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on February 6, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26927).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13646 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Satellite Services Association

Notice is hereby given that, on April 26, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Mobile Satellite Services Association (“MSSA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: FocusPoint International, Inc., Sunrise, FL; Ligado Networks LLC, Reston, VA; Omnispace LLC, McLean, VA; Terrestar Solutions Inc., Outremont, CANADA; Viasat, Carlsbad, CA; Terran Orbital, Boca Raton, FL; eSAT Global, Inc., Solana, CA; and Al Yah Satellite Communications Company PJSC, Abu Dhabi, UNITED ARAB EMIRATES. The general area of MSSA’s planned activity is to (i) support open interoperable architectures and standards for use in multi-orbit satellite systems, ground infrastructure, and end user equipment; (ii) define one or more specifications, best practices, reference architectures, implementation guidelines, and standardized agreements (collectively, “Deliverables”) to promote the adoption of satellite-to-terrestrial mobile telecommunication services and enhance seamless global roaming

between terrestrial and multi-orbit satellite networks; (iii) achieve scale through improved coordination and cooperation mechanisms among mobile satellite services (“MSS”) operators to maximize the utility of already available and licensed global MSS spectrum in nations desiring advanced non-terrestrial networks (“NTN”) services; (iv) maximize scarce multi-orbit space and spectrum resources and employ sustainable network design and operation to enable affordable advanced NTN services; (v) advocate for policies, laws and regulations that advance the purposes of the Venture, including those related to rational, efficient, safe and sustainable uses of spectrum and orbits, and based on, where appropriate, objective and quantitative metrics regarding all objects in orbit around Earth; (vi) provide a neutral forum to facilitate collaboration among members of the Venture for coordination of third generation partner projects (3GPP) and other international standards activities; (vii) support the integration of space networks into national telecommunications infrastructure via trusted local partners and within sovereign regulatory and national security frameworks; (viii) provide mechanisms for individual nations to participate in the new space economy via open standards and architectures and via the space networks supported by the Venture; (ix) create one or more trademarks to raise awareness of commercial opportunities and trust in the marketplace; (x) educate the industry, media, and analyst and operator communities on the value, benefits, and applications for the Venture’s Deliverables; (xi) foster competition in the marketplace in compliance with all applicable antitrust laws and regulations; and (xii) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above. Membership in MSSA remains open and MSSA intends to file additional written notifications disclosing all changes in membership.

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13647 Filed 6–20–24; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Institute of Electrical and Electronics Engineers, Inc.**

Notice is hereby given that, on April 11, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), The Institute of Electrical and Electronics Engineers, Inc. (“IEEE”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 32 new standards have been initiated, and 3 existing standards are being revised. More detail regarding these changes can be found at: <https://standards.ieee.org/about/sasb/sba/21mar2024/>.

The following pre-standards activities associated with IEEE Industry Connections Activities were launched or renewed: <https://standards.ieee.org/about/bog/cag/approvals/april2024/>.

On September 17, 2004, the IEEE filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on February 20, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26922).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13618 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—R Consortium, Inc.**

Notice is hereby given that, on April 22, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), R Consortium, Inc. (“R Consortium”) has filed written notifications simultaneously with the

Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Arcus Biosciences Inc., Hayward, CA; and Sanofi, Bridgewater, NJ, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and R Consortium intends to file additional written notifications disclosing all changes in membership.

On September 15, 2015, R Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 2, 2015 (80 FR 59815).

The last notification was filed with the Department on January 29, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 2024 (89 FR 18438).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13629 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical Technology Enterprise Consortium**

Notice is hereby given that, on April 2, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Medical Technology Enterprise Consortium (“MTEC”), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 10x National Security, Aldie, VA; 4WEB, Inc., Frisco, TX; Abram Scientific, Inc., South San Francisco, CA; Admetsys Corp., Boston, MA; Advanced RNA Vaccine Technologies, Inc., North Bethesda, MD; Aergility Corp., Dunnellon, FL; Airway

Shield S.L., Santander Cantabria, Spain; AmacaThera, Inc., Toronto, CANADA; Ampel LLC, Charlottesville, VA; Anthos Group, Inc., Torrance, CA; Apos US Management, Inc., New York, NY; Asynchealth, Pebble Beach, CA; Baebies, Inc., Durham, NC; Best Practice Associates LLC dba Tria Federal, Arlington, VA; Bio-Change, Ltd., Yokneam, ISRAEL; Black Fur Biomedical, Tucson, AZ; Blue Spark Technologies, Inc., Westlake, OH; Board of Regents, Nevada System of Higher Education on behalf of the University of Nevada, Las Vegas, Las Vegas, NV; Board of the Trustees of the Colorado School of Mines, Golden, CO; Cadet NM, Inc., Albuquerque, NM; Cambridge Research & Development, Inc., Nashua, NH; Canaery, Alachua, FL; Coldplasmatech GmbH, Greifswald, GERMANY; ComeBack Mobility, Inc., New York, NY; CoolSpine LLC, Woodbury, CT; Cristae Consulting LLC, Moorestown, NJ; Directed Systems, Ltd., Cambridge, UNITED KINGDOM; Elucidern, Inc., San Diego, CA; ExThera Medical Corp., Martinez, CA; EyeYon Medical, Ltd., Ness Ziona, ISRAEL; Florida Institute of Technology, Melbourne, FL; FluidForm, Inc., Waltham, MA; Gigantor Technologies, Inc., Melbourne Beach, FL; Global Virtual Training LLC, New York, NY; GoodCap Pharmaceuticals, Toronto, CANADA; Hatch Product Development LLC, Waukegan, IL; Henley Ion LLC, New Orleans, LA; Idea Meds, Inc., New York, NY; Immense Dynamics, Inc., Bremerton, WA; Innovative Health Sciences LLC, Chester, NY; Innovosens AB, Inc., Wilmington, DE; Interoperability Institute LLC, Lansing, MI; JustBard Technologies LLC, Brunswick, MD; KaloCyte, Inc., Baltimore, MD; LaCire LLC, Alexandria, VA; Lankenau Institute for Medical Research, Wynnewood, PA; Loma Linda University, Loma Linda, CA; Lucid Reality Labs LLC, Miami, FL; LumaFlo, Inc., Detroit, MI; Lundquist Institute for Medical Innovation at Harbor-UCLA Medical Center, Torrance, CA; Medasense Biometrics, Ltd., Ramat Gan, ISRAEL; MediCarbone, Inc., Tuscon, AZ; Mitochon Pharmaceuticals, Inc., Blue Bell, PA; Modular Matter, Inc., Abingdon, MD; Moonrise Medical, Inc., Oakville, CANADA; Noleus Technologies, Inc., Houston, TX; Nou Systems, Inc., Huntsville, AL; Noxy Health Products, Inc., Anaconda, MT; Oak Grove Technologies, Raleigh, NC; Obsidian Solutions Group, Fredericksburg, VA; Omnix, Inc., San Francisco, CA; Osetomics LLC, Glen Mills, PA; Osteolyse, Inc., Soda Springs, CA; Owl Therapeutics, San Antonio,

TX; PathKeeper Surgical, Ltd., Kfar Saba, ISRAEL; PyrAmes, Inc., Cupertino, CA; Qidni Labs, Inc., Buffalo, NY; Rafa Laboratories, Ltd., Jerusalem, ISRAEL; ReBlood Rx LLC, San Diego, CA; Regerna Therapeutics, Inc., New York, NY; Regulatory Quality Management Information Source, Inc., Amesbury, MA; Remedor Biomed Ltd., Nof Hagalil, ISRAEL; Renovera, PBC, West Lafayette, IN; Respair, Inc., Pittsburgh, PA; RevBio, Inc., Lowell, MA; Rion, Inc., Rochester, MN; Saforax Health, Haifa, ISRAEL; SCHOTT North America New Ventures, Duryea, PA; SenseVOC LLC, Littleton, CO; Serda B.V., Amsterdam, THE NETHERLANDS; SMSbiotech, Inc., San Marcos, CA; Stanford University, Stanford, CA; STEER Tech LLC, Annapolis Junction, MD; Synapstim Ltd., Herzliya, ISRAEL; Temple University—Of The Commonwealth System of Higher Education, Philadelphia, PA; The Hospital for Special Surgery Fund, Inc., New York, NY; The Institute for Integrative and Innovative Research at the University of Arkansas, Fayetteville, Fayetteville, AK; Tietronix Software, Inc., Houston, TX; TYBR Health, Inc., Houston, TX; Unit Medical Devices, Ltd., Sderot, ISRAEL; University of Arkansas, Little Rock, Little Rock, AR; University of Cincinnati, Cincinnati, OH; Valiant Harbor International LLC, Bethesda, MD; Vasomune Therapeutics US, Inc., Raleigh, NC; Velico Medical, Inc., Beverly, MA; ViBo Health, Inc., Los Angeles, CA; Videra Health, Inc., Orem, UT; Vir Biotechnology, San Francisco, CA; ViyaMD, Inc., Marina del Rey, CA; Western Michigan University Homer Stryker M.D. School of Medicine, Kalamazoo, MI; and XO Armor Technologies, Inc., Auburn, AL have been added as parties to this venture.

Also, 2C4 Technologies, Inc., San Antonio, TX; AbViro LLC, Bethesda, MD; Acer Therapeutics, Inc., Newton, MA; Advanced Surgical Retractor Systems, Inc., Shavano Park, TX; Allied Technologies and Consulting LLC, Frederick, MD; Amend Surgical, Inc., Alachua, FL; American Military Families Action Network, Tacoma, WA; American Type Culture Collection, Manassas, VA; AMK Technologies of Ohio LLC, Mount Vernon, OH; Anchor Therapy Clinic, Sacramento, CA; Applied Research Center, Aiken, SC; Arcascope, Inc., Arlington, VA; Aruna Bio, Inc., Athens, GA; Asante Bio, Tampa, FL; Atorvia Health Technologies, Inc., Ottawa, Ontario, CANADA; Avel eCare LLC, Sioux Falls, SD; Axioforce, Inc., St. Louis, MO; Bio1 Systems, Inc., San Carlos, CA; BioAge Labs, Inc., Richmond, CA; Biobeat

Technologies, Ltd., Petach Tikva, ISRAEL; Bionet Sonar, Inc., Burlington, MA; BiotechPharma Corp., Severna Park, MD; Board of Trustees of the University of Illinois, Champaign, IL; Bodies Done Right, Mayfield Village, OH; California Service Dog Academy, Visalia, CA; Capital Factory Properties LLC, Austin, TX; Channel Clinical Solutions LLC, Raleigh, NC; Children's Hospital Los Angeles, Los Angeles, CA; ClearCoast USA LLC, St. Petersburg, FL; Concurrent Technologies Corp., Johnstown, PA; Conseqta Technology, Arlington, VA; Continuous Precision Medicine, Research Triangle Park, NC; CSP Technologies, Inc., Auburn, AL; CTD Group LLC, Vashon, WA; Daxor Corp., Oak Ridge, TN; Decisive Point Group, Beacon, NY; DermiSense, Inc., Richmond, VA; DHR Health Institute for Research and Development, Edinburg, TX; Dog Tag Buddies, Billings, MT; D-Prime LLC, McLean, VA; Drexel University, Philadelphia, PA; Eagle Global Scientific LLC, San Antonio, TX; Endoluxe, Inc., Dunwoody, GA; Endomedix, Inc., Montclair, NJ; Engineering & Computer Simulations, Inc., Orlando, FL; Entasis Therapeutics, Waltham, MA; FireFlare Games LLC, Cheyenne, WY; Float Lab Technologies, Inc., Venice, CA; Foothold Labs, Inc., Olathe, KS; Gel4Med, Lowell, MA; GelMEDIX, Inc., Newton, MA; GelSana Therapeutics, Inc., Aurora, CO; Global Resonance Technologies LLC, Shelburne, VT; Grand Valley State University, Grand Rapids, MI; Hafion, Inc., Ann Arbor, MI; Hope 4 You Global LLC, Lowell, AR; Hubly, Inc. dba Hubly Surgical, Evanston, IL; Human Systems Integration, Inc., East Walpole, MA; Icahn School of Medicine at Mount Sinai, New York, NY; ICON Government and Public Health Solutions, Hinckley, OH; Idion, Inc., Darien, CT; iFyber LLC, Ithaca, NY; Incell Corp. LLC, San Antonio, TX; IOTAI, Inc., Fremont, CA; Jana Care, Inc., Watertown, MA; JC3 LLC, Rockbridge Baths, VA; Joint Research and Development, Inc., Stafford, VA; Jurata Thin Film, Inc., Chapel Hill, NC; K9s for Warriors, Ponte Vedra Beach, FL; KBR, Beavercreek, OH; Kerecis, Ltd., Isaffordur, ICELAND; Longhorn Vaccines and Diagnostics LLC, Bethesda, MD; Lynntech, Inc., College Station, TX; Manzanita Pharmaceuticals, Inc., Woodside, CA; Maravai Life Sciences, San Diego, CA; MCPC, Cleveland, OH; Mechano Therapeutics LLC, Philadelphia, PA; MediView XR, Inc., Cleveland, OH; Medtronic, Minneapolis, MN; MeMed US, Inc., Milpitas, CA; Methodist Hospital Research Institute dba Houston Methodist Research Institute, Houston,

TX; Microbion Corp., Bozeman, MT; Milestone Scientific, Inc., Roseland, NJ; MiMedx Group, Inc., Marietta, GA; Muscle Activation Techniques, Englewood, CO; MVK Pharmaceuticals LLC, Indianapolis, IN; My Buddies Place, Inc., Pasadena, CA; Nakamir, Inc., Palo Alto, CA; Neurotrauma Sciences LLC, Alpharetta, GA; New York University School of Medicine, New York, NY; nFlux, Inc., Palm Springs, CA; NightHawk Biosciences, Inc., Morrisville, NC; Nihon Kohden OrangeMed, Inc., Santa Ana, CA; North Carolina Biotechnology Center, Research Triangle Park, NC; NovoPedics, Inc., Princeton, NJ; Nyrada, Inc., Gordon, AUSTRALIA; Odic, Inc., Littleton, MA; Omnicure, Inc., Ladue, MO; Oregon Biomedical Engineering Institute, Inc., Wilsonville, OR; OrganaBio LLC, South Miami, FL; Orthoforge, Inc., East Grand Rapids, MI; Otter Cove Solutions LLC, Gaithersburg, MD; Pacific Institute for Research and Evaluation, Beltsville, MD; Padagis US LLC, Allegan, MI; Palantir USG, Inc., Palo Alto, CA; PathoGene, Inc., Monrovia, CA; Paxauris LLC, Phoenix, AZ; Phagelux, Inc., Montréal, CANADA; Philips North America LLC, Cambridge, MA; Population Sleep LLC, Dallas, TX; PortaVision Medical LLC, Jefferson, LA; ppx-TEC LLC, Jackson, MS; Precision Trauma LLC, Columbus, GA; Problem Solutions LLC, Johnstown, PA; Prohuman Technologies, Concord, NC; Promethean LifeSciences, Inc., Pittsburgh, PA; Purdue University, West Lafayette, IN; Red One Medical Devices LLC, Savannah, GA; Regenerative Processing Plant LLC, Tampa, FL; Regranion LLC, Mt. Pleasant, SC; Renerva LLC, Pittsburgh, PA; Resilient Lifescience, Inc., Pittsburgh, PA; Reveille Group, Tampa, FL; Rock West Composites, Inc., San Diego, CA; RST-Sanexas, Las Vegas, NV; SafeBeat Rx, Inc., Chico, CA; SafeBVM Corp., Boston, MA; Safeguard Surgical, Tampa, FL; Safi Biotherapeutics, Inc., Cambridge, MA; Saint Barnabas Medical Center, Livingston, NJ; Saint Louis University, St. Louis, MO; Sanofi Pasteur, Swiftwater, PA; Scientific & Biomedical Microsystems LLC, Glen Burnie, MD; SeaStar Medical, Inc., Denver, CO; Securisyn Medical LLC, Highlands Ranch, CO; Senseye, Inc., Austin, TX; Shee Atiká Enterprises, Huntsville, AL; Sherpa 6, Inc., Littleton, CO; Shipcom Federal Solutions LLC, Belcamp, MD; SLSCO, Ltd., Galveston, TX; Softox Solutions AS, Fornebu, Norway; Soliyarn, Belmont, MA; Sophic Synergistics LLC, Houston, TX; Sparta Biomedical, Inc., Chatham, NJ; SPEAR Human Performance, Inc., Sandy

Springs, GA; SpineThera, Inc., Plymouth, MN; Steadman Philippon Research Institute, Vail, CO; Stellarray, Inc., Austin, TX; Sterogene Bioseparations, Inc., Carlsbad, CA; TechEn, Inc., Milford, MA; Terasaki Institute for Biomedical Innovation, Los Angeles, CA; Texas A&M University, College Station, TX; Texas Research & Technology Foundation, San Antonio, TX; The Emmes Company LLC, Rockville, MD; The Research Institute of the McGill University Health Centre, Montreal, CANADA; TiER1 Performance Solutions, Covington, KY; Transom Scopes, Inc. dba Instrument Technology, Inc., Westfield, MA; Trustees of the University of Pennsylvania, Philadelphia, PA; UCHU Biosensors, Inc., Newark, NJ; University of Miami, Coral Gables, FL; University of Southern California, Los Angeles, CA; U-Smell-It LLC, Guilford, CT; Vaxxas, Cambridge, MA; Viele Exploratory Sustainable Solutions LLC, Livingston Manor, NY; Virion Therapeutics LLC, Newark, DE; Weinberg Medical Physics, Inc., North Bethesda, MD; Westat, Inc., Rockville, MD; Xheme, Inc., Newton, MA; Xomix, Ltd., Chicago, IL; and ZeSa LLC, Eden Prairie, MN have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MTEC intends to file additional written notifications disclosing all changes in membership.

On May 9, 2014, MTEC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on January 9, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024 (89 FR 8246).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13611 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on April 4, 2024, pursuant to section 6(a) of the National Cooperative Research and

Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), ODVA, Inc. (“ODVA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NIRECO CORPORATION, Tokyo, JAPAN; BEIJING JIYUAN AUTOMATION TECHNOLOGY CO., LTD, Beijing, PEOPLE’S REPUBLIC OF CHINA; WERMA Signaltechnik GmbH + CO. KG, Rietheim-Weilheim, GERMANY; ISH Ingenieursozietät GmbH, Kreuztal, North Rhine-Westphalia, GERMANY; WITTENSTEIN cyber motor GmbH, Igersheim, Baden-Württemberg, GERMANY; Elementary Robotics Inc, South Pasadena, CA; Synapticon GmbH, Schönaich, Baden-Württemberg, GERMANY; Eura Drives Electric Co., Ltd, Yantai, Shandong, PEOPLE’S REPUBLIC OF CHINA; MYUNGBO CABLE, Hwaseong-si, Gyeonggi-do, REPUBLIC OF KOREA; TMSS France, Rueil-Malmaison, Haute de Seine, FRANCE, have been added as parties to this venture.

Also, CMD Corporation, Appleton, WI; Hangzhou Hikrobot Technology Co., Ltd., Hangzhou, Zhejiang, PEOPLE’S REPUBLIC OF CHINA; Sanwa Engineering Corp., Hsinchu County, TAIWAN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on December 8, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 2024 (89 FR 7730).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13619 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International

Notice is hereby given that, on May 17, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), ASTM International (“ASTM”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between February 10, 2024, and May 12, 2024, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at <http://www.astm.org>.

On September 15, 2004, ASTM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on February 28, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 2024 (89 FR 18437).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13657 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—America’s DataHub Consortium

Notice is hereby given that, on April 4, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), America’s DataHub Consortium (“ADC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the

Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Applied Engineering Management Corp., Herndon, VA; Fors Marsh Group, Arlington, VA; Parallax Advanced Research Corp., Beaver Creek, OH; and Revelio Labs, Inc., New York, NY, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ADC intends to file additional written notifications disclosing all changes in membership.

On November 11, 2021, ADC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 22, 2021 (86 FR 72628).

The last notification was filed with the Department on January 11, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024 (89 FR 8245).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-13613 Filed 6-20-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Customer Experience Hub

Notice is hereby given that, on April 17, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Customer Experience Hub ("CX Hub") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, 3 Aware LLC, Indianapolis, IN; Adeco LLC, Houston, TX; AGAPE Strategic Solutions of Maryland LLC, Hyattsville, MD; Alliance NCTN Foundation, Chicago, IL; Allvivo Vascular, Inc., Lake Forest, CA; American Cancer Society Cancer Action Network, Washington, DC; American Cancer Society, Inc., Atlanta, GA;

American College of Radiology, Reston, VA; American Military Families Action Network, Tacoma, WA; Apricity Health, Inc., Houston, TX; Artyc PBC, Fremont, CA; Asante Bio, Tampa, FL; Austin Healthcare Council, Austin, TX; Baylor Research Institute dba Baylor Scott & White Research Institute, Dallas, TX; Beth Israel Lahey Health, Cambridge, MA; Betty's Health Company LLC dba Betty's Co., San Antonio, TX; BioInnovation Labs dba BioLabs, Cambridge, MA; BioNorthTexas Foundation, Irving, TX; Boston University, Boston, MA; Breathe Chicago Center at University of Illinois Chicago, Chicago, IL; Capital Factory Properties LLC, Austin, TX; Care Access Research LLC, Boston, MA; Carson Leslie Foundation, Dallas, TX; CentanniPark LLC, Somerville, MA; Central Indiana Corporate Partnership, Indianapolis, IN; CFD Research Corp., Huntsville, AL; Charles River Analytics, Inc., Cambridge, MA; Chicago ARC, Glenview, IL; Children's Cancer Therapy Development Institute, Hillsboro, OR; Clarivate Analytics (US) LLC, Ann Arbor, MI; Clinical Research Philadelphia LLC, Philadelphia, PA; Clinical Trials Transformation Initiative, Durham, NC; CliniOps, Inc., Fremont, CA; Cogitativo, Inc., Berkeley, CA; Critical Path Institute, Tucson, AZ; Cromtec Cyber Solutions, Inc., Houston, TX; Cx Precision Medicine, Fort Worth, TX; Dallas-Fort Worth Hospital Council, Irving, TX; Datavant, Inc., Phoenix, AZ; Decentralized Trials & Research Alliance (DTRA), San Diego, CA; DHR Health Institute for Research & Development, Edinburg, TX; Digital Medicine Society, Inc., Boston, MA; Driscoll Children's Hospital, Corpus Christi, TX; Duke University, Durham, NC; Endpoint Health, Palo Alto, CA; Environmental Information Systems Corp., Las Vegas, NV; Every Cure, Philadelphia, PA; Evidation Health, San Mateo, CA; Exo Imagining, Inc., Santa Clara, CA; Florida Institute of Technology, Inc., Melbourne, FL; Freyya, Inc., San Antonio, TX; Genetic Alliance, Inc., Damascus, MD; Global Coalition for Adaptive Research, Inc., Larkspur, CA; Guava Health, Inc., Santa Barbara, CA; Gulf South Clinical Trials Network, New Orleans, LA; Halo Health Systems, Plano, TX; Hamilton Health Box, Inc., Houston, TX; Harvard T.H. Chan School of Public Health, Boston, MA; Health Level Seven International, Inc., Ann Arbor, MI; Health Tech Austin, Austin, TX; Health Wildcatters, Dallas, TX; Healthcare Innovators Professional Society, Houston, TX; Hero Medical Technologies, Inc., Ponte Vedra Beach, FL; Hope Biosciences LLC, Sugar

Land, TX; Huck Medical Technologies, Inc., Jacksonville, FL; Indiana University, Bloomington, IN; Insilicom LLC, Tallahassee, FL; Institute for Systems Biology, Seattle, WA; Iowa State University of Science and Technology, Ames, IA; IQVIA Government Solutions, Inc., Falls Church, VA; iTrials, Ashburn, VA; JAKTOOL LLC, Cranbury, NJ; LaunchBio, Inc., San Diego, CA; Levels Health, Austin, TX; Lone Star Stroke Research Consortium, San Antonio, TX; Mary Crowley Cancer Research, Dallas, TX; Massachusetts Health & Hospital Association, Burlington, MA; MATRIX AI Consortium, San Antonio, TX; Mayo Clinic, Rochester, MN; Meadows Mental Health Policy Institute, Dallas, TX; Mercury Data Science, Inc. dba OmniScience, Houston, TX; Milken Institute, Washington, DC; Modern Trials, Inc., Haddon Township, NJ; Momentum Design Lab LLC, San Mateo, CA; MPR Associates, Inc., Alexandria, VA; Music Beats Cancer, Washington, DC; MyEyes LLC, Heber, UT; Nanology LLC, Fort Worth, TX; Neelyx Labs, Inc., Wood Dale, IL; Panthera BioSolutions, Fort Worth, TX; Persown, Inc., Jacksonville, FL; Phage Refinery LLC, San Antonio, TX; Polaris Alpha Advanced Systems, Inc., Fredericksburg, VA; Precise Populations, Austin, TX; Providence Health & Services, Renton, VA; Quality by Randomization Ltd. dba Protas, Salford, UNITED KINGDOM; Quantum Leap Healthcare Collaborative, San Francisco, CA; Quidel Corp. dba QuidelOrtho, San Diego, CA; Radiological Society of North America, Inc., Oak Brook, IL; Retina Foundation, Dallas, TX; Rhode Island Health Center Association, Providence, RI; Rock Health Foundation, San Francisco, CA; Ruth Health, Bronx, NY; Safe Health Systems, Inc., Scottsdale, AZ; San Diego State University Foundation, San Diego, CA; Segal Design Institute at Northwestern University, Evanston, IL; Seven Bridges Genomics, Inc., Boston, MA; SiteBridge Research, Inc., Chapel Hill, NC; Southern Research Institute, Birmingham, AL; Spark Biomedical, Inc., Dallas, TX; SRI International, Menlo Park, CA; St. Mary's University of San Antonio, Texas, San Antonio, TX; SygnaMap, Inc., San Antonio, TX; Systems & Technology Research LLC, Woburn, MA; Texas A&M University System Health Science Center, Bryan, TX; The Children's Hospital of Philadelphia, Philadelphia, PA; The Medical College of Wisconsin, Inc., Milwaukee, WI; The Medical University of South Carolina, Charleston, SC; The Methodist Hospital Research Institute,

Houston, TX; The Regents of the University of California, San Francisco, San Francisco, CA; The University of Kansas Medical Center Research Institute, Inc., Kansas City, KS; The University of Texas at Arlington, Arlington, TX; The University of Texas Health Science Center at San Antonio, San Antonio, TX; Tonix Pharmaceuticals, Chatham, NJ; TQIntelligence, Inc., Tucker, GA; Tremedics Medical Devices LLC, Fort Worth, TX; Trustees of the University of Pennsylvania dba Clinical Practices of the University of Pennsylvania, Philadelphia, PA; UC Berkeley Haas Institute for Business Innovation, Berkeley, CA; UCSF: Eureka Research Platform, San Francisco, CA; University of Alabama at Birmingham, Birmingham, AL; University of Chicago, Chicago, IL; University of Colorado Anschutz Medical Campus, Aurora, CO; University of Iowa, Iowa City, IA; University of Massachusetts Medical School, Worcester, MA; University of the Virgin Islands, St. Thomas, VI; University of Utah, Salt Lake City, UT; Vanderbilt University Medical Center, Nashville, TN; Women's Health Access Matters, Greenwich, CT; Yunu, Inc., Cary, NC; and ZS Associates, Inc., Evanston, IL, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the CX Hub intends to file additional written notifications disclosing all changes in membership.

On January 11, 2024, the CX Hub filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26929).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-13623 Filed 6-20-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Senior Healthcare Innovation Consortium

Notice is hereby given that, on April 4, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301

et seq. ("the Act"), Senior Healthcare Innovation Consortium (SHIC) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Access Sensor Technologies LLC, Fort Collins, CO; Clarivate Analytics (US) LLC, Ann Arbor, MI; EchoCare, Ness Ziona, ISRAEL; GaitBetter, Rockville, MD; and North Dakota State University, Fargo, ND, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SHIC intends to file additional written notifications disclosing all changes in membership.

On November 02, 2022, SHIC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 23, 2022 (87 FR 71677).

The last notification was filed with the Department on January 9, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024 (89 FR 8245).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-13614 Filed 6-20-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on April 24, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Nuvoton Technology Corporation, Kyoto, JAPAN, has been added as a party to this venture.

Also, Fuji Film Media Crest Co., Ltd., Tokyo, JAPAN, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on December 20, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024 (89 FR 8244).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-13628 Filed 6-20-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on May 6, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), UHD Alliance, Inc. ("UHD Alliance") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, XGIMI Technology Co., Ltd., Chengdu, PEOPLE'S REPUBLIC OF CHINA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to section 6(a) of the Act. The Department

of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on January 25, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26926).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13659 Filed 6–20–24; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Alliance for OpenUSD Series LLC

Notice is hereby given that, on April 25, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Alliance for OpenUSD Series LLC (“AOUSD”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AOUSD has formed two additional Working Groups (“WGs”) in March 2024: a Materials WG and a Geometry WG. The Materials WG will standardize the description of materials in OpenUSD. Its initial focus and first deliverable will be the USD Material Interchange Specification, which will comprise a set of patterns and BSDF nodes comprising the MaterialX standard libraries. The Geometry WG will define and evolve the strategy for the description of 3D geometry in OpenUSD. Its first deliverable will be the USD Transformable 3D Geometry Specification that will describe the surfaces and volume representations, spatial transformations, rules of determining primary visibility, and other properties required for imaging those representations.

On October 30, 2023, AOUSD filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the

Act on December 15, 2023 (88 FR 86939).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13636 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rapid Response Partnership Vehicle

Notice is hereby given that, on April 12, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Rapid Response Partnership Vehicle (“RRPV”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, A-line, Inc., Signal Hill, CA; ANP Technologies, Inc., Newark, DE; ARNAV Biotech Corp., Atlanta, GA; Action Medical Technologies LLC, Conshohocken, PA; AmerStem, Inc., Camarillo, CA; American Type Culture Collection, Manassas, VA; Aposense, Ltd., Petach Tikva, ISRAEL; Appili Therapeutics USA, Inc., Frederick, MD; Aptitude Medical Systems, Goleta, CA; Arranta Bio MA LLC, Watertown, MA; Asha Therapeutics LLC, Tampa, FL; BDO Public Sector LLC, Mclean, VA; BRCR Medical Center, Inc., Plantation, FL; Battelle Memorial Institute, Columbus, OH; BioInfoExperts LLC, Thibodaux, LA; Boost Biopharma, Inc., Amherst, MA; Bracane Company, Plano, TX; Capricor Therapeutics, Inc., San Diego, CA; CellCarta Biosciences, Inc., Montreal, CANADA; Cerba Research USA, Inc., Lake Success, NY; Clarametx Biosciences, Inc., Columbus, OH; Clarus Biologics, Inc., Chapel Hill, NC; Cue Health, Inc., San Diego, CA; D’Angelo Technologies LLC, Beavercreek, OH; DEKA Research & Development Corp., Manchester, NH; Datavant, Phoenix, AZ; Deutsches Zentrum für Infektionsforschung e.V., Braunschweig, GERMANY; Diagnostic Consulting Network LLC dba DCN Diagnostics, Carlsbad, CA; Diasorin Molecular, Cypress, CA; EMD Millipore dba MilliporeSigma, Burlington, MA;

Ethris GmbH, Planegg, GERMANY; FONDAZIONE BIOTECNOPOLLO DI SIENA, SIENA, ITALY; Flagship Labs, Cambridge, MA; Fred Hutchinson Cancer Center, Seattle, WA; Genentech, South San Francisco, CA; GiwoTech, Inc., Wilmington, DE; Global Action Alliance, Inc., Ashburn, VA; HDT Bio Corp., Seattle, WA; Hope Biosciences, Sugar Land, TX; IQVIA Government Solutions, Inc., Falls Church, VA; Icahn School of Medicine at Mount Sinai, New York, NY; InBios International, Seattle, WA; Injection Safety Industries LLC, Bowling Green, KY; Inovio Pharmaceuticals, Plymouth Meeting, PA; Integrated Biotherapeutics LLC dba IBT Bioservices, Rockville, MD; LTS Lohmann Therapie-Systeme AG, Andernach, GERMANY; Labcorp, Burlington, NC; Labcorp-Monogram Biosciences, South San Francisco, CA; Lyndra Therapeutics, Inc., Watertown, MA; Major, Inc., Los Angeles, CA; MalarVx, Inc., Seattle, WA; Mirimus, Inc., Brooklyn, NY; Nature’s Toolbox, Inc., Rio Rancho, NM; New Horizon Biotech, Inc., Nazareth, PA; OncoC4, Inc., Rockville, MD; PIF Partners LLC, Englewood, NJ; PharmaJet, Inc., Golden, CO; Precision for Medicine, Inc., Frederick, MD; Revvity Health Sciences, Hopkinton, MA; Rocketvax, Ltd., Basel, SWITZERLAND; Selva Therapeutics, Inc., San Mateo, CA; Sentio BioSciences LLC, Maryland Heights, MO; Solaris Vaccines, Inc., Fort Collins, CO; Spring Discovery, Inc., San Carlos, CA; Technical Resources International, Inc., Bethesda, MD; The Emmes Company LLC, Rockville, MD; The Pandemic Institute (Legally hosted by the University of Liverpool), Liverpool, UNITED KINGDOM; Tonix Pharmaceutical Holdings, Chatham, NJ; Trawsfynydd Therapeutics, Inc., Rockville, MD; US Specialty Formulations LLC, Allentown, PA; Univercells S.A., Brussels, BELGIUM; VaxForm LLC, Bethlehem, PA; VisMederi Srl, Siena, ITALY; Vyriad, Inc., Rochester, MN; Walgreen Co., Deerfield, IL; Yourbio Health, Medford, MA; and iosBio, Ltd., Haywards Heath, UNITED KINGDOM, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RRPV intends to file additional written notifications disclosing all changes in membership.

On January 5, 2024, RRPV filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

Register pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26928).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13625 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical CBRN Defense Consortium

Notice is hereby given that, on April 2, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Medical CBRN Defense Consortium (“MCDC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Alamgir Research Inc DBA ARIScience, Wayland, MA; American Additive Manufacturing LLC, Horsham, PA; Amyris Inc, Emeryville, CA; Arnasi 701 LLC, Woburn, MA; Columbus Nanoworks, Columbus, OH; Genetic Networks LLC, Miami Beach, FL; Radiation Monitoring Devices Inc, Watertown, MA; Repurposed Therapeutics Inc, Saint Louis, MO, have been added as parties to this venture.

Also, Clarifia Inc, New York, NY; Conductive Technologies Inc, York, PA; Government Scientific Source, Reston, VA; Kleo Pharmaceuticals, New Haven, CT; Locus Biosciences, Morrisville, NC; Pertexa Healthcare Technologies, Ridgcrest, CA; SX2 Technologies LLC, Port Washington, WI; and Trauma Insight LLC dba LumaBridge LLC, San Antonio, TX, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section

6(b) of the Act on January 6, 2016 (81 FR 513).

The last notification was filed with the Department on January 5, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 06, 2024 (89 FR 8244).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13608 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—APA—The Engineered Wood Association

Notice is hereby given that, on April 4, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), APA—The Engineered Wood Association (“APA—The Engineered Wood Association”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: APA—The Engineered Wood Association, Tacoma, WA. The nature and scope of APA—The Engineered Wood Association’s standards development activities are: the development, maintenance, and updating of standards for wood and engineered wood products including but not limited to softwood plywood, oriented strand board (OSB), wood composite panels, plywood siding, structural glued laminated timber (glulam), wood I-joists, structural composite lumber, rim board, and cross-laminated timber. Standards activities also include serving as the sponsor for the standing committees of U.S. Voluntary Product Standard PS 1, Structural Plywood and Voluntary

Product Standard PS 2, Performance Standard for Wood Structural Panels.

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13616 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on May 17, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Cable Television Laboratories, Inc. (“CableLabs”) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, E. Ritter Communications Holdings, LLC, Wilmington, DE, has been added as a party to this venture.

Also, Guangzhou Digital Media Group Co. Limited, Guangzhou, PEOPLE’S REPUBLIC OF CHINA; Guangdong Cable Corporation Limited, Guangzhou, PEOPLE’S REPUBLIC OF CHINA; and Videotron Ltée, Montreal, Quebec, CANADA, have been terminated as parties to this venture.

No other changes have been made in either the membership or planned activity of the venture. Membership in this venture remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on March 31, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29385).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–13656 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biopharmaceutical Manufacturing Preparedness Consortium**

Notice is hereby given that, on April 12, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Biopharmaceutical Manufacturing Preparedness Consortium (“BIOMAP-CONSORTIUM”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, A-line, Inc., Signal Hill, CA; API Innovation Center, St. Louis, MO; AVS Bio, Norwich, CT; Advanced Concept Innovations, Lakeland, FL; Afton Scientific, Charlottesville, VA; Alchem Laboratories Corp., Alachua, FL; AmerStem, Inc., Camarillo, CA; American Medicines Company, PBC, Davisville, WV; American Type Culture Collection, Manassas, VA; Amyris, Inc., Emeryville, CA; AntoXa Corp., Toronto, CANADA; Apertus Pharmaceuticals LLC, Ballwin, MO; Argonaut Manufacturing Services, Inc., Carlsbad, CA; Asha Therapeutics LLC, Tampa, FL; Attogene Corp., Austin, TX; BASF Corp., Florham Park, NJ; BCG Federal Corp., Washington, DC; BDO Public Sector LLC, McLean, VA; Batavia Biosciences, Inc., Woburn, MA; Benuvia Operations LLC, Round Rock, TX; Bionova Scientific LLC, Fremont, CA; Biosortia Pharmaceuticals, Inc., Dublin, OH; Black Mesa Technology, Inc., Bedford, MA; Blu Zone Bioscience & Supply Chain Solutions, LLC, Frederick, MD; Bracane Company, Inc., Plano, TX; CGCN, Washington, DC; CMC Pharmaceuticals, Inc., Solon, OH; Capra Biosciences, Inc., Manassas, VA; ChromaTan, Inc., Lower Gwynedd, PA; Concept to Market LLC, Monrovia, MD; Cornerstone Chemical Company, Metairie, LA; Corning, Inc., Corning, NY; CuriRx, Inc., Wilmington, MA; DEKA Research & Development Corp., Manchester, NH; DMC Biotechnologies, Inc., Boulder, CO; Dyadic International, Inc., Jupiter, FL; EriVan Bio, Alachua, FL; EverGlade Consulting LLC, Houston, TX; Evimero, Tuscaloosa, AL; FUJIFILM Diosynth Biotechnologies USA, Inc., Morrisville, NC; Fisher BioServices,

Inc., Rockville, MD; Foamtec International LLC, Waco, TX; Fraunhofer USA, Plymouth, MI; HDT Bio Corp., Seattle, WA; HERMES, LLC, Wilmington, NC; Health Blockchain Convergence, Inc., Tysons Corner, VA; INTACT SOLUTIONS LLC, New Milford, CT; InflaRx GmbH, Jena, GERMANY; Interbiome Partners LLC, Rockville, MD; Jubilant HollisterStier CMO, Spokane, WA; Kemp Proteins, Frederick, MD; LaCire LLC, Alexandria, VA; Latham BioPharm Group, Elkridge, MD; MalarVx, Inc., Seattle, WA; Mallinckrodt Specialty Generics dba SpecGx LLC, Webster Groves, MO; Manus Bio, Inc., Waltham, MA; Medical Countermeasures Coalition, Washington, DC; Meissner Filtration Products, Inc., Camarillo, CA; Michael Best Strategies, Washington, DC; MilliporeSigma, Burlington, MA; Nature’s Toolbox, Inc., Rio Rancho, NM; New Horizon Biotech, Inc., Nazareth, PA; NewAge Industries, Inc., Southampton, PA; Nipro PharmaPackaging Americas Corp., Millville, NJ; On Demand Pharmaceuticals, Inc., Rockville, MD; PPD Development, L.P., Wilmington, NC; Par Sterile Product LLC, Rochester, MI; PharmaJet, Golden, CO; Phlow Corp., Richmond, VA; Prestige Ameritech, Ltd., North Richland Hills, TX; ProQuality Network LLC, Dorado, PUERTO RICO; Proteios Technology, Inc., Issaquah, WA; Quantum Four Labs LLC, Arcadia, CA; SANARIA, Inc., Rockville, MD; SCHOTT Pharma USA, Inc., Lebanon, PA; SK Pharmteco, Rancho Cordova, CA; STERIS Corp., Mentor, OH; Scorpius Biomanufacturing, Inc., San Antonio, TX; Sentio BioSciences LLC, Maryland Heights, MO; Sepragen Corp., Union City, CA; Shabas Solutions LLC, Fairfax, VA; Societal CDMO Inc., Gainesville, GA; Sotera Health Company, Broadview Heights, OH; Southwest Research Institute, San Antonio, TX; Strategic Marketing Innovations, Washington, DC; TEGA Therapeutics, Inc., San Diego, CA; TFF Pharmaceuticals, Inc., Fort Worth, TX; Tenagrity Solutions LLC, Fairfax, VA; Texas A&M Engineering Experiment Station, Bryan, TX; Texas Biomedical Research Institute, San Antonio, TX; Thaddeus Medical Systems, Inc., Rochester, MN; The United States Pharmacopeial Convention, Inc., Rockville, MD; Third Pole, Inc., Waltham, MA; Tonix Pharmaceuticals Holding Corp., Chatham, NJ; TriLink BioTechnologies LLC, San Diego, CA; US Specialty Formulations, Allentown, PA; University of Delaware, Newark, DE; Vaxess Technologies, Inc., Cambridge,

MA; Wheeler Bio, Inc., Oklahoma City, OK; and Zalgen Labs LLC, Frederick, MD, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the BIOMAP-CONSORTIUM intends to file additional written notifications disclosing all changes in membership.

On January 5, 2024, the BIOMAP-CONSORTIUM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26923).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-13621 Filed 6-20-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Warfare Research Project Consortium**

Notice is hereby given that, on April 3, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Information Warfare Research Project Consortium (“IWRP”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 10x National Security LLC, Aldie, VA; Accrete AI Government LLC, New York, NY; BlueSky Mast, Inc., Largo, FL; CALIBRE Systems, Inc., Alexandria, VA; cBEYONData LLC, Arlington, VA; Comtech Satellite Network Technologies, Inc., Chandler, AZ; Cybrex LLC, Norfolk, VA; DOMA Technologies LLC, Virginia Beach, VA; Echodyne Corp., Kirkland, WA; Ellis & Watts Global Industries, Inc., Batavia, OH; FishEye Software, Inc., Maynard, MA; Goldbelt Security LLC, Chesapeake, VA; M.C. Dean, Inc., Tysons, VA; Management Services Group, Inc., Virginia Beach, VA; mLogica LLC, Las Vegas, NV; Sciumo, Inc., Odenton, MD; Sextant Technologies LLC, Washington, DC;

Sigma Defense Systems LLC, Perry, GA; Signature Science LLC, Austin, TX; Silicon Mountain Technologies, Inc., Lakewood, CO; Teal Stratus Technologies LLC, Fort Mill, SC; Trinity Information Technology LLC, Yardley, PA; Unstructured Technologies, Inc., Loomis, CA; Varada Consulting LLC, Vienna, VA; and VIRSIG LLC, Port Washington, NY, have been added as parties to this venture.

Also, A.T. Kearney Public Sector & Defense Services LLC, Arlington, VA; Analog Devices, Inc., Wilmington, MA; Apogee Applied Research, Inc., Dayton, OH; Bowler Pons Solutions Consultants LLC, Annapolis, MD; Breault Research Organization, Tucson, AZ; By Light Professional IT Services LLC, McLean, VA; CP Technologies LLC, San Diego, CA; DISH Wireless LLC, Englewood, CO; Effecture LLC, San Diego, CA; IDS International Government Services LLC, Arlington, VA; Impact Resources, Inc. dba IR Technologies, Bristow, VA; Interdigital Communications, Inc., Wilmington, DE; KeyW Corp., Hanover, MD; Lewiz Communications, Inc., San Jose, CA; Mainstream Engineering Corp., Rockledge, FL; MicroHealth LLC, Vienna, VA; MindPoint Group LLC, Alexandria, VA; Nexus Life Cycle Management LLC, Stevenson, WA; NTT DATA Federal Services, Inc., Herndon, VA; ODME Solutions LLC, San Diego, CA; Peregrine Technical Solutions LLC, Yorktown, VA; Progeny Systems LLC, Manassas, VA; Pyramid Systems, Inc., Fairfax, VA; QuesTek Innovations, Evanston, IL; RackTop Systems, Inc., Fulton, MD; Red Balloon Security, Inc., New York, NY; Redcom Laboratories, Inc., Victor, NY; Research & Development Solutions, Inc., McLean, VA; Reservoir Labs, Inc., New York, NY; Sequoia Holdings LLC, Reston, VA; SMS Data Products Group, Inc., McLean, VA; Software AG Government Systems, Inc., Herndon, VA; Spin Systems, Inc., Falls Church, VA; Summit2Sea Consulting LLC, Arlington, VA; System Strategy, Inc., Franklin, MI; Tachyon Networks LLC, San Diego, CA; TeleCommunication Systems, Inc., Annapolis, MD; True North Logistics LLC, Downers Grove, IL; Ultralight Industries Corp., Cincinnati, OH; and Vanguard LED Displays, Inc., Lakeland, FL, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP filed its original notification pursuant to section

6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 23, 2018 (83 FR 53499).

The last notification was filed with the Department on January 3, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024 (89 FR 8243).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-13612 Filed 6-20-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1125-0019]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision and Extension of a Previously Approved Collection; Office of the Chief Administrative Hearing Officer (OCAHO) E-Filing Portal

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Executive Office for Immigration Review, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until July 22, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone: (703) 305-0470, EOIR.PRA.Comments@usdoj.gov; or Justine Fuga, Attorney Advisor, telephone: (571) 294-2272, justine.fuga@usdoj.gov.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** on March 21, 2024, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should

address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- 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.

Written comments and recommendations for this 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 and entering either the title of the information collection or the OMB Control Number 1125-0019. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision and Extension of a previously approved collection.

2. *Title of the Form/Collection:* OCAHO E-Filing Portal.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* EOIR does not maintain an agency-specific form number for this collection.

4. *Affected public who will be asked or required to respond, as well as a brief*

abstract: Individuals and households. The obligation to respond is voluntary.

Abstract: In order to improve the efficient adjudication of OCAHO cases and reduce the printing, copying, and mailing costs (for both OCAHO and the public) associated with OCAHO cases, OCAHO began developing a web-based electronic case management system in 2018 and continues to develop a web-based electronic filing portal (OCAHO E-Filing Portal) for this system. The OCAHO E-Filing Portal will allow parties to OCAHO cases to file complaints electronically, request electronic access to a case to which they are a party, file motions and requests electronically, and receive service of orders and decisions from OCAHO by email. EOIR obtained initial PRA clearance for this information collection in 2021. The OCAHO E-Filing Portal has never been made available to the public because it is connected to an internal electronic case management system that is still under development. Since initial clearance in 2021, and in tandem with developments to the OCAHO case management system, EOIR has made several changes to the OCAHO E-Filing Portal: EOIR removed data fields determined to be unnecessary for the adjudication of OCAHO cases; EOIR added comment fields to various parts of the Portal for parties to OCAHO proceedings to provide information relevant to proceedings and not otherwise captured by other fields in this information collection; EOIR reordered Portal contents and form fields, and added instructions throughout the Portal, to enhance clarity and user navigation within the Portal; and EOIR added capabilities to enable form fields to auto-populate in the Portal upon upload of a completed PDF version of the EOIR-58, Unfair Immigration-Related Employment Practices Complaint Form (OMB#1125-0016), and the EOIR-30, OCAHO Subpoena Form. EOIR intends these enhancements to reduce costs and resources required during the course of OCAHO proceedings and ensure that only authorized parties and their representatives will have access to information and documents pertaining to their specific cases.

5. *Obligation to Respond:* Optional and voluntary.

6. *Total Estimated Number of Respondents:* 55.

7. *Estimated Time per Respondent:* 10 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 9.35 hours.

10. *Total Estimated Annual Other Costs Burden:* \$736.22.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W-218 Washington, DC 20530.

Dated: June 17, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-13633 Filed 6-20-24; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Request for Information on Black Veterans and Good Jobs

AGENCY: Veterans' Employment and Training Service (VETS), U.S. Department of Labor.

ACTION: Request for information.

SUMMARY: The Department of Labor (DOL or the Department) is seeking information from the public regarding evidence on Black veterans' experience transitioning from military to civilian employment and veterans' access to good jobs and meaningful careers. The Department is publishing this Request for Information (RFI) to gather information to continue its efforts in building a strong knowledge base on the employment outcomes and experiences of Black transitioning service members (TSMs) and veterans to inform and improve veteran policies and programs.

DATES: Comments must be received by August 20, 2024.

ADDRESSES: Respondents are encouraged to submit their comments through one of the methods identified below. Email is the preferred method of submission.

- *Email:* ORPVETS@dol.gov.
- *Postal Mail:* Address written

submissions to U.S. Department of Labor, Veterans' Employment and Training Service, Office of Research and Policy, Room S-1325, 200 Constitution Ave. NW, Washington, DC 20210.

Submissions by postal mail must be received by the deadline and should allow sufficient time for security processing.

FOR FURTHER INFORMATION CONTACT:

Yolanda Peacock, Research Analyst, Veterans' Employment and Training Service, ORPVETS@dol.gov, 202-693-0590.

SUPPLEMENTARY INFORMATION:

I. Background

The mission of the Veterans' Employment and Training Service (VETS) at DOL¹ is to prepare America's veterans,² service members, and military spouses for meaningful careers, provide them with employment resources and expertise, protect their employment rights, and promote their employment opportunities. VETS' mission is accomplished through two grant programs: the Jobs for Veterans State Grants (JVSG)³ and Homeless Veterans' Reintegration Program (HVRP),⁴ as well as through the Transition Assistance Program (TAP),⁵ the Employment Navigator & Partnership Program (ENPP),⁶ and the Uniformed Services Employment and Reemployment Rights Act (USERRA).⁷

The JVSG provides federal funding, through a formula grant, to 54 State Workforce Agencies to hire dedicated staff to provide individualized career and training-related services to veterans and eligible persons with significant barriers to employment and to assist employers fill their workforce needs with job-seeking veterans. The HVRP, through a competitive grant, provides services to assist in reintegrating homeless veterans into meaningful employment within the labor force and to stimulate the development of effective service delivery systems that address the complex problems facing homeless veterans.

TAP is a cooperative interagency effort including DOL and the Departments of Defense, Education, Homeland Security, and Veterans Affairs; and the Small Business Administration and the Office of Personnel Management. TAP provides information, tools, and training to ensure service members and their spouses are prepared for the next step in civilian life. The ENPP provides one-on-one career assistance to interested TSMs⁸ and their spouses at select military installations worldwide. Provided outside of the formal DOL

¹ <https://www.dol.gov/agencies/vets>.

² Veterans are service members who have served and completed active-duty military service.

³ <https://www.dol.gov/agencies/vets/programs/grants/state/jvsg>.

⁴ <https://www.dol.gov/agencies/vets/programs/hvrp>.

⁵ <https://www.dol.gov/agencies/vets/programs/tap>.

⁶ <https://www.dol.gov/agencies/vets/programs/tap/employment-navigator-partnership>.

⁷ <https://www.dol.gov/agencies/vets/programs/userra>.

⁸ Transitioning Service Members are members of the military who are leaving active duty and returning to civilian life. They may be within 24 months of retirement or 12 months of separation from the military.

TAP classroom instruction, the Employment Navigator will assist them in securing meaningful and lasting post-separation careers. Finally, USERRA aids those experiencing service-connected problems with their civilian employment, and VETS offers guidance to employers on USERRA regulations. VETS also assists veterans who have questions regarding Veterans' Preference.

II. Black Veterans Research Project

Research indicates that disparities in employment and wages exist both in the general population and within the veteran community, and are influenced by factors such as disability status, gender, location, and race. It has also been observed that certain groups within the military and veteran communities, including individuals of different races and ethnicities, women, individuals with disabilities, and military spouses, have been historically underrepresented in research. In light of this, VETS has undertaken research initiatives focused on various demographic groups. Specifically, VETS has conducted research on military spouses within our Women Veterans⁹ and Disabled Veterans Programs, and through multiple Customer Experience projects, to identify the unique challenges and disparities faced by different demographic groups. VETS seeks to continue building and using evidence to identify and prioritize opportunities to improve overall support of veterans' employment outcomes and experiences in accordance with Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.¹⁰ To this end, VETS endeavors to better understand variations in employment outcomes and experiences across different subgroups of veterans and build a strong knowledge base regarding underserved communities of veterans to inform and improve veteran policies and programs and improve veterans' access to good jobs.¹¹

In FY23, in an effort to advance equity in VETS programs, VETS launched its Black Veterans Research Project. This project was launched due to lower economic indicators that are persistent in the Black Veteran community when compared to other racial cohorts and the whole veteran community. This project

serves as a model for further research into underserved populations served by VETS programs. This research—conducted in collaboration with DOL's Chief Evaluation Office (CEO)—was the starting point to building a strong knowledge base regarding the employment outcomes and experiences of Black TSMs and veterans. The output from this research includes a literature review and three-part roundtable discussion series. The research shows that there are many commonalities across racial cohorts and that intersectionality¹² can affect economic outcomes. These artifacts are available for viewing on VETS' Black Veterans Research web page.¹³

DOL is committed to developing 21st century employment services that are responsive to the needs of today's veterans. To achieve this, VETS will build on the insights gained from the RFI and the Black Veterans Research Project and incorporate the Good Jobs Principles,¹⁴ a shared federal vision of job quality published in 2022 by the Departments of Labor and Commerce.¹⁵ The Principles describe good-paying jobs that remove barriers to employment for veterans and people of color, among other groups. By assessing the potential of existing programs and services and incorporating the Good Jobs Principles, the aim is to identify the strategies that will have the most significant effect in improving employment opportunities and wage outcomes for underserved groups, including Black veterans.

III. Request for Information

One of the key findings from the literature review is that Black veterans are not a monolithic group; intersectionality is a contributing factor for the Black veteran employment experience. The findings from VETS' Black Veterans Research Project also show that Black veterans seek assistance and support programs at a higher rate while experiencing worse economic and employment outcomes than other veteran subgroups. To further enhance the research, VETS seeks to continue its evidence building efforts by focusing on

insights from the public and community at large. Organizations serving veterans, advocacy groups, workforce development and/or job centers (including American Job Centers¹⁶), businesses and employers, economic development associations, training providers, educational institutions (including Historically Black Colleges and Universities), think tanks, researchers, and other subject matter experts are invited to share their professional and/or research knowledge and experience or any other data and information related to the most effective intervention strategies to improve the employment and wages outcomes of underserved groups, including Black TSMs and veterans. VETS seeks the public's insight to identify how its programs can effectively improve employment and wage outcomes for underserved groups, including Black veterans. VETS is especially interested in comments about outcomes that are aligned with good jobs, as defined by the Good Jobs Principles.

The literature review identified several factors contributing to differences in employment outcomes experienced by Black veterans. The contributing factors are discrimination; veteran identity and self; military discharge status; social capital of enlisted service members and officers; education/training/pathways/advancement; veteran status and wages; military experience and occupation—transferability to high-demand occupations in the civilian sector; perceived mismatch from military to civilian jobs; and military transition.

VETS seeks to refine its research scope to identify the most immediate employment needs of Black veterans and other intersectional, marginalized demographic groups, as well as interventions that would have the most immediate positive impact on employment and wage outcomes for all underserved groups, including Black veterans. As such, this RFI is designed to capture specific, concise responses optimizing VETS' ability to easily categorize, group, prioritize, sort, and filter responses.

DOL asks commenters to address any or all of the following questions in the context of the preceding discussion in this document. Commenters do not need to address every question and should focus on those that relate to their expertise or perspective. To the extent possible, please clearly indicate the question(s) addressed in your response. Research and evaluation studies,

⁹ Women Veterans Research U.S. Department of Labor (dol.gov).

¹⁰ <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.

¹¹ <https://www.dol.gov/general/good-jobs>.

¹² “Intersectionality means that people belong to more than one group and, consequently, may experience overlapping health and social inequities and have overlapping strengths and assets related to their group identities or membership.” (The Department of Health and Human Services Evaluation Policy. Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 2022).

¹³ <https://www.dol.gov/agencies/vets/resources/black-veterans-research>.

¹⁴ <https://www.dol.gov/general/good-jobs/principles>.

¹⁵ <https://www.dol.gov/sites/dolgov/files/goodjobs/Good-Jobs-Summit-Principles-Factsheet.pdf>.

¹⁶ <https://www.dol.gov/general/topic/training/onestop>.

statistical information, training materials, policy statements or reports, or other relevant information may also be included or referenced in responses. Please include hyperlinks if available.

Although not required, the Department would appreciate submissions that include a name, phone number, and email address for a single point of contact, in addition to the organizations, tribes, or other governmental agencies with which respondents are associated. This will allow VETS the opportunity to reach out for any necessary clarifications and streamline communication.

Responses will not be posted publicly, but will be summarized in a report prepared by the Department. Any information submitted in response to the RFI may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. For that reason, the Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI.

IV. Questions

1. How does identity intersectionality contribute to the employment outcomes that Black veterans experience and how can services improve and be better marketed to ensure that individuals of all identities and localities have access to opportunity?

2. What can VETS programs do to improve employment and wage outcomes for Black veterans and other intersectional, underserved communities,¹⁷ including job opportunities with the features of Good Jobs described in the Good Jobs Principles? Specifically, what do VETS programs need to do and where should the programs be?

3. What are the primary challenges experienced by Black service members that greatly influence their post-military employment prospects?

4. What key moments during the transition from military to civilian life have a significant impact on employment outcomes for Black veterans?

5. What are the most immediate employment needs of Black veterans?

6. How have veterans' benefits programs and other government services affected the successful or unsuccessful

obtainment of a good job as described by the Good Jobs Principles?¹⁸

7. What are the most effective intervention strategies to improve employment outcomes for Black veterans and other intersectional, underserved communities?

8. How can VETS programs most effectively contribute to improved employment outcomes for Black veterans and other intersectional, underserved communities?

9. Where is the best place to engage with Black veterans and other intersectional, underserved communities and meet their needs?

Signed at Washington, DC, this 13th day of June, 2024.

James D. Rodriguez,

Assistant Secretary for Veterans' Employment and Training Service.

[FR Doc. 2024-13509 Filed 6-20-24; 8:45 am]

BILLING CODE 4510-79-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: 2025-2027 IMLS Inspire! Grants for Small Museums Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments about this assessment process, instructions, and data collections.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

¹⁸ <https://www.dol.gov/general/good-jobs/principles>.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 21, 2024.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting "Institute of Museum and Library Services" under "Currently Under Review;" then check "Only Show ICR for Public Comment" checkbox. Once you have found this information collection request, select "Comment," and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395-7316.

FOR FURTHER INFORMATION CONTACT: Reagan Moore, Senior Program Officer, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024-2135. Ms. Moore can be reached by telephone at 202-653-4637, or by email at rmoores@imls.gov. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202-207-7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The goal of IMLS Inspire! Grants for Small Museums is to help small museums implement projects that address priorities identified in their strategic plans. It has three project categories:

¹⁷ The term "underserved communities" refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. (Executive Order 13985: Advancing Equity and Support for Underserved Communities Through the Federal Government).

Lifelong Learning, Institutional Capacity, and Collections Stewardship and Access.

Current Actions: This action is to renew the forms and instructions for the Notice of Funding Opportunities for the next three years. The 60-Day Notice was published in the **Federal Register** on March 20, 2024 (89 FR 19888). The agency received no comments in response to this notice.

Agency: Institute of Museum and Library Services.

Title of Collection: 2025–2027 IMLS Inspire! Grants for Small Museums Notice of Funding Opportunity.

OMB Control Number: 3137–0111.

Agency Number: 3137.

Affected Public: Eligible museum organizations.

Total Estimated Number of Annual Responses: 250.

Frequency of Response: Once per year.

Average Hours per Response: 35.

Total Estimated Number of Annual Burden Hours: 8,750.

Total Annual Cost Burden: \$283,938.

Total Annual Federal Costs: \$38,056.

Dated: June 14, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–13579 Filed 6–20–24; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: 2025–2027 IMLS Museums Empowered Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB Review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be

properly assessed. The purpose of this Notice is to solicit comments about this assessment process, instructions, and data collections.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 21, 2024.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting “Institute of Museum and Library Services” under “Currently Under Review;” then check “Only Show ICR for Public Comment” checkbox. Once you have found this information collection request, select “Comment,” and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Mark Isaksen, Supervisory Grants Management Specialist, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Isaksen can be reached by telephone at 202–653–4667, or by email at misaksen@imls.gov. Persons who are deaf or hard of hearing (TTY

users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services (IMLS) is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit www.imls.gov.

Current Actions: The goal of Museums Empowered is to strengthen the ability of an individual museum to serve its public through professional development activities that cross-cut various departments to generate systemic change within the museum. It has four project categories: Diversity, Equity, and Inclusion; Digital Technology; Evaluation; and Organizational Management.

This action is to renew the content, forms, and instructions for the Notice of Funding Opportunity for the next three years. The 60-Day Notice was published in the **Federal Register** on March 20, 2024 (89 FR 19890). The agency received non comments in response to this notice.

Agency: Institute of Museum and Library Services.

Title of Collection: 2025–2027 IMLS Museums Empowered Notice of Funding Opportunity.

OMB Control Number: 3137–0107.

Agency Number: 3137.

Affected Public: Museums that meet the IMLS Museums for America institutional eligibility criteria.

Total Estimated Number of Annual Responses: 65.

Frequency of Response: Once per year.

Average Hours per Response: 45.

Total Estimated Number of Annual Burden Hours: 2,925.

Total Annual Cost Burden: \$94,917.

Total Annual Federal Costs: \$10,087.

Dated: June 14, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–13578 Filed 6–20–24; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**Institute of Museum and Library Services****Submission for OMB Review, Comment Request, Proposed Collection: 2025–2027 Museum Grants for American Latino History and Culture Notice of Funding Opportunity**

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments about this assessment process, instructions, and data collections.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 21, 2024.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting "Institute of Museum and Library Services" under "Currently Under Review;" then check "Only Show ICR for Public Comment" checkbox. Once you have found this information collection request, select "Comment," and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Gibran Villalobos, Senior Program Officer, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Villalobos can be reached by telephone at 202–653–4649, or by email at gvillalobos@imls.gov. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The goal of the Museum Grants for American Latino History and Culture program is to support projects that build the capacity of American Latino history and culture museums to serve their communities as well as projects that broadly advance the growth and development of a professional workforce in American Latino institutions. The American Latino History and Culture Program was authorized for creation by the National Museum of the American Latino Act in 2020 (20 U.S.C. 80u), the same Act that authorized the creation of a new Smithsonian National Museum of the American Latino.

Current Actions: This is to request a new clearance for a Notice of Funding Opportunity for the Museum Grants for American Latino History and Culture program. A 60-Day Notice was published in the **Federal Register** on March 21, 2024 (89 FR 20253). The agency received and responded to one comment in response to this notice.

Agency: Institute of Museum and Library Services.

Title of Collection: 2025–2027 Museum Grants for American Latino History and Culture Notice of Funding Opportunity.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Affected Public: American Latino Museums that offer or wish to offer American Latino art, history, and culture.

Total Estimated Number of Annual Responses: 60.

Frequency of Response: Once per year.

Average Hours per Response: 45.

Total Estimated Number of Annual Burden Hours: 2,700.

Total Annual Cost Burden: \$87,615.

Total Annual Federal Costs: \$9,400.

Dated: June 14, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–13577 Filed 6–20–24; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION**Proposal Review Panel for Materials Research; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research (DMR)—Platform for the Accelerated Realization, Analysis, and Discovery of Interface Materials (PARADIM) Site Visit (#1203).

Date and Time: July 15, 2024; 8:00 a.m.–6:30 p.m., July 16, 2024; 8:00 a.m.–3:30 p.m.

Place: Upson Hall, Cornell University, 124 Hoy Rd., Ithaca, NY 14850.

Type of Meeting: Part-open

Contact Person: Z. Charles Ying, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone (703) 292–8428.

Purpose of Meeting: NSF site visit to provide advice and recommendations concerning further support of the PARADIM at Cornell University.

Agenda**Monday, July 15, 2024**

8:00 a.m.–8:50 a.m.—Executive Session (Closed)

8:50 a.m.–11:30 a.m.—Review of PARADIM (Open)

11:30 a.m.–2:00 p.m.—Executive Session (Closed)

2:00 p.m.–3:15 p.m.—Review of PARADIM (Open)

3:15 p.m.–6:30 p.m.—Executive Session (Closed)

Tuesday, July 16, 2024

8:00 a.m.–3:30 p.m.—Executive Session (Closed)

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–13519 Filed 6–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for the Materials Research (DMR)—2D Crystal Consortium (2DCC–MIP) Site Visit (#1203).

Date and Time: July 17, 2024; 8:00 a.m.–6:00 p.m., July 18, 2024; 8:00 a.m.–4:00 p.m.

Place: Millennium Science Complex, Room N–201, 100 Pollock Road, University Park, PA 16802.

Type of Meeting: Part-open.

Contact Person: Z. Charles Ying, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone (703) 292–8428.

Purpose Of Meeting: NSF site visit to provide advice and recommendations concerning further support of the 2DCC–MIP at the University of Pennsylvania.

Agenda

Monday, July 17, 2024

8:00 a.m.–8:50 a.m.—Executive Session (Closed)
8:50 a.m.–12:00 p.m.—Review of 2DCC–MIP (Open)
12:00 p.m.–1:00 p.m.—Executive Session (Closed)
1:00 p.m.–2:00 p.m.—Review of 2DCC–MIP (Open)
2:00 p.m.–6:00 p.m.—Executive Session (Closed)

Tuesday, July 18, 2024

8:00 a.m.–4:00 p.m.—Executive Session (Closed)

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or

confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–13517 Filed 6–20–24; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0154]

Information Collection: Reactor Site Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, “Reactor Site Criteria.”

DATES: Submit comments by July 22, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0154 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0154.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The supporting statement is available in ADAMS under Accession No. ML24116A125.

- *NRC’s PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC’s Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC’s Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not

routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "Reactor Site Criteria." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 5, 2024, 89 FR 24044.

1. *The title of the information collection:* Reactor Site Criteria.
2. *OMB approval number:* 3150–0093.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* As necessary in order for the NRC to assess the adequacy of proposed seismic design bases and the design bases for other site hazards for small modular reactors (SMRs) and/or non-light water reactors (LWRs) constructed and licensed in accordance with parts 50 and 52 of title 10 of the *Code of Federal Regulations* (10 CFR) and the Atomic Energy Act of 1954, as amended.

6. *Who will be required or asked to respond:* Applicants who apply for an early site permit (ESP), combined license (COL) or a construction permit (CP) or operating license (OL) on or after January 10, 1997.

7. *The estimated number of annual responses:* 13.

8. *The estimated number of annual respondents:* 13.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 482,412 hours.

10. *Abstract:* 10 CFR part 100, "Reactor Site Criteria," establishes approval requirements for proposed sites for the purpose of constructing and operating stationary SMRs and/or non-LWRs. Subpart B, "Evaluation Factors for Stationary Power Reactor Site Applications on or after January 10, 1997," requirements apply to applicants who apply for an ESP, COL or a CP or OL on or after January 10, 1997. This clearance is necessary since the NRC is expecting approximately 8 SMR and/or non-LWR siting applications over the

next 3 years. The applicants must provide information regarding the physical characteristics of the site in addition to the potential for natural phenomena and man-made hazards. This includes information on meteorological hazards (such as hurricanes, tornadoes, snowfall, and extreme temperatures), hydrologic hazards (such as floods, tsunamis, and seiches) geologic hazards (such as faulting, seismic hazards, and the maximum credible earthquake) and factors such as population density, the proximity of man-related hazards (*e.g.*, airports, dams, transportation routes, military and chemical facilities), and site hydrological and atmospheric dispersion characteristics. The NRC staff reviews the submitted information and, if necessary, may generate a request for additional information. The staff meets with the applicant and conducts a site visit to resolve any open issues. When the open issues have been resolved, the staff writes the final safety evaluation report, which is published and used as a basis for the remainder of the NRC licensing process.

Dated: June 14, 2024.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024–13553 Filed 6–20–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–367 and CP2024–375; MC2024–368 and CP2024–376; MC2024–369 and CP2024–377; MC2024–370 and CP2024–378; MC2024–371 and CP2024–379]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 25, 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):* MC2024–367 and CP2024–375; *Filing Title:* USPS Request

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).

to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 113 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: June 14, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: June 25, 2024.

2. *Docket No(s)*: MC2024–368 and CP2024–376; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 114 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: June 14, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: June 25, 2024.

3. *Docket No(s)*: MC2024–369 and CP2024–377; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 115 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: June 14, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: June 25, 2024.

4. *Docket No(s)*: MC2024–370 and CP2024–378; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 279 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: June 14, 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*: June 25, 2024.

5. *Docket No(s)*: MC2024–371 and CP2024–379; *Filing Title*: USPS Request to Add Priority Mail Express & USPS Ground Advantage Contract 1 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: June 14, 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*: June 25, 2024.

This Notice will be published in the **Federal Register**.

Jennie Jbara,

Primary Certifying Official.

[FR Doc. 2024–13654 Filed 6–20–24; 8:45 am]

BILLING CODE 7710–FW–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*: June 21, 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 June 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 278 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–363, CP2024–371.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–13573 Filed 6–20–24; 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*: June 21, 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 June 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 111 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024–365, CP2024–373.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–13565 Filed 6–20–24; 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*: June 21, 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 June 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 277 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–362, CP2024–370.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–13572 Filed 6–20–24; 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*: June 21, 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 June 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 115 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–369, CP2024–377.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–13569 Filed 6–20–24; 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:* June 21, 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 June 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 279 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–370, CP2024–378.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–13574 Filed 6–20–24; 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:* June 21, 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 June 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 112 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–366, CP2024–374.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–13566 Filed 6–20–24; 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:* June 21, 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 June 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 113 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–367, CP2024–375.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–13567 Filed 6–20–24; 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:* June 21, 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 June 10, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 107 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–358, CP2024–366.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–13561 Filed 6–20–24; 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:* June 21, 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 June 11, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 108 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–360, CP2024–368.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–13562 Filed 6–20–24; 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:* June 21, 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 June 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 110 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–364, CP2024–372.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–13564 Filed 6–20–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express 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:* June 21, 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 June 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & USPS Ground Advantage® Contract 1 to Competitive Product List*. Documents are available at

www.prc.gov, Docket Nos. MC2024–371, CP2024–379.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–13575 Filed 6–20–24; 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:* June 21, 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 June 11, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 109 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–361, CP2024–369.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–13563 Filed 6–20–24; 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:* June 21, 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 June 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 114 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–368, CP2024–376.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–13568 Filed 6–20–24; 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:* June 21, 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 June 10, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 276 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–359, CP2024–367.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–13571 Filed 6–20–24; 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:* June 21, 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 June 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 116 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–372, CP2024–380.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–13570 Filed 6–20–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100343; File No. SR–CboeEDGX–2024–035]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

June 14, 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 June 7, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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 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 EDGX Exchange, Inc. (the “Exchange” or “EDGX Equities”) proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/),

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 relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit (“Gb”) circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeEDGX–2023–044). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–057. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the “OIP”) in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeEDGX–2023–62). On October 13, 2023, the Exchange withdrew that filing and on business date October 16, 2023 submitted SR–CboeEDGX–2023–065. On December 12, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–079. On December 20, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–081. On February 12, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–013. On April 9, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–020. On June 7, 2024, the Exchange withdrew that filing and submitted this filing.

amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., (“Affiliate Exchanges”).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁴ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange operates in a highly competitive environment. On May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Fee Guidance”), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.¹¹ As described in further detail below, the Exchange believes substitutable products¹² are in fact available to market participants, including by third-party resellers of the Exchange’s physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other equities exchanges that trade equities or other off-exchange trading platforms.

The 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.¹³ Exchanges themselves are platforms.¹⁴ Particularly, exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform. As described in further detail below, the Exchange believes that competition

among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior. And indeed, nothing in the Exchange Act requires the individual examination of specific product fees in isolation. Rather, the Exchange generally requires the rules of an exchange to provide for the “equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.”¹⁵

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports. Further, the current 10 Gb physical port fee has remained unchanged since June 2018.¹⁶ Since its last increase over 6 years ago however, there has been notable inflation. Particularly, the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.¹⁷ Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. Accordingly, the Exchange believes the proposed fee of \$8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%. Were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of \$9,360, which is 10% more than the Exchange is actually proposing. To further demonstrate, the Exchange notes that \$8,500 in 2024 is equivalent to approximately \$6,800 in 2018, when adjusted for inflation. Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.*, \$7,500) when adjusted for inflation. The Exchange is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the

cumulative rate. The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.¹⁸

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no regulatory requirement that any market participant connect to any one particular exchange. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange. Indeed, there are currently 16 registered equities exchanges that trade equities (12 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.¹⁹ Based on publicly available information, no single equities exchange has more than approximately 15% of the market share.²⁰ Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, in 2020 alone, three new exchanges entered the market: Long Term Stock Exchange (LTSE), Members Exchange

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019 (“Fee Guidance”). The Fee Guidance also recognized that “products need to be substantially similar but not identical to be substitutable.”

¹² A substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. See <https://www.investopedia.com/terms/s/substitute.asp>.

¹³ See Fee Guidance.

¹⁴ The Supreme Court in *Ohio v. American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.*, network effects). See *Ohio v. American Express Co.* 138 S. Ct. 2274, 585 U.S. ____ (2018).

¹⁵ See 15 U.S.C. 78f(b)(4).

¹⁶ See Securities and Exchange Release No. 83450 (June 15, 2018), 83 FR 28884 (June 21, 2018) (SR-CboeEDGX-2018-016).

¹⁷ See <https://www.officialdata.org/us/inflation/2010?amount=1>.

¹⁸ See *e.g.*, *See e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange’s 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹⁹ *Id.*

²⁰ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 6, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

(MEMX), and Miami International Holdings (MIAX Pearl).

As noted above, there is no regulatory requirement that any market participant connect to any one equities exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one equities exchange whose membership includes every registered broker-dealer. By way of example, as of April 2024 Cboe BYX has 110 members that trade equities, Cboe EDGX has 124 members that trade equities, Cboe EDGA has 103 members and Cboe BZX has 132 members. There is also no firm that is a Member of the Exchange only. Further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 143 members,²¹ IEX has 129 members,²² and MIAX Pearl has 51 members.²³

A market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity. The Exchange notes that third-party non-Members also resell exchange connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.²⁴ The

Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.*, fee based on number of Members that connect to the Exchange indirectly via the third-party).²⁵ Particularly, these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services. The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party reseller.²⁶ This allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity. These third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings. The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services. That is, even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.*, use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relate to a physical port because such reseller may be providing a third-party reseller as it relate to a physical port

Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR-NASDAQ-2015-002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR-NASDAQ-2017-114).

²⁶ For example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port.

²⁷ See *e.g.*, *See e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. *See also* New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.*, providing space, hosting, power, and other long-haul connectivity options). This is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan. These services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive. Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. For example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network. These third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports. Therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings. Because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.²⁷

Accordingly, vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is

²¹ See <https://www.nyse.com/markets/nyse/membership>.

²² See <https://www.iexexchange.io/membership>.

²³ See https://www.miaxglobal.com/sites/default/files/page-files/20230630_MIAX_Pearl_Equities_Exchange_Members_June_2023.pdf.

²⁴ Third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. Many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. This may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. This facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business.

²⁵ See, *e.g.*, Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (nasdaqtrader.com); and

appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it. In the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 12 non-Cboe affiliated equities markets. Indeed, market participants are free to choose which exchange to use to satisfy their business needs. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. For example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

Additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan") the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.²⁸ The Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the

exchange with that unique business model was otherwise profitable.²⁹

As noted above, exchanges also compete as platforms. In the context of the competition among platforms, different exchanges operate a variety of different business models. In fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products. As discussed above, market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data. For those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices. Further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert. For example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services. As such, demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities. In assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange. When accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.³⁰ For example, data has shown that venues with the highest explicit costs (typically inverted and fee-free venues) have the lowest implicit costs from markouts³¹ and vice versa.³² Implicit costs explain how venues with

higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).³³ Additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.³⁴ As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes. The Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*,

²⁹ *Id.*

³⁰ Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³¹ Per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider.

³² Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³³ See *id.* For example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. As Nasdaq noted, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, when implicit costs are considered, the difference in cost to trade is minimized.

³⁴ Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research.

²⁸ See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7-13-19).

Secaucus NY6 Data Center (“NY6”)), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms’ respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange’s ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges

for similar connections.³⁵ Indeed, the Exchange believes assessing fees that are a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable. As noted above, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange’s affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange’s investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as

compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonable and appropriately allocated.

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. Moreover, Congress’s intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this “national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed.”³⁶ Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules “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.”³⁷ Likewise, the Act grants the Commission authority to amend or repeal “[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”³⁸ In short, the promotion of free and open competition was a core congressional objective in creating the national market system.³⁹ Indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces

³⁶ See H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ 15 U.S.C. 78f(8).

³⁹ See also 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote “fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets”); Order, 73 FR at 74781 (“The Exchange Act and its legislative history strongly support the Commission’s reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.”).

³⁵ See *e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. Finally, and importantly, the Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically. Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,⁴⁰ continual auditing, and considerable expense. The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation. Moreover, the industry could experience frequent rate increases based on escalating expense levels. The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which the Commission has historically sought to avoid.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (i.e., all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does

not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The Exchange's proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 12 non-Cboe affiliated equities markets, as well as off-exchange venues, where competitive products are available for trading. 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."⁴¹ 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'. . . ."⁴² Accordingly, the Exchange does not believe its proposed 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 Act⁴³ and paragraph (f) of Rule 19b-4⁴⁴ 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.

⁴¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁴² *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)).

⁴³ 15 U.S.C. 78s(b)(3)(A).

⁴⁴ 17 CFR 240.19b-4(f).

⁴⁰ See e.g., letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP ("SIG"), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, and letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. ("Virtu"), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. See also Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR-IEX-2021-14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR-PEARL-2022-18) (Notice of Filing of a Proposed Rule Change To Amend the MIAx PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAx Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

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-CboeEDGX-2024-035 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-CboeEDGX-2024-035. 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-CboeEDGX-2024-035 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100333; File No. SR-CboeEDGX-2024-034]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Provide a Discount on the Purchase of Historic Short Volume and Trade Reports

June 14, 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 June 4, 2024, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 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 EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), 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 update its Fee Schedule to provide a discount on fees assessed to EDGX Members ("Members")³ and non-Members that purchase \$20,000 or more of U.S. Equity Short Volume and Trades Reports ("Short Volume Reports"), effective June 4, 2024 through June 30, 2024.

By way of background, the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade date,⁴ total volume,⁵ short volume,⁶ and sell short exempt volume,⁷ by symbol.⁸ The Short Volume Report also includes an end-of-month report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),⁹ trade size,¹⁰ trade price,¹¹ and type of short sale execution,¹² by symbol and exchange.¹³ The Short Volume Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may

³ See Rule 1.5(n) ("Member"). The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

⁴ "Trade date" is the date of trading activity in yyyy-mm-dd format.

⁵ "Total volume" is the total number of shares transacted.

⁶ "Short volume" is the total number of shares sold short.

⁷ "Short exempt volume" is the total number of shares sold short classified as exempt.

⁸ "Symbol" refers to the Cboe formatted symbol in which the trading activity occurred. See https://cdn.cboe.com/resources/membership/US_Symbolology_Reference.pdf.

⁹ "Trade date and time" is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 ET format.

¹⁰ "Trade size" is the number of shares transacted.

¹¹ "Trade price" is the price at which shares were transacted.

¹² "Short type" is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (see 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (see 17 CFR 242.201(c)).

¹³ "Exchange" is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴⁵ 17 CFR 200.30-3(a)(12).

purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Short Volume Report available for purchase to Users on the LiveVol DataShop website (datashop.cboe.com). Both the end-of-day report and end-of-month report are included in the cost of the Short Volume Report and are available for purchase by both Members as well as non-Members on an annual or monthly¹⁴ basis. The monthly fee is \$750 per Internal Distributor¹⁵ and \$1,250 per External Distributor.¹⁶ Additionally, the Exchange offers historical reports containing both the end-of-day volume and end-of-month trading activity. The fee per month of historical data is \$500. The Short Volume Report provided on a historical basis is only for display use redistribution (e.g., the data may be provided on the User’s platform). Therefore, Users of the historical data may not charge separately for data included in the Short Volume Report or incorporate such data into their product. The Exchange notes that the Short Volume Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.¹⁷

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase historical Short Volume Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a 20% discount for ad-hoc purchases of

historical Short Volume Reports of \$20,000 or more.¹⁸ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning June 4, 2024, with the program remaining in effect through June 30, 2024. The Exchange also notes that it previously adopted the same discount program last year and proposes to update the Fees Schedule with the new program dates accordingly.¹⁹

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²¹ 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)²² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,²³ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical short volume data via historical Short Volume Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the equities industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.²⁴

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 16% of the equity market share.²⁵ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.”²⁶ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the

¹⁴ The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on October 24, 2023, the monthly fee will cover the period of October 24, 2023, through November 23, 2023. If the User cancels its subscription prior to November 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

¹⁵ An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity. See Cboe EDGX U.S. Equities Exchange Fee Schedule.

¹⁶ An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity. See Cboe EDGX U.S. Equities Exchange Fee Schedule.

¹⁷ See the Nasdaq Fee Schedule, Equity 7, Section 152. See also, the TAQ Group Short Sales (Monthly File) and Short Volume product, offered by the New York Stock Exchange LLC (“NYSE”) and affiliated equity markets (the “NYSE Group”) at NYSE Exchange Proprietary Market Data √ TAQ NYSE Group Short Sales.

¹⁸ The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, i.e. receive a 20% discount of \$5,000).

¹⁹ See Securities Exchange Act Release No. 99185 (December 14, 2023), 88 FR 88182 (December 20, 2023) (SR-CboeEDGX-2023-072).

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² *Id.*

²³ 15 U.S.C. 78f(b)(4).

²⁴ See *supra* note 17.

²⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 3, 2024), available at <https://www.cboe.com/us/equities/market/>.

²⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of historical Short Volume Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Short Volume Reports is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of historical Short Volume Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Short Volume Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage users to purchase historical Short Volume Reports. Further, the proposed discount is intended to promote increased use of the Exchange's historical Short Volume Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase historical Short Volume Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Short Volume Reports, and the Exchange is not required to make historical Short Volume Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange previously adopted a similar discount program last year.²⁷

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange's historical Short Volume Reports offering

is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of historical Short Volume Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Short Volume Reports.

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 Act²⁸ and paragraph (f) of Rule 19b-4²⁹ 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-CboeEDGX-2024-034 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-CboeEDGX-2024-034. 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-CboeEDGX-2024-034 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Sherry R. Haywood,
Assistant Secretary.

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BILLING CODE 8011-01-P

²⁷ See Securities Exchange Act Release No. 88195 (December 14, 2023), 88 FR 88193 (December 20, 2023) (SR-CboeEDGX-2023-021).

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f).

³⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100349; File No. SR–CboeEDGA–2024–022]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

June 14, 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 June 7, 2024, Cboe EDGA Exchange, Inc. (the “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 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 Equities”) proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://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 relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange’s servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit (“Gb”) circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGX Exchange, Inc. (options and equities platforms), and Cboe C2 Exchange, Inc., (“Affiliate

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeEDGA–2023–011). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGA–2023–015. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the “OIP”) in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeEDGA–2023–016). On October 13, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGA–2023–017. On December 12, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGA–2023–022. On February 9, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGA–2024–006. On April 9, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGA–2024–013. On June 7, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

Exchanges’).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange operates in a highly competitive environment. On May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Fee Guidance”), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

a proposed fee.¹¹ As described in further detail below, the Exchange believes substitutable products¹² are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other equities exchanges that trade equities or other off-exchange trading platforms.

The 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.¹³ Exchanges themselves are platforms.¹⁴ Particularly, exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform. As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior. And indeed, nothing in the Exchange Act requires the individual examination of specific product fees in isolation. Rather, the Exchange generally requires the rules of an exchange to provide for the “equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.”¹⁵

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports. Further, the current 10 Gb physical port fee has remained unchanged since June 2018.¹⁶ Since its last increase over 6 years ago however, there has been notable inflation. Particularly, the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.¹⁷ Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. Accordingly, the Exchange believes the proposed fee of \$8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%. Were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of \$9,360, which is 10% more than the Exchange is actually proposing. To further demonstrate, the Exchange notes that \$8,500 in 2024 is equivalent to approximately \$6,800 in 2018, when adjusted for inflation. Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.*, \$7,500) when adjusted for inflation. The Exchange is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate. The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.¹⁸

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no

regulatory requirement that any market participant connect to any one particular exchange. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange. Indeed, there are currently 16 registered equities exchanges that trade equities (12 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.¹⁹ Based on publicly available information, no single equities exchange has more than approximately 15% of the market share.²⁰ Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, in 2020 alone, three new exchanges entered the market: Long Term Stock Exchange (LTSE), Members Exchange (MEMX), and Miami International Holdings (MIAX Pearl).

As noted above, there is no regulatory requirement that any market participant connect to any one equities exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one equities exchange whose membership includes every registered broker-dealer. By way of example, as of April 2024 Cboe BYX has 110 members that trade equities, Cboe EDGX has 124 members that trade equities, Cboe EDGA has 103 members and Cboe EDGA has 132 members.

¹¹ See Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019 (“Fee Guidance”). The Fee Guidance also recognized that “products need to be substantially similar but not identical to be substitutable.”

¹² A substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. See <https://www.investopedia.com/terms/s/substitute.asp>.

¹³ See Fee Guidance.

¹⁴ The Supreme Court in *Ohio v. American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (*i.e.*, network effects). See *Ohio v. American Express Co.* 138 S. Ct. 2274, 585 U.S. (2018).

¹⁵ See 15 U.S.C. 78f(b)(4).

¹⁶ See Securities and Exchange Release No. 83449 (June 15, 2018), 83 FR 28890 (June 21, 2018) (SR-CboeEDGA-2018-010).

¹⁷ See <https://www.officialdata.org/us/inflation/2010?amount=1>.

¹⁸ See *e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹⁹ *Id.*

²⁰ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 6, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

There is also no firm that is a Member of the Exchange only. Further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 143 members,²¹ IEX has 129 members,²² and MIAX Pearl has 51 members.²³

A market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity. The Exchange notes that third-party non-Members also resell exchange connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.²⁴ The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.*, fee based on number of Members that connect to the Exchange indirectly via the third-party).²⁵ Particularly, these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services. The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with

other non-affiliated Members if purchased through a third-party reseller.²⁶ This allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity. These third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings. The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services. That is, even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.*, use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relate to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.*, providing space, hosting, power, and other long-haul connectivity options). This is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan. These services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive. Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. For example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network. These third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected

through these multi-Exchange ports. Therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings. Because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.²⁷

Accordingly, vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it. In the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 12 non-Cboe affiliated equities markets. Indeed, market participants are free to choose which exchange to use to satisfy their business needs. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members alike, may decide not to purchase, or to reduce its use of, the

²¹ See <https://www.nyse.com/markets/nyse/membership>.

²² See <https://www.iexexchange.io/membership>.

²³ See https://www.miaxglobal.com/sites/default/files/page-files/20230630_MIAX_Pearl_Equities_Exchange_Members_June_2023.pdf.

²⁴ Third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. Many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. This may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. This facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business.

²⁵ See *e.g.*, Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (nasdaqtrader.com); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

²⁶ For example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port.

²⁷ See *e.g.*, See *e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. For example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

Additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan") the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.²⁸ The Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.²⁹

As noted above, exchanges also compete as platforms. In the context of the competition among platforms, different exchanges operate a variety of different business models. In fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products. As discussed above, market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data. For those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and

forcing exchanges to compete on their offerings and prices. Further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert. For example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services. As such, demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities. In assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange. When accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.³⁰ For example, data has shown that venues with the highest explicit costs (typically inverted and fee-free venues) have the lowest implicit costs from markouts³¹ and vice versa.³² Implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).³³ Additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.³⁴ As such, the Exchange believes the proposed fee

change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes. The Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center ("NY6")), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms'

³⁰ Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³¹ Per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider.

³² Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³³ See *id.* For example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. As Nasdaq noted, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, when implicit costs are considered, the difference in cost to trade is minimized.

³⁴ Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research.

²⁸ See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7-13-19).

²⁹ *Id.*

respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.³⁵ Indeed, the Exchange believes assessing fees that are a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable. As noted above, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges

and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. Moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this “national market

system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed.”³⁶ Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules “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.”³⁷ Likewise, the Act grants the Commission authority to amend or repeal “[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”³⁸ In short, the promotion of free and open competition was a core congressional objective in creating the national market system.³⁹ Indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. Finally, and importantly, the Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically. Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,⁴⁰ continual

³⁶ See H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ 15 U.S.C. 78f(8).

³⁹ See also 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote “fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets”); Order, 73 FR at 74781 (“The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.”).

⁴⁰ See *e.g.*, letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (“SIG”), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O’Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, and letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (“Virtu”), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. See also Securities Exchange

³⁵ See *e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

auditing, and considerable expense. The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation. Moreover, the industry could experience frequent rate increases based on escalating expense levels. The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which the Commission has historically sought to avoid.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members

pay the least, and highest bandwidth consuming members pays the most.

The Exchange's proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 12 non-Cboe affiliated equities markets, as well as off-exchange venues, where competitive products are available for trading. 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.”⁴¹ 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’”⁴² Accordingly, the Exchange does not believe its proposed 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 Act⁴³ and paragraph (f) of Rule 19b-4⁴⁴ 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-2024-022 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-2024-022. 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

Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR-IEX-2021-14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR-PEARL-2022-18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

⁴¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁴² *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)).

⁴³ 15 U.S.C. 78s(b)(3)(A).

⁴⁴ 17 CFR 240.19b-4(f).

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-2024-022 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13551 Filed 6-20-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100340; File No. SR-C2-2024-008]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

June 14, 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 June 3, 2024, Cboe C2 Exchange, Inc. (the "Exchange" or "C2") 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

Cboe C2 Exchange, Inc. (the "Exchange" or "C2") proposes to amend its Fees Schedule. The text of the proposed rule change is in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective June 3, 2024.

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 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than approximately 14% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that

market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Currently, the Exchange provides a rebate of \$0.32 per contract for C2 Market-Maker orders AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity and are a National Best Bid or Offer ("NBBO") Joiner or NBBO Setter (which orders yield fee code "SL"). To qualify as a NBBO Joiner, a C2 Market-Maker order must improve the C2 Best Bid or Offer ("BBO") and result in C2 joining an existing NBBO. Only the first order received that results in C2 BBO joining the NBBO at a new price level will qualify for the enhanced rebate. If C2 is at the NBBO, the order will not qualify. Alternatively, C2 Market-Makers may receive the enhanced rebate if they are a NBBO Setter. To qualify as a NBBO Setter and receive the enhanced rebate, a C2 Market-Maker order must set the NBBO. The Exchange also provides a rebate of a rebate of [sic] \$0.28 per contract for C2 Market-Maker orders AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity (which orders yield fee code "SM"). Pursuant to Footnote 1 of the Fee Schedule, the Exchange also offers four Market-Maker Volume Tiers, which provide enhanced rebates between \$0.30 and \$0.36 per contract for qualifying Market-Maker orders yielding fee code SM where a TPH meets required criteria.

The Exchange now proposes to add Footnote 2 (Market-Maker (NBBO Joiner or NBBO Setter) Volume Tiers), applicable to qualifying C2 Market-Maker orders yielding fee code SL, to the Fees Schedule. Under proposed Footnote 2 of the Fees Schedule, the Exchange proposes to offer two Market-Maker (NBBO Joiner or NBBO Setter) Volume Tiers, which provide enhanced rebates of \$0.34 and \$0.36 per contract for qualifying Market Maker orders yielding fee code SL where a TPH meets required criteria.

The Exchange proposes to add new Market-Maker (NBBO Joiner or NBBO Setter) Volume Tier 1 to provide a rebate of \$0.34 per contract if a TPH has an ADAV⁴ in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (*i.e.*, yielding fee codes SM or SL)

⁴⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Cboe Global Markets U.S. Options Market Volume Summary by Month (May 29, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

⁴ "ADAV" means average daily added volume calculated as the number of contracts added, per day.

greater than or equal to 0.85% of Average OCV.⁵ The Exchange also proposes to add new Market-Maker (NBBO Joiner or NBBO Setter) Volume Tier 2 to provide a rebate of \$0.36 per contract if a TPH has an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (*i.e.*, yielding fee codes SM or SL) $\geq 1.05\%$ of Average OCV.

The proposed changes bring the enhanced rebates offered for orders yielding fee code SL in-line with the enhanced rebates currently offered for orders yielding fee code SM. As such, the Exchange believes the proposed enhanced rebates for C2 Market-Makers in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that are NBBO Joiners or Setters will continue to incentivize liquidity providers to provide more aggressively priced liquidity in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with

Section 6(b)(4) of the Act,⁹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

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. Further, the Exchange notes that other exchanges offer tiered product-specific pricing and/or incentives.¹⁰ The proposed changes are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating additional incentives to providing aggressively priced displayed liquidity, which the Exchange believes would enhance market quality to the benefit of all market participants.

The Exchange believes the proposed change to adopt volume-based rebate tiers for C2 Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that are NBBO Joiners or Setters (which yield fee code “SL”) is reasonable, because such market participants are providing liquidity in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA and XLF options to the benefit of all market participants. Increased add volume order flow, particularly by liquidity providers, contributes to a deeper, more liquid market, which, in turn, provides for increased execution opportunities and thus overall enhanced price discovery and price improvement opportunities on the Exchange. As such, this benefits all market participants by contributing towards a robust and well-balanced market ecosystem, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange believes its proposed change is reasonable as it is competitive and in line with volume-based pricing of at least one other exchange.¹¹

Additionally, the Exchange believes that it is equitable and not unfairly discriminatory to offer higher rebates to Market-Makers that add liquidity as compared to other market participants, because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, which other market participants do not have. Further, these rebates are intended to incentivize Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. The Exchange notes that the proposed changes to Market-Maker rebates for orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA and XLF that are NBBO Joiners or Setters and that add liquidity will be applied equally to all Market-Makers.

The Exchange believes that offering the NBBO Joiner and Setter rebate for Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF is reasonable as it is designed to continue to incentivize C2 Market Makers to improve the C2 BBO resulting in C2 joining an existing NBBO or setting a new NBBO to receive the rebate, ultimately encouraging C2 Market Makers to submit more aggressive AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders that will maintain tight spreads, benefitting both TPHs and public investors.

The Exchange believes the Market-Maker Volume Tiers, as amended, continue to be a reasonable means to encourage Market-Makers to increase their order flow to specific multiply listed options on the Exchange (*i.e.*, SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF). The Exchange notes that increased Market-Maker activity, particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increase in order flow from other market participants, contributing towards a robust, well-balanced market ecosystem, particularly in multiply listed options on the Exchange. The Exchange also believes that the proposed enhanced rebates offered under Tiers 1 and 2 are reasonably based on the difficulty of satisfying the tiers’ amended criteria and ensures the proposed rebate and thresholds appropriately reflect the incremental difficulty in achieving the Market-Maker (NBBO Joiner or NBBO Setter) Volume Tiers. The Exchange believes that the proposed enhanced

MIAX Pearl Market Maker orders in Penny Classes that add liquidity.

⁵ “OCV” means, the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (“OCC”) for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See, e.g., MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for product-specific pricing for SPY, QQQ, and IWM; and Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for Market Maker SPY, QQQ, IWM orders that add liquidity between \$0.10 and \$0.26 per contract, as well as tiered [sic] rebates for Market Maker orders in similar, single-name options (AMZN, META, and NVDA) between \$0.15 and \$0.22.

¹¹ See, e.g., MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for rebates ranging between \$0.22 and \$0.48 for all

rebates are also in line with the enhanced rebates currently offered by another exchange for similar products.¹²

The Exchange believes that the Market-Maker (NBBO Joiner or NBBO Setter) Volume Tiers, as amended, represent an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market-Makers, in that all Market-Makers have the opportunity to compete for and achieve the proposed tiers. The enhanced rebates will apply automatically and uniformly to all Market-Makers that achieve the proposed corresponding criteria. The Exchange notes that the tiers are open to any Market-Maker that satisfies the tiers' criteria. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market-Maker qualifying for the proposed tiers, the Exchange notes that currently no Market-Makers would be able to achieve the criteria in Tiers 1 and 2.

The Exchange lastly notes that it does not believe the tiers, as amended, will adversely impact any TPH's pricing. Rather, should a TPH not meet the proposed criteria, the TPH will merely not receive the enhanced rebates corresponding to the tiers, and will instead receive the standard rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all similarly situated TPHs equally. Specifically, the proposed change to adopt volume-based tier rebates for Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA and XLF that are NBBO Joiners or NBBO Setters and add liquidity will be applied equally to all Market-Makers that achieve the proposed tiers' criteria. The Exchange believes that the proposed change to provide volume-based tier rebates for Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that are

NBBO Joiners or NBBO Setters and that add liquidity will incentivize entry on the Exchange of more aggressive SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders that will maintain tighter spreads, benefitting both TPHs and public investors criteria and, as a result, provide for deeper levels of liquidity, increasing trading opportunities for other market participants, thus signaling further trading activity, ultimately incentivizing more overall order flow and improving price transparency on the Exchange. Finally, as noted above, the proposed Market-Maker (NBBO Joiner or NBBO Setter) Volume Tiers apply uniformly to all Market-Makers, in that all Market-Makers have the opportunity to compete for and achieve the tiers, as amended; the enhanced rebates, as amended, will apply automatically and uniformly to all Market-Makers that achieve the proposed corresponding criteria.

Next, the Exchange believes the proposed rule change does 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. TPHs have numerous alternative venues that they may participate on and director [sic] their order flow, including 16 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 14% of the market share.¹³ Therefore, no exchange possesses significant pricing power in the execution of option 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." 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'. . . .". 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 Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ 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-C2-2024-008 on the subject line.

¹² See, e.g., MIAx Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for rebates ranging between \$0.22 and \$0.48 for all MIAx Pearl Market Maker orders in Penny Classes that add liquidity.

¹³ See *supra* note 3.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–C2–2024–008. 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–C2–2024–008, and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–13542 Filed 6–20–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100347; File No. SR–NYSECHX–2024–21]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

June 14, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 3, 2024, the NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users with wireless connectivity to an additional market data feed. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users⁴ with wireless connectivity to an additional market data feed.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the “Existing Third Party Data”), and wired connections to more than 45 market data feeds or combinations of feeds.⁵

The Exchange proposes to add to the Fee Schedule wireless connections (“Connectivity”) to the Nasdaq CXC and Nasdaq CX2 market data feeds.⁶ As there would be limited bandwidth available on the wireless network from the TR2 data center in Toronto, Canada, where the two feeds are generated, the Exchange would not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds. Rather, FIDS would provide connectivity to a selection of symbols from the two market data feeds, which would include those symbols for which there is demand (the “Proposed Third Party Data”).⁷

⁴ For purposes of the Exchange's colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 at n.6 (November 1, 2019) (SR–NYSECHX–2019–12). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR–NYSE–2024–33, SR–NYSEAMER–2024–38, SR–NYSEARCA–2024–49, and SR–NYSENAT–2024–18.

⁵ See Securities Exchange Act Release No. 99809 (March 20, 2024), 89 FR 21158 (March 26, 2024) (SR–NYSECHX–2024–11).

⁶ According to the Nasdaq Canada website, “CXC is a lit book providing clients with a reliable platform for trading Canadian equities, offering the benefits of anonymous or attributed trading and price/broker/time priority” and “[t]he CX2 trading book is designed to provide additional cost savings and trading efficiencies. Through a unique pricing model and broker preferencing functionality, this lit book helps to improve investment performance and to drive positive market structure change.” <https://www.nasdaq.com/solutions/nasdaq-canada>

⁷ When a User requested a wireless connection to Nasdaq CXC or Nasdaq CX2 market data feeds, it would receive connectivity to the Proposed Market Data. The User would then determine the symbols for which it would receive data. The Exchange would not have visibility into which portions of the

Continued

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30–3(a)(12).

As with most other Existing Third Party Data,⁸ the monthly charge for the Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is applicable to wireless connections to the Proposed Third Party Data.

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become operative by the end of 2024. The Exchange will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

Users would be offered Connectivity to the Proposed Third Party Data through connections into the colocation center in the Mahwah, New Jersey data

center (“MDC”).⁹ To receive either market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

In order to implement the proposed change, the Exchange proposes to add the following item to the Connectivity Fee Schedule under “A. Co-Location Fees”:

Type of Service	Description	Amount of charge
Wireless Connection for Third Party Data	Wireless connection of Nasdaq CXC and Nasdaq CX2 data.	\$5,000 per connection initial charge plus monthly charge per connection of \$5,000 Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

If a User were to purchase more than one wireless connection to Proposed Third Party Data, it would pay more than one non-recurring initial charge. Unless the User already had a port for Toronto Stock Exchange data, a proposed wireless connection would include the use of one port for Connectivity to Proposed Third Party Data, and a User would not pay a separate fee for the use of such port.¹⁰

If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data. Rather, the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

The proposed Connectivity would not utilize the pole on the grounds of the MDC.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Exchange believes that it would not obtain new Users due to the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which 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. 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.”¹¹

A third party has created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission’s market-based test

Proposed Market Data a given customer chooses to receive.

⁸ See 84 FR 58778, *supra* note 4, at 58784–85.

⁹ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services

would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

¹⁰ Toronto Stock Exchange data and CME Group Data each require their own port. The remaining Existing Third Party Data requires one port. Accordingly, a User would not be able to connect

to the Proposed Third Party Data using the same port that it uses for connectivity to CME Group Data.

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

considers “whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.”¹⁵ If the Exchange meets that burden, “the Commission will find that its proposal is consistent with the Act unless ‘there is a substantial countervailing basis to find that the terms’ of the proposal violate the Act or the rules thereunder.”¹⁶ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange has not placed third party vendors at a competitive disadvantage created by the Exchange.

The Exchange’s proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with connectivity to the Proposed Third Party Data.

Under the proposed rule, for the first time, a User also would be able to connect to the Proposed Market Data wirelessly, increasing the options available to it. Without this proposed rule change, Users would not have wireless access to the Proposed Third Party Data.

Moreover, a third party created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data.

Accordingly, the wireless connections would compete with the Exchange’s proposed Connectivity and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange’s proposed fees.¹⁷ If the Exchange were to set its proposed fees

too high, Users could respond by instead selecting the telecoms’ substantially similar wireless connectivity.

In addition, the Exchange believes that at least three third-party market participants offer fiber connections to Nasdaq CXC and Nasdaq CX2 market data, including the Proposed Third Party Data, in colocation.¹⁸ FIDS offers connectivity to the Proposed Third Party Data as part of its connectivity to Nasdaq Canada data feeds.¹⁹

The Exchange Would Not Preclude Other Connections to Proposed Market Data in TR2

The Exchange is not aware of any other public, commercially available wireless connections to the Proposed Third Party Data in colocation.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Wireless connections and fiber connections to the Proposed Third Party Data in the MDC would compete with each other. Given the various advantages and disadvantages of both wireless and fiber connections, a User interested in purchasing a connection to the Proposed Third Party Data is likely to consider a variety of factors in deciding whether to use a wireless versus fiber connection, including latency; the amount of network uptime; the equipment the network uses; the cost of the connection; and the applicable contractual provisions.

¹⁸ Because the providers of such connectivity are not regulated entities, they are not obligated to make the availability of connections, latency figures or fees publicly available or the same for all entities.

¹⁹ See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR-NYSECHX-2019-12).

Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

Third Party Competitors Would Not Be at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange’s proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC’s meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC’s two meet-me-rooms (“Telecoms”).²⁰ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange’s best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²¹ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These

²⁰ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²¹ See Securities Exchange Act Release No. 98001 (July 26, 2023), 88 FR 50202 [sic] (August 1, 2023) (SR-NYSECHX-2023-14) (“MMR Notice”).

¹⁵ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSENAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEARCA-2020-15, SR-NYSECHX-2020-05, SR-NYSENAT-2020-08) (“Wireless Approval Order”), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (“2008 ArcaBook Approval Order”). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁶ See Wireless Approval Order, *supra* note 15, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 15, at 74781.

¹⁷ See 2008 ArcaBook Approval Order, *supra* note 15, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²² Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.²³ If the Exchange were to set its prices for Connectivity to Proposed Third Party Data at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the competing wireless connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes that, unless a User connects to Toronto Stock Exchange data, it is reasonable that each proposed service would include the use of a wireless connection port, and a User would not pay a separate fee for the use of such port. If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data, because the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users.

Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over fiber connections.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other

competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons.

The Exchange believes that it is not unfairly discriminatory to make wireless Connectivity to the Proposed Third Party Data available to Users. The proposed rule change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over third party fiber connections.

Given the limitation on bandwidth, the Exchange believes that it is not unfairly discriminatory not to transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees

²² See *id.* at 50199. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

²³ See Wireless Approval Order, *supra* note 15.

proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁴

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors.

The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. For the first time, a User would be able to connect wirelessly to the Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party fiber connections. Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete

with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise.

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange's proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.²⁵ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁶ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the

Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁷ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

Given the limitation on bandwidth, the Exchange believes that it will not impose any burden on competition that is not necessary or appropriate to not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and Rule

²⁵ See *supra* note 20.

²⁶ See MMR Notice, *supra* note 21.

²⁷ See *id.* at 50199.

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 15 U.S.C. 78f(b)(8).

19b–4(f)(6) thereunder.²⁹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.³⁰

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ³¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–NYSECHX–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–NYSECHX–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/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–NYSECHX–2024–21 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–13549 Filed 6–20–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100342; File No. SR–CboeBYX–2024–021]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

June 14, 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 June 7, 2024, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) 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 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 BYX Exchange, Inc. (the “Exchange” or “BYX Equities”) proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/BYX/), 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 relating to physical connectivity fees.³

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeBYX–2023–010). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeBYX–2023–013. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the “OIP”) in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeBYX–2023–014). On October 13, 2023, the Exchange withdrew that filing and submitted SR–CboeBYX–2023–015. On December 12, 2023, the Exchange filed the proposed fee change (SR–CboeBYX–2023–018). On December 12, 2023, the Exchange withdrew that filing and submitted SR–CboeBYX–2023–019. On February 9, 2024, the Exchange withdrew that filing and submitted SR–CboeBYX–2024–006. On April 9, 2024, the Exchange withdrew that filing and submitted SR–CboeBYX–2024–012. On June 7, 2024, the Exchange withdrew that filing and submitted this filing.

²⁹ 17 CFR 240.19b–4(f)(6).

³⁰ 17 CFR 240.19b–4(f)(6)(iii). 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.

³¹ 15 U.S.C. 78s(b)(2)(B).

³² 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit ("Gb") circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BZX Exchange, Inc. (options and equities), Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., ("Affiliate Exchanges").⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange operates in a highly competitive environment. On May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled "Staff Guidance on SRO Rule Filings Relating to Fees" ("Fee Guidance"), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.¹¹ As described in further detail below, the Exchange believes substitutable products¹² are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other equities exchanges that trade equities or other off-exchange trading platforms.

The 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint

products.¹³ Exchanges themselves are platforms.¹⁴ Particularly, exchanges are multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform. As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior. And indeed, nothing in the Exchange Act requires the individual examination of specific product fees in isolation. Rather, the Exchange generally requires the rules of an exchange to provide for the "equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities."¹⁵

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports. Further, the current 10 Gb physical port fee has remained unchanged since June 2018.¹⁶ Since its last increase over 6 years ago however, there has been notable inflation. Particularly, the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.¹⁷ Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. Accordingly, the Exchange believes the proposed fee of \$8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%. Were the Exchange to adjust fully for

⁴ See e.g., The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR-MIAX-2024-016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019 ("Fee Guidance"). The Fee Guidance also recognized that "products need to be substantially similar but not identical to be substitutable."

¹² A substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. See <https://www.investopedia.com/terms/s/substitute.asp>.

¹³ See Fee Guidance.

¹⁴ The Supreme Court in *Ohio v. American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (i.e., network effects). See *Ohio v. American Express Co.* 138 S. Ct. 2274, 585 U.S. (2018).

¹⁵ See 15 U.S.C. 78f(b)(4).

¹⁶ See Securities and Exchange Release No. 83441 (June 14, 2018), 83 FR 28684 (June 20, 2018) (SR-CboeBYX-2018-006).

¹⁷ See <https://www.officialdata.org/us/inflation/2010?amount=1>.

inflation, it would be proposing a monthly rate of \$9,360, which is 10% *more* than the Exchange is actually proposing. To further demonstrate, the Exchange notes that \$8,500 in 2024 is equivalent to approximately \$6,800 in 2018, when adjusted for inflation. Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% *lower* than the rate adopted in 2018 (*i.e.*, \$7,500) when adjusted for inflation. The Exchange is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate. The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.¹⁸

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no regulatory requirement that any market participant connect to any one particular exchange. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange. Indeed, there are currently 16 registered equities exchanges that trade equities (12 of which are not affiliated with Cboe),

some of which have similar or lower connectivity fees.¹⁹ Based on publicly available information, no single equities exchange has more than approximately 15% of the market share.²⁰ Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, in 2020 alone, three new exchanges entered the market: Long Term Stock Exchange (LTSE), Members Exchange (MEMX), and Miami International Holdings (MIAX Pearl).

As noted above, there is no regulatory requirement that any market participant connect to any one equities exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one equities exchange whose membership includes every registered broker-dealer. By way of example, as of April 2024 Cboe BYX has 110 members that trade equities, Cboe EDGX has 124 members that trade equities, Cboe EDGA has 103 members and Cboe BZX has 132 members. There is also no firm that is a Member of the Exchange only. Further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 143 members,²¹ IEX has 129 members,²² and MIAX Pearl has 51 members.²³

A market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity. The Exchange notes that third-party non-Members also resell exchange connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.²⁴ The

Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.*, fee based on number of Members that connect to the Exchange indirectly via the third-party).²⁵ Particularly, these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services. The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party reseller.²⁶ This allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity. These third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings. The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services. That is, even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.*, use one single 10 Gb port

ecosystem. For example, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. Many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. This may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. This facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business.

²⁵ See, e.g., Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (nasdaqtrader.com); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR-NASDAQ-2015-002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR-NASDAQ-2017-114).

²⁶ For example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port.

¹⁸ See e.g., *See e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10 Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10 Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹⁹ *Id.*

²⁰ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 6, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

²¹ See <https://www.nyse.com/markets/nyse/membership>.

²² See <https://www.iexexchange.io/membership>.

²³ See https://www.miaxglobal.com/sites/default/files/page-files/20230630_MIAX_Pearl_Equities_Members_June_2023.pdf.

²⁴ Third-party resellers of connectivity play an important role in the capital markets infrastructure

themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relate to a physical port because such reseller may be providing a third-party reseller as it relate to a physical port because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (e.g., providing space, hosting, power, and other long-haul connectivity options). This is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan. These services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive. Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. For example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network. These third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports. Therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings. Because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. Further, the Exchange believes its offerings are more affordable

as compared to similar offerings at competitor exchanges.²⁷

Accordingly, vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it. In the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 12 non-Cboe affiliated equities markets. Indeed, market participants are free to choose which exchange to use to satisfy their business needs. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. For example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

Additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS

²⁷ See e.g., *See e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10 Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10 Gbps physical port. *See also* New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

Plan") the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.²⁸ The Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.²⁹

As noted above, exchanges also compete as platforms. In the context of the competition among platforms, different exchanges operate a variety of different business models. In fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products. As discussed above, market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data. For those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices. Further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert. For example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services. As such, demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities. In assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange. When accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across

²⁸ See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7-13-19).

²⁹ *Id.*

exchanges.³⁰ For example, data has shown that venues with the highest explicit costs (typically inverted and fee-free venues) have the lowest implicit costs from markouts³¹ and vice versa.³² Implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).³³ Additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.³⁴ As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes. The Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the

Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center ("NY6")), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections.

Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market

participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.³⁵ Indeed, the Exchange believes assessing fees that are a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable. As noted above, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange

³⁰ Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³¹ Per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider.

³² Mackintosh, Phil & Normyle, Michael. "How Exchanges Compete: An Economic Analysis of Platform Competition." Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>.

³³ See *id.* For example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. As Nasdaq noted, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, when implicit costs are considered, the difference in cost to trade is minimized.

³⁴ Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research.

³⁵ See *e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10 Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10 Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

(e.g., ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. Moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this “national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed.”³⁶ Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules “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.”³⁷ Likewise, the Act grants the Commission authority to amend or repeal “[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”³⁸ In short, the promotion of free and open competition was a core congressional objective in creating the national market system.³⁹ Indeed, the Commission has

historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. Finally, and importantly, the Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically. Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,⁴⁰ continual auditing, and considerable expense. The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation. Moreover, the industry could experience frequent rate increases based on escalating expense levels. The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which the

and markets other than exchange markets”); Order, 73 FR at 74781 (“The Exchange Act and its legislative history strongly support the Commission’s reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.”).

⁴⁰ See e.g., letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (“SIG”), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O’Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, and letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (“Virtu”), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. See also Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18) (Notice of Filing of a Proposed Rule Change To Amend the MIAx PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAx Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

Commission has historically sought to avoid.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (i.e., all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.

Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The Exchange’s proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 12 non-Cboe affiliated equities markets, as well as off-exchange venues, where competitive products are available for trading. Moreover, the Commission has

³⁶ See H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ 15 U.S.C. 78f(8).

³⁹ See also 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote “fair competition among brokers and dealers, among exchange markets, and between exchange markets

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.”⁴¹ 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’”⁴² Accordingly, the Exchange does not believe its proposed 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 Act⁴³ and paragraph (f) of Rule 19b-4⁴⁴ 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-CboeBYX-2024-021 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-CboeBYX-2024-021. 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-CboeBYX-2024-021 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13544 Filed 6-20-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100335; File No. SR-ICC-2024-004]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the ICC Recovery Plan and the ICC Wind-Down Plan

June 14, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4,² notice is hereby given that on June 4, 2024, ICE Clear Credit LLC (“ICC”) 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 primarily by ICC. On June 6, 2024, ICE Clear Credit filed Amendment No. 1 to the proposed rule change to make certain changes to the narrative description of the proposed changes.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 (hereafter “the proposed rule change”), from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICC proposes revising the ICC Recovery Plan and the ICC Wind-Down Plan, which serve as plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, consistent with Rule 17ad-22(e)(3)(ii).⁴ ICC proposes to make such changes effective following Commission approval of the proposed

⁴⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 inserts a bullet point to the “ICC Recovery Plan” paragraph of the Form 19b-4 and the Exhibit 1A with the following text, “description of Guaranty Fund Replenishment in Section VIII.B.”. Amendment No. 1 also removes the same bullet point from the “ICC Wind-Down Plan” paragraph of the Form 19b-4 and Exhibit 1A.

⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

⁴¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁴² *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)).

⁴³ 15 U.S.C. 78s(b)(3)(A).

⁴⁴ 17 CFR 240.19b-4(f).

rule change. The proposed rule change is described in detail as follows.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes revising the ICC Recovery Plan and the ICC Wind-Down Plan, which serve as plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, consistent with Rule 17ad-22(e)(3)(ii).⁵ ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed rule change is described in detail as follows.

ICC Recovery Plan

Consistent with the regulations applicable to ICC, the ICC Recovery Plan is designed to establish ICC's actions to maintain its viability as a going concern to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness that threatens ICC's viability. ICC proposes general updates and edits to promote clarity and to ensure that the information provided is current. The proposed amendments reflect and relate to changes that impacted ICC in the past year, including the addition of new ICC clearing participants ("CP") (Intesa Sanpaolo S.p.A. and Royal Bank of Canada), the addition of British Pounds Sterling cash ("GBP") as acceptable client-related initial margin, the removal of references to ICE Clear Europe ("ICEU") Credit Default Swap ("CDS") clearing as that service has closed, and a change to the Managers of the ICC Board of Managers (the "Board").

ICC proposes general updates to ensure that the information in the ICC Recovery Plan is current. In Section I and throughout the document, the

proposed changes specify that the information provided is current as of December 31, 2023, unless otherwise stated. Namely, the proposed changes ensure that relevant information regarding ICC for recovery planning, such as information about ICC's ownership and operation, is current with respect to:

- description of an ICC Independent Director in Section IV.C.;
- data regarding ICC revenues, volumes, and expenses in Section IV.D.;
- MLE Interconnections in Section VI.;
- ICC Third-Party Systems in Section VI.A.;
- description of services provided to ICC by Intercontinental Exchange, Inc. in Section VI.;
- ICC personnel and facilities in Section VI.A.;
- addition of Jacksonville Facilities in Section VI.A.;
- description of ICC in-house systems in Section VI.A.;
- identification of ICC's counterparties in the Counterparty Chart in Section VI.B.;
- description of monitoring mechanisms for CP default in Section VII.A.;
- description of initial default auction in Section VIII.A.;
- direct infusion of cash to ICC from ICE Group in Section VIII.B.;
- reduce or eliminate dividend payment to ICE Holding in Section VIII.B.;
- renegotiation of fee cap on transaction and clearing fees in Section VIII.B.;
- amend outsourcing agreements in Section VIII.B.;
- reduce ICC headcount in Section VIII.B.;
- elimination of bonuses in Section VIII.B.;
- waiver/suspension of ICC lease payments in Section VIII.B.;
- change in Management contact regarding capital infusion from ICE Group to ICC in Section VIII.B.;
- description of Guaranty Fund Replenishment in Section VIII.B.;
- description of financial resources for recovery in Section X.;
- ICC and ICE Group financial information in Section XI.;
- key ICC reports and descriptions, Exhibit 35, in Section XII.B.;
⁶ and

⁵ Several decommissioned reports have been removed from the list: 'DTCC Vendor Credit Terminations' (information no longer relevant to ICC); 'Other Firms Trades Report' (report replaced with FIX protocol messages); 'Index Participant Missed Quotes Surveillance Report' (information available in another key report) and 'Index Participant Submission Detail Report' (information

• Financial service providers that hold CP cash and collateral in Appendix C in Section XIII.

ICC proposes the addition of two new CP's in Section IV.B. Specifically, ICC proposes to add new CP Intesa Sanpaolo S.p.A, which became effective on May 3, 2023. Also, ICC proposes to add new CP Royal Bank of Canada, which became effective on April 15, 2024.

Also, ICC proposes the addition of GBP as acceptable client-related initial margin in Section IV.B and Section IV.E. In response to the addition of GBP, ICC proposes to revise Section IV.E., to clarify the description of ICC's collateral valuation process to all collateral types.

Also, ICC proposes the removal of references to ICEU CDS clearing in Section V.C. as ICEU closed its CDS clearing services on or about October 21, 2023.

Additionally, ICC proposes modifications to reflect the change in the Non-Independent Managers to the Board, in Section IV.C. Specifically, ICE US Holding Company L.P. ("ICE US Holding") replaced former Non-Independent Manager Christopher Edmonds with Elizabeth King, Chief Regulatory Officer, and President of ICE's Sustainable Finance business. Also, ICC proposes minor updates to Section VIII.B. to reflect the change of the Managers as described above.

ICC proposes minor updates to promote clarity and consistency in the ICC Recovery Plan. In Section VII.A., ICC proposes the addition of a Securities and Exchange Commission regulation cite (17 CFR 240.17Ad-22(e)(4)) to reflect and reference the applicable regulations more accurately.

Finally, ICC proposes minor typographical fixes in the ICC Recovery Plan including grammatical and formatting changes.

ICC Wind-Down Plan

The ICC Wind-Down Plan is designed to establish how ICC could be wound-down in an orderly manner. ICC proposes general updates and edits to promote clarity and to ensure that the information provided is current. The proposed amendments reflect and relate to changes that impacted ICC in the past year, including the addition of new CP's (Intesa Sanpaolo S.p.A. and Royal Bank of Canada), and the removal of references to ICEU CDS clearing as that service has closed, and a change to the Managers of the Board.

available in another key report). In addition, the title of two reports was revised to better reflect in the information contained therein. Finally, two new reports were added to the list, both related to exercised/assigned index swappings.

⁵ 17 CFR 240.17Ad-22(e)(3)(ii).

ICC proposes general updates to ensure that the information in the ICC Wind-Down Plan is current. In Section I and throughout the document, the proposed changes specify that the information provided is current as of December 31, 2023, unless otherwise stated. The proposed revisions ensure that relevant information regarding ICC for wind-down planning, such as information about ICC's ownership and operation, is current with respect to:

- activities of ICE in Section II.A.;
- description of an ICC Independent Director in Section IV.B.;
- MLE Interconnections in Section VII.;
- Material legal entity chart in Section VII.;
- ICC personnel and facilities in Section VII.C.;
- description of ICC in-house systems in Section VII.C.;
- identification of ICC's counterparties in the ICC Counterparty Chart VII.D.;
- financial resources to support wind-down in Section IX.; and
- Banking Institutions and Example Proportion of Holdings charts in Section XI.C.

Additionally, ICC proposes the addition of two new CP's in Section IV. A. Specifically, ICC proposes to add new CP Intesa Sanpaolo S.p.A, which became effective on May 3, 2023. Also, ICC proposes to add new CP Royal Bank of Canada, which became effective on April 15, 2024.

Also, ICC proposes the removal of references to ICEU CDS clearing in Section VII.C. as ICEU successfully completed the close-out process on or about October 21, 2023.

Additionally, ICC proposes modifications to the non-independent Board of Managers and the titles of such Managers, in Section IV.B. Specifically, ICE US Holding Company L.P. ("ICE US Holding") did not re-appoint Christopher Edmonds as an ICC non-independent manager because Mr. Edmonds has expanded his role within ICE to include leading ICE's Fixed Income and Data services business segment. ICE US Holding appointed Elizabeth King, Chief Regulatory Officer, and President of ICE's Sustainable Finance business as the new ICC non-independent Manager.

ICC proposes additional updates and edits to promote clarity and consistency in the ICC Wind-Down Plan. In Section XII, the proposed changes update the index of exhibits with the current versions of policies and procedures, consistent with updated footnote references.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁷ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁸ In particular, Section 17A(b)(3)(F) of the Act⁹ requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest.

ICC believes the proposed changes would enhance its ability to effectuate a successful recovery as well as to execute an orderly wind-down by providing updates and additional clarity with respect to ICC's recovery and wind-down processes and procedures. As discussed herein, the proposed revisions ensure that relevant information regarding ICC for recovery and wind-down planning is current, including updated information regarding personnel and facilities, finances and operations, updating new CP's, removing ICEU references, for recovery and wind-down. To support and enhance the implementation of the Plans, additional language clarifications or edits are included so that the Plans remain up-to-date, transparent, and focused on clearly articulating the policies and procedures used to support ICC's recovery and wind-down efforts.

Such revisions include additional details regarding required disclosures, references to relevant policies, updated information regarding recovery tools, and amended language that is intended to be more precise. The Plans would thus promote ICC's ability to continue providing clearing services with as little disruption as possible, and should continuation not be feasible, promote ICC's ability to discontinue clearing services in an orderly manner with minimum negative impact to the marketplace and stakeholders. Accordingly, in ICC's view, the proposed rule change is consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within

the meaning of Section 17A(b)(3)(F) of the Act.¹⁰

Rule 17Ad-22(e)(3)(ii)¹¹ requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which includes plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. The ICC Recovery Plan continues to establish ICC's actions to maintain its viability as a going concern to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness that threatens ICC's viability. The ICC Wind-Down Plan continues to establish how ICC could be wound-down in an orderly manner should its recovery efforts fail. As described above, the proposed changes include updates and edits to promote clarity and to ensure that the information in the Plans is current. In ICC's view, such changes would ensure that the Plans remain useful and effective in a recovery and wind-down scenario. The proposed rule change would thus promote ICC's ability to carry out a successful recovery or orderly wind-down, consistent with the requirements of Rule 17Ad-22(e)(3)(ii).¹²

Rule 17Ad-22(e)(15)¹³ requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify monitor, and manage ICC's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that ICC can continue operations and services as a going concern if those losses materialize, including by (i) determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken; (ii) holding liquid net assets funded by equity equal to the greater of either (x) six months of ICC's current operating expenses, or (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of ICC, as contemplated by the

¹⁰ *Id.*

¹¹ 17 CFR 240.17Ad-22(e)(3)(ii).

¹² *Id.*

¹³ 17 CFR 240.17Ad-22(e)(15).

⁷ 15 U.S.C. 78q-1.

⁸ 17 CFR 240.17Ad-22.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

plans established under Rule 17ad-22(e)(3)(ii);¹⁴ and (iii) maintain a viable plan, approved by the Board and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under Rule 17ad-22(e)(15)(ii).¹⁵

The Plans continue to analyze ICC's particular circumstances and risks to ensure that ICC maintains financial resources necessary to implement both Plans and that ICC remains in compliance with all regulatory capital requirements. The Plans includes information on the financial resources maintained by ICC for recovery and to support wind-down in compliance with relevant regulations and include procedures to follow in case of any shortfall. As such, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(15).¹⁶

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to the Plans will apply uniformly across all market participants. The changes are being proposed to promote clarity and ensure that the information provided is current in the Plans. ICC does not believe the amendments would affect the costs of clearing or the ability of market participants to access clearing. Therefore, ICC does not believe the proposed rule change would impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ICC-2024-004 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR-ICC-2024-004. 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.ice.com/clear-credit/regulation>.

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-ICC-2023-014 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13538 Filed 6-20-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100338; File No. SR-PEARL-2024-26]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule

June 14, 2024.

Pursuant to the provisions of 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 June 7, 2024, MIAX PEARL, LLC ("MIAX Pearl" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 is filing a proposal to amend the fee schedule (the "Fee Schedule") applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings>, at MIAX Pearl's principal office, 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

¹⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

¹⁵ 17 CFR 240.17Ad-22(e)(15)(ii).

¹⁶ 17 CFR 240.17Ad-22(e)(15).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Fee Schedule to: (1) increase the fee associated with Liquidity Indicator Code "Rp" and deactivate the Remove Volume Tiers table³ and corresponding fee;⁴ and (2) establish a new volume calculation method for Equity Members⁵ to achieve enhanced rebates pursuant to the NBBO Setter Plus Program (referred to in this filing as the "NBBO Program").⁶ The Exchange originally filed this proposed fee change on May 31, 2024 (SR-PEARL-2024-24). On June 7, 2024, the Exchange withdrew SR-PEARL-2024-24 and refiled this proposal.

Background of Remove Volume Tiers and Liquidity Indicator Code "Rp"

The Exchange currently charges a standard fee of \$0.00295 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange in all Tapes.⁷ On January 1, 2022, the Exchange established Section 1)d) of the Fee Schedule, Remove Volume Tiers, which provided reduced standard fees for executions of orders in securities priced at or above \$1.00 per share that removed liquidity from the Exchange for Equity Members that met specified volume thresholds on the Exchange.⁸ The Remove Volume Tiers table was subsequently amended and currently provides only one tier with a reduced

fee \$0.00290 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange for Equity Members that meet the specified volume threshold on the Exchange.⁹ On December 1, 2022, the Exchange established a reduced fee of \$0.00265 per share for executions of Midpoint Peg Orders¹⁰ in securities priced at or above \$1.00 that execute at the midpoint of the NBBO¹¹ and remove liquidity from the Exchange in all Tapes.¹²

Proposal To Amend Remove Volume Tiers Table and Liquidity Indicator Code "Rp"

The Exchange proposes to amend the fee associated with Liquidity Indicator Code "Rp" from \$0.00265 to now be \$0.00295 per share and deactivate the Remove Volume Tiers table and corresponding fee such that all executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange will be assessed the standard fee of \$0.00295 per share. The Exchange does not propose to amend the fee for executions of Midpoint Peg Orders in securities priced below \$1.00 per share that execute at the midpoint of the NBBO and remove liquidity from the Exchange in all Tapes, which is currently set at 0.25% of the total dollar value of the transaction.¹³

The purpose of these proposed changes is for business and competitive reasons. The Exchange notes that despite the changes proposed herein, the Exchange's proposed standard fee of \$0.00295 per share for executions of all orders in securities priced at or above \$1.00 per share and remove liquidity from the Exchange remains competitive with the standard fee to remove liquidity in securities priced at or above

\$1.00 per share charged by other equity exchanges.¹⁴

Background of the NBBO Program

The NBBO Program was implemented beginning September 1, 2023 and subsequently amended several times.¹⁵ In general, the NBBO Program provides enhanced rebates for Equity Members that add displayed liquidity ("Added Displayed Volume") in securities priced at or above \$1.00 per share in all Tapes based on increasing volume thresholds and increasing market quality levels (described below). The NBBO Program provides the following additional incentives: (1) an NBBO Setter Additive Rebate¹⁶ applied to executions of orders in securities priced at or above \$1.00 per share that set the NBB or NBO upon entry; (2) an NBBO First Joiner Additive Rebate¹⁷ applied to executions of orders in securities priced at or above \$1.00 per share that bring MIAX Pearl Equities to the established NBB or NBO; and (3) a Step-Up Rebate¹⁸ for Equity Members that satisfy the (i) minimum displayed

¹⁴ See e.g., MEMX LLC ("MEMX") Equities Fee Schedule, Transaction Fees, Fee Code "R" (providing standard remove volume fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share); and Cboe BZX Exchange, Inc. ("BZX"), Equities Fee Schedule, Standard Rates (providing standard remove volume fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share).

¹⁵ See, e.g., Securities Exchange Act Release Nos. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR-PEARL-2023-45); 99318 (January 11, 2024), 89 FR 3488 (January 18, 2024) (SR-PEARL-2023-73); and 99695 (March 8, 2024), 89 FR 18694 (March 14, 2024) (SR-PEARL-2024-11).

¹⁶ The Exchange does not propose to amend the NBBO Setter Additive Rebate, which is an additive rebate of (\$0.0004) per share for executions of orders in securities priced at or above \$1.00 per share that set the NBB or NBO on MIAX Pearl Equities with a minimum size of a round lot. See Fee Schedule, Section 1)c). The Exchange notes that rebates are indicated by parentheses in the Fee Schedule. See the General Notes section of the Fee Schedule.

¹⁷ The Exchange does not propose to amend the NBBO First Joiner Additive Rebate, which is an additive rebate of (\$0.0002) per share for executions of orders in securities priced at or above \$1.00 per share that bring MIAX Pearl Equities to the established NBB or NBO with a minimum size of a round lot. See Fee Schedule, Section 1)c).

¹⁸ The Exchange does not propose to amend the Step-Up Rebate, which is an additive rebate of (\$0.0001) per share for executions of orders in securities priced at or above \$1.00 per share for Equity Members that satisfy two volume-based requirements. See *id.*

³ See Fee Schedule, Section 1)d). The Exchange proposes to insert "Reserved" for Section 1)d) following the change to deactivate the Remove Volume Tiers table so as to keep the remainder of the Fee Schedule as currently formatted.

⁴ See Fee Schedule, Section 1)d).

⁵ The term "Equity Member" is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 901.

⁶ See, generally, Fee Schedule, Section 1)c).

⁷ See Fee Schedule, Section 1)a).

⁸ See Securities Exchange Act Release Nos. 93979 (January 14, 2022), 87 FR 3151 (January 20, 2022) (SR-PEARL-2022-01) (establishing two Remove Volume Tiers of reduced fees for removing liquidity in securities priced at or above \$1.00 per share); 97124 (March 13, 2023), 88 FR 16504 (March 17, 2023) (SR-PEARL-2023-10) (amending the rates for the Remove Volume Tiers) and 97964 (July 24, 2023), 88 FR 48937 (July 28, 2023) (SR-PEARL-2023-31) (amending the rates for the Remove Volume Tiers).

⁹ See Securities Exchange Act Release No. 99175 (December 14, 2023), 88 FR 88186 (December 20, 2023) (SR-PEARL-2023-69).

¹⁰ A Midpoint Peg Order is a non-displayed Limit Order that is assigned a working price pegged to the midpoint of the PBBO. A Midpoint Peg Order receives a new timestamp each time its working price changes in response to changes to the midpoint of the PBBO. See Exchange Rule 2614(a)(3).

¹¹ With respect to the trading of equity securities, the term "NBB" shall mean the national best bid, the term "NBO" shall mean the national best offer, and the term "NBBO" shall mean the national best bid and offer. See Exchange Rule 901.

¹² See Securities Exchange Act Release No. 96472 (December 9, 2022), 87 FR 76645 (December 15, 2022) (SR-PEARL-2022-53) (establishing new Liquidity Indicator Code "Rp").

¹³ See Fee Schedule, Section 1)b), Liquidity Indicator Codes and Associated Fees, Liquidity Indicator Code "Rp".

ADAV¹⁹ as a percentage of TCV²⁰ of 0.35% and (ii) an increase in the percentage of displayed ADAV as a percentage of TCV of at least 0.05% as compared to the Equity Member's February 2024 displayed ADAV percentage.

Pursuant to the NBBO Setter Plus Table in Section 1(c) of the Fee Schedule, the NBBO Program provides six volume tiers enhanced by three market quality levels to provide increasing rebates in this segment. The six volume tiers are achievable by greater volume from the best of three alternative methods. The three market quality levels are achievable by greater NBBO participation in a minimum number of specific securities (described below).

MIAx Pearl Equities first determines the applicable NBBO Program tier based on three different volume calculation methods. The three volume-based methods to determine the Equity Member's tier for purposes of the NBBO Program are calculated in parallel in each month, and each Equity Member receives the highest tier achieved from any of the three methods each month. All three volume calculation methods are based on an Equity Member's respective ADAV, NBBO Set Volume, or ADV, each as a percent of industry TCV as the denominator.

Under volume calculation Method 1, the Exchange provides tiered rebates based on an Equity Member's ADAV as a percentage of TCV. An Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.00% and less than 0.035% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.035% and less than 0.05% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume

across all Tapes by achieving an ADAV of at least 0.05% and less than 0.08% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.08% and less than 0.20% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.20% and less than 0.40% of TCV. Finally, an Equity Member qualifies for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.40% of TCV.

Under volume calculation Method 2, the Exchange provides tiered rebates based on an Equity Member's NBBO Set Volume as a percentage of TCV. Under volume calculation Method 2, an Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.00% and less than 0.01% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.01% and less than 0.015% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.015% and less than 0.02% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.02% and less than 0.03% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.03% and less than 0.08% of TCV. Finally, an Equity Member qualifies for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an NBBO Set Volume of at least 0.08% of TCV.

Under volume calculation Method 3, the Exchange provides tiered rebates based on an Equity Member's ADV as a percentage of TCV. An Equity Member qualifies for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.00% and less than 0.15% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.15% and less than 0.18% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.18% and less than 0.20% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.20% and less than 0.60% of TCV. An Equity Member qualifies for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 0.60% and less than 1.00% of TCV. Finally, an Equity Member qualifies for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADV of at least 1.00% of TCV.

After the volume calculation is performed to determine highest tier achieved by the Equity Member, the applicable rebate is calculated based on two different measurements based on the Equity Member's participation at the NBBO on the Exchange in certain securities (referenced below).

The Exchange provides one column of base rebates (referred to in the NBBO Setter Plus Table as "Level A") and two columns of enhanced rebates (referred to in the NBBO Setter Plus Table as "Level B" and "Level C"),²¹ depending on the Equity Member's Percent Time at

¹⁹ "ADAV" means average daily added volume calculated as the number of shares added per day and "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. "NBBO Set Volume" means the ADAV in all securities of an Equity Member that sets the NBB or NBO on MIAx Pearl Equities. See the Definitions section of the Fee Schedule.

²⁰ "TCV" means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. See *id.*

²¹ For the purpose of determining qualification for the rebates described in all Levels of the Market Quality Tier columns in the NBBO Setter Plus Table, the Exchange will exclude from its calculation: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) any day with a scheduled early market close; and (3) the "Russell Reconstitution Day" (typically the last Friday in June). See the General Notes section of the Fee Schedule.

NBBO²² on MIAX Pearl Equities in a certain amount of specified securities (“Market Quality Securities” or “MQ Securities”).²³ The NBBO Setter Plus Table specifies the percentage of time that the Equity Member must be at the NBB or NBO on MIAX Pearl Equities in at least 200 symbols out of the full list of 1,000 MQ Securities (which symbols may vary from time to time based on market conditions). The list of MQ Securities is generally based on the top multi-listed 1,000 symbols by ADV across all U.S. securities exchanges. The list of MQ Securities is updated monthly by the Exchange and published on the Exchange’s website.²⁴

The base rebates (“Level A”) are as follows: (\$0.00220) per share in Tier 1; (\$0.00290) per share in Tier 2; (\$0.00300) per share in Tier 3; (\$0.00310) per share in Tier 4; (\$0.00335) per share in Tier 5; and (\$0.00340) per share in Tier 6. Under Level B, the Exchange provides enhanced rebates for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes if the Equity Member’s Percent Time at NBBO is at least 25% and less than 50% in at least 200 MQ Securities per trading day during the month. The Level B rebates are as follows: (\$0.00225) per share in Tier 1; (\$0.00295) per share in Tier 2; (\$0.00305) per share in Tier 3; (\$0.00315) per share in Tier 4; (\$0.00340) per share in Tier 5; and (\$0.00345) per share in Tier 6. Under Level C, the Exchange provides enhanced rebates for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes if the Equity Member’s Percent Time at NBBO is at least 50% in at least 200 MQ Securities per trading day during the month. The Level C rebates are as follows: (\$0.00230) per share in Tier 1; (\$0.00300) per share in Tier 2; (\$0.00310) per share in Tier 3; (\$0.00320) per share in Tier 4;

(\$0.00345) per share in Tier 5;²⁵ and (\$0.00350) per share in Tier 6.

Proposal To Amend the NBBO Program To Establish a New Volume Calculation Method

The Exchange proposes to amend the NBBO Setter Plus Table in Section 1(c) of the Fee Schedule to establish new volume calculation Method 4, which will be provide another volume calculation method for Equity Members to qualify for the enhanced rebates of the NBBO Program.²⁶ Proposed volume calculation Method 4 will be represented with a new column in the NBBO Setter Plus Table immediately following the column for volume calculation Method 3. Under proposed volume calculation Method 4, the Exchange will provide tiered rebates based on an Equity Member’s ADAV as a percentage of TCV exclusive of executions of orders in securities priced below \$1.00 per share across all Tapes. The Exchange proposes to establish new footnote #6 to the NBBO Setter Plus Table, which will state that “[f]or volume calculation Method 4, when calculating both the numerator (ADAV) and the denominator (TCV), executions of orders in securities priced below \$1.00 per share across all Tapes will be excluded.”

Under proposed volume calculation Method 4, an Equity Member will qualify for the base rebates in Tier 1 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.00% and less than 0.035% of TCV, exclusive of executions of orders in securities priced below \$1.00 per share across all Tapes. An Equity Member will qualify for the enhanced rebates in Tier 2 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.035% and less than 0.05% of TCV, exclusive of executions of orders in securities priced below \$1.00 per share across all

Tapes. An Equity Member will qualify for the enhanced rebates in Tier 3 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.05% and less than 0.08% of TCV, exclusive of executions of orders in securities priced below \$1.00 per share across all Tapes. An Equity Member will qualify for the enhanced rebates in Tier 4 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.08% and less than 0.20% of TCV, exclusive of executions of orders in securities priced below \$1.00 per share across all Tapes. An Equity Member will qualify for the enhanced rebates in Tier 5 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.20% and less than 0.40% of TCV, exclusive of executions of orders in securities priced below \$1.00 per share across all Tapes. Finally, an Equity Member will qualify for the enhanced rebates in Tier 6 for executions of orders in securities priced at or above \$1.00 per share for Added Displayed Volume across all Tapes by achieving an ADAV of at least 0.40% of TCV, exclusive of executions of orders in securities priced below \$1.00 per share across all Tapes.

MIAX Pearl Equities will continue to first determine the applicable NBBO Program tier based on the four different volume calculation methods. The Exchange will continue to calculate the four volume-based methods to determine the Equity Member’s tier for purposes of the NBBO Program in parallel in each month, and each Equity Member will receive the highest tier achieved from any of the four methods each month. The Exchange does not propose any other changes to the NBBO Program tiers, rebates or additional incentives.

The purpose of establishing proposed volume calculation Method 4, which excludes volume in sub-dollar securities from the calculation, is for business and competitive reasons. Generally, the ratio of consolidated volumes in securities priced at or above \$1.00 per share relative to consolidated volumes inclusive of securities priced below \$1.00 per share is usually stable from month to month, such that TCV has been a reasonable baseline for determining tiered incentives for Equity Members that execute order in securities priced at or above \$1.00 per share on the Exchange. However, there have been recent months where volumes in securities priced below \$1.00 per share

²² “Percent Time at NBBO” means the aggregate of the percentage of time during regular trading hours where a Member has a displayed order of at least one round lot at the national best bid (“NBB”) or national best offer (“NBO”). See the Definitions section of the Fee Schedule.

²³ “Market Quality Securities” or “MQ Securities” shall mean a list of securities designated as such, that are used for the purposes of qualifying for the rebates described in Level B and Level C of the Market Quality Tier columns in the NBBO Setter Plus Program. The universe of these securities will be determined by the Exchange and published on the Exchange’s website. See *id.*

²⁴ See e.g., MIAX Pearl Equities Exchange—Market Quality Securities (MQ Securities) List, effective May 1 through May 31, 2024, available at <https://www.miaxglobal.com/markets/us-equities/pearl-equities/fees> (last visited May 30, 2024).

²⁵ The Exchange provides an alternative method for Equity Members to qualify for the enhanced rebate of Tier 5, Level C by satisfying the following three requirements in the relevant month: (1) Midpoint ADAV of at least 2,500,000 shares; (2) displayed ADAV of at least 10,000,000 shares; and (3) Percent Time at the NBBO of at least 50% in 200 or more symbols from the list of MQ Securities. See Fee Schedule, Section 1(c), note 3. The Exchange does not propose to amend these alternative requirements pursuant to this proposal.

²⁶ The Exchange proposes to make minor updates to the introductory paragraph above the NBBO Setter Plus Table and footnote #1 of the NBBO Setter Plus Table in Section 1(c) of the Fee Schedule to change all references to “three” volume calculation methods to now be “four” volume calculation methods.

(“sub-dollar volume”) have been elevated, thereby impacting the ratio mentioned above.

Anomalous rises in sub-dollar volume may have a material adverse impact on Equity Members’ qualifications for the pricing tiers and enhanced rebates in the NBBO Program because such qualifications depend upon Equity Members achieving threshold percentages of volumes as a percentage of TCV, and an extraordinary rise in sub-dollar volume may significantly elevate TCV. As a result, Equity Members may find it more difficult to qualify for or to continue to qualify for their existing incentives during months where there are such rises in sub-dollar volumes, even if their volume of executions of orders in securities priced at or above \$1.00 per share have not diminished relative to prior months. The Exchange believes that it would be unfair for its Equity Members that execute significant volumes in securities priced at or above \$1.00 per share on the Exchange to fail to achieve or to lose their existing incentives for such volumes due to anomalous behavior that is extraneous to them. Therefore, the Exchange proposes to amend the NBBO Program to establish new volume calculation Method 4 to provide an alternative option when extraordinary spikes in sub-dollar volumes from adversely affecting an Equity Member’s qualification of incentives for their executions of orders in securities priced at or above \$1.00 per share.

The Exchange notes that at least one other competing equities exchange calculates their members’ volume for purposes of pricing tiers and incentives by excluding sub-dollar volumes from one calculation and utilizing the most advantageous volume calculation for such pricing tiers and incentives.²⁷ Accordingly, this proposal is not new or novel.

²⁷ See the Nasdaq Stock Market LLC (“Nasdaq”) Rules, Equity 7: Pricing Schedule, Section 114. Market Quality Incentive Programs, Section (h)(5) (“For purposes of calculating a member’s qualifications for Tiers 1 and 2 of the QMM Program credits . . . the Exchange will calculate a member’s volume and total Consolidated Volume twice. First, the Exchange will calculate a member’s volume and total Consolidated Volume inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate a member’s volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than \$1, while also applying distinct qualifying volume thresholds to each Tier. . . . The Exchange will then assess which of these two calculations would qualify the member for the most advantageous credits for the month and then it will apply those credits to the member.”). See also Securities Exchange Act Release No. 99535 (February 14, 2024), 89 FR 13125 (February 21, 2024) (SR-NASDAQ-2024-005).

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)³⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their 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 sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. For the month of May 2024, based on publicly available information, no single registered equities exchange had more than approximately 14–15% of the total market share of executed volume of equities trading.³¹ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. For the month of May 2024, the Exchange represented 1.68% of the total market share of executed volume of equities trading.³² The Commission and the

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(4).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/>.

³² *Id.*

courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”³³

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to continue to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would continue to enhance liquidity and market quality to the benefit of all Equity Members and market participants.

Proposal To Amend Remove Volume Tiers Table and Liquidity Indicator Code “Rp”

The Exchange believes the proposed changes to amend the fee associated with Liquidity Indicator Code “Rp” and deactivate the Remove Volume Tiers table and corresponding fee such that all executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange will now be assessed the standard fee of \$0.00295 per share are reasonable. This is because the Exchange’s standard fee for removing liquidity in securities priced at or above \$1.00 per share, as noted above, remains lower than, and competitive with, the standard fee charged by competing exchanges to remove liquidity in securities priced at or above \$1.00 per share.³⁴ The Exchange further believes that the proposed changes are equitably allocated and not unfairly discriminatory because the standard fee

³³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

³⁴ See *supra* note 14.

of \$0.00295 per share for executions of all orders in securities priced at or above \$1.00 per share and remove liquidity from the Exchange will apply equally to all Equity Members that remove liquidity.

Proposal To Amend the NBBO Program To Establish a New Volume Calculation Method

The Exchange believes its proposal to amend the NBBO Setter Plus Table to establish new volume calculation Method 4 is reasonable and equitable because, in its absence, Equity Members may experience material adverse impacts on their ability to qualify for the enhanced rebates of the NBBO Program during a month with an anomalous rise in sub-dollar volumes. The Exchange believes it is reasonable and equitable to not inadvertently penalize Equity Members that execute significant volumes on the Exchange due to anomalous and extraneous trading activities in sub-dollar securities. The proposed new volume calculation Method 4 would provide a means for Equity Members that add displayed liquidity an alternative method by determining whether calculating volume (e.g., ADAV, NBBO Set Volume, or ADV) as a percentage of TCV to include or exclude sub-dollar volume would result in Equity Members qualifying for the most advantageous rebates. The Exchange would then be able to apply the most advantageous volume calculation that would result in the highest tier achieved for enhanced rebates of the NBBO Program for each Equity Member. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the Exchange does not intend for the proposal to advantage any particular Equity Member. The Exchange will continue to calculate all four volume calculation methods in parallel each month to ensure that each Equity Member receives the most advantageous volume calculation for purposes of determining tiers for the NBBO Program.

The Exchange believes that the proposal to establish volume calculation Method 4 provides a reasonable means to continue to encourage Equity Members to not only increase their order flow to the Exchange but also to contribute to price discovery and market quality on the Exchange by submitting aggressively priced displayed liquidity in securities priced at or above \$1.00 per share. The Exchange believes that the NBBO Program, as modified with this proposal, continues to be equitable and not unfairly discriminatory because it is open to all Equity Members on an equal

basis and provides enhanced rebates that are reasonably related to the value of the Exchange's market quality associated with greater order flow by Equity Members that set the NBBO, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes the proposal is equitable and not unfairly discriminatory because it is designed to incentivize the entry of aggressively priced displayed liquidity that will create tighter spreads, thereby promoting price discovery and market quality on the Exchange to the benefit of all Equity Members and public investors.

The Exchange notes that at least one other competing equities exchange calculates their members' volume for purposes of pricing tiers and incentives by excluding sub-dollar volumes from one calculation and utilizing the most advantageous volume calculation for such pricing tiers and incentives.³⁵

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes that the proposed changes to make the fee of \$0.00295 per share for all executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange will not impose any burden on intramarket competition because it represents a modest increase from the current Remove Volume Tier fee and fee for executions of Midpoint Peg Orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange. The

Exchange believes the proposed changes to increase the fee associated with Liquidity Indicator Code "Rp" from \$0.00265 per share to \$0.00295 per share and to deactivate the Remove Volume Tiers table and corresponding fee do not impose any burden on intramarket competition because, with the proposed changes, all executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange will now be assessed the standard fee of \$0.00295 per share. Accordingly, the standard fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange will apply equally to all Equity Members.

The Exchange intends for its proposal to establish new volume calculation Method 4 to provide an alternative option for Equity Members to achieve the enhanced rebates of the NBBO Program due to anomalous spikes in sub-dollar volumes and is not intended to provide a competitive advantage to any particular Equity Member. Proposed volume calculation Method 4 will be eligible to all Equity Members equally in that the Exchange will calculate all four volume calculation methods in parallel each month and apply the most advantageous calculation to each Equity Member's volume to qualify for the enhanced rebates of the NBBO Program. Furthermore, the Exchange believes that the NBBO Program, as modified by this proposal, will continue to incentivize Equity Members to submit additional aggressively priced displayed liquidity to the Exchange, and to increase their order flow on the Exchange generally, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange believes that this, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition as the

³⁵ See *supra* note 27.

Exchange operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 14–15% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of all orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes are competitive proposals and the standard fee of \$0.00295 per share for removing liquidity in securities priced at or above \$1.00 per share remains lower than, or similar to, the standard fee to remove liquidity in securities priced at or above \$1.00 per share charged by competing equities exchanges.³⁶ Further, the standard removal fee will apply to all Equity Members equally. In addition, the Exchange notes that at least one other competing equities exchange calculates their members' volume for purposes of pricing tiers and incentives by excluding sub-dollar volumes from one calculation and utilizing the most advantageous volume calculation for such pricing tiers and incentives.³⁷

Additionally, 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."³⁸ 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: "[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 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 possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"³⁹ Accordingly, the Exchange does not believe its proposed pricing changes impose 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

Written comments were neither solicited nor received.

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)(ii) of the Act,⁴⁰ and Rule 19b-4(f)(2)⁴¹ 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 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-PEARL-2024-26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-PEARL-2024-26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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-PEARL-2024-26 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

Sherry R. Haywood,

Assistant Secretary.

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³⁶ See *supra* note 14.

³⁷ See *supra* note 27.

³⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

³⁹ See *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-NYSE-2006-21)).

⁴⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴¹ 17 CFR 240.19b-4(f)(2).

⁴² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100337; File No. SR–CboeBYX–2024–009]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 11.25(e) (“Priority and Execution of Orders”) To Allow Users To Utilize the Exchange’s Match Trade Prevention Functionality When Entering Periodic Auction Orders Onto the Exchange for Execution

June 14, 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 June 6, 2024, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “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

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) proposes to amend Exchange Rule 11.25(e) (“Priority and Execution of Orders”) to allow Users to utilize the Exchange’s Match Trade Prevention functionality when entering Periodic Auction Orders onto the Exchange for execution. 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/byx/), 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 Rule 11.25(e) to allow Users³ to utilize the Exchange’s Match Trade Prevention (“MTP”) functionality when entering Periodic Auction Orders⁴ onto the Exchange for execution.⁵ By way of background, MTP is an existing process⁶ through which Users can prevent their incoming orders designated with a MTP modifier from executing against a resting opposite side order also designated with an MTP modifier and originating from the same market participant identifier (“MPID”), Exchange Member identifier, trading group identifier, Exchange Sponsored Participant identifier, affiliate identifier, or Multiple Access identifier (any such identifier, a “Unique Identifier”).⁷ Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. MTP is a valuable tool for Exchange Users because it allows them to better manage order flow and prevent undesirable trading activity such as wash sales⁸ or self-trades⁹ that may occur because of

³ The term “User” shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. See Rule 1.5(cc), definition of “User”.

⁴ The term “Periodic Auction Order” shall mean a “Periodic Auction Only Order” or “Periodic Auction Eligible Order” as those terms are defined in Rules 11.25(b)(1)–(2), and the term “Periodic Auction Book” shall mean the System’s electronic file of such Periodic Auction Orders. See Rule 11.25(a)(6). Hereinafter, a Periodic Auction Only Order may be referred to as a “PAO Order”, and a Periodic Auction Eligible Order may be referred to as a, “PAE Order”.

⁵ The Exchange plans to implement the proposed rule change on a date that will be circulated in a notice from the Cboe Trade Desk to all Members.

⁶ The Exchange notes that previous proposals extending the functionality of MTP to other trading scenarios were effective upon filing with the Commission. See generally Securities and Exchange Act Release No. 53429 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR–EDGX–2010–18); Securities and Exchange Act Release No. 34–96292 (November 10, 2020), 87 FR 68766 (November 16, 2022) (SR–CboeEDGX–2022–048).

⁷ See Rule 11.9(f)—Match Trade Prevention (“MTP”) Modifiers.

⁸ A “wash sale” is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, e.g., 15 U.S.C. 78i(a)(1); FINRA Rule 6140(b) (“Other Trading Practices”).

⁹ Self-trades are “transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve

the high-speed nature of trading in today’s marketplace.

Currently, Rule 11.25(e) states that all MTP modifiers (as defined in Rule 11.9(f)(1)–(5)) for Periodic Auction Orders will be ignored for executions occurring during a Periodic Auction. As part of the Exchange’s prior Periodic Auction Rule filings,¹⁰ the Exchange reasoned that MTP is mainly designed for use on the Continuous Book,¹¹ and use of MTP for Periodic Eligible Orders¹² and Periodic Auction Only Orders¹³ (collectively, Periodic Auction Orders) may complicate the execution of an auction that requires the pooling and matching of multiple orders against other orders at the Periodic Auction Book Price.¹⁴ Based on User feedback,

no change in beneficial ownership of the security.” FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02, available at: <https://www.finra.org/rules-guidance/rulebooks/finra-rules/5210>.

¹⁰ See Securities and Exchange Act Release No. 34–91423 (March 26, 2021), 86 FR 17230 (April 1, 2021) (SR–CboeBYX–2020–021).

¹¹ The term “Continuous Book” shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term “Continuous Book” shall mean the System’s electronic file of such Continuous Book Orders. See Rule 11.25(a)(2), definition of “Continuous Book Order”.

¹² “A ‘Periodic Auction Eligible Order’ is a non-displayed limit order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible . . . Periodic Auction Eligible Orders will be ranked as Non-Displayed Limit Orders consistent with the priority of order outlined in Rule 11.12(a). An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book. Incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a). Periodic Auction Eligible Orders will not trade on the Continuous Book during a Periodic Auction Period in the security.” See 11.25(b)(2).

¹³ “A ‘Periodic Auction Only Order’ is a non-displayed limit order entered with an instruction to participate solely in Periodic Auctions pursuant to this Rule 11.25. Periodic Auction Only Orders are not eligible for executions on the Continuous Book.” See Rule 11.25(b)(1). Hereinafter, Periodic Auction Only Orders as, “PAO Orders.”

¹⁴ “The term ‘Periodic Auction Book Price’ shall mean the price within the Collar Price Range at which the most shares from the Periodic Auction Book would match. In the event of a volume-based tie at multiple price-levels, the Periodic Auction Book Price will be the price that results in the minimum total imbalance. In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Book Price will be the price closest to the Volume Based Tie Breaker. The Periodic Auction Book Price will be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Book Price.” See 11.25(a)(5), definition of “Periodic Auction Book Price”.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

however, Users of Periodic Auctions desire the ability to utilize MTP for their Periodic Auction Orders outside of a Periodic Auction to help them manage their order flow and prevent undesirable executions against themselves. Users are not asking to utilize MTP for their Periodic Auction Orders when a Periodic Auction is occurring.

Accordingly, the Exchange now seeks to allow Users to utilize MTP when entering Periodic Auction Orders onto the Exchange.¹⁵ Importantly, allowing Users to designate Periodic Auction Orders with MTP modifiers will *not* impact how the Periodic Auction itself is conducted, and the proposed MTP functionality will not prevent the completion of a Periodic Auction once it has been initiated. As proposed, however, there will be instances where the Exchange has elected to temporarily bypass a User's MTP instruction. The Exchange believes this is necessary and appropriate to help strike a responsible balance between providing Users with an optional risk tool to prevent undesirable executions and ensuring that Periodic Auctions will complete. Moreover, the current architecture and design of Exchange Systems¹⁶ require that MTP for Periodic Auctions function as described.

To illustrate how Periodic Auction Orders designated with MTP modifiers will behave, the Exchange offers the following examples:¹⁷

¹⁵ The Exchange notes that previous proposals extending the functionality of MTP to other trading scenarios were effective upon filing with the Commission. See Securities and Exchange Act Release No. 53429 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR-EDGX-2010-18); see also Securities and Exchange Act Release No. 34-96292 (November 10, 2022), 87 FR 68766 (November 16, 2022) (SR-CboeEDGX-2022-048).

¹⁶ The term "System" shall mean the electronic communications and trading facility designed by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. See Rule 1.5(aa), definition of "System".

¹⁷ For each example, assume that all trade prices are within the National Best Bid or National Best Offer ("NBBO"). Additionally, note that while Exchange Rule 11.9(f) provides for various MTP modifiers—including Cancel Newest, Cancel Oldest, Decrement and Cancel, Cancel Both, and Cancel Smallest—the Examples provided in this rule filing only demonstrate how certain of these modifiers will operate. Including examples for every possible MTP scenario would be difficult to efficiently demonstrate in a rule filing. Nevertheless, the MTP modifier exemplified in the provided Examples is not critical to understanding how the proposed functionality will operate because as demonstrated below, when a Periodic Auction is not in progress MTP will operate as it does today, and when a Periodic Auction is in progress, the System will, as described below, temporarily bypass an order's MTP instruction.

Example 1: Two PAE Orders Matching—MTP Action Occurs

Example 1 illustrates how MTP will operate when Firm A's resting PAE Order with an MTP modifier of MTP Cancel Oldest ("MCO"),¹⁸ interacts with a subsequent inbound PAE Order submitted by Firm A with an MTP modifier of MCO and a Periodic Auction is *not* in progress. Here, MTP operates in the same manner as it would for Continuous Book Orders¹⁹ and predictably cancels Firm A's Order 1, based on Firm A's Order 2 MCO modifier, thereby preventing Firm A from potentially trading with itself either on the Continuous Book or during a Periodic Auction.²⁰

- *Order 1—Resting (Firm A): PAE Order (MTP = Cancel Oldest), Buy 100 @ 1.00*
- *Order 2—Inbound order (Firm A): PAE Order (MTP = Cancel Oldest), Sell 200 @ 1.00*
- *Result: Order 1 is canceled.*

Example 2: Two PAO Orders Matching—MTP Action Occurs

Example 2 illustrates how MTP will operate when Firm A's resting PAO Order with an MTP Modifier of MCN, interacts with Firm A's inbound PAO Order with an MCN modifier, and a Periodic Auction is *not* in progress. Here, MTP operates in the same manner as it would for Continuous Book Orders and predictably cancels Firm A's Order 2 based on Order 2's MCN Modifier,

¹⁸ MTP Cancel Oldest ("MCO") is defined as "[a]n incoming order marked with the "MCO" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The resting order marked with the MCO modifier will be cancelled back to the originating User(s). The incoming order marked with the MCO modifier will remain on the BYX Book. See Rule 11.9(f)(2).

¹⁹ The term "Continuous Book Order" shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term "Continuous Book" shall mean System's electronic file of such Continuous Book Orders. See Rule 11.25(a)(2).

²⁰ As MTP action is controlled by the incoming order ("... the MTP modifier on the incoming order controls the interaction between two orders marked with MTP modifiers." See Rule 11.21(g)), Firm A's Order 1 was correctly cancelled in this situation. Note, however, that if Firm A's Order 2 had included an MTP modifier of MTP Cancel Newest ("MCN"), the result would simply be that Order 2 is instead canceled. MTP Cancel Newest ("MCN") is defined as "[a]n incoming order marked with the "MCN" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The incoming order marked with the MCN modifier will be cancelled back to the originating User(s). The resting order marked with an MTP modifier will remain on the BYX Book." See Rule 11.9(f)(1). Similarly, if we changed Order 1's MTP Modifier to Cancel Newest and Order 2 remained as MTP Cancel Oldest, Order 1 would be canceled as Order 2's instruction controls MTP action.

thereby preventing Firm A from potentially trading with itself during a Periodic Auction.

- *Order 1—Resting (Firm A): PAO Order (MTP = Cancel Newest), Buy 100 @ 1.00*
- *Order 2—Inbound order (Firm A): PAO Order (MTP = Cancel Newest), Sell 200 @ 1.00*
- *Result: Order 2 is canceled*

For the sake of clarity, the Exchange also wishes to explain what would happen to Order 2 if a Periodic Auction was in progress when Order 2 arrived. To address this scenario, assume an inbound Periodic Auction Order from Firm B—Order X—arrived between Order 1 and Order 2, and initiated a Periodic Auction with Order 1. Here, when Order 2 arrives, and the Periodic Auction is in progress, Order 2 would still be canceled. When a Periodic Auction is in progress, and an inbound Periodic Auction Order is designated with an MTP modifier, and such order matches against a resting contra-side order originating from the same Unique Identifier that is also designated with a MTP modifier, the inbound Periodic Auction Order will be canceled. This behavior will enable Users to better manage their order flow and prevent undesirable executions in Periodic Auctions, just as they do today for their Continuous Book orders.

Example 3: Incoming PAE Order Matching Against a PAO Order—MTP Action Occurs

Example 3 illustrates how MTP will operate when Firm A's resting PAO Order with a MTP modifier of MTP Cancel Smallest ("MCS"),²¹ interacts with Firm A's inbound PAE Order with an MCS modifier, and an auction is *not* in progress. Here, MTP operates in the same manner as it would for Continuous Book Orders and predictably cancels Firm A's Order 1 based on Firm A's Order 2 MCS modifier because Order 1 is smaller than Order 2, thereby preventing Firm A from potentially trading with itself during a Periodic Auction.

- *Order 1—Resting (Firm A): PAO Order (MTP = Cancel Smallest), Buy 100 @ 1.00*

²¹ MTP Cancel Smallest ("MCS") is defined as "[a]n incoming order marked with the "MCS" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled back to the originating User(s). If the orders are not equivalent in size, the smaller of the two orders will be cancelled back to the originating User and the larger order will remain on the book. See Rule 11.9(f)(5).

- *Order 2—Inbound order (Firm A): PAE Order (MTP = Cancel Smallest), Sell 200 @ 1.00*
- *Result: Order 1 is canceled.*

Example 4: Incoming PAE Order Matching Against a Continuous Book Order—MTP Action Occurs

Example 4 illustrates how MTP will operate when Firm A's incoming PAE Order with a MCS modifier, matches against Firm A's resting Continuous Book Order, and a Periodic Auction is *not* in progress. Here, Firm A's Order 1 is canceled based on Firm A's Order 2 MCS modifier because Order 1 is smaller than Order 2. Because a PAE Order is eligible to receive an execution on the Continuous Book, and both Order 1 and Order 2 are designated with MTP modifiers, the System correctly cancels Order 1, thereby preventing Firm A from potentially trading with itself on the Continuous Book.

- *Order 1—Resting (Firm A): Continuous Book order (MTP = Cancel Smallest), Buy 100 @ 1.00*
- *Order 2—Inbound order (Firm A): PAE Order (MTP = Cancel Smallest), Sell 200 @ 1.00*
- *Result: Order 1 is canceled.*

For the sake of clarity, the Exchange wishes to describe what would happen to Order 1 if a Periodic Auction was in progress when Order 2 arrived.²² First, note that a Continuous Book Order cannot initiate a Periodic Auction.²³ Therefore, to initiate a Periodic Auction in this example, assume that two Periodic Auction Orders arrived, from Firm B and Firm C, and in between Order 1 and Order 2—e.g., Order X (Firm B) and Order Y (Firm C). Further assume that Order X and Order Y are marketable versus each other. If Order X and Order Y arrived post-entry of Order 1, and initiated a Periodic Auction, Order 2 would be included in the Periodic Auction. The System will temporarily bypass Order 1's MTP instruction, and Order 1 and Order 2 could then potentially trade at the end of the Periodic Auction, assuming of course Order 1 did not already receive an execution on the Continuous Book while the Periodic Auction was in progress, and that Order 1 has priority as determined by Rule 11.25(d). Note that the bypassing of the MTP modifiers

in this scenario occurs only upon entry of Order 2 to prevent the cancellation of orders in situations where an immediate execution would not occur. Otherwise, MTP remains in effect, and would cause the cancellation of contra side Continuous Book Orders originating from the same Unique Identifier as Order 1 while the Periodic Auction is in progress, as well as the cancellation of any contra side Periodic Auction Orders originating from the same Unique Identifier as Order 2, seeking to join the Periodic Auction.

Here, even though Order 1 and Order 2 both originated from Firm A, and are designated with an MTP modifier, Order 1 is not canceled upon Order 2's arrival because Order 1 is a Continuous Book Order that may or may not end up trading with Order 2 once the Periodic Auction is complete. Because Order 1 could receive an execution on the Continuous Book while the Periodic Auction is in progress, the Exchange temporarily bypasses Order 1's MTP instruction upon Order 2's arrival to prevent Order 1 from forfeiting a Continuous Book execution based on a possibility that Order 1 would be executable versus Order 2 at the completion of the Periodic Auction.

Example 5: Incoming Continuous Book Order Matching Against a PAO Order—No MTP Action Occurs

Example 5 illustrates how MTP will operate when Firm A's incoming Continuous Book Order with an MCS modifier matches with Firm A's resting PAO Order with an MCS modifier, and a Periodic Auction is *not* in progress. Here, MTP will not be applied because PAO Orders and Continuous Book Orders are not permitted to trade with one another.²⁴ As such, MTP is not needed to prevent Firm A's Order 1 from trading with Firm A's Order 2 and as such, Order 2 is permitted to post to the BYX Book.

- *Order 1—Resting (Firm A): PAO Order (MTP = Cancel Smallest), Buy 100 @ 1.00*
- *Order 2—Inbound order (Firm A): Continuous Book order (MTP = Cancel Smallest), Sell 200 @ 1.00*
- *Result: Order 2 will rest in the Continuous Book, and there is no MTP action.*

Example 6: Incoming Order Is Canceled Due to "Periodic Auction in Progress" Involving a PAO Order

Example 6 illustrates how an incoming order with a MTP modifier is

canceled because a Periodic Auction is in progress.²⁵ Here, Firm A's inbound Order 2, a PAE Order to sell 200 @ 1.00, with a MTP modifier of MTP Cancel Both ("MCB"),²⁶ immediately starts an auction with Firm B's Order 1, a resting PAO Order to Buy 100 @ 1.00. While the Periodic Auction is in progress, Firm A enters Order 3, a PAE Order to Buy 200 @ 1.00 with an MCB instruction.

The entry of Order 3 presents a scenario in which the Exchange seeks to implement MTP functionality that behaves differently than demonstrated in each of the preceding five examples. Specifically—and only in these circumstances—when a Periodic Auction is in progress, and an inbound PAO or PAE Order containing an MTP instruction that matches against a contra-side order from the same firm also containing an MTP instruction, the inbound PAO or PAE order will be canceled. Importantly, this behavior is necessary to help ensure that once a Periodic Auction is initiated it will be completed.

Applying this proposed behavior to Example 6's fact pattern, when Firm A's Order 3, a PAE Order with an MCB modifier is entered after Periodic Auction has been initiated and Order 3 subsequently matches with Firm A's Order 2 (a PAE Order with a MCB modifier), Order 3 will be cancelled. Without this proposed behavior, Order 3 would otherwise be included in the Periodic Auction, and its MTP Cancel Both instruction would result in the cancellation of Order 2, preventing the Periodic Auction from completing, and denying Firm A an execution it would otherwise have expected to receive. The Exchange believes that this proposed behavior appropriately balances the dual goals of ensuring that Periodic Auctions complete once initiated and providing Members the ability to utilize MTP for their Periodic Auction Orders in each of the scenarios described in the preceding five examples.²⁷

²⁵ Example 6 demonstrates the proposed functionality described in proposed Rule 11.25(e)(2).

²⁶ MTP Cancel Both ("MCB") is defined as "[a]n incoming order marketed with the "MCB" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User(s). See Rule 11.9(f)(4).

²⁷ The Exchange notes that the proposed MTP functionality is intended as a supplementary risk tool that Members may voluntarily use to help them manage their risk and compliance with applicable securities rules. As registered broker-dealers, Members are ultimately responsible for compliance with applicable securities rules, and should not rely on the proposed functionality as a sole means of compliance. As such, while the proposed MTP functionality will, in some instances, operate

²² This iteration of Example 4 demonstrates the proposed functionality described in proposed Rule 11.25(e)(1).

²³ See Rule 11.25(c), Initiation and Publication of Periodic Auction Information, "A Periodic Auction will be initiated in a security during Regular Trading Hours when one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell pursuant to this Rule 11.25."

²⁴ *Supra* note 11 ("Periodic Auction Only Orders are not eligible for execution on the Continuous Book.").

- *Order 1—Resting (Firm B): PAO Order, Buy 100 @ 1.00*
- *Order 2—Inbound Order (Firm A): PAE Order (MTP = Cancel Both²⁸), Sell 200 @ 1.00*
- *Action: Order 2 initiates a Periodic Auction with Order 1*
- *Order 3—Inbound order (Firm A): PAE Order (MTP = Cancel Both), Buy 200 @ 1.00*
- *Action: Order's 3's MCB modifier is automatically converted to MCN*
- *Result: Order 3 is canceled due to "Cancel Newest" rule (for Periodic Auction Orders only) that applies when there is a Periodic Auction in progress.*

Example 7: Incoming Order Has MTP Temporarily Bypassed in a Periodic Auction

Example 7 is another example of MTP modifiers not being applied when a Periodic Auction is in progress, despite the Member adding MTP instructions to their Periodic Auction Order(s) and Continuous Book Order(s). Here, Firm B's Order 2, a PAE Order with an MCO modifier, initiates a Periodic Auction upon entry with Firm A's Order 1, a resting PAE Order with an MCO modifier. Firm A subsequently enters a Continuous Book Order (Hidden) with an MCO modifier. Here, the Exchange will temporarily bypass²⁹ an inbound Continuous Book Order's MTP modifier when a Periodic Auction is in progress, and such Continuous Book Order would post to the Continuous Book, and be eligible to participate in the Periodic Auction, or alternatively receive an execution from the Continuous Book. In such instance, applying the Continuous Book Order's MTP modifier and canceling such order based on the *potential* that the order could trade in the Periodic Auction, would be unnecessarily prohibitive. By posting to the Continuous Book, such order could still execute without violating its MTP instructions.

Based on the proposed MTP functionality, Order 3 will post to the

BYX Book prior to the end of the Periodic Auction as the MTP modifier is temporarily bypassed. Order 1 and Order 2 will trade in the Periodic Auction for 500 shares @ 10.02. After trading with Order 2, Order 1 still has 500 shares remaining. Prior to the end of the Periodic Auction, Order 3 will be matched in the Periodic Auction and trade 200 shares with Order 1 @ 10.02, bypassing the MCO modifier assigned by Firm A to its Order 1 and Order 3.

The Exchange believes that temporarily bypassing an MTP modifier in this scenario is necessary to ensure that a Periodic Auction completes once it is initiated.³⁰ Additionally, bypassing Order 3's MTP instruction is also necessary to avoid disrupting trading in the Continuous Book, because Order 3 could perhaps post and trade while the auction is in progress. The Exchange therefore believes cancelling Order 3 based on its *potential* to trade in the Periodic Auction would unnecessarily prevent a Member from potentially receiving a Continuous Book execution. While the proposed MTP functionality will explicitly and automatically temporarily bypass a Member's MTP modifier when the scenario described in Example 7 is present, the Exchange believes that such behavior appropriately balances the dual goals of ensuring that Periodic Auctions operate as designed (*i.e.*, once initiated they will complete, executing the maximum number of shares), and still provides Members the ability to utilize MTP for their Periodic Auction Orders in majority of instances described in each of the preceding six examples.³¹

- *Order 1—Firm A: PAE Order (MTP = Cancel Oldest), Buy 1000 @ 10.02*
- *Order 2—Firm B: PAE Order (MTP = Cancel Oldest), Sell 500, @ 10.02*
- *Action: Order 2 initiates an auction with Order 1, because Firm A and Firm B are different entities.*
- *Order 3—Inbound order (Firm A): Continuous Book Order (MTP = Cancel Oldest), Sell 200 @ 10.02*
- *Action: MTP modifier on Order 3 is temporarily bypassed*

Result: Order 3 posts to the BYX Book prior to the end of the auction; Order 1 and Order 2 trade in the Periodic Auction for 500 @ 10.02; Order 3 then trades 200 @ 10.02 with Order 1 (bypassing MTP).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.³² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³³ 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)³⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that its proposed MTP functionality is designed to promote the just and equitable principles of trade, and to protect investors and the public interest, by enabling Users to better prevent undesirable trading activity such as wash sales or self-trades for not only their Continuous Book Orders, but their Periodic Auction Orders as well. Additionally, by providing Users with a supplemental risk tool that will better enable them to achieve compliance with applicable securities rules and regulations, the proposed rule change will help to further ensure that orders eligible for execution in the Periodic Auction indeed represent genuine trading interest from separate and distinct firms. While the proposed MTP functionality would not operate identically to MTP as it is used in non-Periodic Auction scenarios, the Exchange believes that its proposal strikes an appropriate balance between ensuring Users receive executions in the Periodic Auction and providing Users' the ability to utilize MTP in most

differently than it does outside of the context of Periodic Auctions, its design as a supplementary risk tool will still serve to benefit Members that choose to utilize this tool.

²⁸ MTP Cancel Both is defined as "[a]n incoming order marked with the "MCB" modifier will not execute against the opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User(s). See Rule 11.9(f)(4).

²⁹ The Exchange notes that the bypassing of the Continuous Book Order's MTP modifier in this scenario is *temporary*. Should the Periodic Auction complete and Order 3 does not have the opportunity to trade with Order 1 in the Periodic Auction, then Order 3 would remain posted on the Continuous Book with its MTP modifier and be afforded the protections of MTP.

³⁰ Example 7 demonstrates the proposed functionality described in proposed Rule 11.25(e)(3).

³¹ The Exchange notes that the proposed MTP functionality is intended as a supplementary risk tool that Members may voluntarily use to help them manage their risk and compliance with applicable securities rules. As registered broker-dealers, Members are ultimately responsible for compliance with applicable securities rules, and should not rely on the proposed functionality as a sole means of compliance. As such, while the proposed MTP functionality will, in some instances, operate differently than it does outside of the context of Periodic Auctions, its design as a supplementary risk tool will still serve to benefit Members that choose to utilize this tool.

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

³⁴ *Id.*

trading situations involving Periodic Auctions (as demonstrated in Examples 1—6). By making this clear to Users,³⁵ they will be able to anticipate how MTP modifiers will interact with their Periodic Auction Orders and mitigate any confusion that Users may have in using the proposed functionality.

Additionally, the Exchange believes that the proposed rule change is designed to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Based on User feedback, the lack of MTP functionality for Periodic Auction Orders may discourage Users from entering Periodic Auction Orders because they do not have an automated way to systematically prevent undesirable executions resulting from orders originating from a User's algorithm or trading desk, or their related algorithms or trading desks. In this regard, the proposed rule may encourage Users to increase their Periodic Auction participation, thereby further enhancing the Periodic Auction liquidity pool and the ability of investors to execute larger orders that may otherwise be difficult to execute without market impact in the continuous market. Additionally, because Periodic Auctions are price-forming, the enhanced liquidity pools would indeed augment Periodic Auction's valuable price discovery function, which may be particularly helpful for investors when trading securities that typically trade with wider spreads.

Again, while the proposed MTP functionality may not apply a User's MTP modifiers in all instances, the Exchange as well as its Users believe that some level of MTP protection is more beneficial than completely foregoing MTP protection in its entirety. By making clear to Users how MTP for Periodic Auction Orders will operate, Users can better manage their use of MTP modifiers, and anticipate how their Periodic Auction Orders will behave.

Finally, the Exchange further believes that the proposed rule change does not unfairly discriminate amongst Users because the proposal will allow all Periodic Auction Users to utilize MTP just as all Users entering Continuous Book Orders may utilize MTP today. In this regard, the proposed amendment will avoid disparate treatment of Users. Furthermore, the bypassing or amending

of MTP modifiers, as described in the Examples above, will apply equally to all Periodic Auction Users, regardless of their size.

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. MTP is an optional functionality offered by the Exchange and Periodic Auction Users are free to decide whether to use MTP in their decision-making process when submitting Periodic Auction Orders to the Exchange.

Similarly, the Exchange does not believe that the proposed amendment poses a burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. Indeed, the proposed rule change is designed to increase competition by offering Periodic Auction Users the ability to better manage their order flow and prevent undesirable executions. In turn, Users may be further incentivized to send additional orders to BYX's Periodic Auction mechanism, thereby fostering competition amongst exchanges.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-CboeBYX-2024-009 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-CboeBYX-2024-009. 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-CboeBYX-2024-009 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Sherry R. Haywood,
Assistant Secretary.

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BILLING CODE 8011-01-P

³⁵ In addition to codifying the proposed functionality, the Exchange will send out a Member notice that includes information about the proposed MTP functionality for Periodic Auctions.

³⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100350; File No. SR–NYSEARCA–2024–50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

June 14, 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 June 3, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “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 amend the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to provide an additional calculation for purposes of determining whether an ETP Holder qualifies for fees and credits that pertain to providing liquidity under certain pricing tiers. The Exchange proposes to implement the fee change effective June 3, 2024. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to provide an additional calculation for purposes of determining whether an ETP Holder qualifies for fees and credits that pertain to providing liquidity under certain pricing tiers. More specifically, the proposed additional calculation would apply to the following pricing tiers in Section VII. of the Fee Schedule: Adding Tiers,³ Limit Non-Display Step Up Tier and Tape C Tiers for Adding.⁴ The Exchange proposes to implement the fee change effective June 3, 2024.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁵

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁶ Indeed, equity trading is currently dispersed across 16 exchanges,⁷ numerous alternative trading systems,⁸ and broker-dealer

internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 20% market share.⁹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 12% market share of executed volume of equities trading.¹⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

The Exchange currently provides ETP Holders with various tiered credits for executing orders that add liquidity to the Exchange and charges them various fees for executing orders that remove liquidity from the Exchange, as set forth in Section VII. of the Fee Schedule, titled “Tier Rates—Round Lots and Odd Lots. The fees and credits enumerated in Section VII. apply all securities priced at \$1 or more that are executed on the Exchange. ETP Holders may qualify for tiers of discounted fees and premium credits based, in part, upon the volume of their activities on the Exchange as a percentage of total “Consolidated Average Daily Volume” or “CADV.”

Pursuant to Section I. of the Fee Schedule, the term “CADV” means, unless otherwise stated, the United States consolidated average daily volume of transactions reported to a securities information processor (“SIP”). Transactions that are not reported to a SIP are not included in the CADV. If CADV is preceded by a reference to a Tape or to Sub-Dollar, then CADV would refer to all consolidated average daily volume of transactions reported to a SIP for all securities in that Tape or to all Sub-Dollar securities. Per the Fee Schedule, trade activity on days when

³ Adding Tiers refers to Tiers 1 through 5 under the Adding Tiers pricing tier table on the Fee Schedule.

⁴ Tape C Tiers for Adding refers to Tiers 1 through 3 under the Tape C Tiers for Adding pricing tier table on the Fee Schedule.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (“Regulation NMS”).

⁶ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

⁷ See Cboe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share.

⁸ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems

registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹⁰ See *id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

the market closes early and on the date of the annual reconstitution of the Russell Investment Indexes does not count toward volume tiers.¹¹ For purposes of determining trade related fees and credits based on CADV, the Exchange may exclude any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours.¹²

Generally, the ratio of consolidated volumes in securities priced at or above \$1 (“dollar plus volume”) relative to consolidated volumes inclusive of securities priced below a dollar is usually stable from month to month, such that “CADV” has been a reasonable baseline for determining tiered incentives for ETP Holders that execute dollar plus volume on the Exchange. However, there have been a few months where volumes in securities priced below a dollar (“sub-dollar volume”) have been elevated, thereby impacting the ratio mentioned above.

Anomalous rises in sub-dollar volume stand to have a material adverse impact on ETP Holders’ qualifications for pricing tiers/incentives because such qualifications depend upon ETP Holders achieving threshold percentages of volumes as a percentage of CADV, and an extraordinary rise in sub-dollar volume stands to elevate CADV. As a result, ETP Holders may find it more difficult, if not practically impossible, to qualify for or to continue to qualify for their existing incentives during months where there are such rises in sub-dollar volumes, even if their dollar plus volumes have not diminished relative to prior months.

The Exchange believes that it would be unfair for ETP Holders that execute significant dollar plus volumes on the Exchange to fail to achieve or to lose their existing incentives for such volumes due to anomalous behavior that is extraneous to them. Therefore, the Exchange wishes to amend the Fee Schedule to help avoid extraordinary spikes in sub-dollar volumes from adversely affecting an ETP Holder’s qualification of incentives for their dollar plus stock executions.

Accordingly, the Exchange proposes to amend footnote 1 of the Fee Schedule to state that, for purposes of calculating an ETP Holder’s qualifications for fees and credits that pertain to providing liquidity, the Exchange will calculate an ETP Holder’s equity volume and total equity CADV twice for the following tiers: Adding Tiers, Limit Non-Display

Step Up Tier and Tape C Tiers for Adding. First, the Exchange will calculate an ETP Holder’s equity volume and total equity CADV inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate an ETP Holder’s equity volume and total equity CADV exclusive of volume that consists of executions in securities priced less than \$1. As proposed, the Exchange will then assess which of these two calculations would qualify the ETP Holder for the most advantageous fees and credits for the month and then the Exchange will apply those to the ETP Holder. Another market recently amended its rules to provide its members with a similar remedy.¹³

Although the Exchange wishes to avoid extraordinary spikes in sub-dollar volumes from adversely affecting an ETP Holder’s qualification of incentives for their dollar plus stock executions, the Exchange proposes to limit the application of the proposed calculation to efficiently allocate the Exchange’s limited resources for incentives. Specifically, as noted above, the Exchange proposes to apply the proposed calculation excluding sub-dollar volumes to the incentives that pertain to providing liquidity under the Adding Tiers, the Limit Non-Display Step Up Tier and the Tape C Tiers for Adding. The Exchange wishes to impose such limitations in order to limit the cost impact on the Exchange, while still providing some relief to ETP Holders in months with extraordinary spikes in sub-dollar volumes. It is appropriate for the Exchange to devote to incentive programs in a meaningful way and to reallocate these incentives periodically in a manner that best achieves the Exchange’s overall mix of objectives.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members,

issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market. 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.”¹⁶ As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market.

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including credits and fees that apply based upon members achieving certain volume thresholds. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, the Exchange’s fees are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange believes that the proposal to amend the Fee Schedule is reasonable and equitable because, in its absence, ETP Holders may experience material adverse impacts on their ability to qualify for certain incentives during a month with an anomalous rise in sub-dollar volumes. The Exchange does not wish to penalize ETP Holders that execute significant volumes on the Exchange due to anomalous and extraneous trading activities of a small number of firms in sub-dollar securities. The proposed rule would seek to

¹¹ See Fee Schedule, Footnote 1.

¹² *Id.*

¹³ See Securities Exchange Act Release No. 99535 (February 14, 2024), 89 FR 13125 (SR-NASDAQ-2024-005) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ See Regulation NMS, *supra* note 6, 70 FR at 37499.

provide a means for ETP Holders that provide liquidity to avoid such a penalty by determining whether calculating ETP Holder equity volume and total equity CADV to include or exclude sub-dollar volume would result in ETP Holders qualifying for the most advantageous fees and credits, and then applying the calculations that would result in the incentives for providing liquidity that are most advantageous to each ETP Holder. The Exchange believes it is reasonable to limit the proposal by applying the proposed calculation to incentives that pertain to providing liquidity to a limited number of pricing tiers because the pricing tiers that are the subject of this proposed rule change are those that are the most impacted by anomalous spikes in sub-dollar volumes, and by applying the additional calculation to those specified pricing tiers would alleviate burden on ETP Holders from being disadvantaged by trading over which it has little or no control. The Exchange believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange does not intend for the proposal to advantage any particular ETP Holders and the Exchange will apply the proposed calculation to all similarly situated ETP Holders.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt by the Exchange to maintain, if not improve its market share relative to its competitors.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁷ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange does not believe that its proposal would place any category of Exchange participant at a competitive disadvantage. The Exchange intends for

its proposed changes to the fees and credits to reallocate its limited resources more efficiently and to align them with the Exchange's overall mix of objectives. The proposed rule change is intended to help avoid pricing disadvantages due to anomalous spikes in sub-dollar volumes and is not intended to provide a competitive advantage to any one particular ETP Holder. The proposed calculation would be available to all similarly-situated market participants, and, as such, the proposed changes would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.*, excluding auctions) is currently less than 12%. In such an environment, the Exchange must continually review, and consider adjusting its fees and credits to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁸ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2024-50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-50, and should be submitted on or before July 12, 2024.

¹⁷ 15 U.S.C. 78f(b)(8).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100345; File No. SR–NYSEAMER–2024–38]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Amending the Connectivity Fee Schedule

June 14, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on June 3, 2024, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users with wireless connectivity to an additional market data feed. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users⁴ with wireless connectivity to an additional market data feed.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the “Existing Third Party Data”), and wired connections to more than 45 market data feeds or combinations of feeds.⁵

The Exchange proposes to add to the Fee Schedule wireless connections (“Connectivity”) to the Nasdaq CXC and Nasdaq CX2 market data feeds.⁶ As there would be limited bandwidth available on the wireless network from the TR2 data center in Toronto, Canada, where the two feeds are generated, the Exchange would not transport

information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds. Rather, FIDS would provide connectivity to a selection of symbols from the two market data feeds, which would include those symbols for which there is demand (the “Proposed Third Party Data”).⁷

As with most other Existing Third Party Data,⁸ the monthly charge for the Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is applicable to wireless connections to the Proposed Third Party Data.

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become operative by the end of 2024. The Exchange will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

Users would be offered Connectivity to the Proposed Third Party Data through connections into the colocation center in the Mahwah, New Jersey data center (“MDC”).⁹ To receive either market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

In order to implement the proposed change, the Exchange proposes to add the following item to the Connectivity Fee Schedule under “A. Co-Location Fees”:

⁷ When a User requested a wireless connection to Nasdaq CXC or Nasdaq CX2 market data feeds, it would receive connectivity to the Proposed Market Data. The User would then determine the symbols for which it would receive data. The Exchange would not have visibility into which portions of the Proposed Market Data a given customer chooses to receive.

⁸ See Securities Exchange Act Release No. 76748 (December 23, 2015), 80 FR 81648 (December 30, 2015) (SR–NYSEMKT–2015–85).

⁹ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

¹⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange’s affiliates the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR–NYSE–2024–33, SR–NYSEARCA–2024–49, SR–NYSECHX–2024–21, and SR–NYSENAT–2024–18.

⁵ See Securities Exchange Act Release No. 99807 (March 20, 2024), 89 FR 21072 (March 26, 2024) (SR–NYSEAMER–2024–18).

⁶ According to the Nasdaq Canada website, “CXC is a lit book providing clients with a reliable platform for trading Canadian equities, offering the benefits of anonymous or attributed trading and price/broker/time priority” and “[t]he CX2 trading book is designed to provide additional cost savings and trading efficiencies. Through a unique pricing model and broker preferencing functionality, this lit book helps to improve investment performance and to drive positive market structure change.” <https://www.nasdaq.com/solutions/nasdaq-canada>.

Type of service	Description	Amount of charge
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq CXC and Nasdaq CX2 data.	\$5,000 per connection initial charge plus monthly charge per connection of \$5,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

If a User were to purchase more than one wireless connection to Proposed Third Party Data, it would pay more than one non-recurring initial charge. Unless the User already had a port for Toronto Stock Exchange data, a proposed wireless connection would include the use of one port for Connectivity to Proposed Third Party Data, and a User would not pay a separate fee for the use of such port.¹⁰

If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data. Rather, the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

The proposed Connectivity would not utilize the pole on the grounds of the MDC.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Exchange believes that it would not obtain new Users due to the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which 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. 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.”¹¹

A third party has created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission’s market-based test considers “whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.”¹⁵ If the Exchange meets that burden, “the Commission will find that its proposal is consistent with the Act unless ‘there is a substantial countervailing basis to find that the terms’ of the proposal violate the Act or the rules thereunder.”¹⁶ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange has not placed third party vendors at a competitive disadvantage created by the Exchange.

The Exchange’s proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with connectivity to the Proposed Third Party Data.

Under the proposed rule, for the first time, a User also would be able to connect to the Proposed Market Data wirelessly, increasing the options available to it. Without this proposed rule change, Users would not have wireless access to the Proposed Third Party Data.

Moreover, a third party created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends

¹⁵ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEARCA–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEARCA–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (“Wireless Approval Order”), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (“2008 ArcaBook Approval Order”). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁶ See Wireless Approval Order, *supra* note 15, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 15, at 74781.

¹⁰ Toronto Stock Exchange data and CME Group Data each require their own port. The remaining Existing Third Party Data requires one port. Accordingly, a User would not be able to connect to the Proposed Third Party Data using the same port that it uses for connectivity to CME Group Data.

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data.

Accordingly, the wireless connections would compete with the Exchange's proposed Connectivity and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.¹⁷ If the Exchange were to set its proposed fees too high, Users could respond by instead selecting the telecoms' substantially similar wireless connectivity.

In addition, the Exchange believes that at least three third-party market participants offer fiber connections to Nasdaq CXC and Nasdaq CX2 market data, including the Proposed Third Party Data, in colocation.¹⁸ FIDS offers connectivity to the Proposed Third Party Data as part of its connectivity to Nasdaq Canada data feeds.¹⁹

The Exchange Would Not Preclude Other Connections to Proposed Market Data in TR2

The Exchange is not aware of any other public, commercially available wireless connections to the Proposed Third Party Data in colocation.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Wireless connections and fiber connections to the Proposed Third Party Data in the MDC would compete with each other. Given the various advantages and disadvantages of both wireless and fiber connections, a User interested in purchasing a connection to the Proposed Third Party Data is likely to consider a variety of factors in deciding whether to use a wireless versus fiber connection, including latency; the amount of network uptime; the equipment the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

Third Party Competitors Would Not Be at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange's proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").²⁰ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set

the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²¹ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²² Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not

¹⁷ See 2008 ArcaBook Approval Order, *supra* note 15, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

¹⁸ Because the providers of such connectivity are not regulated entities, they are not obligated to make the availability of connections, latency figures or fees publicly available or the same for all entities.

¹⁹ See Securities Exchange Act Release No. 83707 (July 25, 2018), 83 FR 36985 (July 31, 2018) (SR-NYSEAmex-2018-35).

²⁰ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²¹ See Securities Exchange Act Release No. 97999 (July 26, 2023), 88 FR 50190 (August 1, 2023) (SR-NYSEAmex-2023-36) ("MMR Notice").

²² See *id.* at 50193. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.²³ If the Exchange were to set its prices for Connectivity to Proposed Third Party Data at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the competing wireless connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes that, unless a User connects to Toronto Stock Exchange data, it is reasonable that each proposed service would include the use of a wireless connection port, and a User would not pay a separate fee for the use of such port. If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data, because the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users.

Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over fiber connections.

Additional third party competitors could offer fiber or wireless connectivity

to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons.

The Exchange believes that it is not unfairly discriminatory to make wireless Connectivity to the Proposed Third Party Data available to Users. The proposed rule change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over third party fiber connections.

Given the limitation on bandwidth, the Exchange believes that it is not

unfairly discriminatory not to transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁴

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors.

The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. For the first time, a User would be able to connect wirelessly to the Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party fiber connections.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may

²³ See Wireless Approval Order, *supra* note 15.

²⁴ 15 U.S.C. 78f(b)(8).

create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise.

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange's proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.²⁵ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set

the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁶ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁷ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

Given the limitation on bandwidth, the Exchange believes that it will not impose any burden on competition that is not necessary or appropriate to not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and Rule 19b-4(f)(6) thereunder.²⁹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁰

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6)(iii). 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.

³¹ 15 U.S.C. 78s(b)(2)(B).

²⁵ See *supra* note 20.

²⁶ See MMR Notice, *supra* note 21.

²⁷ See *id.* at 50193.

• Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-38 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEAMER-2024-38. 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-NYSEAMER-2024-38 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13547 Filed 6-20-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100334; File No. SR-CboeEDGA-2024-024]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Provide a Discount on the Purchase of Historic Short Volume and Trade Reports

June 14, 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 June 12, 2024, Cboe EDGA Exchange, Inc. (the "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 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 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 update its Fee Schedule to provide a discount on fees assessed to EDGA Members ("Members")³ and non-Members that purchase \$20,000 or more of U.S. Equity Short Volume and Trades Reports ("Short Volume Reports"), effective June 4, 2024 through June 30, 2024.⁴

By way of background, the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade date,⁵ total volume,⁶ short volume,⁷ and sell short exempt volume,⁸ by symbol.⁹ The Short Volume Report also includes an end-of-month report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),¹⁰ trade size,¹¹ trade price,¹² and type of short sale execution,¹³ by symbol and exchange.¹⁴ The Short Volume Report is a completely voluntary product, in that

³ See Rule 1.5(n) ("Member"). The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

⁴ The Exchange initially filed the proposed rule change on June 4, 2024 (SR-CboeEDGA-2024-021). On June 12, 2024, the Exchange withdrew that filing and submitted this filing.

⁵ "Trade date" is the date of trading activity in yyyy-mm-dd format.

⁶ "Total volume" is the total number of shares transacted.

⁷ "Short volume" is the total number of shares sold short.

⁸ "Short exempt volume" is the total number of shares sold short classified as exempt.

⁹ "Symbol" refers to the Cboe formatted symbol in which the trading activity occurred. See https://cdn.cboe.com/resources/membership/US_Symbolology_Reference.pdf.

¹⁰ "Trade date and time" is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 ET format.

¹¹ "Trade size" is the number of shares transacted.

¹² "Trade price" is the price at which shares were transacted.

¹³ "Short type" is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (see 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (see 17 CFR 242.201(c)).

¹⁴ "Exchange" is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³² 17 CFR 200.30-3(a)(12).

the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Short Volume Report available for purchase to Users on the LiveVol DataShop website (datashop.cboe.com). Both the end-of-day report and end-of-month report are included in the cost of the Short Volume Report and are available for purchase by both Members as well as non-Members on an annual or monthly¹⁵ basis. The monthly fee is \$750 per Internal Distributor¹⁶ and \$1,250 per External Distributor.¹⁷ Additionally, the Exchange offers historical reports containing both the end-of-day volume and end-of-month trading activity. The fee per month of historical data is \$500. The Short Volume Report provided on a historical basis is only for display use redistribution (*e.g.*, the data may be provided on the User’s platform). Therefore, Users of the historical data may not charge separately for data included in the Short Volume Report or incorporate such data into their product. The Exchange notes that the Short Volume Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.¹⁸

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase historical Short Volume Reports will receive a percentage fee discount where specific purchase

thresholds are met. Specifically, the Exchange proposes to provide a 20% discount for ad-hoc purchases of historical Short Volume Reports of \$20,000 or more.¹⁹ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning June 4, 2024, with the program remaining in effect through June 30, 2024. The Exchange also notes that it previously adopted the same discount program last year and proposes to update the Fees Schedule with the new program dates accordingly.²⁰

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² 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)²³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,²⁴ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its

Trading Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical short volume data via historical Short Volume Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the equities industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.²⁵

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 16% of the equity market share.²⁶ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.”²⁷ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does,

¹⁵ The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on October 24, 2023, the monthly fee will cover the period of October 24, 2023, through November 23, 2023. If the User cancels its subscription prior to November 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

¹⁶ An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity. See Cboe EDGA U.S. Equities Exchange Fee Schedule.

¹⁷ An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity. See Cboe EDGA U.S. Equities Exchange Fee Schedule.

¹⁸ See the Nasdaq Fee Schedule, Equity 7, Section 152. See also, the TAQ Group Short Sales (Monthly File) and Short Volume product, offered by the New York Stock Exchange LLC (“NYSE”) and affiliated equity markets (the “NYSE Group”) at NYSE Exchange Proprietary Market Data √ TAQ NYSE Group Short Sales.

¹⁹ The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, *i.e.* receive a 20% discount of \$5,000).

²⁰ See Securities Exchange Act Release No. 88195 (December 14, 2023), 88 FR 88193 (December 20, 2023) (SR-CboeEDGA-2023-021).

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ *Id.*

²⁴ 15 U.S.C. 78f(b)(4).

²⁵ See *supra* note 17.

²⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 3, 2024), available at <https://www.cboe.com/us/equities/market/>.

²⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of historical Short Volume Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Short Volume Reports is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of historical Short Volume Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Short Volume Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage users to purchase historical Short Volume Reports. Further, the proposed discount is intended to promote increased use of the Exchange's historical Short Volume Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase historical Short Volume Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Short Volume Reports, and the Exchange is not required to make historical Short Volume Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange previously adopted a similar discount program last year.²⁸

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As

discussed above, the Exchange's historical Short Volume Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of historical Short Volume Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Short Volume Reports.

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 Act²⁹ and paragraph (f) of Rule 19b-4³⁰ 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-2024-024 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-2024-024. 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-CboeEDGA-2024-024 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13537 Filed 6-20-24; 8:45 am]

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²⁸ See Securities Exchange Act Release No. 88195 (December 14, 2023), 88 FR 88193 (December 20, 2023) (SR-CboeEDGA-2023-021).

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f).

³¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100336; File No. SR–GEMX–2024–12]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 3

June 14, 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 June 3, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX’s Pricing Schedule at Options 7, Section 3, “Regular Order Fees and Rebates.”

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/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

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3, “Regular Order Fees and Rebates” to

increase a Penny Symbol Priority Customer³ Maker Rebate.

Today, GEMX assesses 5 tiers of Penny Symbol Maker Rebates. Market Makers⁴ are paid the following Penny Symbol Maker Rebates: a Tier 1 Maker Rebate of \$0.20 per contract; a Tier 2 Maker Rebate of \$0.25 per contract; a Tier 3 Maker Rebate of \$0.30 per contract; a Tier 4 Maker Rebate of \$0.32 per contract; and a Tier 5 Maker Rebate of \$0.41 per contract. In comparison, GEMX pays Non-Nasdaq GEMX Market Makers (FarMM),⁵ Firm Proprietary⁶/ Broker Dealers⁷ and Professional Customers⁸ the following Penny Symbol Maker Rebates: a Tier 1 Maker Rebate of \$0.20 per contract. GEMX does not pay Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers Tier 2 through Tier 5 Maker Rebates. Finally, Priority Customers are paid the following Penny Symbol Maker Rebates: a Tier 1 Maker Rebate of \$0.25 per contract; a Tier 2 Maker Rebate of \$0.40 per contract; a Tier 3 Maker Rebate of \$0.48 per contract; a Tier 4 Maker Rebate of \$0.51 per contract; and a Tier 5 Maker Rebate of \$0.53 per contract.

At this time, GEMX proposes to increase the Penny Symbol Priority Customer Tier 2 Maker Rebate from \$0.40 to \$0.43 per contract. GEMX is not proposing to amend the Qualifying Tier Thresholds to achieve these tiers. GEMX believes that increasing the Priority Customer Tier 2 Maker Rebate in Penny Symbols will incentivize GEMX Members to send additional Priority Customer order flow to GEMX to obtain an increased rebate.

³ A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in the Pricing Schedule the term “Priority Customer” includes “Retail”. See Options 7, Section 1(c).

⁴ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

⁵ A “Non-Nasdaq GEMX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See Options 7, Section 1(c).

⁶ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

⁷ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

⁸ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated, “[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’. . . .”¹¹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

GEMX’s proposal to increase the Penny Symbol Priority Customer Tier 2 Maker Rebate from \$0.40 to \$0.43 per contract is reasonable because increasing the Priority Customer Tier 2 Maker Rebate in Penny Symbols should

⁹ See 15 U.S.C. 78f(b).

¹⁰ See 15 U.S.C. 78f(b)(4) and (5).

¹¹ See *NetCoalition*, 615 F.3d at 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)).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

incentivize GEMX Members to send additional Priority Customer order flow to GEMX to obtain an increased rebate.

GEMX's proposal to increase the Penny Symbol Priority Customer Tier 2 Maker Rebate from \$0.40 to \$0.43 per contract is equitable and not unfairly discriminatory because Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

GEMX's proposal to increase the Penny Symbol Priority Customer Tier 2 Maker Rebate from \$0.40 to \$0.43 per contract does not impose an undue burden on competition because Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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)(ii) of the Act¹² and Rule 19b-4(f)(2)¹³ 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2024-12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-GEMX-2024-12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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-GEMX-2024-12 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13539 Filed 6-20-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100341; File No. SR-CboeBZX-2024-051]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

June 14, 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 June 7, 2024, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") 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 solicit comments on the proposed rule change from interested persons.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX Equities") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/BZX/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-

Members on a monthly basis: \$2,500 per physical port for a 1 gigabit ("Gb") circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., ("Affiliate Exchanges").⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange operates in a highly competitive environment. On May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled "Staff Guidance on SRO Rule Filings Relating to Fees" ("Fee Guidance"), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.¹¹ As described in further detail below, the Exchange believes substitutable products¹² are in fact available to market participants, including by third-party resellers of the Exchange's physical connectivity, and the availability to trade all of the products offered at the Exchange at one of the 16 other equities exchanges that trade equities or other off-exchange trading platforms.

The 2019 Fee Guidance also acknowledged that platform competition may demonstrate a competitive environment and therefore constrain aggregate returns, regardless of the pricing of individual products, and that platforms often have joint products.¹³ Exchanges themselves are platforms.¹⁴ Particularly, exchanges are

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR-CboeBZX-2023-046). On September 1, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX-2023-067. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the "OIP") in anticipation of a possible U.S. government shutdown. On October 2, 2023, the Exchange filed the proposed fee change (SR-CboeBZX-2023-080). On October 13, 2023, the Exchange withdrew that filing and on business date October 16, 2023 submitted SR-CboeBZX-2023-084. On December 12, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX-2023-103. On February 9, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-016. On April 9, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-027. On June 7, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR-MIAX-2024-016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019 ("Fee Guidance"). The Fee Guidance also recognized that "products need to be substantially similar but not identical to be substitutable."

¹² A substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. See <https://www.investopedia.com/terms/s/substitute.asp>.

¹³ See Fee Guidance.

¹⁴ The Supreme Court in *Ohio v. American Express Co.* recognized that, as platforms facilitate transactions between two or more sides of a market, their value is dependent on attracting users to both sides of the platform (i.e., network effects). See *Ohio*

multi-sided platforms that facilitate interactions between multiple sides of the market—buyers and sellers, companies and investors, and traders and market watchers—and their value is dependent on attracting users to the multiple sides of the platform. As described in further detail below, the Exchange believes that competition among exchanges as trading platforms (and between exchanges and alternative trading venues) constrain exchanges from charging excessive fees for any exchange products, including trading, listings, connectivity and market data. As such, fees need not be analyzed from only one side, but rather can, and should, be considered within the larger context of the platform to test for anti-competitive behavior. And indeed, nothing in the Exchange Act requires the individual examination of specific product fees in isolation. Rather, the Exchange generally requires the rules of an exchange to provide for the “equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.”¹⁵

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports. Further, the current 10 Gb physical port fee has remained unchanged since June 2018.¹⁶ Since its last increase over 6 years ago however, there has been notable inflation. Particularly, the dollar has had an average inflation rate of 3.76% per year between 2018 and today, producing a cumulative price increase of approximately 24.8% inflation since the fee for the 10 Gb physical port was last modified.¹⁷ Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. Accordingly, the Exchange believes the proposed fee of \$8,500 is reasonable as it only represents an approximate 13% increase from the rate adopted six years ago, notwithstanding the cumulative inflation rate of inflation of 24.8%. Were the Exchange to adjust fully for inflation, it would be proposing a monthly rate of \$9,360, which is 10% more than the Exchange is actually proposing. To further demonstrate, the Exchange notes that \$8,500 in 2024 is equivalent to approximately \$6,800 in 2018, when adjusted for inflation.

v. American Express Co. 138 S. Ct. 2274, 585 U.S. (2018).

¹⁵ See 15 U.S.C. 78f(b)(4).

¹⁶ See Securities and Exchange Release No. 83442 (June 14, 2018), 83 FR 28675 (June 20, 2018) (SR–CboeBZX–2018–037).

¹⁷ See <https://www.officialdata.org/us/inflation/2010?amount=1>.

Accordingly, the Exchange believes the proposed rate is also reasonable as it is nearly 20% lower than the rate adopted in 2018 (*i.e.*, \$7,500) when adjusted for inflation. The Exchange is also unaware of any standard that suggests any fee proposal that exceeds a certain yearly or cumulative inflation rate is unreasonable, and in any event, in this instance the increase is well below the cumulative rate. The Exchange also believes its offerings are more affordable as compared to similar offerings at competitor exchanges.¹⁸

The Exchange also notes Members and Non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no regulatory requirement that any market participant connect to any one particular exchange. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange. Indeed, there are currently 16 registered equities exchanges that trade equities (12 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.¹⁹ Based on publicly available information, no single equities exchange has more than approximately 15% of the market share.²⁰ Further, low

¹⁸ See *e.g.*, *See e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange’s 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹⁹ *Id.*

²⁰ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 6, 2024),

barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, in 2020 alone, three new exchanges entered the market: Long Term Stock Exchange (LTSE), Members Exchange (MEMX), and Miami International Holdings (MIAX Pearl).

As noted above, there is no regulatory requirement that any market participant connect to any one equities exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one equities exchange whose membership includes every registered broker-dealer. By way of example, as of April 2024 Cboe BYX has 110 members that trade equities, Cboe EDGX has 124 members that trade equities, Cboe EDGA has 103 members and Cboe BZX has 132 members. There is also no firm that is a Member of the Exchange only. Further, based on publicly available information regarding a sample of the Exchange’s competitors, NYSE has 143 members,²¹ IEX has 129 members,²² and MIAX Pearl has 51 members.²³

A market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity. The Exchange notes that third-party non-Members also resell exchange connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.²⁴ The

available at https://www.cboe.com/us/equities/market_statistics/.

²¹ See <https://www.nyse.com/markets/nyse/membership>.

²² See <https://www.iexexchange.io/membership>.

²³ See https://www.miaxglobal.com/sites/default/files/page-files/20230630_MIAX_Pearl_Equities_Exchange_Members_June_2023.pdf.

²⁴ Third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. Many of the third-party connectivity resellers also act as distribution agents for all of the market data

Continued

Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.*, fee based on number of Members that connect to the Exchange indirectly via the third-party).²⁵ Particularly, these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services. The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party reseller.²⁶ This allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity. These third-party sellers may also provide an additional value to market participants in addition to the physical port itself as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings. The Exchange believes such third-party resellers may also use the Exchange's connectivity as an incentive for market participants to purchase further services such as hosting services. That is, even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.*, use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller as it relate to a physical port because such reseller may be providing a third-party reseller as it relate to a physical port

generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. This may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. This facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business.

²⁵ See, *e.g.*, Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (nasdaqtrader.com); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR-NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR-NASDAQ–2017–114).

²⁶ For example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port.

because such reseller may be providing a discount on the physical port to incentivize the purchase of additional services and infrastructure support alongside the physical port offering (*e.g.*, providing space, hosting, power, and other long-haul connectivity options). This is similar to cell phone carriers offering a new iPhone at a discount (or even at no cost) if purchased in connection with a new monthly phone plan. These services may reevaluate reselling or offering Cboe's direct connectivity if they deem the fees to be excessive. Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. For example, there are approximately 12 third parties who resell Exchange connectivity across the 7 Affiliated Exchanges, which are all accessible on the same network. These third-party resellers collectively maintain approximately 48 physical ports from the Exchange, but have collectively almost 200 unique customers downstream, connected through these multi-Exchange ports. Therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings. Because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members (such as third-party resellers) alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.²⁷

²⁷ See *e.g.*, See *e.g.*, The Nasdaq Stock Market LLC ("Nasdaq"). General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps

Accordingly, vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it. In the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 12 non-Cboe affiliated equities markets. Indeed, market participants are free to choose which exchange to use to satisfy their business needs. Moreover, if the Exchange were to assess supracompetitive rates, members and non-members alike, may decide not to purchase, or to reduce its use of, the Exchange's direct connectivity. Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange which ultimately does not benefit the Exchange. For example, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

Additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan") the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business

physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

models.²⁸ The Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.²⁹

As noted above, exchanges also compete as platforms. In the context of the competition among platforms, different exchanges operate a variety of different business models. In fact, there are a number of ways an exchange can differentiate itself, such as by pricing structure, technology and functionality offerings, and products. As discussed above, market participants can access the exchange without purchasing anything from an exchange, instead using third-party routers and data. For those whose business models necessitate the purchase of some mix of trading, connectivity, and data services, there are a variety of options at different price points, allowing market participants to exercise choice, and forcing exchanges to compete on their offerings and prices. Further, all elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert. For example, trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and connectivity services. As such, demand for one set of platform services depends on the demand for other services and therefore to make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities. In assessing competition for exchange services, exchanges must also consider not only explicit costs, such as fees for trading, market data, and connectivity, but the implicit costs, such as realized spreads, of trading on an exchange. When accounting for explicit and implicit costs, research has found that competition has largely equalized all-in trading costs to users across exchanges.³⁰ For example, data has

shown that venues with the highest explicit costs (typically inverted and fee-free venues) have the lowest implicit costs from markouts³¹ and vice versa.³² Implicit costs explain how venues with higher explicit costs manage to compete with seemingly much cheaper venues (and conversely, how exchanges with higher implicit costs use lower fees to compete).³³ Additional research also confirms that market participants route trades in a way that not only accounts for explicit and implicit costs—but also very efficiently values opportunity costs, like lower odds of getting a fill on inverted venues.³⁴ As such, the Exchange believes the proposed fee change is reasonable as exchanges are constrained from charging excessive fees for any exchange product, including physical connectivity.

The Exchange also believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes. The Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things,

can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center (“NY6”)), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing

²⁸ See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7-13-19).

²⁹ *Id.*

³⁰ Mackintosh, Phil & Normyle, Michael. “How Exchanges Compete: An Economic Analysis of Platform Competition.” Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>

³¹ Per-trade markout is a measure of theoretical profitability from the perspective of a liquidity provider.

³² Mackintosh, Phil & Normyle, Michael. “How Exchanges Compete: An Economic Analysis of Platform Competition.” Nasdaq, March 2024, <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>

³³ See *id.* For example, research by Nasdaq found that it is over 60% more expensive to trade on the costliest exchange than on the cheapest. As Nasdaq noted, such a sizeable disparity suggests that there is another factor that keeps these exchanges in competition. Specifically, when implicit costs are considered, the difference in cost to trade is minimized.

³⁴ Bershova, Nataliya & Jaquet, Paul. (2019). Execution Quality and Fee Structure: Passive Lit Executions. Bernstein Electronic Trading, Execution Research.

innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition.

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.³⁵ Indeed, the Exchange believes assessing fees that are a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable. As noted above, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it

offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. Moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this “national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed.”³⁶ Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules “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.”³⁷ Likewise, the Act grants the Commission authority to amend or repeal “[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”³⁸ In short, the promotion of free and open competition was a core congressional objective in creating the national market system.³⁹ Indeed, the Commission has

historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. Finally, and importantly, the Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically. Indeed, the Exchange believes that classification of costs could likely not be done without on-going debate over formulas for allocation,⁴⁰ continual auditing, and considerable expense. The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation. Moreover, the industry could experience frequent rate increases based on escalating expense levels. The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which the Commission has historically sought to avoid.

for overseeing the SROs and the national market system.”).

⁴⁰ See *e.g.*, letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (“SIG”), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O’Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, and letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (“Virtu”), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. See also Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR-IEX-2021-14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR-PEARL-2022-18) (Notice of Filing of a Proposed Rule Change To Amend the MIAx PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAx Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

³⁵ See *e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

³⁶ See H.R. Rep. No. 94-229, at 92 (1975) (Conf. Rep.) (emphasis added).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ 15 U.S.C. 78f(8).

³⁹ See also 15 U.S.C. 78k-1(a)(1)(C)(ii) (purposes of Exchange Act include to promote “fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets”); Order, 73 FR at 74781 (“The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pay the most.

The Exchange's proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 12 non-Cboe affiliated equities markets, as well as off-exchange venues, where competitive products are available for trading. 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.”⁴¹ 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’”⁴² Accordingly, the Exchange does not believe its proposed 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 Act⁴³ and paragraph (f) of Rule 19b-4⁴⁴ 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-CboeBZX-2024-051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeBZX-2024-051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2024-051 and should be submitted on or before July 12, 2024.

⁴¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁴² *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)).

⁴³ 15 U.S.C. 78s(b)(3)(A).

⁴⁴ 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–13543 Filed 6–20–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100346; File No. SR–NYSEARCA–2024–49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Connectivity Fee Schedule

June 14, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on June 3, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users with wireless connectivity to an additional market data feed. The proposed rule change is available on the Exchange’s

website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users⁴ with wireless connectivity to an additional market data feed.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the “Existing Third Party Data”), and wired connections to more than 45 market data feeds or combinations of feeds.⁵

The Exchange proposes to add to the Fee Schedule wireless connections (“Connectivity”) to the Nasdaq CXC and Nasdaq CX2 market data feeds.⁶ As there would be limited bandwidth available on the wireless network from the TR2 data center in Toronto, Canada,

where the two feeds are generated, the Exchange would not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds. Rather, FIDS would provide connectivity to a selection of symbols from the two market data feeds, which would include those symbols for which there is demand (the “Proposed Third Party Data”).⁷

As with most other Existing Third Party Data,⁸ the monthly charge for the Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is applicable to wireless connections to the Proposed Third Party Data.

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become operative by the end of 2024. The Exchange will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

Users would be offered Connectivity to the Proposed Third Party Data through connections into the colocation center in the Mahwah, New Jersey data center (“MDC”).⁹ To receive either market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

In order to implement the proposed change, the Exchange proposes to add the following item to the Connectivity Fee Schedule under “A. Co-Location Fees”:

Type of service	Description	Amount of charge
Wireless Connection for Third Party Data	Wireless connection of Nasdaq CXC and Nasdaq CX2 data.	\$5,000 per connection initial charge plus monthly charge per connection of \$5,000.

⁴⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange’s affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to

propose the changes described herein. See SR–NYSE–2024–33, SR–NYSEAMER–2024–38, SR–NYSECHX–2024–21, and SR–NYSENAT–2024–18.

⁵ See Securities Exchange Act Release No. 99808 (March 20, 2024), 89 FR 21151 (March 26, 2024) (SR NYSEArca–2024–26).

⁶ According to the Nasdaq Canada website, “CXC is a lit book providing clients with a reliable platform for trading Canadian equities, offering the benefits of anonymous or attributed trading and price/broker/time priority” and “[t]he CX2 trading book is designed to provide additional cost savings and trading efficiencies. Through a unique pricing model and broker preferencing functionality, this lit book helps to improve investment performance and to drive positive market structure change.” <https://www.nasdaq.com/solutions/nasdaq-canada>

⁷ When a User requested a wireless connection to Nasdaq CXC or Nasdaq CX2 market data feeds, it

would receive connectivity to the Proposed Market Data. The User would then determine the symbols for which it would receive data. The Exchange would not have visibility into which portions of the Proposed Market Data a given customer chooses to receive.

⁸ See Securities Exchange Act Release No. 76749 (December 23, 2015), 80 FR 81640 (December 30, 2015) (SR–NYSEArca–2015–99).

⁹ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

Type of service	Description	Amount of charge
		Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

If a User were to purchase more than one wireless connection to Proposed Third Party Data, it would pay more than one non-recurring initial charge. Unless the User already had a port for Toronto Stock Exchange data, a proposed wireless connection would include the use of one port for Connectivity to Proposed Third Party Data, and a User would not pay a separate fee for the use of such port.¹⁰

If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data. Rather, the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

The proposed Connectivity would not utilize the pole on the grounds of the MDC.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Exchange believes that it would not obtain new Users due to the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which 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. 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.”¹¹

A third party has created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In

considering the reasonableness of proposed services and fees, the Commission’s market-based test considers “whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.”¹⁵ If the Exchange meets that burden, “the Commission will find that its proposal is consistent with the Act unless ‘there is a substantial countervailing basis to find that the terms’ of the proposal violate the Act or the rules thereunder.”¹⁶ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange has not placed third party vendors at a competitive disadvantage created by the Exchange.

The Exchange’s proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with connectivity to the Proposed Third Party Data.

Under the proposed rule, for the first time, a User also would be able to connect to the Proposed Market Data wirelessly, increasing the options available to it. Without this proposed rule change, Users would not have wireless access to the Proposed Third Party Data.

Moreover, a third party created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data.

¹⁵ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSEENAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEARCA-2020-15, SR-NYSECHX-2020-05, SR-NYSEENAT-2020-08) (“Wireless Approval Order”), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (“2008 ArcaBook Approval Order”). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁶ See Wireless Approval Order, *supra* note 15, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 15, at 74781.

¹⁰ Toronto Stock Exchange data and CME Group Data each require their own port. The remaining Existing Third Party Data requires one port. Accordingly, a User would not be able to connect to the Proposed Third Party Data using the same port that it uses for connectivity to CME Group Data.

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

Accordingly, the wireless connections would compete with the Exchange's proposed Connectivity and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.¹⁷ If the Exchange were to set its proposed fees too high, Users could respond by instead selecting the telecoms' substantially similar wireless connectivity.

In addition, the Exchange believes that at least three third-party market participants offer fiber connections to Nasdaq CXC and Nasdaq CX2 market data, including the Proposed Third Party Data, in colocation.¹⁸ FIDS offers connectivity to the Proposed Third Party Data as part of its connectivity to Nasdaq Canada data feeds.¹⁹

The Exchange Would Not Preclude Other Connections to Proposed Market Data in TR2

The Exchange is not aware of any other public, commercially available wireless connections to the Proposed Third Party Data in colocation.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Wireless connections and fiber connections to the Proposed Third Party Data in the MDC would compete with each other. Given the various

advantages and disadvantages of both wireless and fiber connections, a User interested in purchasing a connection to the Proposed Third Party Data is likely to consider a variety of factors in deciding whether to use a wireless versus fiber connection, including latency; the amount of network uptime; the equipment the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

Third Party Competitors Would Not Be at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange's proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").²⁰ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable

level²¹ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²² Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not

¹⁷ See 2008 ArcaBook Approval Order, *supra* note 15, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

¹⁸ Because the providers of such connectivity are not regulated entities, they are not obligated to make the availability of connections, latency figures or fees publicly available or the same for all entities.

¹⁹ See Securities Exchange Act Release No. 83708 (July 25, 2018), 83 FR 36980 (July 31, 2018) (SR-NYSEArca-2018-52).

²⁰ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²¹ See Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR-NYSEArca-2023-47) ("MMR Notice").

²² See *id.* at NYSE:[sic] 50241.[sic] American:[sic] 50193[sic]. Arca: 50246. Chicago:[sic] 50199[sic]. National:[sic] 50235[sic]. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.²³ If the Exchange were to set its prices for Connectivity to Proposed Third Party Data at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the competing wireless connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes that, unless a User connects to Toronto Stock Exchange data, it is reasonable that each proposed service would include the use of a wireless connection port, and a User would not pay a separate fee for the use of such port. If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data, because the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users.

Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over fiber connections.

Additional third party competitors could offer fiber or wireless connectivity

to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons.

The Exchange believes that it is not unfairly discriminatory to make wireless Connectivity to the Proposed Third Party Data available to Users. The proposed rule change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over third party fiber connections.

Given the limitation on bandwidth, the Exchange believes that it is not

unfairly discriminatory not to transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁴

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors.

The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. For the first time, a User would be able to connect wirelessly to the Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party fiber connections.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may

²³ See Wireless Approval Order, *supra* note 15.

²⁴ 15 U.S.C. 78f(b)(8).

create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data to is subject to a 30-day testing period, during which the monthly charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise.

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange's proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.²⁵ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set

the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁶ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁷ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

Given the limitation on bandwidth, the Exchange believes that it will not impose any burden on competition that is not necessary or appropriate to not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and Rule 19b-4(f)(6) thereunder.²⁹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁰

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6)(iii). 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.

³¹ 15 U.S.C. 78s(b)(2)(B).

²⁵ See *supra* note 20.

²⁶ See MMR Notice, *supra* note 21.

²⁷ See *id.* at 50246.

- Send an email to rule-comments@sec.gov. Please include file number SR–NYSEARCA–2024–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–49 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–13548 Filed 6–20–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100348; File No. SR–NYSENAT–2024–18]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Connectivity Fee Schedule

June 14, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on June 3, 2024, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users with wireless connectivity to an additional market data feed. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users⁴ with wireless connectivity to an additional market data feed.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the “Existing Third Party Data”), and wired connections to more than 45 market data feeds or combinations of feeds.⁵

The Exchange proposes to add to the Fee Schedule wireless connections (“Connectivity”) to the Nasdaq CXC and Nasdaq CX2 market data feeds.⁶ As there would be limited bandwidth available on the wireless network from the TR2 data center in Toronto, Canada, where the two feeds are generated, the Exchange would not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds. Rather, FIDS would provide connectivity to a selection of symbols from the two market data feeds,

⁴ For purposes of the Exchange's colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR–NYSENAT–2018–07). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR–NYSE–2024–33, SR–NYSEAMER–2024–38, SR–NYSEARCA–2024–49, and SR–NYSECHX–2024–21.

⁵ See Securities Exchange Act Release No. 99810 (March 20, 2024), 89 FR 21050 (March 26, 2024) (SR–NYSENAT–2024–09).

⁶ According to the Nasdaq Canada website, “CXC is a lit book providing clients with a reliable platform for trading Canadian equities, offering the benefits of anonymous or attributed trading and price/broker/time priority” and “[t]he CX2 trading book is designed to provide additional cost savings and trading efficiencies. Through a unique pricing model and broker preferencing functionality, this lit book helps to improve investment performance and to drive positive market structure change.” <https://www.nasdaq.com/solutions/nasdaq-canada>

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

³² 17 CFR 200.30–3(a)(12).

which would include those symbols for which there is demand (the “Proposed Third Party Data”).⁷

As with most other Existing Third Party Data,⁸ the monthly charge for the Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is

applicable to wireless connections to the Proposed Third Party Data.

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become operative by the end of 2024. The Exchange will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

Users would be offered Connectivity to the Proposed Third Party Data through connections into the colocation

center in the Mahwah, New Jersey data center (“MDC”).⁹ To receive either market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

In order to implement the proposed change, the Exchange proposes to add the following item to the Connectivity Fee Schedule under “A. Co-Location Fees”:

Type of service	Description	Amount of charge
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq CXC and Nasdaq CX2 data.	\$5,000 per connection initial charge plus monthly charge per connection of \$5,000 Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

If a User were to purchase more than one wireless connection to Proposed Third Party Data, it would pay more than one non-recurring initial charge. Unless the User already had a port for Toronto Stock Exchange data, a proposed wireless connection would include the use of one port for Connectivity to Proposed Third Party Data, and a User would not pay a separate fee for the use of such port.¹⁰

If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data. Rather, the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

The proposed Connectivity would not utilize the pole on the grounds of the MDC.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Exchange believes that it would not obtain new Users due to the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which 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. 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.”¹¹

A third party has created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related

fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

⁷ When a User requested a wireless connection to Nasdaq CXC or Nasdaq CX2 market data feeds, it would receive connectivity to the Proposed Market Data. The User would then determine the symbols for which it would receive data. The Exchange would not have visibility into which portions of the Proposed Market Data a given customer chooses to receive.

⁸ See 83 FR 26314, *supra* note 4, at 26319–20.

⁹ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

¹⁰ Toronto Stock Exchange data and CME Group Data each require their own port. The remaining

Existing Third Party Data requires one port. Accordingly, a User would not be able to connect to the Proposed Third Party Data using the same port that it uses for connectivity to CME Group Data.

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."¹⁵ If the Exchange meets that burden, "the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder."¹⁶ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange has not placed third party vendors at a competitive disadvantage created by the Exchange.

The Exchange's proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with connectivity to the Proposed Third Party Data.

Under the proposed rule, for the first time, a User also would be able to connect to the Proposed Market Data wirelessly, increasing the options available to it. Without this proposed rule change, Users would not have wireless access to the Proposed Third Party Data.

Moreover, a third party created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data.

Accordingly, the wireless connections would compete with the Exchange's proposed Connectivity and would exert significant competitive forces on the

Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.¹⁷ If the Exchange were to set its proposed fees too high, Users could respond by instead selecting the telecoms' substantially similar wireless connectivity.

In addition, the Exchange believes that at least three third-party market participants offer fiber connections to Nasdaq CXC and Nasdaq CX2 market data, including the Proposed Third Party Data, in colocation.¹⁸ FIDS offers connectivity to the Proposed Third Party Data as part of its connectivity to Nasdaq Canada data feeds.¹⁹

The Exchange Would Not Preclude Other Connections to Proposed Market Data in TR2

The Exchange is not aware of any other public, commercially available wireless connections to the Proposed Third Party Data in colocation.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Wireless connections and fiber connections to the Proposed Third Party Data in the MDC would compete with each other. Given the various advantages and disadvantages of both wireless and fiber connections, a User interested in purchasing a connection to the Proposed Third Party Data is likely

to consider a variety of factors in deciding whether to use a wireless versus fiber connection, including latency; the amount of network uptime; the equipment the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

Third Party Competitors Would Not Be at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange's proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").²⁰ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²¹ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the

¹⁵ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSENAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEARCA-2020-15, SR-NYSECHX-2020-05, SR-NYSENAT-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁶ See Wireless Approval Order, *supra* note 15, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 15, at 74781.

¹⁷ See 2008 ArcaBook Approval Order, *supra* note 15, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

¹⁸ Because the providers of such connectivity are not regulated entities, they are not obligated to make the availability of connections, latency figures or fees publicly available or the same for all entities.

¹⁹ See Securities Exchange Act Release No. 83709 (July 25, 2018), 83 FR 37028 (July 31, 2018) (SR-NYSENAT-2018-15).

²⁰ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²¹ See Securities Exchange Act Release No. 98002 (July 26, 2023), 88 FR 50232 (August 1, 2023) (SR-NYSENAT-2023-12) ("MMR Notice").

meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²² Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.²³ If the Exchange were to set its prices for

Connectivity to Proposed Third Party Data at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the competing wireless connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes that, unless a User connects to Toronto Stock Exchange data, it is reasonable that each proposed service would include the use of a wireless connection port, and a User would not pay a separate fee for the use of such port. If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data, because the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users.

Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over fiber connections.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or

potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons.

The Exchange believes that it is not unfairly discriminatory to make wireless Connectivity to the Proposed Third Party Data available to Users. The proposed rule change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over third party fiber connections.

Given the limitation on bandwidth, the Exchange believes that it is not unfairly discriminatory not to transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

The Exchange believes that the proposed change is not unfairly

²² See *id.* at 50235. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

²³ See Wireless Approval Order, *supra* note 15.

discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁴

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors.

The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. For the first time, a User would be able to connect wirelessly to the Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party fiber connections.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any

impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data to is subject to a 30-day testing period, during which the monthly charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise.

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange's proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.²⁵ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁶ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to

participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁷ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

Given the limitation on bandwidth, the Exchange believes that it will not impose any burden on competition that is not necessary or appropriate to not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

²⁵ See *supra* note 20.

²⁶ See MMR Notice, *supra* note 21.

²⁷ See *id.* at 50235.

²⁴ 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and Rule 19b-4(f)(6) thereunder.²⁹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁰

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAT-2024-18 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-NYSEAT-2024-18. 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-NYSEAT-2024-18 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-13550 Filed 6-20-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100332; File No. SR-NYSEAMER-2024-41]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE American Options Fee Schedule

June 14, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³

notice is hereby given that, on June 12, 2024, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule ("Fee Schedule") to replace the Excessive Bandwidth Utilization Fees with a single fee. The Exchange proposes to implement the fee changes effective June 12, 2024.⁴ The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to replace the Order to Trade Ratio Fee and Messages to Contracts Traded Ratio Fee with an Excessive Bandwidth Utilization Fee to reflect the Exchange's migration to NYSE Pillar ("Pillar"). The Exchange proposes to implement the fee changes effective May 30, 2024 [sic].

⁴ On May 1, 2024, the Exchange originally filed to amend the Fee Schedule (NYSEAMER-2024-30) and, on May 16, 2024, the Exchange withdrew that filing and submitted NYSEAMER-2024-32. On May 30, 2024, the Exchange withdrew NYSEAMER-2024-32 and submitted NYSEAMER-2024-37, which latter filing the Exchange withdrew on June 12, 2024.

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6)(iii). 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.

³¹ 15 U.S.C. 78s(b)(2)(B).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

The Exchange imposes certain fees to discourage excessive message traffic (that do not result in executions or otherwise improve market quality) that could unnecessarily tax the Exchange's resources, bandwidth, and capacity, as no system has unlimited capacity.

With the Exchange's migration to the Pillar trading platform, market participants can send both quote and order message traffic over a single connection. This functionality allows the Exchange to monitor the message traffic of each ATP Holder, which in turn impacts how the Exchange calculates (and assess fees for) each ATP Holder's use of Exchange bandwidth and processing resources.

Currently, the Exchange assesses two fees designed to curtail excessive message traffic: an Order to Trade Ratio Fee that is based on the number of orders entered as compared to the number of executions received in a calendar month and a Messages to Contracts Traded Ratio Fees that measures the efficiency of an ATP Holder's orders and quotes, subject to certain exceptions (collectively, the "Excessive Traffic fees").⁵ Because the Pillar trading system enables the Exchange to monitor the excessive message traffic of both orders and quotes, the Exchange has determined it no longer needs both Excessive Traffic fees. The Exchange therefore proposes a single "Monthly Excessive Bandwidth Utilization Fee" or "EBUF".⁶ As detailed below, the proposed EBUF is similar in structure to the existing Order to Trade Ratio Fee, except that the proposed EBUF would include quotes, which reflects the communication protocol available on Pillar. Consistent with the purpose of the proposed EBUF, the Exchange believes that assessing one fee (instead of two) for excessive message traffic would result in a more efficient use of Exchange resources.⁷

⁵ See Fee Schedule, Section II. Monthly Excessive Bandwidth Utilization Fees, II.A. (Order to Trade Ratio Fees) and II.B. (Messages to Contracts Traded Ratio Fees). The calculation for assessing the Messages to Contracts Traded Ratio Fees, which aggregates the activity of affiliated entities, does not include for quotes submitted by a Specialist or e-Specialist that set the NBBO in their allocated issues and Market Makers that execute a monthly average daily volume electronically of at least 20,000 contracts (as aggregated all options issues in their assignment). See Fee Schedule, Sections II.A. and B, respectively. If an ATP Holder is liable for either or both fees in a given month, that firm is only charged the greater of the two fees. See Fee Schedule, Section II.

⁶ See proposed Fee Schedule, Section II., Monthly Excessive Bandwidth Utilization Fee.

⁷ As discussed further herein, the Exchange does not propose to carry forward the existing "Messages to Contracts Traded Ratio Fee" because the proposed EBUF is designed to capture the excessive quote traffic that was captured by that fee. Because

Like the Order to Trade Ratio Fee, the proposed EBUF is designed to strike the right balance between deterring ATP Holders from submitting an excessive number of messages (that do not result in executions or otherwise improve market quality) without discouraging ATP Holders from accessing the Exchange, except that it will include quotes. As proposed, the EBUF will only be assessed on ATP Holders that send more than 50 million messages per day on average during a calendar month.⁸ For purposes of EBUF, "messages" include quotes, orders, order cancellations and modifications.⁹

The proposed EBUF would calculate an ATP Holder's "Monthly Message to Execution Ratio" (*i.e.*, the number of messages sent versus the number of executions). The Exchange has determined that, on Pillar, setting a baseline threshold for this "Monthly Message to Execution Ratio" at 500,000 to 1 or greater should ensure the efficient use of the Exchange's resources, bandwidth, and capacity by ATP Holders that are actively trading on the Exchange. Thus, as proposed, the Exchange will calculate the number of messages submitted by an ATP Holder, and the number of executions by the ATP Holder, and will only assess the EBUF if the Monthly Message to Execution Ratio exceeds 500,000 to 1. The proposed Fee will be assessed to further encourage efficient use of the Exchange's resources as shown here:

Monthly message to execution ratio	Monthly charge
Between 500,000 and 749,999 to 1	\$5,000
Between 750,000 and 999,999 to 1	10,000
1,000,000 to 1 and greater ...	15,000

Like the Order to Trade Ratio Fee, the higher the Messages to Executions Ratio (*i.e.*, the more unexecuted message that Pillar ingests), the higher the proposed fee, which increase is designed to discourage (increasing levels of) excessive message traffic by ATP Holders. The Exchange notes that the proposed minimum thresholds for triggering the proposed EBUF are higher than the thresholds associated with the Order to Trade Ratio Fee (but the associated fees are substantially the same), which reflects the fact that both quotes and orders (and cancellations or

Pillar processing renders the "Messages to Contracts Traded Ratio Fee" redundant (and therefore unnecessary), the Exchange believes the proposed EBUF would streamline the Fee Schedule.

⁸ See proposed Fee Schedule, Section II., Monthly Excessive Bandwidth Utilization Fee.

⁹ *Id.*

modification thereof) are "messages" included in the calculation as well as the fact that Pillar can accommodate more message traffic than the Exchange's pre-Pillar system.¹⁰ The proposed EBUF thresholds are set at levels that an ATP Holder should not hit or exceed in the ordinary course of trading. As such, the Exchange believes that the proposed EBUF thresholds and associated fees are set at levels reasonable designed to encourage ATP Holders to efficiently use message traffic as necessary.

In addition, like both existing Excessive Traffic fees, the Exchange will not assess the EBUF for an ATP Holder's first occurrence in a rolling twelve-month period (the "Exemption").¹¹ For example, an ATP Holder that exceeds the minimum EBUF threshold in October 2024 will not be assessed the EBUF as long as that ATP Holder does not exceed the minimum EBUF threshold again before October 2025. If that same ATP Holder exceeds the minimum EBUF threshold in December 2025, it will not incur the EBUF if it does not exceed the minimum EBUF before December 2026. As noted above, an ATP Holder should not exceed the EBUF in its normal course of trading. Therefore, the proposed Exemption acts as a guardrail of sorts that is designed to protect ATP Holders from incurring the EBUF when they first encounter lower than expected executions in a rolling twelve-month period, such as when they are new to the Pillar trading platform, deploying new technologies, or testing different trading strategies, thereby encouraging ATP Holders to maintain their trading activity on the Exchange by mitigating the initial impact of the EBUF.

Further, consistent with the application of the existing Excessive Traffic fees, the Exchange will likewise retain discretion to exclude one or more days of data for purposes of calculating the proposed EBUF if the Exchange determines, in its sole discretion, that one or more ATP Holders or the Exchange was experiencing a bona fide systems problem.¹²

In adopting the single EBUF, the Exchange will no longer assess the Messages to Contracts Traded Ratio Fee

¹⁰ For example, the current Order to Trade Ratio Fee has minimum "order to execution" ratio thresholds of between 10,000 and 14,999 to 1, with an accompanying fee of \$5,000; between 15,000 and 19,999 to 1, with an accompanying fee of \$10,000; between 20,000 and 24,999 to 1, with an accompanying fee of \$20,000; and 25,000 to 1 and greater, with an accompanying fee of \$35,000.

¹¹ Compare Section II. of the Fee Schedule with the proposed Section II. of the Fee Schedule, Monthly Excessive Bandwidth Utilization Fee.

¹² See *id.*

(“Ratio”), which was adopted in 2011 to address quote traffic.¹³ In calculating this additional Ratio fee, an ATP Holder could aggregate all of its activity (orders and quotes and contracts) with its affiliates.¹⁴ To encourage the use of quotes instead of orders, the Exchange excluded from the Ratio fee calculation certain quotes (*i.e.*, quotes setting the NBBO and those of Specialists). Because the proposed EBUF monitors each ATP Holder’s orders and quotes, the Exchange believes there is no need to carry forward this Ratio fee. Further, the Exchange notes that retaining this Ratio fees could result in ATP Holders potentially being double charged for similar excessive messaging activity. As such, the Exchange believes that adopting a single EBUF would be a more efficient use of Exchange resources and less burdensome to market participants.

In connection with the proposed EBUF (and associated removal of the current Excessive Traffic fees), the Exchange proposes to delete from the Fee Schedule both Excessive Traffic fees and the now-expired waivers.¹⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁷ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed EBUF is reasonable, equitable, and not unfairly discriminatory because it is designed to strike the right balance between deterring ATP Holders from submitting an excessive number of messages that do not result in an execution (or improve market quality) without discouraging ATP Holders from accessing the Exchange. To the extent that the proposed EBUF results in the efficient use of the Exchange’s finite

resources, all market participant stand to benefit from improved market quality.

The proposal to assess one fee (instead of two) for excessive message traffic is reasonable as it would result in a more efficient use of Exchange resources and would streamline the Fee Schedule, which benefits all market participants. The Exchange believes that the proposed EBUF, which captures excessive quote traffic, would render the “Messages to Contracts Traded Ratio Fee” redundant and therefore unnecessary.¹⁸

The Exchange believes that the proposed minimum EBUF thresholds, which are higher than the thresholds associated with the Order to Trade Ratio Fee (but carry roughly the same incremental fees), are reasonable because, unlike the Order to Trade Ratio Fee, the proposed EBUF counts a broader category of “message,” including quotes, orders, order cancellations, and modifications. Therefore, the Exchange believes the EBUF appropriately accounts for the significantly wider category of “messages” now included and accounts for the increased capacity available to Exchange participants on the Pillar trading system. Given that the proposed EBUF is meant to operate as a guardrail of sorts that an ATP Holder should not “hit” or exceed in the ordinary course of trading, the Exchange proposes to set the EBUF thresholds at levels reasonably designed to encourage ATP Holders to efficiently use message traffic as necessary.

The Exchange believes that the proposed Exemption is reasonable, equitable, and not unfairly discriminatory because it is designed to protect ATP Holders from incurring the EBUF when they first encounter lower than expected executions in a rolling twelve-month period, such as when they are new to the Pillar trading platform, deploying new technologies, or testing different trading strategies, thereby encouraging ATP Holders to maintain their trading activity on the Exchange by mitigating the initial impact of the EBUF. The Exchange believes the proposed Exemption is reasonable as it is intended to lessen the initial impact of the EBUF while affording ATP Holders an opportunity to moderate or fine tune their message rates as needed once-every-twelve-months.

¹⁸ As noted herein, the Pillar trading system enables the Exchange to monitor the excessive message traffic of both orders and quotes and the Exchange no longer needs both Excessive Traffic fees.

The proposed EBUF is a reasonable, equitable, and not unfairly discriminatory because it neither targets nor will it have a disparate impact on any category of market participant. The proposed EBUF would impact all similarly situated ATP Holders on an equal basis; all ATP Holders would be eligible for the Exemption the first time they incur the EBUF in a rolling 12-month period.

The Exchange believes that eliminating the Ratio fee (in favor of the single EBUF) is reasonable, equitable, and not unfairly discriminatory because it is rendered redundant by the proposed EBUF, which will monitor both order and quotes of each ATP Holder.¹⁹ Because the proposed EBUF monitors quote traffic, the Exchange believes that retaining this Ratio fee would risk the potential for ATP Holders being double charged for similar excessive messaging activity. The proposed EBUF (like the Order to Trade Ratio Fee) would not include the option for ATP Holders to aggregate their activity with their affiliates.²⁰ Moreover, ATP Holders did not employ this aspect of the Ratio fee. As such, the Exchange believes that adopting a single EBUF would be a more efficient use of Exchange resources and less burdensome to market participants.

The Exchange believes that the removal of the obsolete text from the Fee Schedule (regarding the Excessive Traffic fees and associated stale waiver language) would further the protection of investors and the public interest by promoting clarity and transparency in Fee Schedule thereby making the Fee Schedule easier to navigate and understand.

B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes the proposed EBUF, including the Exemption, would not place an unfair burden on intramarket competition because it is designed to encourage efficient and rational use of the Exchange’s finite resources and would apply to all market participants. Similarly, the elimination of the Ratio

¹⁹ As noted herein, the Pillar trading system enables the Exchange to monitor the excessive message traffic of both orders and quotes and the Exchange no longer needs both Excessive Traffic fees.

²⁰ See *supra* note 14.

¹³ See Securities Exchange Act Release No. 64655 (June 13, 2011), 76 FR 35495 (June 17, 2011) (immediately effective filing that, among other things, adopted the Messages to Contracts Traded Ratio Fee) (SR-NYSEAmex-2011-37).

¹⁴ The Exchange notes that this aggregation feature of the Ratio fee was not being employed by ATP Holders. The Order to Trade Ratio Fee does not include an aggregation feature. Accordingly, the proposed EBUF (which is similar to this fee) does not include an aggregation feature.

¹⁵ See proposed Fee Schedule, Monthly Excessive Bandwidth Utilization Fee.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

fee will impact all similarly situated ATP Holders.

The deletion of the language relating to the now-expired waivers of the Excessive Traffic fees would remove from the Fee Schedule language that is no longer applicable to any ATP Holders and, accordingly, would not have any impact on intramarket competition. The proposed Exemption would apply equally to all ATP Holders; all ATP Holders would be eligible for the Exemption for the first occurrence of the proposed Ratio Threshold Fee in a rolling 12-month period.

Intermarket Competition. The Exchange believes the proposed EBUF, including the Exemption, would not place an unfair burden on intermarket competition as it is not intended to address any competitive issues but is instead designed solely to encourage the efficient use of the Exchange's resources. The Exchange believes that the proposed EBUF should deter excessive message traffic that does not improve market quality which, in turn, will sustain the Exchange's overall competitiveness.

The proposed deletion of text related to the Excessive Traffic fees would add clarity to the Fee Schedule by removing obsolete pricing and, accordingly, would not have any impact on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ²¹ of the Act and subparagraph (f)(2) of Rule 19b-4 ²² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

under Section 19(b)(2)(B) ²³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEAMER-2024-41. 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-NYSEAMER-2024-41 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13535 Filed 6-20-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100344; File No. SR-NYSE-2024-33]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Connectivity Fee Schedule

June 14, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder, ³ notice is hereby given that on June 3, 2024, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule ("Fee Schedule") regarding colocation services and fees to provide Users with wireless connectivity to an additional market data feed. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

²³ 15 U.S.C. 78s(b)(2)(B).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users⁴ with wireless connectivity to an additional market data feed.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the “Existing Third Party Data”), and wired connections to more than 45 market data feeds or combinations of feeds.⁵

The Exchange proposes to add to the Fee Schedule wireless connections

(“Connectivity”) to the Nasdaq CXC and Nasdaq CX2 market data feeds.⁶ As there would be limited bandwidth available on the wireless network from the TR2 data center in Toronto, Canada, where the two feeds are generated, the Exchange would not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds. Rather, FIDS would provide connectivity to a selection of symbols from the two market data feeds, which would include those symbols for which there is demand (the “Proposed Third Party Data”).⁷

As with most other Existing Third Party Data,⁸ the monthly charge for the Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is applicable to wireless connections to the Proposed Third Party Data.

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become operative by the end of 2024. The Exchange will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

Users would be offered Connectivity to the Proposed Third Party Data through connections into the colocation center in the Mahwah, New Jersey data center (“MDC”).⁹ To receive either market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

In order to implement the proposed change, the Exchange proposes to add the following item to the Connectivity Fee Schedule under “A. Co-Location Fees”:

Type of service	Description	Amount of charge
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq CXC and Nasdaq CX2 data.	\$5,000 per connection initial charge plus monthly charge per connection of \$5,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

If a User were to purchase more than one wireless connection to Proposed Third Party Data, it would pay more than one non-recurring initial charge. Unless the User already had a port for Toronto Stock Exchange data, a proposed wireless connection would include the use of one port for Connectivity to Proposed Third Party Data, and a User would not pay a separate fee for the use of such port.¹⁰

If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data. Rather, the User would be able to connect to the

Proposed Third Party Data using the same port that it already had.

The proposed Connectivity would not utilize the pole on the grounds of the MDC.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Exchange believes that it would not obtain new Users due to the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which 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. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices,

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange’s affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR–NYSEAMER–2024–38, SR–NYSEARCA–2024–49, SR–NYSECHX–2024–21, and SR–NYSENAT–2024–18.

⁵ See Securities Exchange Act Release No. 99806 (March 20, 2024), 89 FR 21055 (March 26, 2024) (SR–NYSE–2024–15).

⁶ According to the Nasdaq Canada website, “CXC is a lit book providing clients with a reliable platform for trading Canadian equities, offering the benefits of anonymous or attributed trading and price/broker/time priority” and “[t]he CX2 trading book is designed to provide additional cost savings and trading efficiencies. Through a unique pricing model and broker preferencing functionality, this lit book helps to improve investment performance and to drive positive market structure change.” <https://www.nasdaq.com/solutions/nasdaq-canada>.

⁷ When a User requested a wireless connection to Nasdaq CXC or Nasdaq CX2 market data feeds, it would receive connectivity to the Proposed Market Data. The User would then determine the symbols for which it would receive data. The Exchange would not have visibility into which portions of the Proposed Market Data a given customer chooses to receive.

⁸ See Securities Exchange Act Release No. 76748 (December 23, 2015), 80 FR 81609 (December 30, 2015) (SR–NYSE–2015–52).

⁹ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

¹⁰ Toronto Stock Exchange data and CME Group Data each require their own port. The remaining Existing Third Party Data requires one port. Accordingly, a User would not be able to connect to the Proposed Third Party Data using the same port that it uses for connectivity to CME Group Data.

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.”¹¹

A third party has created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In

considering the reasonableness of proposed services and fees, the Commission’s market-based test considers “whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.”¹⁵ If the Exchange meets that burden, “the Commission will find that its proposal is consistent with the Act unless ‘there is a substantial countervailing basis to find that the terms’ of the proposal violate the Act or the rules thereunder.”¹⁶ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange has not placed third party vendors at a competitive disadvantage created by the Exchange.

The Exchange’s proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with connectivity to the Proposed Third Party Data.

Under the proposed rule, for the first time, a User also would be able to connect to the Proposed Market Data wirelessly, increasing the options available to it. Without this proposed rule change, Users would not have wireless access to the Proposed Third Party Data.

Moreover, a third party created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data.

Accordingly, the wireless connections would compete with the Exchange’s proposed Connectivity and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the

Exchange’s proposed fees.¹⁷ If the Exchange were to set its proposed fees too high, Users could respond by instead selecting the telecoms’ substantially similar wireless connectivity.

In addition, the Exchange believes that at least three third-party market participants offer fiber connections to Nasdaq CXC and Nasdaq CX2 market data, including the Proposed Third Party Data, in colocation.¹⁸ FIDS offers connectivity to the Proposed Third Party Data as part of its connectivity to Nasdaq Canada data feeds.¹⁹

The Exchange Would Not Preclude Other Connections to Proposed Market Data in TR2

The Exchange is not aware of any other public, commercially available wireless connections to the Proposed Third Party Data in colocation.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Wireless connections and fiber connections to the Proposed Third Party Data in the MDC would compete with each other. Given the various advantages and disadvantages of both wireless and fiber connections, a User interested in purchasing a connection to the Proposed Third Party Data is likely to consider a variety of factors in deciding whether to use a wireless

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSEAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEARCA-2020-15, SR-NYSECHX-2020-05, SR-NYSEAT-2020-08) (“Wireless Approval Order”), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (“2008 ArcaBook Approval Order”). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁶ See Wireless Approval Order, *supra* note 15, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 15, at 74781.

¹⁷ See 2008 ArcaBook Approval Order, *supra* note 15, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

¹⁸ Because the providers of such connectivity are not regulated entities, they are not obligated to make the availability of connections, latency figures or fees publicly available or the same for all entities.

¹⁹ See Securities Exchange Act Release No. 83706 (July 25, 2018), 83 FR 37033 (July 31, 2018) (SR-NYSE-2018-32).

versus fiber connection, including latency; the amount of network uptime; the equipment the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

Third Party Competitors Would Not Be at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange's proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").²⁰ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²¹ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to

participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²² Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.²³ If the Exchange were to set its prices for Connectivity to Proposed Third Party Data at a level that Users found to be too

high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the competing wireless connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes that, unless a User connects to Toronto Stock Exchange data, it is reasonable that each proposed service would include the use of a wireless connection port, and a User would not pay a separate fee for the use of such port. If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data, because the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users.

Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over fiber connections.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber

²⁰ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²¹ See Securities Exchange Act Release No. 97998 (July 26, 2023), 88 FR 50238 (August 1, 2023) (SR-NYSE-2023-27) ("MMR Notice").

²² See *id.* at 50241. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

²³ See Wireless Approval Order, *supra* note 15.

connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons.

The Exchange believes that it is not unfairly discriminatory to make wireless Connectivity to the Proposed Third Party Data available to Users. The proposed rule change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over third party fiber connections.

Given the limitation on bandwidth, the Exchange believes that it is not unfairly discriminatory not to transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that

voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁴

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors.

The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. For the first time, a User would be able to connect wirelessly to the Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party fiber connections.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by

placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data to is subject to a 30-day testing period, during which the monthly charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise.

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange's proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.²⁵ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁶ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into

²⁵ See *supra* note 20.

²⁶ See MMR Notice, *supra* note 21.

²⁴ 15 U.S.C. 78f(b)(8).

and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁷ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

Given the limitation on bandwidth, the Exchange believes that it will not impose any burden on competition that is not necessary or appropriate to not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and Rule 19b-4(f)(6) thereunder.²⁹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁰

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-33 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.

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6)(iii). 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.

³¹ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to file number SR-NYSE-2024-33. 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-NYSE-2024-33 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-13546 Filed 6-20-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20360 and #20361; Iowa Disaster Number IA-20003]

Presidential Declaration Amendment of a Major Disaster for the State of Iowa

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA-4784-DR), dated 05/24/2024.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/20/2024 through 05/31/2024.

³² 17 CFR 200.30-3(a)(12).

²⁷ See *id.* at 50241.

DATES: Issued on 06/14/2024.

Physical Loan Application Deadline Date: 07/23/2024.

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 the State of Iowa, dated 05/24/2024, is hereby amended to update the incident period for this disaster as beginning 05/20/2024 and continuing through 05/31/2024.

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. 2024-13681 Filed 6-20-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20392 and #20393; Arkansas Disaster Number AR-20009]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Arkansas

AGENCY: 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 Arkansas (FEMA-4788-DR), dated 06/12/2024.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 05/24/2024 through 05/27/2024.

DATES: Issued on 06/12/2024.

Physical Loan Application Deadline Date: 08/12/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 03/12/2025.

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 06/12/2024, 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: Baxter, Benton, Boone, Carroll, Fulton, Madison, Marion, Nevada, Randolph, Sharp.

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 20392C and for economic injury is 203930.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-13586 Filed 6-20-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20364 and #20365; Oklahoma Disaster Number OK-20004]

Presidential Declaration of a Major Disaster for the State of Oklahoma

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster 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 06/14/2024.

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: 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: Notice is hereby given that as a result of the President's major disaster declaration on 06/14/2024, applications for disaster loans may be submitted 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 (Physical Damage and Economic Injury Loans):

Blaine, Caddo, Custer, Delaware, Jackson, Mayes, Muskogee, Rogers.

Contiguous Counties (Economic Injury Loans Only):

Oklahoma: Adair, Beckham, Canadian, Cherokee, Comanche, Craig, Dewey, Grady, Greer, Harmon, Haskell, Kingfisher, Kiowa, Major, McIntosh, Nowata, Okmulgee, Ottawa, Roger Mills, Sequoyah, Tillman, Tulsa, Wagoner, Washington, Washita

Arkansas: Benton

Missouri: McDonald

Texas: Hardeman, Wilbarger

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 20364C and for economic injury is 203650.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster Recovery & Resilience.
[FR Doc. 2024–13673 Filed 6–20–24; 8:45 am]
BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20395 and #20396; Oklahoma Disaster Number OK–20005]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Oklahoma

AGENCY: 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 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 06/14/2024.
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: 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: Notice is hereby given that as a result of the President’s major disaster declaration on 06/14/2024, 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, Delaware, Mayes, Rogers.
The Interest Rates are:

	Percent
For Physical Damage:	

	Percent
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 20395C and for economic injury is 203960.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster Recovery & Resilience.
[FR Doc. 2024–13680 Filed 6–20–24; 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: Small Business Administration.
ACTION: Amendment 3.

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 06/12/2024.
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: Bell, Robertson, Terrell.

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. 2024–13595 Filed 6–20–24; 8:45 am]
BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20362 and #20363; Arkansas Disaster Number AR–20007]

Presidential Declaration Amendment of a Major Disaster for the State of Arkansas

AGENCY: Small Business Administration.
ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–4788–DR), dated 05/30/2024.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.
Incident Period: 05/24/2024 through 05/27/2024.

DATES: Issued on 06/11/2024.
Physical Loan Application Deadline Date: 07/29/2024.
Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2025.

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 the State of Arkansas, dated 05/30/2024, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):
Fulton, Greene, Madison, Randolph.

Contiguous Counties (Economic Injury Loans Only):
Arkansas: Clay, Craighead, Crawford, Franklin, Johnson, Lawrence, Sharp
Missouri: Dunklin, Howell, Oregon, Ripley

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. 2024–13585 Filed 6–20–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before July 22, 2024.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting “Small Business Administration”; “Currently Under Review,” then select the “Only Show ICR for Public Comment” checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at Curtis.Rich@sba.gov; (202) 205–7030, or from www.reginfo.gov/public/do/PRAMain.

SUPPLEMENTARY INFORMATION: This PRA submission is for SBA Form 770 (OMB Control No. 3245–0012), Financial Statement of Debtor. The primary purpose for collecting this information is to evaluate the debtor’s financial capacity to repay the debt owed to the Agency and determine to what extent the Agency may compromise the debt, maximize recovery, and protect the interests of the Agency. Forms are to be completed and signed by the obligor and then submitted to the lender or Forms are to be completed and signed by the Borrower/Obligor and then submitted to the SBA Disaster Loan Servicing Center handling the account.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control Number: 3245–0012.

Title: Financial Statement of Debtor.

Description of Respondents: SBA Borrowers.

SBA Form Number: SBA Form 770.

Estimated Number of Respondents: 5,000.

Estimated Annual Responses: 5,000.

Estimated Annual Hour Burden: 5,000.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–13683 Filed 6–20–24; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36786]

Koch, Inc.—Intra-Corporate Family Exemption—Old Augusta Railroad, LLC; Blue Rapids Railway Company LLC; Moscow Camden and San Augustine Railroad LLC; and KM Railways, LLC

Koch, Inc. (Koch),¹ has filed a verified notice of exemption for an intra-corporate family transaction under 49 CFR 1180.2(d)(3), which exempts from the prior approval requirements of 49 U.S.C. 11323 “[t]ransactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.” 49 CFR 1180.2(d)(3).

According to the verified notice, Koch Industries, Inc. (KII), a Kansas corporation, indirectly owns controlling interests in four common carrier railroads: Old Augusta Railroad, LLC (OAR); Blue Rapids Railway Company LLC (BRR); Moscow Camden and San Augustine Railroad LLC (MCSA); and KM Railways, LLC (KMR). The verified notice states that each of these railroads are Class III rail carriers.² Under the

proposed transaction, KII will engage in an intra-corporate reorganization that will result in Koch’s indirect control of OAR, BRR, MCSA, and KMR.³ According to the verified notice, the reorganization will be implemented pursuant to a merger agreement⁴ by and among KII, Koch, Koch Cos., and Sunflower Subsidiary Corp. (Sunflower).⁵ Koch states that the

purpose of the transaction is to create a new corporate holding structure and to promote the investment objectives of Koch and its stockholders.⁶ The verified notice states that the proposed transaction does not impose or involve any interchange commitment by or affecting any of the subject railroads.

The verified notice states that the transaction will not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(3).

Unless stayed, the exemption will be effective on July 6, 2024 (30 days after the verified notice was filed). Koch states that it intends to consummate the proposed transaction following that date.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III rail carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of

mile rail line in Texas, and KMR owns and operates 9,350 feet of rail line in Illinois.

³ Koch states that it will indirectly control such railroads through Koch Companies, LLC (Koch Cos.), a newly formed Delaware entity and direct subsidiary of Koch.

⁴ Koch submitted under seal a confidential version of its verified notice containing the agreement. Koch also filed a motion for protective order, which is addressed in a separate decision.

⁵ According to the verified notice, Sunflower, a newly formed Kansas corporation and direct subsidiary of Koch Cos., will merge with and into KII, with KII being the surviving entity.

⁶ The verified notice states that the existing stockholders of KII will continue as the stockholders of Koch in the same proportion as such stockholders held KII immediately prior to the reorganization.

¹ The verified notice states that Koch is a newly formed Kansas corporation and noncarrier.

² According to the verified notice, OAR owns approximately 2.5 miles of rail line in Mississippi, BRR owns and operates an approximately 10-mile rail line in Kansas, MCSA owns and operates a 6.9-

the exemption. Petitions for stay must be filed no later than June 28, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36786, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Koch's representative, Peter W. Denton, Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036.

According to Koch, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: June 17, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Raina White,
Clearance Clerk.

[FR Doc. 2024-13645 Filed 6-20-24; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36746; Docket No. FD 36747]

Bay Colony Railroad Corporation— Acquisition and Operation of Rail Line—in Norfolk County, Mass.; Massachusetts Coastal Railroad, LLC—Acquisition and Operation Exemption—Bay Colony Railroad Corporation and Massachusetts Bay Transportation Authority

Bay Colony Railroad Corporation (Bay Colony), a Class III rail carrier, acquired and operates a freight rail easement covering the approximately 3.4-mile Millis Industrial Track (sometimes referred to as the “Millis Branch”) between the northeast side of the Framingham Secondary right-of-way in Medfield Junction (milepost 0.0) and the end of the line in Millis (milepost 3.4), in Norfolk County, Mass. On January 16, 2024, Bay Colony filed, in Docket No. FD 36746, a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10902 for after-the-fact authority for its acquisition and operation of the Millis Industrial Track.

Bay Colony also requests that, to the extent necessary, the Board confirm Bay Colony's right to operate a portion of the Dover Secondary Track beginning near BCLR milepost 7.2 located at the south edge of Ice House Road and terminating at milepost 7.3 at Medfield Junction

(Remaining Dover Secondary Track) (collectively, the Millis Industrial Track and the Remaining Dover Secondary Track will be referred to as “the Line”), also in Norfolk County, Mass.

Concurrently, on January 16, 2024, Massachusetts Coastal Railroad, LLC (Mass Coastal), a Class III rail carrier, filed, in Docket No. FD 36747, a petition under 49 U.S.C. 10502 seeking an exemption from the provisions of 49 U.S.C. 10902 to acquire the Line from Bay Colony and operate it.¹ Both petitions are unopposed.²

As discussed below, the Board finds that exempting Bay Colony's acquisition of the easement and operation of the Millis Industrial Track, as well as Mass Coastal's acquisition and operation of the Line, will promote the rail transportation policy (RTP) of 49 U.S.C. 10101, and regulation of these transactions is not needed to protect shippers from the abuse of market power. Therefore, the Board will grant the petitions.

Background

Mass Coastal's 2023 Verified Notice of Exemption to Acquire the Line

In November 2023, Mass Coastal filed a verified notice of exemption under 49 CFR 1150.41 to acquire the Line from Bay Colony and operate it. Mass Coastal explained that Bay Colony has been operating the Line, which is owned by the Massachusetts Bay Transportation Authority (MBTA), pursuant to modified certificates of public convenience and necessity. Verified Notice 2, *Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R.*, FD 36738; *see also Bay Colony R.R.—Modified Rail Certificate*, FD 29963 (ICC served Sept. 24, 1987)³ & (ICC served June 29, 1982).⁴ In addition, Mass Coastal stated that, since 2005, Bay Colony has been operating the Line pursuant to a retained freight rail easement (Easement), which it acquired from CSX Transportation, Inc. (CSXT), and, since 2006, pursuant to a new trackage rights and operating agreement (Operating Agreement) with MBTA. Verified Notice 2–3, *Mass. Coastal R.R.—Acquis. & Operation Exemption—*

¹ These proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

² By decision served April 12, 2024, proceedings under 49 U.S.C. 10502(b) were instituted in both dockets. *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746 et al. (STB served Apr. 12, 2024).

³ The modified certificate served September 24, 1987, will be referred to as the “1987 Modified Certificate.”

⁴ The modified certificate served June 29, 1982, will be referred to as the “1982 Modified Certificate.”

Bay Colony R.R., FD 36738. In its verified notice, Mass Coastal explained that it would be acquiring an assignment of the Easement and the Operating Agreement from Bay Colony. *Id.* at 3.

Mass Coastal's verified notice was rejected because of various issues and questions surrounding the status and operation of the Line, which rendered the matter inappropriate for the class exemption procedures. *See Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R. (December 2023 Decision)*, FD 36738, slip op. at 2 (STB served Dec. 15, 2023). The *December 2023 Decision* explained that it was unclear whether Bay Colony's current operation of the Line pursuant to the modified certificates was appropriate, as it contradicted arguments Bay Colony itself previously made with respect to the Millis Industrial Track. *Id.* Specifically, in response to a notice MBTA filed on April 13, 2005, in Docket No. FD 29963, seeking to terminate Bay Colony's modified certificate operations on the Millis Industrial Track, Bay Colony filed a petition for declaratory order in Docket No. FD 34698, in which it argued, among other things, that its modified certificate may not have been appropriate because the Millis Industrial Track was never abandoned or approved for abandonment. Bay Colony Pet. 5, May 5, 2005, *Bay Colony R.R.—Pet. for Decl. Ord.*, FD 34698. In settling the dispute concerning Bay Colony's operations on the Millis Industrial Track, Bay Colony and MBTA informed the Board that appropriate notices of exemption would be filed in the near future. *See* Joint Status Report 1, July 7, 2006, *Bay Colony R.R.—Pet. for Decl. Ord.*, FD 34698. However, Bay Colony never sought or received Board authority under 49 U.S.C. 10901 or 49 U.S.C. 10902 for operation of the Millis Industrial Track, nor did Bay Colony explain why it no longer believed it needed such authority. *December 2023 Decision*, FD 36738, slip op. at 2.

The *December 2023 Decision* explained that the rejection of Mass Coastal's verified notice did not preclude Mass Coastal or Bay Colony from seeking authority through a petition for exemption or an application but directed that any future pleading should clarify the following:

1. Whether Bay Colony must obtain Board authority to acquire and operate the Line before Mass Coastal can obtain authority under 49 U.S.C. 10902.

2. Whether the arguments put forth by Bay Colony in Docket No. FD 34698—that the modified certificate may not have been appropriate because the

Millis Industrial Track was never approved for abandonment—also apply to the Remaining Dover Secondary Track, and whether MBTA possesses any common carrier obligation for the Millis Industrial Track or the Remaining Dover Secondary Track.

3. Whether the Easement and/or the Operating Agreement cover(s) the Remaining Dover Secondary Track. *December 2023 Decision*, FD 36738, slip op. at 3.

Thereafter, on January 16, 2024, Bay Colony filed the petition for exemption currently pending in Docket No. FD 36746, in which it seeks after-the-fact authority to acquire the Easement and operate the Millis Industrial Track pursuant to the Operating Agreement. Bay Colony also seeks confirmation that it may operate the Remaining Dover Secondary Track. On the same day, Mass Coastal filed the petition for exemption currently pending in Docket No. FD 36747, in which it seeks authority to acquire the Line from Bay Colony and operate it.

History of the Millis Industrial Track

According to Bay Colony, the Millis Industrial Track was conveyed to MBTA by deed of Penn Central Transportation Company (Penn Central) dated January 17, 1973, subject to Penn Central's reservation of the Easement to operate over the track. (Bay Colony Pet. 2, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746); *see also* Bay Colony Notice 3, Sept. 2, 1987, *Bay Colony R.R.—Modified Rail Certificate*, FD 29963. Bay Colony states that Penn Central—and subsequently, Consolidated Rail Corporation (Conrail)—continued providing freight service on the Millis Industrial Track. (Bay Colony Pet. 2–3, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746); *see also* Bay Colony Notice 3, Sept. 2, 1987, *Bay Colony R.R.—Modified Rail Certificate*, FD 29963. As noted in Bay Colony's petition, on September 2, 1987, it filed with the Interstate Commerce Commission (ICC) a notice for a modified certificate to operate two rail lines, including the Millis Industrial Track. (Bay Colony Pet. 2, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746); *see also* Bay Colony Notice, Sept. 2, 1987, *Bay Colony R.R.—Modified Rail Certificate*, FD 29963. In a decision served later that month, the ICC also authorized Conrail, pursuant to 49 U.S.C. 748, to discontinue service⁵ over the Millis

Industrial Track. *See Conrail Discontinuance of Serv. in Norfolk Cnty., Mass.*, AB 167 (Sub-No. 954N) (ICC served Sept. 11, 1987). Following that discontinuance decision, on September 24, 1987, the ICC served the 1987 Modified Certificate. *See Bay Colony R.R.—Modified Rail Certificate*, FD 29963 (ICC served Sept. 24, 1987).

According to Bay Colony, it operated the Millis Industrial Track pursuant to the 1987 Modified Certificate without incident until April 2005 when ownership of the Easement passed from Conrail to New York Central Lines, LLC (NYC), and subsequently to CSXT, when NYC was merged into CSXT. (Bay Colony Pet. 3, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746.) Bay Colony states that neither Conrail nor NYC nor CSXT ever sought to reactivate common carrier operating rights under the Easement. (*Id.*)

In April 2005, MBTA filed a notice seeking to terminate the 1987 Modified Certificate as it related to the Millis Industrial Track. (*Id.* at 3); *see also* MBTA Notice, Apr. 13, 2005, *Bay Colony R.R.—Modified Rail Certificate*, FD 29963. In response, Bay Colony filed a motion to dismiss MBTA's notice to terminate, and, concurrently, in Docket No. FD 34698, filed a petition for declaratory order, arguing that the Millis Industrial Track had potentially not been eligible for a modified certificate in 1987 and that Bay Colony should be deemed to have a full common carrier certificate over the track. (Bay Colony Pet. 3–4, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746.) Bay Colony ultimately settled with MBTA, acquired the Easement by assignment from CSXT, and then Bay Colony and MBTA entered into the Operating Agreement in 2006. (Bay Colony Pet. 4, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746.)⁶

Bay Colony notes that, at the time of the settlement, it and MBTA indicated to the Board that appropriate notices of exemption concerning Bay Colony's operations on the Millis Industrial Track would be filed following dismissal of

seeking “approval of abandonment of Conrail's operation only.” Conrail Appl. 2, June 1, 1987, *Conrail Discontinuance of Serv. in Norfolk Cnty., Mass.*, AB 167 (Sub-No. 954N).

⁶ MBTA requested that its notice of termination be dismissed. The Board granted that request on January 5, 2006. *Bay Colony R.R.—Modified Rail Certificate*, FD 29963 et al., slip op. at 2 (STB served Jan. 5, 2006). And after finalizing the Operating Agreement with MBTA, Bay Colony requested that its petition for declaratory order be dismissed. The Board granted that request on July 11, 2006. *Bay Colony R.R.—Pet. for Decl. Ord.*, FD 34698, slip op. at 2 (STB served July 11, 2006).

Bay Colony's petition for declaratory order in Docket No. FD 34698. (*Id.*); *see also Bay Colony R.R.—Modified Rail Certificate*, FD 29963 et al., slip op. at 2 (STB served Jan. 5, 2006). However, Bay Colony acknowledges that no notices were filed, and it continued to operate the Millis Industrial Track pursuant to the existing 1987 Modified Certificate. (Bay Colony Pet. 4, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746.)

History of the Remaining Dover Secondary Track

As to the Remaining Dover Secondary Track, according to Bay Colony, MBTA acquired the Dover Secondary Track, between Needham Junction at milepost 0.0 and Medfield Junction at milepost 7.2, from Penn Central in 1982, subject to an operating easement held by Conrail. (*Id.* at 5); *see also* Bay Colony Notice 7–8, June 11, 1982, *Bay Colony R.R.—Modified Rail Certificate*, FD 29963. Bay Colony states that Conrail operated the Dover Secondary Track from Conrail's formation until Conrail applied to abandon it in Docket No. AB 167 (Sub-No. 353). (Bay Colony Pet. 4, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746); *see also* Bay Colony Notice 7–8, June 11, 1982, *Bay Colony R.R.—Modified Rail Certificate*, FD 29963. Bay Colony states that Conrail continued to operate the Dover Secondary Track under a subsidy paid by the Commonwealth of Massachusetts (Commonwealth) until the subsidy expired. (Bay Colony Pet. 4, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746); *see also* Bay Colony Notice 7–8, June 11, 1982, *Bay Colony R.R.—Modified Rail Certificate*, FD 29963. The ICC issued an abandonment certificate for the Dover Secondary Track on June 11, 1982, and in connection with the abandonment, Conrail released its easement for the Dover Secondary Track to the Commonwealth. (Bay Colony Pet. 4, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746); *see also Conrail Aban. Between Chick & Cook St. & Needham Jct. & Medfield Jct. Mass.*, AB 167 (Sub-No. 353N) (ICC served June 11, 1982). According to Bay Colony, it filed with the ICC on June 11, 1982, a notice for a modified certificate to operate over rail lines owned by the Commonwealth, including the Dover Secondary Track. (Bay Colony Pet. 5, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746); *see also* Bay Colony Notice, June 11, 1982, *Bay Colony R.R.—Modified Rail*

⁵ Conrail stated in its application that, because it did not own the Millis Industrial Track, it was

Certificate, FD 29963. The ICC served the 1982 Modified Certificate on June 29, 1982. *Bay Colony R.R.—Modified Rail Certificate*, FD 29963 (ICC served June 29, 1982).

Bay Colony states that the Operating Agreement applied to operation of the Dover Secondary Track pursuant to the 1982 Modified Certificate. (Bay Colony Pet. 5, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746.) Bay Colony notes that the Operating Agreement described the Dover Secondary Track as beginning at milepost 0.0 in Needham and continuing to milepost 7.3, which is known as Medfield Junction. (*Id.*) Bay Colony explains that the change in milepost designation at Medfield Junction from milepost 7.2 in the 1982 Modified Certificate to milepost 7.3 in the Operating Agreement reflects only a redesignation of the end of the rail line, as the Dover Secondary Track has always been described as ending at Medfield Junction, where it connects with the Millis Industrial Track and with track now operated by CSXT.⁷ (*Id.* at 6.)

Bay Colony further explains that it operated the entire Dover Secondary Track pursuant to the 1982 Modified Certificate until October 11, 2013, when it filed a notice terminating its operations over the portion of the Dover Secondary Track from milepost 0.0 to milepost 7.2. (*Id.*) According to Bay Colony, it continues to operate the Remaining Dover Secondary Track to facilitate interchange between the Millis Industrial Track and CSXT. (*Id.* at 6 n.6.)

Bay Colony's Petition for Exemption

In its present petition, Bay Colony seeks an exemption from the prior approval requirements of 49 U.S.C. 10902 to acquire the Easement and to operate the Millis Industrial Track under the Operating Agreement. (Bay Colony Pet. 10–13, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746.)⁸ In its petition, Bay Colony also responds to

the issues raised in the *December 2023 Decision*.

In response to the first question from the *December 2023 Decision*, Bay Colony states that, with respect to the Millis Industrial Track, it is seeking after-the-fact authority to acquire the Easement and to operate pursuant to the Operating Agreement. (*Id.* at 8.) Bay Colony argues that if it is granted the requested authority, the question of whether it was required to obtain authority to acquire the Easement will be moot and Mass Coastal will be able to obtain authority under 49 U.S.C. 10902 to acquire the Easement and assume common carrier operations over the Millis Industrial Track. (*Id.*) As to the Remaining Dover Secondary Track, Bay Colony argues that it continues to have a valid modified certificate for that track and therefore does not need additional authority from the Board to operate over it. (*Id.*) However, Bay Colony does request that, if necessary, the Board confirm the redesignated endpoint of the Remaining Dover Secondary Track as milepost 7.3. (*Id.*) Bay Colony asserts that, after it obtains the required after-the-fact authorities, Mass Coastal should be able to obtain authority to operate the Remaining Dover Secondary Track under a modified certificate or a common carrier certificate, under 49 CFR 1150.21, through an assignment of the Operating Agreement. (*Id.*)

In response to the second question posed in the *December 2023 Decision*, Bay Colony notes that the Board was never called upon to rule on the appropriateness of the 1987 Modified Certificate in Docket No. FD 34698, and it asserts that the arguments it made about the 1987 Modified Certificate were mooted when it withdrew its petition for declaratory order in that proceeding. (*Id.*) Bay Colony argues that because the ICC issued the 1987 Modified Certificate based on a complete and accurate presentation of the facts there is no reason for the Board to revisit the issue here. (*Id.*) Bay Colony also states that the arguments it made in Docket No. FD 34698 only applied to the Millis Industrial Track, not to the Remaining Dover Secondary Track. (*Id.*) Bay Colony also asserts that MBTA never acquired—and does not currently have—a common carrier obligation on the Millis Industrial Track or the Dover Secondary Track. (*Id.* at 2, 9–10.)

Regarding the third question from the *December 2023 Decision*, Bay Colony clarifies that the Easement covers only the Millis Industrial Track, not the Remaining Dover Secondary Track. (*Id.* at 10.) Bay Colony also clarifies that the Operating Agreement originally covered

the entire Dover Secondary Track, until Bay Colony's partial termination of service, and that it continues to cover the Remaining Dover Secondary Track in addition to the Millis Industrial Track. (*Id.* at 4, 10.)

Mass Coastal's Petition for Exemption

In its present petition, Mass Coastal seeks an exemption from the prior approval requirements of 49 U.S.C. 10902 to acquire the Line from Bay Colony and operate it.⁹ (Mass Coastal Pet. 7–10, *Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R.*, FD 36747.) For the Millis Industrial Track, Mass Coastal seeks authority to acquire by assignment the Easement and the Operating Agreement. (*Id.* at 8.) As to the Remaining Dover Secondary Track, Mass Coastal states that, by assignment of the Operating Agreement, it would have the right to operate under the 1982 Modified Certificate. (*Id.*) However, Mass Coastal states that it is seeking to operate the Remaining Dover Secondary Track under an exemption from 49 U.S.C. 10902, which Mass Coastal argues is permitted under 49 CFR 1150.21. (Mass Coastal Pet. 8, *Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R.*, FD 36747.)

Request for Expedited Consideration. Bay Colony and Mass Coastal request that the Board consider the petitions on an expedited basis and allow the exemptions to become effective upon the Board's issuance of a decision. (See Bay Colony Pet. 15–16, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746; Mass Coastal Pet. 12–13, *Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R.*, FD 36747.) Bay Colony and Mass Coastal explain that they anticipated consummating the assignment of the Easement and Operating Agreement to Mass Coastal, the authority originally requested in the verified notice in Docket No. FD 36738, on or about December 18, 2023. (Bay Colony Pet. 15, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746; Mass Coastal Pet. 12, *Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R.*, FD 36747.) Bay Colony and Mass Coastal state that they intend to complete the transaction once the issues raised in the *December 2023 Decision* have been addressed and the Board has granted the petitions, and they note that Mass Coastal was able to extend its financing

⁷ Although it is not entirely clear what the term “redesignation” means as it is used by Bay Colony, the Board understands it to mean, in the fuller context, that the physical endpoint of the Dover Secondary Track has consistently been understood to be at milepost 7.3 regardless of how the endpoint has been documented.

⁸ According to Bay Colony, the Operating Agreement suggests, without explicitly providing, that based on the assignment of the Easement from CSXT to Bay Colony, Bay Colony would thereafter be operating the Millis Industrial Track pursuant to the Easement. (Bay Colony Pet. 4, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746.)

⁹ Mass Coastal notes that its request is contingent upon the Board's granting Bay Colony's petition for exemption in Docket No. FD 36746.

for the transaction for a limited period of time. (Bay Colony Pet. 15–16, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746; Mass Coastal Pet. 12, *Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R.*, FD 36747.)

Discussion and Conclusions

Bay Colony's Petition for Exemption

Millis Industrial Track. Under 49 U.S.C. 10902, a Class III rail carrier may not acquire a rail line without the prior approval of the Board. However, under 49 U.S.C. 10502(a), the Board must, to the maximum extent consistent with 49 U.S.C. subtitle IV, part A, exempt a transaction or service from regulation upon finding that: (1) regulation is not necessary to carry out the RTP; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

The Board finds that an exemption from the prior approval requirements of 49 U.S.C. 10902 for Bay Colony's acquisition of the Easement and operation of the Millis Industrial Track under the Operating Agreement is consistent with 49 U.S.C. 10502(a). Detailed scrutiny of this transaction is not necessary to carry out the RTP. An exemption from the application process would promote the RTP by minimizing the need for Federal regulatory control over the transaction, ensuring the development and continuation of a sound rail transportation system able to compete with other modes of transportation and meet the needs of the public, reducing regulatory barriers to entry and exit from the industry, and providing for the expeditious handling and resolution of proceedings. See 49 U.S.C. 10101(2), (4), (7), (15). Other aspects of the RTP will not be adversely affected.

Regulation of this transaction is also not needed to protect shippers from the abuse of market power. The record reflects that Bay Colony has been providing service on the Millis Industrial Track pursuant to the 1987 Modified Certificate since 1987, and the Board finds that granting Bay Colony the requested after-the-fact authority to acquire the Easement and operate the Millis Industrial Track will not adversely affect any customers or the public. In addition, granting the requested exemption will, in turn, allow Bay Colony to assign the Easement and Operating Agreement to Mass Coastal, which will facilitate continued common carrier service. Given this market power finding, the Board need not determine

whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. Section 10902(d), however, precludes the Board from imposing labor protection for Class III carriers receiving authority under 49 U.S.C. 10902. Accordingly, the Board may not impose labor protective conditions here because Bay Colony is a Class III carrier.

Under 49 CFR 1105.6(c)(1), this action, which will not result in significant changes in carrier operations, is categorically excluded from environmental review. Similarly, under 49 CFR 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service. Bay Colony has indicated no plans to alter railroad properties 50 years old or older, and any future abandonment of the Millis Industrial Track would be subject to Board jurisdiction.

Remaining Dover Secondary Track. Based on Bay Colony's representation that the Remaining Dover Secondary Track as currently measured ends at milepost 7.3 and has always been described as ending at Medfield Junction, where it connects with the Millis Industrial Track and with track now operated by CSXT, (see Bay Colony Pet. 5–6, *Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass.*, FD 36746), the Board confirms that the Remaining Dover Secondary Track, between milepost 7.2 and milepost 7.3, remains subject to the 1982 Modified Certificate.¹⁰

Mass Coastal's Petition for Exemption

The Board finds that an exemption from the prior approval requirements of 49 U.S.C. 10902 for Mass Coastal's acquisition and operation of the Line is consistent with 49 U.S.C. 10502(a). Detailed scrutiny of this transaction is not necessary to carry out the RTP. An exemption from the application process would promote the RTP by minimizing the need for Federal regulatory control over the transaction, ensuring the development and continuation of a sound rail transportation system able to compete with other modes of transportation and meet the needs of the public, reducing regulatory barriers to entry and exit from the industry, and providing for the expeditious handling and resolution of proceedings. See 49

U.S.C. 10101(2), (4), (7), (15). Other aspects of the RTP will not be adversely affected.

Regulation of this transaction is also not needed to protect shippers from the abuse of market power. Granting the requested exemption will simply allow Mass Coastal to replace Bay Colony as the carrier providing service to shippers on the Line; the record reflects that no shipper will experience a reduction in rail service options. (See Mass Coastal Pet. 9, *Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R.*, FD 36747.) Given this market power finding, the Board need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. Section 10902(d), however, precludes the Board from imposing labor protection for Class III carriers receiving authority under 49 U.S.C. 10902. Accordingly, the Board may not impose labor protective conditions here because Mass Coastal is a Class III carrier.

Under 49 CFR 1105.6(c)(1), this action, which will not result in significant changes in carrier operations, is categorically excluded from environmental review. Similarly, under 49 CFR 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service. Mass Coastal has indicated no plans to alter railroad properties 50 years old or older, and any future abandonment of the Line would be subject to Board jurisdiction.

Remaining Issues

MBTA. The Board finds that MBTA does not have a common carrier obligation for either the Millis Industrial Track or the Remaining Dover Secondary Track. In its petition, Bay Colony recounts the history of the Dover Secondary Track and the Millis Industrial Track, which is the same history Bay Colony provided in notices for modified certificates of public convenience and necessity for the Dover Secondary Track¹¹ and the Millis Industrial Track,¹² in 1982 and 1987, respectively. The ICC issued the 1982 Modified Certificate and the 1987 Modified Certificate under 49 CFR 1150 subpart C, which contains special rules that apply to state-owned lines that have been abandoned or approved for abandonment. Under 49 CFR 1150.22, if

¹⁰ The ICC's decision authorizing Conrail to abandon the Dover Secondary Track described that track as between milepost 0.0 and milepost 7.3. See *Conrail Aban. Between Chick & Cook St. & Needham Jct. & Medfield Jct., Mass.*, AB 167 (Sub-No. 353N) (ICC served June 11, 1982).

¹¹ See Bay Colony Notice 7–8, June 11, 1982, *Bay Colony R.R.—Modified Rail Certificate*, FD 29963.

¹² See Bay Colony Notice 3, Sept. 2, 1987, *Bay Colony R.R.—Modified Rail Certificate*, FD 29963.

the state intends to operate the line itself, it will be considered a common carrier. However, if the state contracts with an operator to provide service over the line, only the operator incurs a common carrier obligation. *Id.*

Therefore, because MBTA has contracted with Bay Colony to provide service on the Dover Secondary Track and the Millis Industrial Track pursuant to the 1982 Modified Certificate and the 1987 Modified Certificate, and because there is no indication that MBTA intended to provide service itself, or has ever provided service itself, MBTA does not have a common carrier obligation on any part of the Line.

Expedited Consideration and Effective Date. As described above, in requesting expedited consideration, Bay Colony and Mass Coastal request that any Board authority granted to them be effective upon issuance of the Board's decision. This request is reasonable under the circumstances. Accordingly, the exemptions will be effective on the date that this decision is published in the **Federal Register**.

Relatedly, the Board's regulations require Bay Colony to provide appropriate parties with 60 days' notice of a planned termination of modified certificate operations. *See* 49 CFR 1150.24. Bay Colony shall provide notice of its termination of modified certificate operations on the Line to the appropriate parties, and to the Board in Docket No. FD 29963. The notice also shall indicate that Mass Coastal will now be providing common carrier service on the Line. To allow Mass Coastal to begin providing the common carrier service authorized in this decision, the Board will, on its own motion, waive the 60-day advance notice requirement under 49 CFR 1150.24, and will instead require only seven days' notice.

It is ordered:

1. In Docket No. FD 36746, under 49 U.S.C. 10502, the Board exempts Bay Colony's acquisition of the Easement and operation of the Millis Industrial Track from the prior approval requirements of 49 U.S.C. 10902, as explained above.

2. In Docket No. FD 36746, the Board confirms that the Remaining Dover Secondary Track, between milepost 7.2 and milepost 7.3, remains subject to the 1982 Modified Certificate, as explained above.

3. In Docket No. FD 36747, under 49 U.S.C. 10502, the Board exempts Mass Coastal's acquisition and operation of the Line from the prior approval requirements of 49 U.S.C. 10902, as explained above.

4. Bay Colony shall provide notice pursuant to 49 CFR 1150.24 of its termination of modified certificate operations on the Line to the appropriate parties, and to the Board in Docket No. FD 29963.

5. The 60-day advance notice requirement under 49 CFR 1150.24 is waived, as explained above. Instead, Bay Colony must provide the notice required by 49 CFR 1150.24 at least seven days in advance of the planned termination.

6. Notice of the exemptions will be published in the **Federal Register**.

7. The exemptions will be effective on June 21, 2024. Petitions for reconsideration must be filed by July 11, 2024.

Decided: June 14, 2024.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

Brendetta Jones,
Clearance Clerk.

[FR Doc. 2024-13671 Filed 6-20-24; 8:45 am]

BILLING CODE 4915-01-P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at the June 13, 2024 Meeting

AGENCY: Susquehanna River Basin Commission

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on June 13, 2024, in Harrisburg, Pennsylvania, the Commission approved the applications of certain water resources projects and took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: June 13, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary, telephone: (717) 238-0423, ext. 1312, fax: (717) 238-2436; email: joyler@srbc.gov. Regular mail inquiries may be sent to the above address. See also the Commission website at www.srbc.gov.

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above, these actions were also taken: (1) elected Commission officers for FY2025; (2) reconciled and adopted the FY2025 budget; (3) adopted Policy 2024-01, "SRBC Procurement Procedures"; (4) adopted a resolution to allow the Commission to use a reserve fund as a

line of credit, (5) adopted the 2025-2027 Water Resources Program; and (6) actions on 19 regulatory program projects.

Project Applications Approved

1. *Project Sponsor:* Berwick Enterprises, Inc. *Project Facility:* The Bridges Golf Club, Berwick Township, Adams County, Pa. Application for renewal of consumptive use of up to 0.249 mgd (30-day average) (Docket No. 19950102).

2. *Project Sponsor and Facility:* BKV Operating, LLC (Meshoppen Creek), Washington Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 2.160 mgd (peak day) (Docket No. 20190602).

3. *Project Sponsor and Facility:* BKV Operating, LLC (Susquehanna River), Washington Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 2.914 mgd (peak day) (Docket No. 20190603).

4. *Project Sponsor and Facility:* BKV Operating, LLC (unnamed tributary to Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.648 mgd (peak day) (Docket No. 20190604).

5. *Project Sponsor:* Byler Golf Management, Inc. *Project Facility:* Iron Valley Golf Club, Cornwall Borough, Lebanon County, Pa. Applications for renewal of consumptive use of up to 0.300 mgd (30-day average) and groundwater withdrawals (30-day averages) of up to 0.300 mgd from Well Lb-814 and 0.140 mgd from Well B (Docket No. 20200902).

6. *Project Sponsor:* Cowanesque Valley Recreation Association. *Project Facility:* River Valley Country Club, Westfield Township, Tioga County, Pa. Application for renewal of consumptive use of up to 0.099 mgd (30-day average) (Docket No. 20020602).

7. *Project Sponsor and Facility:* Dillsburg Area Authority, Carroll Township, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.280 mgd (30-day average) from Well 5A (Docket No. 19980703).

8. *Project Sponsor and Facility:* EQT ARO LLC (Pine Creek), McHenry Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20190601).

9. *Project Sponsor and Facility:* Keystone Clearwater Solutions, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 1.250 mgd (peak day) (Docket No. 20190608).

10. *Project Sponsor and Facility:* Lear Corporation Pine Grove, Pine Grove Borough, Schuylkill County, Pa. Application for renewal of consumptive use of up to 0.160 mgd (30-day average) (Docket No. 19940501).

11. *Project Sponsor:* Londonderry Township. *Project Facility:* Sunset Golf Course, Londonderry Township, Dauphin County, Pa. Application for renewal of consumptive use of up to 0.181 mgd (30-day average) (Docket No. 20190613). *Located in an Environmental Justice area.*

12. *Project Sponsor and Facility:* Lycoming County Water and Sewer Authority, Fairfield Township, Lycoming County, Pa. Application for groundwater withdrawal of up to 0.216 mgd from Well PW-2 (30-day average).

13. *Project Sponsor and Facility:* Mount Joy Borough Authority, Mount Joy Borough, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 1.020 mgd (30-day average) from Well 3 (Docket No. 20070607), and modification of Docket Nos. 20110617, 20110617-1, and 20110617-2 for Wells 1 and 2 by adding conditions related to Well 3 and proposed operations.

14. *Project Sponsor:* Pennsylvania—American Water Company. *Project Facility:* Philipsburg/Moshannon District, Rush Township, Centre County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.600 mgd from Cold Stream Well 1, 0.432 mgd from Cold Stream Well 2, and 0.374 mgd from Cold Stream Well 3 (Docket No. 19890302).

15. *Project Sponsor and Facility:* Seneca Resources Company, LLC (Tioga River), Richmond Township, Tioga County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

16. *Project Sponsor and Facility:* Shippensburg Borough Authority, Southampton Township, Franklin County, Pa. Application for renewal of groundwater withdrawal of up to 1.900 mgd from Well 2 (Docket No. 19940504).

17. *Project Sponsor and Facility:* SWN Production Company, LLC (North Branch Mehoopany Creek), Forkston Township, Wyoming County, Pa. Application for surface water withdrawal of up to 2.500 mgd (peak day).

18. *Project Sponsor and Facility:* Tower City Borough Authority, Porter Township, Schuylkill County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.086 mgd from Well 5 and 0.070 mgd from Well 6 (Docket

No. 19920301). *Located in an Environmental Justice area.*

19. *Project Sponsor and Facility:* Town of Erwin, Steuben County, N.Y. Applications for renewal of groundwater withdrawals (30-day averages) of up to 1.700 mgd from Well 4 and 0.634 mgd from Well 6 (Docket Nos. 19990503 and 20070602, respectively). *Located in an Environmental Justice area.*

Authority: Public Law 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: June 17, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024-13652 Filed 6-20-24; 8:45 am]

BILLING CODE 7040-01-P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: May 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT:

Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; email: joyler@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Herbert Drilling Pad; ABR-201404001.R2; Harford and Lenox Townships, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 6, 2024.

2. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 726 Pad F; ABR-202405001; Plunketts Creek Township, Lycoming County, Pa.;

Consumptive Use of Up to 4.0000 mgd; Approval Date: May 12, 2024.

3. RENEWAL—Beech Resources, LLC; Pad ID: Premier Well Site; ABR-201905002.R1; Lycoming and Old Lycoming Townships, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: May 12, 2024.

4. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Freed; ABR-201204014.R2; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 12, 2024.

5. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Molly J 2; ABR-201905001.R1; Monroe Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 12, 2024.

6. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Reilly; ABR-201204015.R2; Colley Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 12, 2024.

7. RENEWAL—Coterra Energy Inc.; Pad ID: PetersenH P1; ABR-201205002.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: May 12, 2024.

8. RENEWAL—Seneca Resources Company, LLC; Pad ID: PHC 4H; ABR-20090501.R3; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 12, 2024.

9. RENEWAL—Seneca Resources Company, LLC; Pad ID: PHC 5H; ABR-20090502.R3; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 12, 2024.

10. RENEWAL—SWN Production Company, LLC; Pad ID: Gaylord Pad; ABR-201204020.R2; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 12, 2024.

11. RENEWAL—SWN Production Company, LLC; Pad ID: Glover Pad; ABR-201204019.R2; Thompson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 12, 2024.

12. RENEWAL—SWN Production Company, LLC; Pad ID: Page Pad; ABR-201204021.R2; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 12, 2024.

13. RENEWAL—SWN Production Company, LLC; Pad ID: Preston-Perkins; ABR-201204025.R2; Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 12, 2024.

14. RENEWAL—SWN Production Company, LLC; Pad ID: Seamans Pad; ABR–201204022.R2; Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 12, 2024.

15. RENEWAL—SWN Production Company, LLC; Pad ID: Walker Pad; ABR–201204023.R2; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 12, 2024.

16. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Blanchard Drilling Pad; ABR–201405002.R2; McNett Township, Lycoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 16, 2024.

17. RENEWAL—Inflection Energy (PA) LLC; Pad ID: TLC Pad; ABR–201405004.R2; Eldred Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 16, 2024.

18. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: BENSE (01 025/070) B; ABR–20090509.R3; Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: May 16, 2024.

19. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: CEASE (01 005/008) R; ABR–20090506.R3; Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: May 16, 2024.

20. RENEWAL—Seneca Resources Company, LLC; Pad ID: PHC 9H; ABR–20090503.R3; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 16, 2024.

21. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Black Unit #1H; ABR–20090517.R3; Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 23, 2024.

22. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Harper Unit #1H; ABR–20090515.R3; West Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 23, 2024.

23. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Hart; ABR–201205009.R2; Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 23, 2024.

24. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Maris; ABR–201205010.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 23, 2024.

25. RENEWAL—Seneca Resources Company, LLC; Pad ID: Wilcox Pad F; ABR–20090505.R3; Covington

Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 23, 2024.

26. RENEWAL—EQT ARO LLC; Pad ID: Little Fawn Pad A; ABR–201905004.R1; Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 26, 2024.

27. RENEWAL—Seneca Resources Company, LLC; Pad ID: DCNR 100 Pad P; ABR–201205011.R2; Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 26, 2024.

28. RENEWAL—SWN Production Company, LLC; Pad ID: TONYA EAST; ABR–201204012.R2; Great Bend and New Milford Townships, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 26, 2024.

29. RENEWAL—EQT ARO LLC; Pad ID: David C Duncan Pad B; ABR–201905005.R1; Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 28, 2024.

30. Seneca Resources Company, LLC; Pad ID: Bechtel 674; ABR–202405002; Richmond and Covington Townships, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 28, 2024.

31. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Hannan; ABR–20090520.R3; Troy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 31, 2024.

32. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Isbell; ABR–20090521.R3; Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 31, 2024.

33. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Ward; ABR–20090519.R3; West Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 31, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: June 17, 2024.

Jason E. Oyler,
General Counsel and Secretary to the Commission.

[FR Doc. 2024–13651 Filed 6–20–24; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0047]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 20, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0047 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Dougherty, (667)–668–1781, Office of Policy and Governmental Affairs, Office of Highway Policy Information, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Use Tax Evasion Discretionary Grant Program

Background: The Highway Use Tax Evasion Projects (HUTE) program provides funding to the Internal Revenue Service (IRS) and the States to carry out intergovernmental enforcement efforts, along with training and research, to reduce evasion of payment of motor fuel and other highway use taxes, which are the

principal sources for Federal and State highway funding. Under the current Surface Transportation Authorization, the Infrastructure Investment and Jobs Act (IIJA), \$2 million is available to make grants for intergovernmental enforcement efforts, including research and training. The intergovernmental enforcement efforts grants are awarded to State agencies through a competitive application process from which FHWA and the IRS make selections based on the most innovative, intergovernmental proposals. The States then perform various tasks, including increased enforcement, enhancement of data systems, and coordination with other State agencies.

The remaining funding may, at the discretion of the Secretary of Transportation, either be awarded for intergovernmental enforcement efforts grants, or allocated to the IRS for their enforcement efforts.

While the statute allows for the IRS to determine the use of their allocations, they must be used in some fashion related to the identification and elimination of highway use tax evasion. For both the States and the IRS, the initiatives may include, but are not limited to, office examinations, refinery and terminal examinations, and on-road enforcement in areas such as the illegal use of dyed diesel fuel by motor vehicles.

Respondents: There are 51 respondents, including 50 State Transportation Departments, and the District of Columbia. While the applications are open to all of those organizations, on average, about 16 applications are received each year for grant requests, some of which include multiple States, which brings the total individual projects to around 30.

Frequency: On an on-going basis as grant opportunities are announced.

Estimated Average Burden per Response: There are an average of 16 applications filed each cycle. It takes approximately 40 hours to gather the information and upload it through the grants.gov system.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 640 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing

the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: June 14, 2024.

Jazmyne Lewis,
Information Collection Officer.

[FR Doc. 2024-13527 Filed 6-20-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for Judicial Review of Actions by Florida Department of Transportation (FDOT).

SUMMARY: The FHWA, on behalf of the FDOT, is issuing this notice to announce actions taken by FDOT and other Federal Agencies that are final agency actions. These actions relate to the proposed S.R. 401 Bridge Replacement Improvements Project Development and Environment (PD&E) Study (Financial Management Number 444787-1). The proposed S.R. 401 Bridge Replacement Improvements Project will improve system linkage and modal interrelationships from 500 feet south of the S.R. 528 bridges to 3,500 feet north of the S.R. 401 bridges to Charles Rowland Drive. The project consists of replacing the existing three bascule bridges over the Canaveral Barge Canal with two parallel three-lane, high-level fixed span concrete bridges. These actions grant licenses, permits, or approvals for the project.

DATES: By this notice, the FHWA, on behalf of FDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before November 18, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

ADDRESSES: The Type 2 Categorical Exclusion and additional project documents can be viewed and downloaded from the project website at:

<https://www.cflroads.com/444787-1>, or by contacting FDOT Office of Environmental Management, 605 Suwannee Street, MS 37, Tallahassee, Florida 32399, during normal business hours are 8:00 a.m. to 5:00 p.m. (Eastern Standard Time), Monday through Friday, except State holidays.

FOR FURTHER INFORMATION CONTACT:

Jennifer Marshall, P.E., Director, FDOT Office of Environmental Management, FDOT; telephone (850) 414-4316; email: Jennifer.Marshall@dot.state.fl.us.

SUPPLEMENTARY INFORMATION: Effective December 14, 2016, and as subsequently renewed on May 26, 2022, the FHWA assigned, and the FDOT assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that FDOT and other Federal Agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, or approvals for the proposed improvement highway project. The actions by FDOT and other Federal Agencies on the project, and the laws under which such actions were taken are described in the Type 2 Categorical Exclusion approved on May 20, 2024 and in other project records for the listed project. The Type 2 Categorical Exclusion and other documents for the listed project are available by contacting FDOT at the address provided above.

The project subject to this notice is:

Project Location: The project is located in Brevard County, Florida. The project limits are from 500 feet south of the S.R. 528 bridges to 3,500 feet north of the S.R. 401 bridges to Charles Rowland Drive.

Project Actions: This notice applies to the Type 2 Categorical Exclusion, and all other Federal Agency licenses, permits, or approvals for the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. **General:** National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. **Air:** Clean Air Act (CAA) [42 U.S.C. 7401-7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. **Noise:** Noise Control Act of 1972 [42 U.S.C. 4901-4918]; 23 CFR 772.

4. **Land:** Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302-200310].

5. **Wildlife:** Endangered Species Act (ESA) [16 U.S.C. 1531-1544 and 1536];

Marine Mammal Protection Act [16 U.S.C. 1361–1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801–1891d], with Essential Fish Habitat requirements [16 U.S.C. 1855(b)(2)].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)–470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501–312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013; 18 U.S.C. 1170].

7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000 d–2000d–1]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. *Wetlands and Water Resources:* Clean Water Act (section 319, section 401, Section 404) [33 U.S.C. 1251–1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501–3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and 133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001–4130].

9. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning

and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: June 14, 2024.

Karen M. Brunelle,

*Director, Office of Project Development,
Federal Highway Administration,
Tallahassee, Florida.*

[FR Doc. 2024–13591 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0045]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway
Administration (FHWA), DOT.

ACTION: Notice and request for
comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by
August 20, 2024.

ADDRESSES: You may submit comments
identified by DOT Docket ID Number
0045 by any of the following methods:

Website: For access to the docket to
read background documents or
comments received go to the Federal
eRulemaking Portal: Go to <http://www.regulations.gov>.

Follow the online instructions for
submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility,
U.S. Department of Transportation,
West Building Ground Floor, Room
W12–140, 1200 New Jersey Avenue SE,
Washington, DC 20590–0001.

Hand Delivery or Courier: U.S.
Department of Transportation, West
Building Ground Floor, Room W12–140,
1200 New Jersey Avenue SE,
Washington, DC 20590, between 9 a.m.
and 5 p.m. ET, Monday through Friday,
except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
Patricia Sergeson, (202) 493–3166,
Office Corporate Research, Technology
and Innovation Management, Federal
Highway Administration, Department of

Transportation, 6300 Georgetown Pike,
McLean VA 22101, Office hours are
from 7 a.m. to 4 p.m., Monday through
Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Transportation Pooled Fund
Excellence Award.

Background: FHWA is partnering
with the American Association of State
Highway and Transportation Officials
(AASHTO) Research Advisory
Committee (RAC) to further promote
research, innovation, and excellence
through a new TPF Program Excellence
Award.

For more than 45 years, the FHWA's
TPF Program has enabled public and
private entities to collaboratively
conduct cutting-edge transportation
research. Through the TPF Program,
participants are able to pool funds and
expertise to develop innovative
solutions at a lower cost while
extending the reach and impact of their
research.

The TPF Excellence Award will
recognize outstanding TPF studies that
have made significant advancements in
national research efforts in the areas of
safety, economic growth, equity, and/or
transformative climate solutions. The
future award will highlight the
importance of meaningful collaboration
and partnership in transportation
research. Administered through a
partnership between FHWA and the
AASHTO RAC, the biennial TPF
Excellence Award will recognize one
FHWA-led TPF study and one State
Department of Transportation (DOT)-led
study. Nominations would be received
between February 1 and May 1 every 2
yr. Nomination forms would be sent to
FHWA Division Offices and State DOTs
to solicit nominees.

Award: Any participant in the TPF
program can nominate a TPF study that
is completed and has posted a final
report by June 30 of the year submitted.
The nominator is responsible for
completing the nomination form that
summarizes the outstanding
accomplishments of the entry. FHWA
will use the collected information to
evaluate, showcase, and enhance the
public's knowledge of research and
innovation conducted through these
TPF projects. Nominations will be
reviewed by an independent panel of
judges from various backgrounds. The
awards will be given every 2 yr. The
winners will be presented awards at the
completion of the process.

Respondents: Any participant in the
Transportation Pooled Fund (TPF)
program can submit a nomination of a
TPF study for the TPF Excellence
Award, including staff from the 50

States, the District of Columbia, and Puerto Rico.

Frequency: The information will be collected biennially.

Estimated Average Burden per Response: 5 hours per respondent per application.

Estimated Total Annual Burden Hours: It is expected that the respondents will complete approximately 20 applications for an estimated total of 100 annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: June 14, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024-13531 Filed 6-20-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2024-0046]

Agency Information Collection Activities: Notice of Request for Renewal of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under

SUPPLEMENTARY INFORMATION. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 20, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0046 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Dougherty, (667)-668-1781, Office of Policy & Governmental Affairs, Office of Highway Policy Information, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of the Heavy Vehicle Use Tax.

OMB Control: 2125-0541.

Background: Title 23 United States Code, section 141(c), provides that a State's apportionment of funds under 23 U.S.C. 104(b)(1) shall be reduced in an amount up to 8 percent of the amount to be apportioned during any fiscal year beginning after September 30, 1984, if vehicles subject to the Federal heavy vehicle use tax are lawfully registered in the State without having presented proof of payment of the tax. The annual certification by the State Governor or designated official regarding the collection of the heavy vehicle use tax serves as the FHWA's primary means of determining State compliance. The FHWA has determined that an annual certification of compliance by each State is the least obtrusive means of administering the provisions of the legislative mandate. In addition, States are required to retain for 1 year a Schedule 1, IRS Form 2290, Heavy Vehicle Use Tax Return (or other suitable alternative provided by regulation). The FHWA conducts compliance reviews at least once every 3 years to determine if the annual certification is adequate to ensure effective administration of 23 U.S.C. 141(c).

Respondents: 50 State Transportation Departments, and the District of Columbia for a total of 51 respondents.

Frequency: Annually.

Estimated Average Burden per

Response: The average burden to submit the certification and to retain required records is 12 hours per respondent.

Estimated Total Annual Burden

Hours: Total estimated average annual burden is 612 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: June 14, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024-13512 Filed 6-20-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2024-0071]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: VALENTINE (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 22, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number

MARAD–2024–0071 by any one of the following methods:

- *Federal eRulemaking Portal*: Go to <https://www.regulations.gov>. Search MARAD–2024–0071 and follow the instructions for submitting comments.
- *Mail or Hand Delivery*: Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0071, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: patricia.hagerty@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel VALENTINE is:

Intended Commercial Use of Vessel: Requester intends to offer passenger charters.

Geographic Region Including Base of Operations: New York, Connecticut, Rhode Island, Massachusetts. Base of Operations: Newport, Rhode Island.

Vessel Length and Type: 60.8' Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0071 at <https://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part

388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <https://www.regulations.gov>, keyword search MARAD–2024–0071 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to SmallVessels@dot.gov. Include in the email subject heading "Contains Confidential Commercial Information" or "Contains CCI" and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be

followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–13607 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Maritime Transportation System National Advisory Committee; Notice of Public Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) announces a public meeting of the U.S. Maritime Transportation System National Advisory Committee (MTSNAC) to develop and discuss advice and recommendations for the U.S. Department of Transportation on issues related to the marine transportation system. In general, the meeting will cover ways to enhance the use of America's Marine Highways, the enhancement of U.S. port infrastructure and performance, how to strengthen U.S. Maritime capabilities essential to national security and economic prosperity, and finally, ways to enable maritime industry innovation in information, safety, environmental sustainability, and other areas.

DATES: The meeting will be held on Wednesday, July 10, 2024, from 9:00 a.m. to 4:30 p.m. and Thursday, July 11, 2024, from 9:00 a.m. to 4:30 p.m. Eastern Daylight Time (EDT). Requests to attend the meeting must be received by 5:00 p.m. EDT on the prior week, Monday, July 1, 2024, to facilitate entry. Requests for accommodations for a disability must be received by Monday, July 1, 2024. Those requesting to speak during the public comment period of the meeting must submit a written copy

of their remarks to DOT no later than Monday, July 1, 2024. Requests to submit written materials for review during the meeting must be received by Monday, July 1, 2024.

ADDRESSES: The meeting will be held at the at the DOT Conference Center at 1200 New Jersey Ave. SE, Washington, DC 20590. Any Committee-related request should be sent to the person listed in the following section.

FOR FURTHER INFORMATION CONTACT: Capt. Jeffrey Flumignan, Designated Federal Officer, at MTSNAC@dot.gov or (347) 491-2349. Maritime Transportation System National Advisory Committee, 1200 New Jersey Avenue SE, W21-307, Washington, DC 20590. Please visit the MTSNAC website at <https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0>.

SUPPLEMENTARY INFORMATION:

I. Background

The MTSNAC is a Federal advisory committee that advises the U.S. Secretary of Transportation through the Maritime Administrator on issues related to the maritime transportation system. The MTSNAC was established in 1999 and mandated in 2007 by the Energy Independence and Security Act of 2007 (Pub. L. 110-140). The MTSNAC is codified at 46 U.S.C. 50402 and operates in accordance with the provisions of the Federal Advisory Committee Act.

II. Agenda

The agenda will include (1) welcome, opening remarks, and introductions; (2) administrative items; (3) breakout sessions; (4) updates to the Committee from breakout sessions; (5) public comments; (6) discussions relevant to formulate recommendations; and (7) presentation of recommendations. A final agenda will be posted on the MTSNAC website at <https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0> at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public. Members of the public who wish to attend in person must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. Seating will be limited and available on a first-come-first-serve basis.

Services for Individuals with Disabilities: The public meeting is

physically accessible to people with disabilities. The U.S. Department of Transportation is committed to providing all participants equal access to this meeting. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public Comments: A public comment period will commence at approximately 11:45 a.m. EDT on July 10, 2024, and again on July 11, 2024, at the same time. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting or preferably emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Additional written comments are welcome and must be filed as indicated below.

Written comments: Persons who wish to submit written comments for consideration by the Committee must send them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

(Authority: 49 CFR part 1.93(a); 5 U.S.C. 552b; 41 CFR parts 102-3; 5 U.S.C. app. Sections 1-16)

By Order of the Maritime Administrator.
T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.

[FR Doc. 2024-13684 Filed 6-20-24; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2024-0072]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: DANIELA (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations

for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 22, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2024-0072 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search MARAD-2024-0072 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD-2024-0072, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone: (202) 366-0903. Email: patricia.hagerty@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel DANIELA is:

Intended Commercial Use of Vessel: Requester intends to offer passenger charters.

Geographic Region Including Base of Operations: Florida. Base of Operations: Miami, Florida.

Vessel Length and Type: 100' Azimut Jumbo.

The complete application is available for review identified in the DOT docket as MARAD 2024–0072 at <https://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <https://www.regulations.gov>, keyword search MARAD–2024–0072 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to SmallVessels@dot.gov.

Include in the email subject heading "Contains Confidential Commercial Information" or "Contains CCI" and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–13603 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0073]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ROD BENDER (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief

description of the proposed service, is listed below.

DATES: Submit comments on or before July 22, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0073 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search MARAD–2024–0073 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0073, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: patricia.hagerty@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ROD BENDER is:

Intended Commercial Use of Vessel: Requester intends to offer sport fishing charters.

Geographic Region Including Base of Operations: Alaska, Washington. Base of Operations: Auke Bay, Alaska.

Vessel Length and Type: 33' Powerboat.

The complete application is available for review identified in the DOT docket as MARAD 2024–0073 at <https://www.regulations.gov>. Interested parties may comment on the effect this action

may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <https://www.regulations.gov>, keyword search MARAD-2024-0073 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to SmallVessels@dot.gov. Include in the email subject heading "Contains Confidential Commercial Information" or "Contains CCI" and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024-13606 Filed 6-20-24; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2024-0075]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: KAIROS (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 22, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2024-0075 by any one of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Search

MARAD-2024-0075 and follow the instructions for submitting comments.

- **Mail or Hand Delivery:** Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD-2024-0075, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone: (202) 366-0903. Email: patricia.hagerty@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KAIROS is:

Intended Commercial Use of Vessel: Requester intends to offer passenger transport.

Geographic Region Including Base of Operations: Washington. Base of Operations: Anacortes, Washington.

Vessel Length and Type: 30' Motor.

The complete application is available for review identified in the DOT docket as MARAD 2024-0075 at <https://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an

approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <https://www.regulations.gov>, keyword search MARAD-2024-0075 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to SmallVessels@dot.gov. Include in the email subject heading "Contains Confidential Commercial Information" or "Contains CCI" and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024-13605 Filed 6-20-24; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2024-0074]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: DREAM CATCHER (SAIL); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 22, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2024-0074 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search MARAD-2024-0074 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD-2024-0074,

1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone: (202) 366-0903. Email: patricia.hagerty@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel DREAM CATCHER is:

Intended Commercial Use of Vessel: Requester intends to offer passenger sailing charters.

Geographic Region Including Base of Operations: California, Washington. Base of Operations: Emeryville, California.

Vessel Length and Type: 48.2' Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024-0074 at <https://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <https://www.regulations.gov>, keyword search MARAD–2024–0074 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to SmallVessels@dot.gov. Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department’s FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT’s

compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–13604 Filed 6–20–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. DOT–OST–2011–0022]

Notice of Submission of Proposed Information Collection to OMB of Agency Request for Revision of a Previously Approved Collection: Online Complaint Form and Related Uses of a Modernized Aviation Consumer Protection Information Technology System

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments. Revision of information related to an active OMB control number.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation’s intention to revise an information collection request (ICR) related to an OMB control number for an online complaint form by which a consumer can electronically submit a service-related complaint against an airline and other air travel-related companies. The complaint form has been revised as part of the Department’s Office of Aviation Consumer Protection’s (OACP) information technology (IT) system modernization project. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on November 1, 2023: Online Complaint Form for Service-Related Issues in Air Transportation. One comment was received by Airlines for America (A4A). This notice responds to that comment and adds two new ICRs to capture additional functionalities of the modernized IT system. The new ICRs are related to external users, such as regulated entities and other users, that may use the modernized IT system to set up and manage individual accounts and access complaints and other submissions and/or submit complaint responses, reports, or other information into that system.

DATES: Comments on this notice must be received by July 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular ICR by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Daeleen Chesley, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590, 202–366–9342 (Voice), or Daeleen.Chesley@dot.gov (Email). Arrangements to receive this document in an alternative format may be made by contacting the above-named individual.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0568.

Title: Online Complaint Form and Related Uses of a Modernized Aviation Consumer Protection Information Technology System.

Abstract: The Department of Transportation’s (Department) Office of Aviation Consumer Protection (OACP), formerly the Office of Aviation Enforcement and Proceedings, has broad authority under 49 U.S.C., subtitle VII, to investigate and enforce consumer protection and civil rights laws and regulations related to air transportation.

Among other things, OACP receives service-related consumer complaints filed against airlines and other air travel-related companies. Information from complaints and airline and travel company responses may be used by the office to determine the extent to which these entities are in compliance with federal aviation consumer protection and civil rights laws and what, if any, action should be taken regarding issues raised in consumer complaints. The information submitted via the online form may also be used to ascertain consumer satisfaction with air transportation services and serve as a basis for rulemaking, legislation, and research.

Revision of Consumer Submissions (Complaints, Comments, Compliments) ICR

The ICR related to the complaint submission form is being revised due to updates that OACP is making to the office’s online air consumer complaint form as part of an Information Technology (IT) system modernization project.¹ Most consumer submissions

¹ OACP’s outdated legacy IT system is the Consumer Complaint Application System (CCA).

(over 90%) are complaints that are filed using the web-based form. At times, consumers may also choose to file a complaint with the Department using regular mail. The type of information requested on the current form includes complainant’s name, address, phone number (including area code), email address, and name of the airline or company about which she/he is complaining, as well as the flight date and flight itinerary (where applicable) of a complainant’s trip. In addition, a consumer may also provide a narrative description of a specific air-travel related problem or issue. The Department has limited its informational request to that necessary to meet its aviation consumer protection responsibilities.

The updated form continues to allow consumers to input information related to complaints about their flight experience, as well as to submit general comments and compliments. However,

aviation consumers submitting complaints or comments via the form based on the modernized IT system will be efficiently guided through their entry by the system using conditional logic. The modernized system, or Aviation Complaint, Enforcement, and Reporting System (ACERS), allows for additional information fields and guides consumers to enter specific information, which will better ensure an individual air consumer’s specific concerns are more comprehensively captured in the modernized IT system.

This information collection request is to enable consumers to continue to file their complaints and comments to the Department using an online form, whether via personal computer or on a mobile device. If the online complaint form is not available, the Department may receive fewer complaints and comments from consumers. The lack of consumer input could inhibit OACP’s ability to effectively investigate

individual complaints against both airlines and other air travel-related companies. It would also impact OACP’s ability to become aware of potentially unfair or deceptive practices that may develop in violation of the Department’s rules. The information collection continues to further the objective of 49 U.S.C. 41712 to protect consumers from unfair or deceptive practices, the objective of § 41705 and § 40127 to ensure the civil rights of air travelers are respected, and the objective of § 41702 to ensure safe and adequate service in air transportation.

Filing a complaint or comment using a web-based form is voluntary and minimizes the burden on respondents. Based on the table below, approximately ninety-seven percent of the submissions (complaints, comments, and inquiries) received by OACP during calendar years (CYs) 2021 through 2022 were filed using the web-based form as shown in the table below.²

TABLE 1.1—COMPLAINTS RECEIVED BY OACP (CY21/22)

Calendar year	Total number of complaints filed on-line	Total number of complaints filed with OACP	% of on-line submissions
2021	48,465	49,958	97.01
2022	75,731	77,656	97.52
Average Total	62,098	63,807	97.27

TABLE 1.2—COMMENTS (NON-COMPLAINTS) RECEIVED BY OACP (CY21/22)

Calendar year	Total number information requests	Total number compliments	Total number opinions
2021	5,799	14	444
2022	7,575	24	1,008
Average Total	6,687	19	726
Total Yearly Average: 6,782 .....	.....	.....	.....

New ICRs

In response to comments submitted by A4A, the Department is adding two ICRs to this notice to capture additional burdens associated with using ACERS. A4A identified additional burdens related to providing information to OACP via ACERS that were not captured in the 60-day notice. A4A members and other regulated entities that are required to file certain reports with OACP and to respond to consumer complaints already submit information

to the Department, primarily via email, and in some instances, via a portal into OACP’s legacy database system that ACERS is replacing. OACP has routinely requested airline responses to consumer complaints implicating regulated areas from carriers and carriers have routinely been providing this information as a general practice. OACP anticipates that the use of ACERS will be less burdensome and save time for regulated entities that use the system because the modernized IT system includes

enhanced features, e.g., drag and drop functionality.

1. External User Account Creation and Management ICR

The first new ICR encompasses the burden on regulated entities (e.g., U.S. and foreign air carriers, air travel companies) and other external users to create individual organizational accounts in ACERS and, subsequently, manage those accounts.

As noted above, consumers will use ACERS to create and submit their

CCA will be de-commissioned a short time after the modernized IT system is available for public use.

² As of CY 2020, OACP has received a higher number of online submissions than those submitted

in prior CYs. For example, our CY17–19 average was 16,348 complaints submitted per year. In 2020, the total was 100,613 and were mostly related to flight cancellations and refund issues that resulted

from the Covid-19 pandemic. In CYs 21 and 22, the number of submissions remain high but are lower than the number of complaints submitted in CY2020.

complaints/comments. ACERS is designed to provide airlines and air travel companies the ability to review consumer submissions about its air transportation services directly within the system. The system is intended to facilitate more efficient interaction between OACP and regulated entities. As such, each carrier or air travel company that uses the system for complaint handling will need to set up and manage an account for their staff to be able to access the system.³ Account set-up and management will be handled by a staff member of the entity that has been designated by that entity to create and manage the accounts. In most cases, that person will be that entity's regulatory liaison to the Department. It is important to note that use of ACERS is designed to provide direct access to consumer submissions, thereby reducing the burden on those airlines and ticket agents that use it.

ACERS is also designed for both U.S. and foreign air carriers as well as airports to be able to efficiently submit certain statutorily required reports (*e.g.*, reports regarding disability complaints and tarmac delay incidents) that the entities previously submitted using OACP's legacy database system or via email. To submit these reports via ACERS, entities will also need to create and manage user accounts.⁴ In addition to use by regulated entities, the system has also been designed to facilitate inter-agency coordination to help protect the rights of consumers in air travel.⁵ Accordingly, the Department anticipates that entities such as State attorney general offices (State AGs) may use the IT system account management features pursuant to agreements with the Department and will need to create and manage accounts to use ACERS.

Setting up a new account will consist of the following steps:

1. Creating a New User Account;

2. Receiving an Account Creation Email;

3. Creating a *Login.gov* Account (or using an existing *Login.gov* Account);

4. Logging into the ACERS Portal; and
5. Adding Contact Information into the Account.

Entities establishing accounts to enable access to ACERS will be able to include contact information for up to ten (10) individuals in their respective organizations who can address consumer complaints and/or submit reports. The submitted information will include (per individual) his/her role/position with the entity, a contact telephone number and an email address. Entity account managers will also be able to change contact names and information, as needed.

The chart below provides a list of external users who may use ACERS, as well as the estimated number of accounts that each entity may set up in the system.⁶

TABLE 2.1—LIST OF EXTERNAL ENTITIES BY TYPE AND ESTIMATED NUMBER OF ACCOUNTS

Entity type	Number of respondents/ initial accounts	Estimated account holders per entity	Total estimated account holders per entity
Large Air Carriers	15	10	150
"Other" Air Carriers	76	2	152
Foreign Carriers	147	2	294
Large Air Travel Companies	19	2	38
Other Travel agents and tour operators	61	1	61
US Airport	401	2	802
Other External users ⁷ (<i>e.g.</i> , State AGs)	75	2 per AG (25), 1 per others	100
SubTotal:	794	.....	1,597
Estimated Adjustments (18%) .....	.....	.....	287
Total:	794	.....	1,884

TABLE 2.2—ESTIMATED TOTAL BURDEN HOURS

Number of initial accounts	× 30 minutes setup per account	Number of "Other" accounts	× 15 minutes setup per account	Total =
794	23,820 min./397 hr	1,090	16,350 min./272.5 hr	40,170 min./669.5 hr.

Airline Responses to Consumer Complaints and Related Information

The second new ICR encompasses the burden on airlines and air travel

³ OACP has provided regulated entities the option of providing information in advance so that initial account set-up will be completed within the IT system for regulated entities before the system is launched, further reducing the burden of setting up an account.

⁴ Burdens associated with report submissions are covered under separate OMB control numbers. This notice addresses the burden associated with setting

companies that use the modernized IT system functionalities that exceed those available in the legacy system. Airlines and air travel companies will have the ability to upload complaint responses

up and managing individual accounts in the modernized IT system.

⁵ See, US DOT website at https://www.transportation.gov/airconsumer/State_AG_Partnership.

⁶ Assumptions are the following: Larger reporting carriers may have up to 10 accounts; Other carriers, foreign carriers, larger travel agents, US airports, and State AGs could have up to 2 accounts (primary

and related information to ACERS, including providing information about amounts refunded, reimbursed, or compensated where relevant. OACP anticipates that most or all complaint

and back-up accounts) but may have one or none; and small travel agents/tour operators would only need to log-in on occasion or not at all.

⁷ The Department has an MOU with 18 AGs and another 7 are anticipated to join the MOU. This estimate considers that other government entities (including additional AGs) or users may need to access ACERS before this OMB control number is renewed.

responses and related information will be submitted by regulated entities (U.S./ foreign air carriers and air travel companies), of which U.S. carriers will be the primary submitter.⁸ Airlines and airports⁹ may use ACERS to upload

optional reports. At times, non-regulated entities (e.g., State AGs) may use ACERS to submit consumer complaints and referrals to the Department.

The charts below include the estimated response numbers and burdens associated with complaint submissions and follow-up.

TABLE 3.1—ESTIMATE OF REGULATED AND NON-REGULATED ENTITIES AND ACERS SUBMISSIONS

Entity type	Respondent number	Estimated total responses	Estimated initial submissions (80%) × 5 min.	Estimated follow-up submissions (20%) × 30 min.
Regulated entities (Air carriers, travel agents, and airports)	318	62,098	49,678	12,420
Other External Users	101	1,600	1,280	320
Total:	419	63,698	50,978	12,740

TABLE 3.2—ESTIMATED BURDEN FOR ACERS RESPONSE UPLOAD AND FOLLOW-UP

Estimated initial responses	× 5 min.	Estimated follow-up submissions	× 30 min.	Total estimated burden
50,978	254,890 min./4,248 hrs	12,740	382,200 min./6,370 hrs	637,090 min./10,618 hrs.

The PRA and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. As stated above, on November 1, 2023, OST published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which the agency is seeking revision from OMB: Online Complaint Form for Service-Related Issues in Air Transportation (88 FR 75093). The comment period ended on January 2, 2024. OST received one substantive comment from A4A.

A4A Comment

A4A’s comment identified burdens associated with using ACERS that were not identified in the 60-day notice, which OACP has addressed in this 30-day Notice. A4A also identified many concerns regarding OACP policy decisions regarding enforcement matters, policy decisions, and publication of certain information, such as complaint data. A4A alleges that the Department is failing to adhere to established regulatory requirements of the PRA, including:

(i.) Minimizing the paperwork burden on airlines resulting from the collection of information by or for the Federal Government; and

(ii.) Improving the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society.

A4A argues that OACP is impermissibly attempting to impose new requirements on regulated entities. OACP agrees with A4A that new requirements, such as requiring regulated entities to use ACERS, may not be imposed through the process of obtaining approval pursuant to the PRA for an information request. OACP believes that using ACERS will streamline interactions, creating efficiencies for both OACP and the regulated entities that voluntarily use the new IT system.

A4A also alleges that the Department’s 60-day Notice does not include the burden on the airlines of providing responses to consumer complaints and supplemental information via ACERS, including providing information about amounts refunded, reimbursed, or compensated where relevant. OACP agrees and has included estimates of the additional burden in this 30-day Notice. The system is designed to allow the efficient submission of information that OACP anticipates will be beneficial for airlines. Furthermore, A4A notes the Department’s authority to request responses to disability complaints but questions the Department’s authority to

request from airlines any other responses to consumers or related information. As noted above, OACP is not attempting to impose new requirements via this Notice so is not addressing A4A comments regarding the Department’s authority.

In its comment, A4A notes that OACP made a policy decision to eliminate carriers’ ability to administratively challenge consumer complaints. By way of background, the change that A4A objects to is OACP’s elimination of an airline’s ability to “transfer” complaints from the marketing carrier to the operating carrier, usually a regional partner, thereby reducing the number of complaints against the mainline carrier. OACP discontinued the policy in 2023. Complaints are counted against the carrier named by the consumer, regardless of whether it was the marketing (e.g., mainline/network) or operating (e.g., regional) airline.

A4A states that the “net effect is carriers’ increased time addressing consumer complaints that are invalid, i.e., the complaint does not fall within DOT complaint category, or it is the responsibility of another carrier or third-party.” The policy change to attribute complaints to the airline identified by the consumer, regardless of whether it was the marketing (e.g., a mainline/network) or operating (e.g., regional) airline, is unrelated to any burdens

⁸ Using ATCR data from March–June 2023, U.S. carriers will submit an estimated 68% of the documents. Foreign carrier submissions are estimated at 27% and travel agents/tour operators will submit 5% of the documents.

⁹ Airports are regulated entities for purposes of tarmac delay plan submissions. The burden calculation to submit tarmac delay plans is included in a separate ICR/OMB control number (OMB 2105–0566). However, airports are included

here to the extent that an airport may submit an optional additional report.

imposed by ACERS. OACP does not share A4A's view of the impact of the policy change on carriers, since airlines are required to respond to all written consumer complaints, regardless of whether the airline views the complaint as valid. A4A expresses a number of concerns related to how the policy change will impact complaint data published in the Department's Air Travel Consumer Report (ATCR). However, these are concerns about OACP policy decisions and are unrelated to the information collection requests in this Notice because the information collected from consumers will remain the same regardless of the policy decision. Accordingly, the change is not relevant to this ICR approval request.

A4A also alleges that OACP's new information collection form will create more data quality concerns for the federal government and burdens on the airlines, because it will require that consumers enter contact information but not a ticket or confirmation number since the complaint could be from someone unsuccessfully attempting to book air transportation. However, as noted above, airlines are required to respond to all written consumer complaints and accepting consumer complaints without a ticket or confirmation number is not new. Accordingly, OACP disagrees that A4A has identified a data quality concern or failed to adequately capture the burden on airlines.

A4A also questions the Department's ability to "filter out" complaints and states that ACERS will impose an additional burden on the carriers to keep complaints active and open pending a potential DOT investigation, since the system does not notify the carriers whether a complaint case has been closed. However, OACP disagrees that A4A has identified additional burdens related to ACERS as OACP is continuing its past practice in these areas. Regarding transitioning to the new system, OACP is committed to working with all external users to ensure a successful transition from the legacy IT system to ACERS.

In conclusion, A4A's comments about OACP enforcement/investigatory policies and practices and the complaint information published in the ATCR are outside the scope of this notice. Many of A4A's concerns, such as complaints about review and challenge processes, relate to policy decisions and not to the new system. The IT modernization implementing ACERS as OACP's new IT system will allow the Department to upgrade its online consumer submission form and provide regulated entities and

certain other users with information submission and account management functionality. This ICR notice is limited to those uses.

Accordingly, the information collection requests described herein have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve the revision of this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). The 30-day notice informs the regulated community to file relevant comments to OMB and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure their full consideration. 5 CFR 1320.12(c); *see also* 60 FR 44983 (Aug. 29, 1995).

1. Air Travel Consumer Complaint and Comment Burden Calculations

Respondents: Consumers that Choose to File an Online Complaint or Comment with the Office of Aviation Consumer Protection.

Burden Calculation for Complaints

Estimated Number of Respondents: 62,098 (based on averaging data from CYs 2021–22).

Estimated Total Burden on Respondents: 15,524.5 hours (931,470 minutes). The estimate was calculated by multiplying the average number of cases filed using the online form in CYs 21–22 (62,098) by the estimated time needed to fill out the online form (15 minutes).¹⁰

Burden Calculation for Comments

Estimated Number of Respondents: 6,782 (based on averaging data from CYs 2021–22).

Estimated Total Burden on Respondents: 565.17 hours (33,910 minutes). The estimate was calculated by multiplying the average number of cases filed using the online form in CYs 21–22 (6,782) by the estimated time

needed to fill out the online form (5 minutes).¹¹

2. IT System Account Creation and Management

Respondents: Air Travel Industry and Other Users that Create and Manage Accounts Using OACP's Modernized IT System.

Estimated Number of Respondents: 719 air travel industry and 75 "other" users.

Estimated Total Burden on Respondents: 40,170 minutes/669.5 hours. The burden was calculated by multiplying the total estimated number of respondents by the estimated time to create an account (30 min. per account), plus the time to add/change other users of the account (15 min. per account).

3. Uploading Complaint Responses and Documents to the IT System

Respondents: Air Travel Industry and Other Users that Upload Documents into OACP's Modernized IT System.

Estimated Number of Respondents: 419 air travel industry and "other" users.

Estimated Total Burden on Respondents: 637,090 minutes/10,618 hours. The burden was calculated by multiplying the total estimated number of respondents by the estimated time to upload a document (5 min. per event) and follow-up information (30 min. per event) into the system.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. All comments will become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC.

Kimberly Graber,

Deputy Assistant General Counsel, Office of Aviation Consumer Protection.

[FR Doc. 2024–13580 Filed 6–20–24; 8:45 am]

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¹⁰ Feedback obtained during development of the modernized guided input process suggests that the form will take no longer than 15 minutes for a consumer to complete.

¹¹ An air consumer submitting these types of filing generally provide less information, so we estimate 5 minutes is sufficient.

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Actions**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION SECTION** for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director Compliance, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On June 17, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individual

1. AL-WAZIR, Ali Abd-Al-Wahhab Muhammad (a.k.a. "AL-WAZIR, Ali"; a.k.a. "PRINCE"), Guangzhou, China; DOB 25 Dec 1978; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 03692384 (Yemen) expires 26 Jul 2015 (individual) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224), 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041, 3 CFR, 2019 Comp., p. 356 (E.O. 13224, as amended) for

having acted or purported to act for or on behalf of, directly or indirectly, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. AL-HAIFI, Muadh Ahmed Mohammed (a.k.a. AL-HAYFI, Mu'adh Ahmad Muhammad), Muscat, Oman; DOB 1981; POB Sanaa, Al-Amanah, Yemen; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 03397777 (Yemen) expires 04 Jan 2015 (individual) [SDGT] (Linked To: INTERNATIONAL SMART DIGITAL INTERFACE LIMITED LIABILITY COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, INTERNATIONAL SMART DIGITAL INTERFACE LIMITED LIABILITY COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. INTERNATIONAL SMART DIGITAL INTERFACE LIMITED LIABILITY COMPANY (a.k.a. INTERNATIONAL SMART DIGITAL INTERFACE LLC), 8730 Way Block No. 387, Almaabilah South, Muscat, Muscat Governorate, Oman; Al Seeb, South Al Mabilah, Muscat Governorate, Oman; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 26 Mar 2018; Registration Number 1316463 (Oman) issued 26 Mar 2018 expires 05 Mar 2023 [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. TASNEEM TRADING COMPANY LIMITED, Unit 04-05, 16th Floor, the Broadway, No. 54-62 Lockhart Road, Wanchai, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 07 Oct 2013; Company Number 1976604 (Hong Kong) [SDGT] (Linked To: GUANGZHOU TASNEEM TRADING COMPANY LIMITED).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13224, as amended, for owning or controlling, directly or indirectly, GUANGZHOU TASNEEM TRADING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. GUANGZHOU TASNEEM TRADING COMPANY LIMITED (a.k.a. GUANGZHOU TAZNING TRADING CO., LTD.; a.k.a. "GUANGZHOU TAZI NING COMMERCIAL TRADE CO., LTD."), Huan Shi Xi Lu 37 Hao, 719 Fang, Li Wan Qu, Guangzhou, Guangdong 510000, China; 1020 No. 37, Huanshi West Road, Liwan District, Guangzhou, Guangdong 510000, China; Secondary sanctions risk: section 1(b) of

Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 26 Feb 2014; Registration Number 440101400149579 (China); Unified Social Credit Code (USCC) 91440101085957441G (China) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. NINGBO BEILUN SAIGE MACHINE CO., LTD., No. 2, Building 15, No. 428, Songhuajiang Road, Xinqi, Beilun District, Ningbo, Zhejiang 315800, China; website www.nbsaige.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 14 Dec 2010; Registration Number 330206000106175 (China); Unified Social Credit Code (USCC) 91330206567000255M (China) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

5. DONGGUAN YUZE MACHINING TOOLS COMPANY LIMITED (a.k.a. "HONGKONG YOUCI LIMITED"; a.k.a. "YUZE MACHINING TOOLS"; a.k.a. "YUZE YUDING MACHINERY"; a.k.a. "YUZE YUDING MACHINING TOOLS CO., LTD."; a.k.a. "YUZE TOOLS"), Room 6, Building H, Changan Commercial Center, Changan Town, Dongguan, Guangdong, China; website www.yuzemachinery.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 08 Jun 2017; Unified Social Credit Code (USCC) 91441900MA4WN7NF7W (China) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: June 17, 2024.

Bradley T. Smith,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2024-13630 Filed 6-20-24; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Privacy Act of 1974; Matching Program**

AGENCY: Department of the Treasury, Internal Revenue Service.

ACTION: Notice of a modified matching program.

SUMMARY: Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of the Internal Revenue Service (IRS) Disclosure of Information to Federal, State and Local Agencies (DIFSLA) Computer Matching Program. The Minnesota Department of Children, Youth, and Families will be participating in the matching program along with the existing federal and state agency participants.

DATES: Comments on this matching notice must be received no later than 30 days after date of publication in the **Federal Register**. If no public comments are received during the period allowed for comment, the modified program will be effective July 21, 2024, provided it is a minimum of 30 days after the publication date.

Beginning and ending dates: The matches are conducted on an ongoing basis in accordance with the terms of the DIFSLA Computer Matching Agreement in effect with each participant as approved by the applicable Data Integrity Board(s). The term of the existing agreements covers an 18-month period, July 1, 2023, through December 31, 2024. Ninety days prior to expiration of the agreement, the parties to the agreement may request a 12-month extension in accordance with 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Comments may be sent by email to glds.cmppa@irs.gov or by mail to the Internal Revenue Service; Privacy, Governmental Liaison and Disclosure; Data Services; ATTN: Patricia Grasela, Program Manager, 2970 Market Street, BLN: 2-Q08.124, Philadelphia, PA 19104.

FOR FURTHER INFORMATION CONTACT:

General questions may be sent to Internal Revenue Service; Privacy, Governmental Liaison and Disclosure; Data Services; ATTN: Patricia Grasela, Program Manager, 2970 Market Street, BLN: 2-Q08.124, Philadelphia, PA 19104. Telephone: 267-466-5564 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The notice of the matching program was last published at 88 FR 33667 (May 24, 2023). Members of the public desiring specific information concerning an ongoing matching activity may request a copy of the applicable computer matching agreement at the address provided above.

Participating Agencies

Name of Source Agency

Department of the Treasury, Internal Revenue Service.

Name of Recipient Agencies

A. Federal agencies expected to participate:

1. Department of Veterans Affairs, Veterans Benefits Administration
2. Department of Veterans Affairs, Veterans Health Administration
3. Social Security Administration

B. State agencies expected to participate using non-federal records are:

1. Alabama Department of Human Resources
2. Alabama Medicaid Agency
3. Alaska Department of Health and Social Services, Division of Public Assistance
4. Arkansas Department of Human Services
5. California Department of Social Services
6. Connecticut Department of Social Services
7. Delaware Department of Health and Social Services
8. District of Columbia Department of Human Services
9. Florida Department of Children and Families
10. Georgia Department of Human Services, Division of Family and Children Services
11. Hawaii Department of Human Services
12. Idaho Department of Health and Welfare
13. Illinois Department of Human Services
14. Indiana Family and Social Services Administration, Division of Family Resources
15. Iowa Department of Health and Human Services
16. Kansas Department for Children and Families
17. Kentucky Cabinet for Health and Family Services
18. Louisiana Department of Health
19. Louisiana Department of Children and Family Services
20. Maine Department of Health and Human Services
21. Maryland Department of Human Services
22. Michigan Department of Health and Human Services
23. Minnesota Department of Children, Youth, and Families
24. Minnesota Department of Human Services
25. Mississippi Department of Human Services
26. Mississippi Division of Medicaid
27. Missouri Department of Social

Services

28. Montana Department of Public Health and Human Services
29. Nebraska Department of Health and Human Services
30. New Hampshire Department of Health & Human Services, Division of Economic and Housing Stability, Bureau of Family Assistance
31. New Jersey Department of Human Services, Division of Family Development
32. New Mexico Human Services Department
33. New York State Office of Temporary and Disability Assistance
34. North Carolina Department of Health and Human Services
35. North Dakota Department of Health and Human Services, Humans Services Division, Economic Assistance Section
36. Ohio Department of Jobs and Family Services
37. Ohio Department of Medicaid
38. Oklahoma Department of Human Services, Adult and Family Services
39. Oregon Health Authority, Oregon Department of Human Resources
40. Pennsylvania Department of Human Services
41. Rhode Island Department of Human Services
42. South Carolina Department of Social Services
43. South Dakota Department of Social Services
44. Tennessee Department of Human Services
45. Texas Health and Human Services Commission
46. Utah Department of Workforce Services
47. Vermont Department of Children and Families, Economic Services Division
48. Virginia Department of Social Services
49. Washington Department of Social and Health Services
50. Wisconsin Department of Children and Families
51. Wyoming Department of Family Services

Authority for Conducting the Matching Program: Public Law 98-369, Deficit Reduction Act of 1984, requires the Agency administering certain federally assisted benefit programs to conduct income verification to ensure proper distribution of benefit payments. The records in this match are to be disclosed only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of benefits under, these programs. In accordance with section 6103(l)(7) of the Internal Revenue Code (IRC), the

Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the IRS files to any federal, state, or local agency administering a program listed below:

(i) A state program funded under part A of title IV of the Social Security Act;

(ii) Medical assistance provided under a state plan approved under title XIX of the Social Security Act, or subsidies provided under section 1860D–14 of such Act;

(iii) Supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(iv) Any benefits provided under a state plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) Unemployment compensation provided under a state law described in section 3304 of the IRC;

(vi) Assistance provided under the Food and Nutrition Act of 2008;

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(viii)(I) Any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(viii)(II) parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(viii)(III) Health-care services furnished under sections 1710(a)(2)(G), 1710(a)(3), and 1710(b) of such title.

Purpose: The purpose of this program is to prevent or reduce fraud and abuse in certain federally assisted benefit programs while protecting the privacy interests of the subjects of the match. Information is disclosed by the IRS only for the purpose of, and to the extent necessary in, determining eligibility for, and/or the correct amount of, benefits for individuals applying for or receiving certain benefit payments.

Categories of Individuals: Individuals applying for or receiving benefits under federal and state administered programs.

Categories of Records: The IRS will provide return information from information returns (e.g., Forms 1099–DIV, 1099–INT, and W–2G) filed by payers of unearned income in the IRS

Information Returns Master File (IRMF) (Treasury/IRS 22.061). The recipient Agency will furnish the IRS with requests for records in accordance with the current IRS Publication 3373, Disclosure of Information to Federal, State, and Local Agencies (DIFSLA) Handbook. The Agency may request return information from IRS on a monthly basis for new applicants and may request information with respect to all beneficiaries once per year. The requests from the Agency will include: the Social Security Number (SSN) and name control (first four characters of the surname) for each individual for whom unearned income information is requested. IRS will provide a response record for each individual identified by the Agency. The total number of records will be equal to or greater than the number of records submitted by the Agency. In some instances, an individual may have more than one record on file. When there is a match of an individual SSN and name control, IRS will disclose the following to the Agency: payee account number; payee name and mailing address; payee taxpayer identification number (TIN); payer name and address; payer TIN; and income type and amount.

System(s) of Records: IRS will extract return information with respect to unearned income from the Information Returns Master File (IRMF), Treasury/IRS 22.061, as published at 80 FR 54081–082 (September 8, 2015), through the DIFSLA Computer Matching Program.

Department of Veterans Affairs will provide to IRS information from the Veterans Benefits Administration—Compensation, Pension and Education, Rehabilitation Records—VA, 58 VA 21/22/28, amended and republished in its entirety at 86 FR 61858 (November 8, 2021); and Veterans Health Administration—Healthcare Eligibility Records, Income Verification Records—VA, 89VA10NB, as published at 73 FR 26192 (May 8, 2008), and updated at 78 FR 76897 (December 19, 2013).

Social Security Administration will provide to IRS information from the Office of Systems Requirements—Supplemental Security Income Record and Special Veterans Benefits, 60–0103, last fully published at 71 FR 1830 (January 11, 2006), amended at 72 FR 69723 (December 10, 2007), 83 FR 31250–51 (July 3, 2018), and 83 FR 54969 (November 1, 2018).

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2024–13669 Filed 6–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Inflation Reduction Act Storytelling Educational Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collection listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before August 20, 2024.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at PRA@treasury.gov.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Christopher Sun by emailing christopher.sun@treasury.gov, calling (202) 819–6332, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Title: Inflation Reduction Act Storytelling Educational Program.

OMB Control Number: 1505–NEW.

Type of Review: Request for a new OMB Control Number.

Description: Located on the Treasury.gov/IRA website, the IRA Storytelling Educational Program would feature a participation consent form and a series of questions—designed to offer members of the public who opt into self-disclosing information about their IRA-related experience with claiming clean energy incentives or using IRS modernization programs and resources—and enable Treasury officials to communicate their stories to the broader American public.

The IRA Storytelling Educational Program would serve to increase awareness of the IRA's tax incentives and other impacts so that more individuals, businesses, tax-exempt organizations, and others are aware of and understand the incentives now available to them, thereby promoting uptake, and the IRA's broader purpose. Public participation is entirely voluntary.

Form: None.

Affected Public: Individuals, Businesses, Tax-Exempt Entities.
Estimated Number of Respondents: Less than 1,000.

Frequency of Response: Once per consenting respondent.

Estimated Total Number of Annual Responses: Less than 1,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: Less than 500 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024-13600 Filed 6-20-24; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Departmental Offices Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before July 22, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Spencer W. Clark by emailing PRA@treasury.gov, calling (202) 927-5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

1. *Title:* Request for Transfer of Property Seized/Forfeited by a Treasury Agency.

OMB Control Number: 1505-0152.

Type of Review: Extension without change of a currently approved collection.

Description: Form TD F 92-22.46 is necessary for State and Local Law Enforcement agencies to apply for the sharing of seized assets from the Treasury Forfeiture Fund after participating in joint investigations with the Federal government.

Form: TD F 92-22.46.

Affected Public: State and local law enforcement agencies.

Estimated Number of Respondents: 1,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 7,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 3,500.

2. *Title:* Generic Clearance for Improving Customer Experience (OMB Circular A-11, Section 280 Implementation).

OMB Control Number: 1505-0272.

Type of Review: Extension without change of a currently approved collection.

Description: On September 11, 1993, President Clinton issued Executive Order 12862, "Setting Customer Service Standards" which clearly define his vision that the Federal agencies will put the people first. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. Section 1(b) of Executive Order 12862 requires government agencies to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services" and Section 1(e) requires agencies "survey

front-line employees on barriers to, and ideas for, matching the best in business."

On March 30, 2016, President Obama established the Core Federal Services Council, which again emphasized the need to deliver world-class customer service to the American people. The Council, composed of the major high-volume, high-impact Federal programs that provide transactional services directly to the public, were encouraged "to improve the customer experience by using public and private sector management best practices, such as conducting self-assessments and journey mapping, collecting transactional feedback data, and sharing such data with frontline and other staff."

In March 2018, the Administration of President Trump launched the President's Management Agenda (PMA) and established new Cross-Agency Priority (CAP) Goals. Excellent service was established as a core component of the mission, service, stewardship model that frames the entire PMA, embedding a customer-focused approach in all of the PMA's initiatives. This model was also included in the 2018 update of the Federal Performance Framework in Circular A-11, ensuring 'excellent service' as a focus in future agency strategic planning efforts. The PMA included a CAP Goal on Improving Customer Experience with Federal Services, with a primary strategy to drive improvements within 25 of the nation's highest impact programs. This effort is supported by an interagency team and guidance in Circular A-11 requiring the collection of customer feedback data and increasing the use of industry best practices to conduct customer research.

These Presidential actions and requirements establish an ongoing process of collecting customer insights and using them to improve services. This new request will enable the Department of Treasury to act in accordance with OMB Circular A-11 Section 280 to ultimately transform the experience of its customers to improve both efficiency and mission delivery, and increase accountability by communicating about these efforts with the public.

Form: None.

Affected Public: Businesses, individuals and state or local governments.

Estimated Number of Respondents: 2,001,550.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 2,001,550.

Estimated Time per Response: Varies. Feedback survey (3 minutes), User testing (15–30 minutes), Customer interviews (30 minutes), Focus groups (90 minutes).

Estimated Total Annual Burden Hours: 101,125.

Authority: 44 U.S.C. 3501 et seq.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–13689 Filed 6–20–24; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Compliance Assurance Process (CAP) Application and Associated Forms

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 14234, Compliance Assurance Process (CAP) Application and Sub-forms (A, B, C, D, E, F).

DATES: Comments should be received on or before July 22, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Melody Braswell by emailing PRA@treasury.gov, calling (202) 622–1035, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Compliance Assurance Process (CAP) Application and Associated Forms.

OMB Number: 1545–2312.

Form Numbers: 14234 and sub-forms A, B, C, D, E, F.

Abstract: The Compliance Assurance Process (CAP) is strictly a voluntary program available to Large Business and International Division (LB&I) taxpayers that meet the selection criteria. CAP is a real-time review of completed business transactions during the CAP year with the goal of providing certainty of the tax return within 60 days of the filing. Taxpayers in CAP are required to be cooperative and transparent and report all material issues and items related to completed business transactions to the review team.

Current Actions: There are two new forms being added to the Information Collection Request. Form 14234–E, Compliance Assurance Process (CAP) Cross Border Activities Questionnaire (CBAQ), is used by the IRS for risk assessment purposes to review a taxpayer’s material cross border activities transactions (other than transfer pricing) in the CAP year. Form 14234–F Post-Filing Representation by Taxpayer requires that the corporate officer, authorized to sign the tax return of the CAP taxpayer, attest that all material issues from the pre-filing review have been disclosed and resolved, and all resolved issues are reported as agreed on the company’s tax return.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses.

Estimated Number of Respondents: 125.

Estimated Number of Responses: 875.

Estimated Time per Response: 5.35 hours.

Estimated Total Annual Burden Hours: 4,680 hours.

Authority: 44 U.S.C. 3501 et seq.

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2024–13589 Filed 6–20–24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that a meeting of the Rehabilitation

Research and Development Service (RR&D) Scientific Merit Review Board (hereinafter, “the Board”) will be held on Wednesday, August 21, 2024, via Webex from 1–1:30 p.m. EST. The meeting will be partially closed to the public, with an open portion from 1–1:10. The closed portion, from 1:10–1:30 p.m., will be used for discussion, examination of and reference to the research applications and scientific review. Discussions will involve reference to staff and consultant critiques of research proposals. Discussions will also cover the scientific merit of each proposal and the qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92–463 subsection 10(d), and amended by Public Law 94–409, closing the committee meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure that the VA RR&D program promotes functional independence and improves the quality of life for impaired and disabled Veterans.

Board members will advise the Deputy Chief Research and Development Officer for Investigators, Scientific Review and Management (ISRM) and the Chief Research and Development Officer on the scientific and technical merit, mission relevance and protection of human and animal subjects of the proposals submitted to RR&D. The Board does not consider grants, contracts or other forms of extramural research.

Members of the public may attend the open portion of the meeting via WebEx, from 1–1:10 p.m., in listen-only mode, as the time-limited open agenda does not allow for public comment presentations. To attend the open portion of the meeting, the public may dial the Webex phone number (1–833–558–0712), then enter the meeting access code (2827 156 5012).

Written comments from members of the public should be mailed to Kristy Benton-Grover, Designated Federal Officer, RR&D, Department of Veterans Affairs (14RDR), 810 Vermont Avenue NW, Washington, DC 20420, or to Kristy.Benton-Grover@va.gov at least five days before the meeting. The public comments will be shared with the Board

members. The public may not attend the closed portion of the meeting as disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92–463 subsection 10(d), and amended by Public Law 94–409, closing the committee meeting is in

accordance with title 5 U.S.C. 552b(c)(6) and (9)(B).

Dated: June 14, 2024.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–13528 Filed 6–20–24; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the New England Wind Project, Offshore Massachusetts; Final Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 217**

[Docket No. 240524–0146]

RIN 0648–BL96

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: Final rule; notification of issuance of letter of authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, NMFS hereby promulgates regulations to govern the incidental taking of marine mammals by Avangrid Renewables, LLC, (Avangrid), the parent company of the original applicant, Park City Wind, LLC (Park City Wind), during the construction of the New England Wind Project (the Project), an offshore wind energy project, developed in two phases, known as Park City Wind (phase 1) and Commonwealth Wind (phase 2), in Federal and State waters off of Massachusetts, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Areas (OCS–A 0534 and OCS–A 0561) and 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 proposed rule for this action concerned only Lease Areas OCS–A 0534 and the SW portion of Lease Area OCS–A 0501. However, after publication of the proposed rule, Lease Area OCS–A 0534 was segregated into two portions: OCS–A 0534 and OCS–A 0561. Phase 1 remained with Park City Wind (OCS–A 0534) while phase 2 (OCS–A 0561) was assigned to a sister company named Commonwealth Wind, LLC (subsidiary of Avangrid). As a result of this, Park City Wind requested that the Letter of Authorization (LOA), if issued, be issued to Avangrid, who would oversee the construction of the both phases of the Project by its two subsidiaries.

These regulations, which allow for the issuance of a LOA for the incidental take of marine mammals during construction-related activities within the Project Area during the effective dates of the regulations, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat as well as requirements pertaining to the monitoring and reporting of such taking. **DATES:** This rule is effective from March 27, 2025, through March 26, 2030.

FOR FURTHER INFORMATION CONTACT: Karolyn Lock, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Availability**

A copy of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This final rule, as promulgated, provides a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) for NMFS to authorize the take of marine mammals incidental to construction of the Project within the Project Area. NMFS received a request from the applicant to incidentally take a small number of marine mammals from 39 species of marine mammals. After reviewing the request and making the required findings, NMFS could authorize 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 the applicant's 5 years of construction activities. The applicant did not request and NMFS neither anticipates nor allows take by serious injury or mortality incidental to the specified activities in this final rulemaking.

Legal Authority for the Final Action

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who

engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking, “other means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as “mitigation”); and requirements pertaining to the monitoring and reporting of such takings.

As noted above, the applicant did not request and NMFS neither anticipates nor would allow take by serious injury or mortality incidental to the specified activities in this final rulemaking. Relevant definitions of MMPA statutory and regulatory terms are included below:

- *Citizen*—individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) (50 CFR 216.103);
- *Take*—to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362);
- *Incidental Harassment, Incidental Taking and Incidental, but not Intentional, Taking*—an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable or accidental (50 CFR 216.103);
- *Serious Injury*—any injury that will likely result in mortality (50 CFR 216.3);
- *Level A harassment*—any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362; 50 CFR 216.3); and
- *Level B harassment*—any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362).

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I, provide the legal basis for proposing and, if appropriate, issuing this rule containing 5-year regulations and associated LOA. This final rule also establishes required mitigation, monitoring, and reporting requirements for the in-water specified activities.

Summary of Major Provisions Within the Final Rule

The major provisions within this final rule include:

- Allowing NMFS to authorize, under a LOA, the take of small numbers of marine mammals by Level A harassment and/or Level B harassment (50 CFR 217.322) incidental to the Project and prohibiting take of such species or stocks in any manner not permitted (50 CFR 217.323) (*e.g.*, mortality or serious injury);
- Establishing a seasonal moratorium on impact pile driving and drilling during January 1 through April 30, annually, as well as avoiding impact pile driving and drilling in December in order to minimize impacts to North Atlantic right whales (*Eubalaena glacialis*). Impact pile driving and drilling must not be planned in December; however, it may then only occur if necessary to complete the Project within a given year and with prior approval by NMFS (*e.g.*, as a result of unforeseen circumstances such as unanticipated weather delays, unexpected technical difficulties). LOA Holder must notify NMFS in writing by September 1 of that year that pile driving or drilling cannot be avoided and circumstances are expected to necessitate pile driving or drilling in December;
- Establishing a seasonal moratorium on vibratory pile driving (*i.e.*, vibratory setting of piles) during December 1 through May 31, annually, to minimize impacts to North Atlantic right whales (*Eubalaena glacialis*);
- Establishing a seasonal moratorium on the detonation of unexploded ordnance or munitions and explosives of concern (UXO/MEC) from December 1 through May 31, annually. UXO/MEC detonation must not be planned for December or May in order to minimize impacts to North Atlantic right whales (*Eubalaena glacialis*); however, UXO/MEC detonation may occur in December or May with NMFS' approval on a case-by-case basis only.
- Requirements for UXO/MEC detonations to only occur if all other means of removal are impracticable (*i.e.*, As Low As Reasonably Practicable (ALARP) risk mitigation procedure)),

conducting UXO/MEC detonations during daylight hours only, and limiting detonations to one per 24 hour period;

- Conducting both visual and passive acoustic monitoring (PAM) by trained, NMFS-approved Protected Species Observers (PSOs) and PAM operators before, during, and after select in-water construction activities;
- Establishing clearance and shutdown zones for all in-water construction activities to prevent or reduce the risk of Level A harassment and to minimize the risk of Level B harassment, including a delay or shutdown of foundation impact pile driving and delay to UXO/MEC detonation if a North Atlantic right whale is observed at any distance by PSOs or acoustically detected within certain distances;
- Establishing minimum visibility and PAM monitoring zones during foundation installation activities (*i.e.*, impact pile driving, vibratory pile driving, and drilling);
- Requiring use of at least two noise attenuation devices during all foundation installation activities and UXO/MEC detonations to reduce noise levels to those modeled assuming a broadband 10 decibel (dB) attenuation;
- Requiring sound field verification (SFV) requirements during foundation installation and UXO/MEC detonations to measure in situ noise levels for comparison against the modeled results.
- Requiring SFV during the operational phase of the Project;
- Requiring soft-start during impact pile driving and ramp-up during the use of high-resolution geophysical (HRG) marine site characterization survey equipment;
- Requiring various vessel strike avoidance measures;
- Requiring various measures during fisheries monitoring surveys, such as removing gear from the water if marine mammals are considered at-risk or are interacting with gear;
- Requiring regular and situational reporting including, but not limited to, information regarding activities occurring, marine mammal observations and acoustic detections, and sound field verification monitoring results; and
- Requiring monitoring of the North Atlantic right whale sighting networks, Channel 16, and PAM data, as well as reporting any sightings to the NMFS or sighting network.

Through adaptive management, as described in the provisions established in these regulations, NMFS Office of Protected Resources may modify (*e.g.*, delete, revise, or add to) the existing mitigation, monitoring, or reporting

measures summarized above and required by the LOA.

NMFS must withdraw or suspend an LOA issued under these regulations, after notice and opportunity for public comment, if it finds the methods of taking or the mitigation, monitoring, or reporting measures are not being substantially complied with or the authorized take is having, or may have, more than a negligible impact on the concerned species or stock (16 U.S.C. 1371(a)(5)(B); 50 CFR 216.106(e)). Additionally, failure to comply with the requirements of the LOA may result in civil monetary penalties and knowing violations may result in criminal penalties (16 U.S.C. 1375; 50 CFR 216.106(g)).

Fixing America's Surface Transportation Act (FAST-41)

This project is covered under title 41 of the Fixing America's Surface Transportation Act, or "FAST-41." FAST-41 includes a suite of provisions designed to expedite the environmental review for covered infrastructure projects, including enhanced interagency coordination as well as milestone tracking on the public-facing Permitting Dashboard. FAST-41 also places a 2-year limitations period on any judicial claim that challenges the validity of a Federal agency decision to issue or deny an authorization for a FAST-41 covered project (42 U.S.C. 4370m-6(a)(1)(A)).

The Project is listed on the Permitting Dashboard, where milestones and schedules related to the environmental review and permitting for the Project can be found at <https://www.permits.performance.gov/permitting-project/new-england-wind>.

Summary of Request

On December 1, 2021, the original applicant, Park City Wind, a limited liability company registered in the State of Delaware and wholly owned subsidiary of Avangrid submitted a request for the promulgation of regulations and issuance of an associated 5-year LOA to take, by harassment only, marine mammals incidental to construction activities associated with implementation of the New England Wind Project (hereafter "Project") offshore of Massachusetts in the BOEM Lease Area OCS-A 0534 and the possible use of the SW portion of Lease Area OCS-A 0501. The request was for the incidental, but not intentional, taking of a small number of 39 marine mammal species by Level B harassment (for all species or stocks) and by Level A harassment (for 19 species or stocks). Park City Wind did

not request, and NMFS neither expects nor would allow under this rule, take by serious injury or mortality to occur for any marine mammal species or stock incidental to the specified activities.

In response to our questions and comments, and following extensive information exchange between Park City Wind and NMFS, the applicant submitted a final revised application on July 13, 2022. NMFS deemed it adequate and complete on July 20, 2022. This final application is available on NMFS' website at <https://www.fisheries.noaa.gov/protected-resource-regulations>.

On August 22, 2022, NMFS published a notice of receipt (NOR) of the adequate and complete application in the **Federal Register** (87 FR 51345), requesting public comments and information during a 30-day public comment period. During the NOR public comment period, NMFS received comment letters from one private citizen and one non-governmental organization (ALLCO Renewable Energy Limited). NMFS reviewed all submitted material and took the material into consideration during the drafting of the proposed rule.

In January 2023 and again in March 2023, Park City Wind submitted memos to NMFS detailing updates and changes to their ITA application ("Update Application"). These memos updated the density models using the 2022 Roberts *et al.* density models, project foundation installation and potential UXO/MEC detonation schedules, vibratory pile driving (*i.e.*, vibratory setting of piles) assessment, and mitigation of drilling activity. In addition, the applicant detailed development of their fisheries monitoring program and associated mitigation measures. In a May 2023 memo, Park City Wind submitted corrected take estimate amounts for foundation installation activities and total take requested across all activities. These updates were reflected in the proposed rule. These memos are available on the NMFS website at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-park-city-wind-llc-construction-new-england-wind-offshore-wind>.

On June 8, 2023, NMFS published a proposed rule for the Project in the **Federal Register** (88 FR 37606). In the proposed rule, NMFS synthesized all of the information provided by the applicant, all best available scientific information and literature relevant to the proposed project, made preliminary small numbers and negligible impact determinations, and outlined, in detail, proposed mitigation designed to effect the least practicable adverse impacts on

marine mammal species and stocks, as well as proposed monitoring and reporting measures. The public comment period on the proposed rule was open for 30 days from June 8, 2023 through July 10, 2023. A summary of public comments received during this 30-day period are described in the Comments and Responses section. The public comments are available to be viewed on the Federal e-Rulemaking Portal at <https://www.regulations.gov>.

In January 2024, Park City Wind submitted a final draft of the new modeling and associated acoustic ranges, exposure estimates, and take estimates. Within these memos, the applicant revised the model(s) used and model assumptions for foundation installation activities and updated the acoustic ranges, exposure ranges, exposure estimates, take estimates, and amount of requested take as a result. The model changes are detailed in the *Modeling and Take Estimates* section in this final rule. NMFS accepted the updated modeling and has reflected the changes to the distance to thresholds, exposure estimates, and take estimates within the final rule. A description of these changes can be found below in the *Modeling and Take Estimates* section. This January 2024 Application Update is on NMFS website at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-park-city-wind-llc-construction-new-england-wind-offshore-wind>.

On May 6, 2024, Park City Wind notified NMFS that it had requested that BOEM segregate a portion of lease area OCS-A-0534, which would then be assigned to another subsidiary of Avangrid, Commonwealth Wind, LLC, as lease area OCS-A 0561. Park City Wind requested to NMFS that the incidental take regulation (ITR) governing take of marine mammals incidental to activities associated with both phases of the Project and the associated LOA (if issued by NMFS) be issued to Park City Wind's parent company, Avangrid, a limited liability company registered in the State of Oregon, who would oversee phase 1 (constructed and operated by Park City Wind) and phase 2 (constructed and operated by Commonwealth Wind) of the New England Wind Project. The lease segregation, completed by BOEM on May 15, 2024, did not alter the geographic location or size of the area in which the project would be built, nor did the applicant request any changes to the construction schedule, planned activities, or take. In short, no substantive changes to the Project were requested. As a result, where appropriate, Avangrid, owner of Park

City Wind, has henceforth been incorporated as the applicant or LOA Holder throughout this final rule.

NMFS previously issued one Incidental Harassment Authorization (IHA) to Park City Wind for the taking of small numbers of marine mammals incidental to marine site characterization surveys, using HRG of the Project's phase 1 (Park City Wind) in the BOEM Lease Area OCS-A 0534 (87 FR 44087, July 7, 2022); phase 2 was not part of this authorization (Commonwealth Wind). However, no work occurred under this initial IHA and Park City Wind requested a reissuance of the IHA with new effective dates. NMFS reissued the IHA (88 FR 88892, December 26, 2023) with the new effective dates of March 1, 2024, through February 28, 2025. NMFS has also previously issued an IHA to Avangrid, owner of Park City Wind, LLC, to take small numbers of marine mammals incidental to HRG surveys in BOEM Lease Area (OCS-A 0508) off the coasts of North Carolina and Virginia (84 FR 31032, June 28, 2019). To date, Park City Wind and Avangrid have complied with all IHA requirements (*e.g.*, mitigation, monitoring, and reporting). Applicable monitoring results may be found in the Estimated Take of Marine Mammals section. If available, the full monitoring reports can be found on NMFS' website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations (87 FR 46921, August 1, 2022) to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (UME). Should a final vessel speed rule be issued and become effective during the effective period of this ITR—or any other MMPA incidental take authorization (ITA)—the authorization holder will be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders will be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization

will remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule will become effective immediately upon the effective date of any final vessel speed rule and, when notice is published on the effective date, NMFS will also notify Avangrid if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer required.

Description of the Specified Activity

Overview

Avangrid plans to construct and operate two offshore wind projects within OCS-A 0534 and OCS-A 0561: Park City Wind (phase 1, 0534) and Commonwealth Wind (phase 2, 0561) (collectively called New England Wind; hereinafter referred to as “Project”). The Project will occupy all of Lease Area OCS-A 0534, OCS-A 0561, and potentially a portion of Lease Area OCS-A 0501 in the event that Vineyard Wind 1 does not develop spare or extra positions included in Lease Area OCS-A 0501. If Vineyard Wind 1 does not develop spare or extra positions in Lease Area OCS-A 0501, those positions would be assigned to Lease Area OCS-A 0534.

The Project will consist of several different types of permanent offshore infrastructure, including wind turbine generators (WTGs) and associated foundations, electrical service platforms (ESPs) and their foundations, inter-array cables, offshore export cables, and scour protection. Specifically, activities to construct the Project include the installation of 41–62 WTGs and 1–2 ESPs in phase 1 by impact and vibratory pile driving and, in the event of an obstruction, drilling. Phase 2 depends upon the final footprint of phase 1. Phase 2 is expected to include the installation of 64–88 WTGs and 1–3 ESP positions by impact and vibratory pile driving and, in the event of an obstruction, drilling. In total, up to 129 WTGs and 2–5 ESPs may be constructed at a maximum of 130 positions (2 positions may potentially have co-located ESPs (*i.e.*, two foundations installed at one grid position), resulting in 132 foundations). Additional activities will include cable installation, site preparation activities (*e.g.*, dredging), HRG surveys, the potential detonations of up to 10 UXO/MEC, and conducting several types of fishery and ecological monitoring surveys. Multiple vessels will transit within the Project Area and between ports and the wind farm to perform the work and transport crew, supplies, and materials. All

offshore cables will connect to onshore export cables, substations, and grid connections in Barnstable County, Massachusetts. Marine mammals exposed to elevated noise levels during pile driving, drilling, UXO/MEC detonations, or site characterization surveys may be taken by Level A harassment and/or Level B harassment, depending on the specified activity. A detailed description of the construction project is provided in the proposed rule as published in the **Federal Register** (88 FR 37606, June 8, 2023).

Dates and Duration

Avangrid anticipates activities resulting in harassment to marine mammals occurring throughout all 5 years of the final rule (table 1). Offshore Project activities are expected to begin in March 2025, after issuance of the 5-year LOA, and continue through March 2030. Avangrid anticipates the following construction schedule over the 5-year period. Avangrid has noted that these are the best and conservative estimates for activity durations, but that the schedule may shift due to weather, mechanical, or other related delays. Additional information on dates and activity-specific durations can be found in the proposed rule and are not repeated here.

TABLE 1—ACTIVITY SCHEDULE TO CONSTRUCT AND OPERATE THE PROJECT

Project activity	Expected timing	Expected duration
HRG Surveys	Q1 2025–Q4 2029	Any time of the year, up to 25 days per year.
Scour Protection Pre- or Post-Installation	Q1 2025–Q4 2029	Any time of the year.
WTG and ESP Foundation Installation, Schedule A	Q2–Q4 2026 and 2027 ¹	Up to 8 months per year.
WTG and ESP Foundation Installation, Schedule B	Q2–Q4 2026, 2027, and 2028 ¹	Up to 8 months per year.
Horizontal Directional Drilling at Cable Landfall Sites	Q4 2025–Q2 2026	Up to 150 days.
UXO/MEC Detonations	Q2–Q4 2025 and 2026	Up to 6 days in 2025 and 4 days in 2026. No more than 10 days total.
Inter-array Cable Installation	Q3–Q4 2026 and Q2 2027–Q2 2028	Phase 1: 5 months; Phase 2: 10 months.
Export Cable Installation and Termination	Q2 2026–Q2 2028	Phase 1: 8–9 months; Phase 2: 13–17 months.
Fishery Monitoring Surveys	Q1 2025–Q4 2029	Any time of year.
Turbine Operation	Initial turbines operational 2027, all turbines operational by 2028.	

Note: Project activities are anticipated to start no earlier than Q1 2025. Q1 = January through March; Q2 = April through June; Q3 = July through September; Q4 = October through December. The Project is divided into two phases: Park City Wind (phase 1) and Commonwealth Wind (phase 2).

¹ Foundation installation pile driving and drilling would be limited to May 1–December 31, annually; however, impact pile driving and drilling in December will not be planned but may occur due to unforeseen circumstances (*e.g.*, unanticipated extended weather delays, unexpected technical difficulties) and with NMFS approval. Vibratory pile driving (*e.g.*, vibratory setting of piles) must not occur December 1–May 31, annually.

Specified Geographical Region

A detailed description of the Specified Geographical Region, identified as the Mid-Atlantic Bight, is provided in the proposed rule (88 FR 37606, June 8, 2023). Since the proposed rule was published, no changes have been made to the Specified Geographical Region. This

final rule provides clarity on the boundaries of the Mid-Atlantic Bight, which spans from Cape Hatteras, North Carolina to Cape Cod, Massachusetts and extends into the western Atlantic to the 100-m isobath. All of Avangrid’s specified activities (*i.e.*, pile driving and drilling of WTG and ESP foundations; number of possible UXO/MEC detonations ($n=10$); placement of scour

protection; trenching, laying, and burial activities associated with the installation of the export cable route and inter-array cables; HRG site characterization surveys; and WTG operation) are concentrated in the Lease Area and cable corridor offshore Massachusetts. Avangrid would also concentrate vessel use within this area;

however, some limited vessel movement may occur outside this area.

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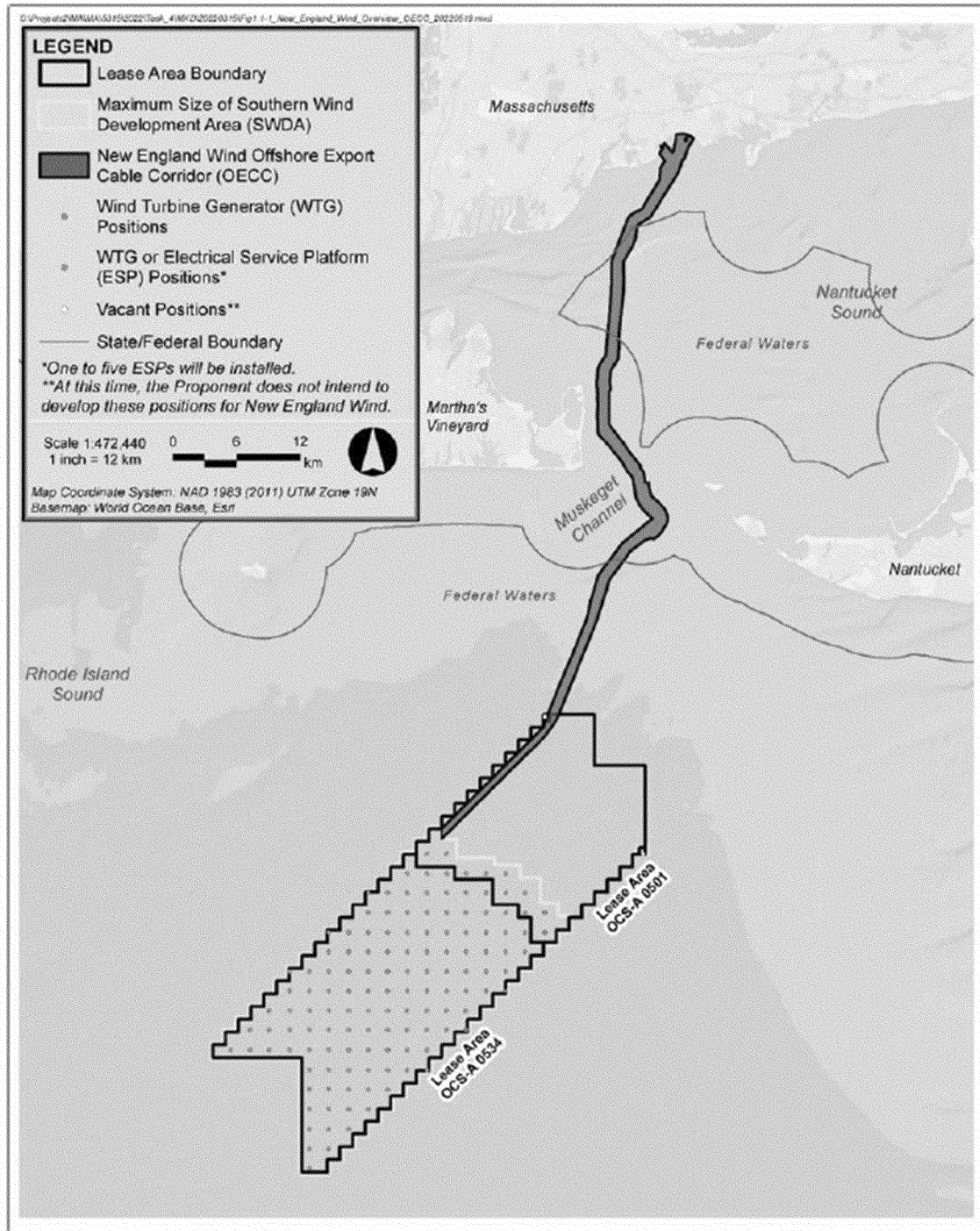


Figure 1 – Lease Area and Cable Corridor

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Comments and Responses

NMFS published a proposed rule in the **Federal Register** on June 8, 2023 (88 FR 37606) for a 30-day public comment period. The proposed rule described, in

detail, the specified activities, the specified geographical region of the specified activities, the marine mammal species that may be affected by these activities, and the anticipated effects on marine mammals. In the proposed rule, we requested that interested persons

submit relevant information, suggestions, and comments on Park City Wind's (now Avangrid's) request for the promulgation of regulations and issuance of an associated LOA described therein, our estimated take analyses, the

preliminary determinations, and the proposed regulations.

NMFS received 41 comment submissions, including comments from the Marine Mammal Commission (Commission), several non-governmental organizations, and private citizens, all of which are available for review on <https://www.regulations.gov>. Some of these comments were out-of-scope or not applicable to the Project (e.g., general opposition to or support of offshore wind projects, concerns for other species outside NMFS' jurisdiction) and are not described herein or discussed further. Non-governmental organizations included: Long Island Commercial Fishing Association, Responsible Offshore Development Alliance, and Green Oceans. These letters, and the Commission's, contained substantive information that NMFS considered in this final rule, including comments related to the estimated take analysis, final determinations, and final mitigation, monitoring, and reporting requirements. A summary of comments are described below, along with NMFS' responses.

Modeling and Take Estimates

Comment 1: The Commission has stated that, due to uncertainty in how NMFS will be addressing their previously submitted comments for other final offshore wind rulemakings, they are not providing "an exhaustive letter regarding similar issues" for the proposed action. They have stated that, in lieu of this, they incorporate by reference all previously submitted comment letters for past proposed rules (i.e., Empire Wind, Dominion Energy Virginia, Sunrise Wind, Revolution Wind, Ocean Wind 1, South Fork Wind) and that NMFS should specifically review these previously submitted letters (e.g., Sunrise Wind (88 FR 8996, February 10, 2023), Revolution Wind (87 FR 79072, December 23, 2022), and Ocean Wind 1 (87 FR 64868, October 26, 2022) and incorporate, where applicable, relevant information in the context of the Project. They specifically noted that these general concerns could include "underestimated numbers of Level A and B harassment takes (including failing to round up to group size), incomplete SFV measurement requirements, insufficient mitigation and monitoring measures, errors and omissions in the preamble to and the proposed rule, and the general issue of quality control and quality assurance in NMFS's preparation of proposed incidental take authorizations."

Response: NMFS acknowledges the receipt of a comment letter on the

proposed Project by the Commission, as well as receipt of comment letters from the Commission for the other referenced proposed projects. We appreciate that, in the past, the Commission has provided very specific and detailed comments and suggestions on NMFS' actions, as a collaborative effort to improve both the ITAs themselves as well as the conservation benefits for NMFS' trust species. Because the Commission did not provide specific comments on the proposed rule for the Project, we cannot address any specific concerns. However, we can address general themes of concern raised in previous letters, and, inasmuch as another specific comment is applicable here, we refer the Commission back to our previous responses.

Overall, the Commission's letters raised concerns over concern underestimated Level A and B harassment zones and numbers of takes, incomplete SFV measurement requirements, insufficient mitigation and monitoring measures, errors and omissions in the proposed rule and its preamble, and the general issue of quality control and quality assurance in NMFS's preparation of proposed ITAs. With respect to mitigation, monitoring and reporting requirements, we have thoroughly addressed the Commission's previous concerns and have updated final rules, including this one, accordingly. Lastly, any "omissions" and "general issues of quality control and quality assurance" from one action are less likely to be present in another action as updates are carried through across actions (although NMFS does not agree that every example previously raised by the Commission was, in fact, an error).

Comment 2: Commenters recommend NMFS re-estimate and authorize Level A harassment takes based on modeling results for the worst-case scenario rather than presuming an arbitrary 80- or 100-percent reduction for mitigation efficacy and/or a 10-dB sound attenuation for impact pile driving, re-estimate and authorize Level B harassment takes based on more conservative assumptions for the pile-driving scenarios that could occur (including only one monopile or fewer than four pin piles installed per day), re-estimate the various mortality, Level A harassment, and Level B harassment zones and numbers of takes based on 0 dB of sound attenuation for UXO/MEC detonations and authorize Level A and B harassment takes, including behavior takes, that could result from UXO/MEC detonations, and increase any Level A or B harassment takes to mean group size (including updates that reflect the

results of more recent marine mammal surveys in the Rhode Island-Massachusetts WEA). Other commenters had similar comments. Commenter(s) also suggested that the numbers of takes, particularly with respect to the North Atlantic right whale, rely on mitigation methods that remain unproven.

Response: NMFS disagrees that our analysis should carry forward take estimates based on the worst-case scenario that assumes no reduction of impacts results from the mitigation and notes that the commenter did not present any data supporting their recommendation. As described in the proposed rule, this final rule reasonably assumes that the mitigation efforts will be effective at reducing the potential for Level A harassment calculated in the density-based models. The models do not account for mitigation (except with respect to assuming attenuation and seasonal restrictions) and, therefore, it is reasonable to assume the model overestimates Level A harassment. Further, while the scientific literature documents marine mammals are likely to avoid loud noises such as pile driving (e.g., Brandt *et al.*, 2016, Nowack *et al.*, 2004), avoidance was not quantitatively considered in the take estimates (although NMFS reasonably predicts this natural behavior will further reduce the potential for Level A harassment).

In the proposed rule, NMFS described the best available science, which supports the assumption that at least 10 dB of attenuation can be reliably achieved using noise attenuation systems such as a double bubble curtain. The commenter did not provide reason for why they believe this was an overestimate nor did they suggest an alternative amount of attenuation NMFS should consider other than zero attenuation. Other commenters expressed similar support stating that bubble curtains are not effective for low-frequency cetaceans. NMFS agrees that attenuation levels vary by frequency band and that bubble curtains attenuate higher frequency sounds more effectively; however, NMFS disagrees that lower frequency bands, which are important to consider when evaluating impacts, are not attenuated at all. The data from Bellmann (2021), shows that for both single and double bubble curtains, more than 10 dB of attenuation was achieved for bands as low as 32 Hz. And while it is true that performance diminishes significantly at lower frequencies (<32 Hz), those bands also contain significantly less pile driving sound and is 16+ dB outside the most susceptible frequency range for low-frequency cetaceans.

NMFS recognizes that the key to effective mitigation is the ability to detect marine mammals to trigger such mitigation. Avangrid is required to undertake extensive monitoring to maximize marine mammal detection effectiveness. The reduction to the density-based take estimate appropriately reflects and acknowledges the monitoring efforts, including the placement of three PSOs on the pile driving platform and dedicated PSOs vessel(s) and PAM.

NMFS agrees that there is potential for behavioral disturbance from a single detonation per day and disagrees that “behavior takes” were omitted and have not been accounted for. However, the behavioral threshold for underwater detonations identified by the Commission (5 dB less than the temporary threshold shift (TTS) is only applicable to multiple detonations per day. NMFS is not aware of evidence to support the assertion that animals will have behavioral responses that would qualify as take to temporally and spatially isolated explosions at received levels below the TTS threshold. Accordingly, the current take estimate framework allows for the consideration of behavioral disturbance resulting from single explosions specifically if they are exposed above the TTS threshold, as opposed to the 5-dB lower threshold for behavioral disturbance from multiple detonations. We acknowledge in our analysis that individuals exposed above the TTS threshold may also be harassed by direct behavioral, disruption and those potential impacts are considered in the negligible impact determination. The distances to harassment thresholds have not changed from the application and proposed rule and are presented in this final rule. Take estimates did not change as a result of including this additional information.

Comment 3: Commenter(s) claimed that NMFS thresholds are outdated, primarily because scientific literature demonstrates examples where behavioral disturbances have been documented where received levels are lower than 160 dB. Moreover, the commenter suggested that estimating the extent of Level B take from impact driving using the 160dB (impulsive) threshold is flawed because an animal may be exposed to several hours of pile driving per day which should be considered continuous and that, although impulsive at the source, the sound from impact driving may be received as a continuous source at a distance. Commenter(s) stated that vessel noise is not included in the effects and that it should be included in calculations for harassment zones (as a

continuous noise source) and as a source of take. For these reasons, commenter(s) suggested the proposed rule underestimates the takes by Level B harassment and “zones of impact”; thus NMFS’ small numbers and negligible impact determination is flawed.

Response: For the reasons described below, NMFS disagrees that the 160-dB threshold for behavioral harassment is not supported by the best available science and that the small numbers and negligible impact determinations are flawed based on the use of this threshold in the take estimate analysis. The potential for behavioral response to an anthropogenic source can be highly variable and context-specific (Ellison *et al.*, 2012). While NMFS acknowledges the potential for Level B harassment at exposures to received levels below 160 dB rms, it should also be acknowledged that not every animal exposed to received levels above 160 dB rms will respond in ways constituting behavioral harassment. There are a variety of studies indicating that contextual variables play a very important role in response to anthropogenic noise, and the severity of effects are not necessarily linear when compared to a received level (RL). Several studies (*e.g.*, Nowacek *et al.*, 2004 and Kastelein *et al.*, 2012 and 2015) showed there were behavioral responses to sources below the 160 dB threshold but also acknowledged the importance of context in these responses. For example, Nowacek *et al.* (2004) reported the behavior of five out of six North Atlantic right whales was disrupted at RLs of only 133–148 dB re 1 μ Pa (returning to normal behavior within minutes) when exposed to an alert signal. However, the authors also reported that none of the whales responded to noise from transiting vessels or playbacks of ship noise even though the RLs were at least as loud and contained similar frequencies to those of the alert signal. The authors state that a possible explanation for whales responding to the alert signal and not responding to vessel noise is due to the whales having been habituated to vessel noise while the alert signal was a novel sound. In addition, the authors noted differences between the characteristics of the vessel noise and alert signal, which may also have played a part in the differences in responses to the two noise types. Therefore, it was concluded that the signal itself, as opposed to the RL, was responsible for the response. DeRuiter *et al.* (2012) also indicate that variability of responses to acoustic stimuli depends not only on the species receiving the

sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Finally, behavioral responses depend on many contextual factors, including range to source, RL above background noise, novelty of the signal, and differences in behavioral state (Ellison *et al.*, 2012, Gong *et al.*, 2014). Similarly, Kastelein *et al.* (2015) examined behavioral responses of a harbor porpoise to sonar signals in a quiet pool but stated behavioral responses of harbor porpoises at sea would vary with context such as social situation, sound propagation, and background noise levels.

NMFS uses 160 dB (rms) as the received sound pressure level for estimating the onset of Level B behavioral harassment takes for impulsive/intermittent sound sources, and this is currently considered the best available science while acknowledging that the 160 dB_{rms} step-function approach is a simplistic approach. While it may be true because of reverberation that impulsive pile driving strikes may “stretch” as their sound travels through the environment, we do not classify these sounds as continuous, like drilling and vibratory pile driving. NMFS’ behavioral harassment thresholds consider instantaneous exposure to noise and are based on a received level. These thresholds do not account for duration of exposure, as our PTS onset thresholds do. Thus, whether an individual was exposed to a few pile driving strikes or exposed for several hours of pile driving, the 160-dB threshold would still apply. While it is correct that in practice it works as a step-function (*i.e.*, animals exposed to received levels above the threshold are considered to be “taken” and those exposed to levels below the threshold are not), it is in fact intended as a sort of mid-point of likely behavioral responses, which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context. What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that appropriately considered take while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simplistic quantitative estimate of take while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

Overall, we reiterate the lack of scientific consensus regarding what criteria might be more appropriate. Defining sound levels that disrupt behavioral patterns is difficult because

responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (e.g., feeding, resting, or migrating), prior experience, and biological factors (e.g., age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.*, 2007; Ellison *et al.*, 2012; Southall *et al.*, 2021). For example, Gomez *et al.* (2016) reported that RL was not an appropriate indicator of behavioral response. Further, the seminal reviews presented by Southall *et al.* (2007), Gomez *et al.* (2016), and Southall *et al.* (2021) did not suggest any specific new criteria due to lack of convergence in the data. Undertaking a process to derive defensible exposure-response relationships, as suggested by Tyack and Thomas (2019), is complex. The recent systematic review by Gomez *et al.* (2016) was unable to derive criteria expressing these types of exposure-response relationships based on currently available data.

NMFS acknowledges that there may be methods of assessing likely behavioral responses to acoustic stimuli that better capture the variation and context-dependency of those responses than the simple 160 dB step-function used here; there is no agreement on what that method should be or how more complicated methods may be implemented by applicants. NMFS is committed to continuing its work in developing updated guidance with regard to acoustic thresholds but pending additional consideration and process, is reliant upon an established threshold that is reasonably reflective of best available science.

NMFS disagrees that vessel noise would result in take and, therefore, be necessary to include in the take calculations in this final rule. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 hertz (Hz) frequency range. Source levels range from about 140 to 195 decibels (dB) referenced to 1 (re 1) μ Pa (micropascal) at 1 m (National Research Council (NRC), 2003; Hildebrand, 2009), depending on factors such as vessel type, load, and speed, and vessel hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.*, 2012; McKenna *et al.*, 2012; Rolland *et al.*, 2012). As discussed in the Negligible

Impact Analysis and Determination section (specifically the *Auditory Masking or Communication Impairment* section) of both the proposed and final rule, the level of masking that could occur from the specified activities will have a negligible impact on marine mammals, including North Atlantic right whales. Inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the sound source are in close enough proximity for the effect to occur. In addition, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency). As our analysis (both quantitative and qualitative components) indicates, because of the relative movement of whales and vessels, as well as the stationary nature of a majority of the activities, we do not expect these exposures with the potential for masking to be of a long duration within a given day. Further, because of the relatively low density of North Atlantic right whales during months when most of project activities would be occurring (*i.e.*, May through November in most cases), and the relatively large area over which the vessels will travel and where the activities will occur, we do not expect any individual North Atlantic right whales to be exposed to potentially masking levels from these surveys for more than a few days in a year. Furthermore, as many of the activities are occurring in clusters and specific areas rather than sporadically dispersed in the Project Area (*i.e.*, foundation installation all occurs in the same general area, nearshore cable installation activities occur in relatively similar and nearby areas), animals are likely to temporarily avoid these locations during periods where activities are occurring but are expected to return once activities have ceased.

As noted above, any masking effects of the project's activities are expected to be limited in duration, if present. For HRG surveys, given the likelihood of significantly reduced received levels beyond short distances from the transiting survey vessel, the short duration of potential exposure, the lower likelihood of extensive additional contributors to background noise offshore and within these short exposure periods, and the fact that the frequency of HRG signals are primarily above those used in social communication or for detection of other important clues, we believe that the incremental addition of the survey vessel is unlikely to result in more than minor and short-term masking effects.

For pile driving and drilling, and especially foundation installation, masking effects are more likely given the larger zones and longer durations, and animals that approach the source could experience temporary masking of some lower frequency cues. However, any such effects would be localized to the areas around these stationary activities, which means that whales transiting through the area could adjust their transit away from the construction location and return once the activity has completed. As described in the "Potential Effects of the Activities on Marine Mammals" section of the proposed rule, NMFS acknowledges the noise contributions of vessels to the soundscape and the potential for larger vessels such as commercial shipping vessels, especially, to mask mysticete communication. For the activity as a whole, including the operation of supporting vessels for Avangrid's activities, any masking that might potentially occur would likely be incurred by the same animals predicted to be exposed above the behavioral harassment threshold, and thereby accounted for in the analysis. NMFS notes that the commenter did not provide additional scientific information for NMFS to consider to support its concern.

Comment 4: Commenter(s) recommended that NMFS should consider the best available data regarding North Atlantic right whale abundance in the project area, as well as the most comprehensive models for estimating marine mammal take and developing robust mitigation measures.

Response: The MMPA and its implementing regulations require that ITRs be established based on the best scientific evidence available. NMFS generally considers the information in the most recent U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments Report (SAR; Hayes *et al.*, 2023) to be the best scientific evidence available for a particular marine mammal stock because of the MMPA's rigorous SAR procedural requirements, which includes peer review by a statutorily established Scientific Review Group. Since publication of the proposed rule, NMFS has released the draft 2023 Stock Assessment Report indicating the North Atlantic right whale population abundance is estimated as 340 individuals based on sighting data through December 31, 2021 (89 FR 5495, January 29, 2024). NMFS has used the best scientific evidence available in the analysis of this final rule. This new stock abundance estimate, which is based on the analysis from Pace *et al.* (2017) and subsequent

refinements found in Pace (2021), provides the best scientific evidence available, and in this case, the most recent estimate, including improvements to NMFS's right whale abundance model. NMFS notes this estimate aligns with the 2022 North Atlantic Right Whale Report Card (Pettis *et al.*, 2022) estimate (also 340) based on sighting data through August 2022 but, as described above, the SARs are peer reviewed by other scientific review groups prior to being finalized and published and the Report Card is published independently by Consortium members without undertaking this peer review process. Based on this, NMFS has considered all relevant information regarding North Atlantic right whale, including the information cited by the commenters. However, NMFS has relied on the draft 2023 SAR in this final rule as it reflects the best scientific evidence available.

We further note that this change in abundance estimate does not change the estimated take of North Atlantic right whales or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Avangrid's construction activities.

NMFS evaluates the models used by applicants to support take estimates to ensure that they are methodologically sound and incorporate the best science available. NMFS also requires use of the Roberts *et al.* (2016, 2023) density data and SARs abundance estimates for all species, both of which represent the best scientific evidence available regarding marine mammal occurrence.

Comment 5: Commenter(s) stated that Level A harassment in the form of a Permanent Threshold Shift (PTS) would result in deafness and lead to mortality. It was also asserted that Level B harassment in the form of a TTS is temporary deafness which could result in an increased risk of vessel strike. Lastly, that NMFS has refused to acknowledge the lack of available data on low frequency cetacean hearing or potential behavioral impacts from noise on low frequency cetacean species.

Response: Neither the proposed rule or this final rule allow mortality or serious injury of marine mammals to be authorized. The best scientific evidence available indicates that the anticipated impacts from the specified activities potentially include avoidance, cessation of foraging or communication, TTS and PTS, stress, masking, *etc.* (as described in the Effects of the Specified Activities on Marine Mammals and their Habitat section in the proposed rule). NMFS defines a threshold shift as a change, usually an increase, in the threshold of audibility at a specified frequency or

portion of an individual's hearing range above a previously established reference level expressed in decibels (NMFS, 2018). Threshold shifts can be permanent (PTS), in which case there is an irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range or temporary, in which there is reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range and the animal's hearing threshold would fully recover over time (Southall *et al.*, 2019a). When PTS occurs, there can be physical damage to the sound receptors in the ear (*i.e.*, tissue damage) whereas TTS represents primarily tissue fatigue and is reversible (Henderson *et al.*, 2008). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.*, Ward, 1997; Southall *et al.*, 2019a). Therefore, NMFS does not consider TTS to constitute auditory injury or deafness as it is a temporary form of hearing impairment. Repeated sound exposure that leads to TTS could cause PTS. For this project, as stated in the proposed rule, no more than a small degree of PTS is expected to be associated with any of the incurred Level A harassment, given it is unlikely that animals would stay in the close vicinity of a source for a duration long enough to produce more than a small degree of PTS. PTS would consist of minor degradation of hearing capabilities occurring predominantly at frequencies one-half to one octave above the frequency of the energy produced by pile driving or instantaneous UXO/MEC detonation (*i.e.*, the low-frequency region below 2 kHz) (Cody and Johnstone, 1981; McFadden, 1986; Finneran, 2015), not severe hearing impairment. If hearing impairment occurs from either impact pile driving or UXO/MEC detonation, 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 stated in the proposed rule, NMFS acknowledges that there is limited data on threshold shifts in marine mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans. However, such relationships are assumed to be similar to those in humans and other terrestrial mammals. Noise exposure can result in either a permanent shift in hearing thresholds from baseline (PTS; a 40 dB

threshold shift approximates a PTS onset; *e.g.*, Kryter *et al.*, 1966; Miller, 1974; Henderson *et al.*, 2008) or a temporary, recoverable shift in hearing that returns to baseline (a 6 dB threshold shift approximates a TTS onset; *e.g.*, Southall *et al.*, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds, expressed in the unweighted peak sound pressure level metric (PK), for impulsive sounds (such as impact pile driving pulses) are at least 6 dB higher than the TTS thresholds and the weighted PTS cumulative sound exposure level thresholds are 15 (impulsive sound) to 20 (non-impulsive sounds) dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2019a). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, PTS is less likely to occur as a result of these activities, but it is possible and a small amount has been proposed for authorization for several species. For more detailed information on PTS and TTS, please see the Hearing Threshold Shift and Negligible Impact Determination sections of the proposed rule.

NMFS disagrees that the potential effects to species as a result of the project's specified activities would result in increased risk of vessel strikes. Please see our response to *Comment 8* for more details on the vessel strike avoidance requirements required by this final rule.

Comment 6: A commenter suggested that NMFS' low-frequency cetacean weighting function is inaccurate because it applies a 2-pole High-pass filter set at 200 Hz, while Southall *et al.* (2007) suggested moving the high-pass filter down to 7Hz. The commenter was also concerned that applying any weighting function underestimates the potential impacts on marine mammals because they claim applying a weighting function assumes that when hearing is less sensitive at the outer limits of the hearing range, the effects to the animal (potential for adverse impact) will be insignificant or non-existent unless inordinately loud. They also claimed that there is no empirical evidence that NMFS' weighting curve aligns with mysticetes infrasonic hearing. Further, they assert signal kurtosis was not accounted for in NMFS analysis and should be included in any predictive impact models. Commenter(s) also state that the spreading model is inadequate for modeling noise levels as it does not account for reflection off the water's surface or from other sources.

Response: The marine mammal weighting functions in NMFS' 2018 Revised Technical Guidance do not contain any filters. Furthermore, the Revised Technical Guidance provides generalized hearing ranges for marine mammal species, where the low-frequency cetacean lower bounds of the hearing range start at 7 kHz. These weighting functions are meant to reflect the hearing groups' susceptibility to noise-induced hearing loss and are based on audiogram data, as well as TTS data. Furthermore, for impulsive sources, there are peak sound pressure level criteria that are unweighted. Thus, impacts of noise on hearing will not be underestimated. For low-frequency cetaceans, since direct measurements of hearing ability are lacking, weighting functions are based on a multitude of information, including anatomical studies and modeling (Houser *et al.*, 2001; Parks *et al.*, 2007; Tubelli *et al.*, 2012; Cranford and Krysl 2015); vocalizations (see reviews in Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008); taxonomy; and behavioral responses to sound (Dahlheim and Ljungblad, 1990; see review in Reichmuth, 2007). Finally, kurtosis is an additional metric to determine if a sound is impulsive versus non-impulsive (*i.e.*, kurtosis is a measure of the "peakedness" of a noise waveform, with the impulsive components (Qiu *et al.*, 2020). As described in the proposed rule and NMFS' Technical Guidance (NMFS, 2018), NMFS applies different thresholds in an impact analysis for impulsive and non-impulsive sources. Impact pile driving is categorized as an impulsive sound. Thus, while kurtosis was not assessed directly, whether a sound is impulsive or non-impulsive is inherently considered in our analyses when assessing the potential for PTS (*i.e.*, deciding which acoustic thresholds are appropriate based on sound source characteristics that include a source's impulsiveness). Therefore, kurtosis (the impulsivity of a sound source) is accounted for in NMFS analysis.

Potential impacts to marine mammal nervous systems through exposure to sound were discussed in the proposed rule in the Potential Effects of Underwater Sound on Marine Mammals section. NMFS assumes that the reference to "injury-causing" SPL by the commenter is the potential for a permanent threshold shift (PTS).

NMFS disagrees that the spreading model is inadequate. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, which notably includes the frequency and directivity

of the source, water depth (or bathymetry), the reflective or absorptive nature of the seabed, and other factors. 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 ($20 \times \log[\text{range}]$). Spherical spreading can be thought of as a 'direct path' model, as all sound in the water column is assumed to have arrived via a direct path from the source. 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 ($10 \times \log[\text{range}]$). Both cylindrical spreading and the often used 'practical spreading' model are multi-path models, in that they account for sound which may consist of both direct paths and paths consisting of reflections from the seabed and the sea surface.

As described in the proposed rule, the area of water ensonified at or above the RMS 160-dB threshold was calculated using a simple model of sound propagation loss, which accounts for the loss of sound energy over increasing range. Our use of the spherical spreading model, is a reasonable approximation over the relatively short ranges involved. Even in conditions where cylindrical spreading (where propagation loss = $10 \times \log[\text{range}]$; such that there would be a 3-dB reduction in sound level for each doubling of distance from the source) may be appropriate (*e.g.*, non-homogenous conditions where sound may be trapped between the surface and bottom), this effect does not begin at the source. Rather, spreading is typically more or less spherical from the source out to some distance, and then may transition to cylindrical (Richardson *et al.*, 1995). Further, for these types of surveys, NMFS has determined that spherical spreading is a reasonable assumption even in relatively shallow waters, as the reflected energy from the seafloor will be much weaker than the more dominant, direct path energy. This is a result of the typically high-frequency and often downward directed nature of most HRG sources. Similar arguments, related to the validity of spherical spreading in shallow water for some HRG sources, have been made in literature (Ruppel *et al.*, 2022), and NMFS has relied on this approach for past ITAs with similar equipment, locations, and depths. NMFS' User Spreadsheet tool assumes a "safe distance" methodology for mobile

sources where propagation loss is spherical spreading (20LogR) (https://media.fisheries.noaa.gov/2020-12/User_Manual%20DEC_2020_508.pdf?null), and NMFS calculator tool for estimating isopleths to Level B harassment thresholds also incorporates the use of spherical spreading. NMFS has determined that spherical spreading is the most appropriate form of propagation loss for these surveys and represents the best scientific information available.

Comment 7: Commenter(s) stated that auditory injury can occur below the PTS threshold and could occur below the TTS threshold. Further, that noise levels that did not manifest in PTS soon after an exposure event could cause irreversible neural damage in mammals after repeated or cumulative exposure. They also stated that the threshold for tissue injury has been found to occur at lower threshold than the threshold for TTS onset (Houser, 2021). NMFS' nearly singular focus on PTS distance (distance from activity at which partial or full permanent deafness will be induced in the whale) as the only indicator of "take" (premature death or reproductive failure affecting the population) is not reasonable. NMFS has no empirically derived direct measure of thresholds for PTS harm, but rather PTS is modeled from (limited) TTS data. NMFS is inappropriately defining "harm" to low-Frequency baleen whales as NMFS does not have any empirically-determined benchmark for what is the injury-causing sound pressure level (SPL) against which to measure the proposed activities.

Response: NMFS's TTS thresholds represent an onset of noise-induced hearing loss (*i.e.*, 6 dB threshold shift) and are 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). There have been no indications that in marine mammals TTS occurs below our current thresholds. Furthermore, as Houser 2021 indicates "There are relatively few studies demonstrating that TTS can be associated with the destruction of tissue. To date, relevant studies have only been performed in terrestrial laboratory animals." Studies on terrestrial mammals indicating neuropathy from noise exposure are associated with threshold shifts of 40 to 50 dB. Finally, PTS is defined as a threshold shift that does not fully recover back to baseline levels. It should not be assumed that an animal with PTS is deaf.

As stated in the proposed rule and reiterated here, there are no PTS data available for cetaceans and only one instance of PTS being induced in older harbor seals (Reichmuth *et al.*, 2019). However, available TTS data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds (Southall *et al.*, 2007; NMFS, 2018; Southall *et al.*, 2019)) suggest that most threshold shifts occur in the frequency range of the source up to one octave higher than the source. We would anticipate a similar frequency range affected for PTS. Further, no more than a small degree of PTS is expected to be associated with any of the incurred Level A harassment, given it is unlikely that animals would stay in the close vicinity of a source for a duration long enough to produce more than a small degree of PTS. More information on PTS and TTS–PTS shift can be found in the “Negligible Impact Analysis and Determination” and the “Potential Effects of Underwater Sound on Marine Mammals” sections in the proposed rule. Furthermore, NMFS also relies on our behavioral harassment thresholds to assess potential effects occurring below levels associated with PTS and TTS. For information on the 160 dB threshold (onset of Level B behavioral harassment), please see our response to *Comment 3*. For more information related to PTS, please see our response to *Comment 5*.

Mitigation

Comment 8: Commenter(s) requested NMFS add to or modify the vessel strike avoidance mitigation measures contained within the proposed rule. Recommendations included “strengthening vessel speed restrictions”, and if weather or other conditions limit the range of observation, shutdown zones (including for transiting vessels) will be initiated keeping 500 meters (m) away from North Atlantic right whale. A commenter also incorrectly claimed that vessel speed restrictions are not fully mandated or enforced for offshore wind vessels.

Response: NMFS acknowledges that vessel strikes pose a risk to all large whales, including North Atlantic right whales and the proposed rule and this final rule require multiple mitigation measures to effect the least practicable adverse impact from vessels on marine mammals. These measures are more restrictive than other industrial, commercial, military, and recreational vessels. All transiting vessels (regardless of speed or size) are required to have a dedicated visual observer watching for marine mammals. In the event a marine mammal is observed under certain

circumstances, the vessel must slow to 10 kn or less or, if within separation zones (which are encoded in regulation (62 FR 6729, March 17, 1997) or follow marine mammal viewing guidelines), turn away from and slow engines to neutral. In any SMA, DMA, Slow Zone (the latter two of which are currently voluntary for other vessels), Avangrid must operate vessels at 10 kn or less. Further, between November 1 and April 30, all vessels, regardless of size, in the specified geographical region must operate at 10 kn or less (11.5 mph). NMFS has determined it is impracticable for all vessels to travel 10 kn or less at all times and is not necessary to achieve the least practicable adverse impact given the mitigation discussed above. As described above, in many cases, there are no alternatives to the 10 kn or less speed restriction. However, NMFS has determined that when whales are less likely to be in the area and visual and acoustic monitoring is conducted, Avangrid vessels could travel at over 10 kn. NMFS has determined that the monitoring required, including both direct marine mammal monitoring and situational awareness monitoring and reporting, are sufficient to allow Avangrid vessels to travel at speeds greater than 10 kn when vessel strike risk is lowest when not subjected to the previously described restrictions.

In this final rule, NMFS is requiring that all vessels associated with Avangrid’s activities must be equipped with a properly installed, operational Automatic Identification System (AIS) device and Avangrid must report all Maritime Mobile Service Identify (MMSI) numbers to NMFS Office of Protected Resources, thus facilitating monitoring of vessel speeds. In addition, NMFS maintains an Enforcement Hotline for members of the public to report violations of vessel speed restrictions. NMFS is not requiring PSOs to be onboard every transiting vessel as it is impracticable due to potential limited space on the vessels. However, as described in the proposed rule and carried forward in this final rule, Avangrid must have dedicated visual observers onboard all vessels with no other concurrent duties. The dedicated visual observer may be a PSO or a trained crew member.

Avangrid provided information pertaining to the types and number of vessels necessary to construct the project. They are also required to submit a Marine Mammal Vessel Strike Avoidance Plan, which must include, but is not limited to, more detail on ports used and means by which they would abide by the extensive measures

outlined here. While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for vessel strike resulting from Avangrid’s activity and, in consideration of the required mitigation measures specific to vessel strike avoidance included in the final rule NMFS has determined that the potential for vessel strike is so low as to be discountable and thus, no vessel strikes are expected or authorized to occur. These measures also ensure the least practicable adverse impact on species or stocks and their habitat.

Comment 9: Commenter(s) asserted an independent review of mitigation measures should be required due to limitations associated with visual monitoring and PAM.

Response: The MMPA does not require an independent review of mitigation measures. In contrast, it does require notice and opportunity for public comment (16 U.S.C. 1371(a)(5)(A)(i)). The public comment period is a means by which the public (*i.e.*, independent reviewers) are able to provide NMFS with mitigation measure recommendations supported by scientific evidence that NMFS takes into consideration when finalizing the rulemaking.

Comment 10: Commenter(s) recommended clarification should be included in the LOA that explicitly states if a shutdown would be initiated as a result of weather or other conditions that limit the range of observation.

Response: The comment refers to a 500-m shutdown zone for North Atlantic right whales; therefore, NMFS assumes the recommendation is referring to HRG surveys, a low impact activity. As described in the proposed rule and this final rule, PSOs are required to monitor the shutdown zone during operations. During periods of low visibility, alternative monitoring technology (*i.e.*, infrared or thermal cameras) must be used to monitor these zones. This final rule clarifies that when the shutdown zones become obscured for brief periods (no more than 30 minutes) due to inclement weather, survey operations may continue (*i.e.*, no shutdown is required) so long as no marine mammals have been detected. Further, the shutdown requirement is waived for certain genera of small delphids. As noted above, take of marine mammals from HRG surveys is limited overall, take by Level B harassment only is expected to occur only within a small area in close proximity to the vessel, and no Level A harassment is expected to result from exposure to the surveys even in the

absence of mitigation. There is a low likelihood that short periods of obscured visibility might potentially coincide with a marine mammal entering the shutdown zone, and a shutdown not occurring. While such an event may result in a higher level exposure than would occur if the shutdown happened, such an exposure would still not be expected to result in a Level A take and would be brief and not change the number of takes or our evaluation of their likely effects, which again, are expected to be comparatively minor. Additionally, the frequent delay and/or cessation of HRG surveys creates operational challenges and impracticalities for applicants. Altogether, the required measures affect the least practicable adverse impact on the affected species.

Comment 11: Commenter(s) recommended that NMFS require mitigation measures that meet the least practicable adverse impact standard (e.g., impacts of underwater noise be minimized to the fullest extent feasible) coupled with a robust monitoring and reporting program to ensure compliance.

Response: As described in both the proposed rule and this final rule, NMFS has included requirements for mitigation measures that effect the least practicable adverse impact on marine mammal species or stocks and their habitat, as required under the MMPA (16 U.S.C. 1371(a)(5)(A)(i)(II)). As they relate to underwater noise, the mitigation measures include sound attenuation methods that successfully (evidenced by required sound field verification measurements) reduce real-world noise levels produced by impact pile driving, vibratory pile driving, and drilling of foundation installation to, at a minimum, the levels modeled assuming 10 dB of attenuation. NMFS clarifies that, because no unattenuated piles may be driven, there is no way to confirm a 10-dB reduction; rather, in situ SFV measurements will be conducted to ensure that sound levels are at or below those modeled assuming a 10-dB reduction. In addition to the SFV requirements in the proposed rule, consistent with the Biological Opinion (BiOp), we added to this final rule the requirement that Avangrid must conduct “Abbreviated SFV” monitoring (consisting of a single acoustic recorder placed at an appropriate distance from the pile) on all foundation installations for which the complete SFV monitoring (i.e., “Thorough SFV”), as required in the proposed rule, is not carried out. NMFS is requiring that these SFV results must be included in the weekly reports. Any indications that distances

to the Level A harassment and Level B harassment thresholds for whales are exceeded must be addressed by Avangrid, including an explanation of factors that contributed to the exceedance and corrective actions that were taken to avoid exceedance on subsequent piles.

NMFS has required numerous monitoring and reporting requirements which result in a robust compliance program.

Effects Assessment

Comment 12: Several commenters disagreed with NMFS’ negligible impact determination, particularly for North Atlantic right whale. These comments included assertions that NMFS did not consider the imperiled population status of North Atlantic right whale; NMFS did not evaluate the cumulative effects of all projects (such as offshore wind construction and operational noise, underwater noise, and site characterization surveys and baseline background levels of ambient noise which result in stress); NMFS did not meaningfully examine the effects of the loss of communication space on marine mammals and, further, seems to misapprehend the spatial and temporal scope of the effects (e.g., masking, disruption to courtship and mating behaviors, foraging/feeding, and TTS, etc.); that NMFS did not adequately assess the impact of behavioral disruption on feeding and similar behaviors resulting in decreased body condition nor the asserted increased risk of mortality from TTS; that any effect to the small number of breeding females can adversely affect fecundity and imperil the species; that NMFS has not used the best available science when reaching its NID by using the 160-dB threshold; and that NMFS did not consider whether abandonment of habitat that was designated with the express purpose of preventing vessel strikes would push the species further into a vessel traffic corridor, thereby elevating the risk to the species nor evaluated all the risks to North Atlantic right whale by habitat displacements as sublethal take has can a measurable effect due to the small population.

Response: NMFS is required to authorize the requested incidental take if it finds the total incidental take of small numbers of marine mammals by U.S. citizens “while engaging in that (specified) activity” within a specified geographical region during the 5-year period (or less) will have a negligible impact on such species or stock and, where applicable, will not have an unmitigable adverse impact on the availability of such species or stock for

subsistence uses (16 U.S.C. 1371(a)(5)(A)). Negligible impact is defined 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 effect on annual rates of recruitment or survival” (50 CFR 216.103). Consistent with the preamble of NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are factored into the baseline, which is used in the negligible impact analysis. Here, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (e.g., as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors).

The preamble of NMFS’ implementing regulations also addresses cumulative effects from future, unrelated activities. Such effects are not considered in making the negligible impact determination under MMPA section 101(a)(5). NMFS considers: (1) cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis; and (2) reasonably foreseeable cumulative effects under section 7 of the ESA for ESA-listed species, as appropriate. Accordingly, NMFS has adopted and reviewed BOEM’s EIS and as part of its inter-agency coordination. This EIS addresses cumulative impacts related to the Project and substantially similar activities in similar locations. Cumulative impacts regarding the promulgation of the regulations and issuance of a LOA for construction activities planned by Avangrid, have been adequately addressed in the adopted EIS that supports NMFS’ determination that this action has been appropriately analyzed under NEPA. Separately, the cumulative effects of the Project on ESA-listed species, including the North Atlantic right whale, were analyzed under section 7 of the ESA when NMFS engaged in formal inter-agency consultation with the NOAA Greater Atlantic Regional Field Office (GARFO). The BiOp for the Project determined that NMFS’ promulgation of the rulemaking and issuance of an LOA for construction activities, individually and cumulatively, are likely to adversely affect, but not jeopardize, listed marine mammals.

NMFS disagrees that our negligible impact determination is flawed or not supported. NMFS fully disclosed the imperiled status of North Atlantic right whales in the Description of Marine

Mammals in the Area of Specified Activity section of the proposed rule. The proposed rule, as well as this final rule by reference, fully explains the impacts to North Atlantic right whales is expected to be limited to low-level behavioral harassment (e.g., temporary avoidance or cessation of foraging). The proposed rule also described the Potential effects of behavioral disturbance on marine mammal fitness and that, based on the best available science, behavioral disturbance resulting from the specified activities is not expected to impact individual animals' health or have effects on individual animals' survival or reproduction, thus no detrimental impacts at the population level are anticipated. The commenters do not provide scientific evidence that suggests otherwise. Specifically, the commenters did not provide evidence that any effect to a breeding female would result in reduced fecundity.

Commenters suggested NMFS did not meaningfully evaluate loss of communication space; however, the Effects on Marine Mammals and Their Habitat in the proposed rule contained an analysis on the impacts of masking both in general and from the specified activities. NMFS also disagrees that TTS would result in increased risk of mortality. TTS was fully described in the Potential Effects of Underwater Sound on Marine Mammals and Potential Effects of Disturbance on Marine Mammal Fitness in the proposed rule. NMFS does not anticipate nor authorize serious injury or mortality of any marine mammal species for the specified activities.

NMFS acknowledges that whales may temporarily avoid the area where the specified activities occur. However, NMFS does not anticipate, based on the best available science, that whales will abandon their habitat, as suggested by a commenter, or be displaced in a manner that would result in a higher risk of vessel strike, and the commenter does not provide evidence that either of these effects should be a reasonably anticipated outcome of the specified activity. The primary activity that is anticipated to result in temporary avoidance of the otherwise used habitat is foundation installation pile driving and drilling. Not only would this activity be limited to times of year when North Atlantic right whale presence is low, pile driving and drilling would be intermittent, and only occur for a limited time over the course of 2 or 3 years (depending on schedule type). Together, these factors further reduce the likelihood that this species would be in close enough proximity to the activity

to engage in avoidance behavior to the degree it would move into an area of risk (which would be closer to shore) that it could be struck by another vessel.

For NMFS' response on the use of the 160-dB threshold, please see our response to *Comment 3*.

Comment 13: Commenter(s) questioned the validity of NMFS small numbers analysis on the basis that the numbers do not account for the cumulative take numbers from previous, ongoing, or potential projects.

Response: NMFS has provided a reasoned approach to small numbers, as described in the "Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico" final rule (86 FR 5322 at 5438, April 19, 2021). Utilizing that approach, NMFS has made the necessary small numbers finding for all affected species and stocks in this case (see Small Numbers section for more detail). Neither the MMPA nor our implementing regulations require the small numbers analysis to consider take from previous, ongoing, or potential projects.

Comment 14: Commenters suggested NMFS failed to account for the cumulative (or additive) impacts on marine mammal species in the analysis and that NMFS should evaluate the cumulative impacts of ongoing and future OSW projects rather than evaluating projects individually, including that NMFS must consider the total number of takes proposed to be authorized across all wind projects. They suggested that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed, and potential activities on marine mammals, including North Atlantic right whales, and ensure that the cumulative effects are not excessive before issuing a LOA.

Response: Neither the MMPA nor NMFS' implementing regulations call for consideration of the take resulting from other specified activities in the negligible impact analysis. The preamble to NMFS' implementing regulations (54 FR 40338, September 29, 1989) states, in response to comments, that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (e.g., as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors). The

1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There, NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this ITR, as well as other ITRs currently in effect or proposed within the specified geographical region are appropriately considered an unrelated activity relative to the others. The ITRs are unrelated in the sense that they are discrete actions under section 101(a)(5)(A) issued to discrete applicants. Section 101(a)(5)(A) of the MMPA requires NMFS to make a determination that the take incidental to a "specified activity" will have a negligible impact on the affected species or stocks of marine mammals.

NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals, 50 CFR 216.104(a)(1). Thus, the "specified activity" for which incidental take coverage is being sought under section 101(a)(5)(A) is generally defined and described by the applicant. Here, Avangrid was the applicant for the ITR, and we are responding to the specified activity as described in that application and making the necessary findings on that basis.

Through the response to public comments in the 1989 implementing regulations (54 FR 40338, September 29, 1989), NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for listed species, as appropriate. Accordingly, NMFS has adopted an EIS written by BOEM and reviewed by NMFS as part of inter-agency coordination. This EIS addresses cumulative impacts related to the Project and substantially similar activities in similar locations. Cumulative impacts regarding the promulgation of the regulations and issuance of a LOA for construction activities, such as those planned by Avangrid, have been adequately addressed under NEPA in the adopted EIS that supports NMFS' determination that this action has been appropriately analyzed under NEPA. Separately, the cumulative effects of the Project on ESA-listed species, including North Atlantic right whales, was analyzed under section 7 of the ESA when NMFS engaged in formal inter-agency

consultation with GARFO. The BiOp for the Project determined that NMFS' promulgation of the rulemaking and issuance of a LOA for construction activities associated with leasing, individually and cumulatively, are likely to adversely affect, but not jeopardize, listed marine mammals.

Comment 15: Commenter(s) claimed the request for an ITA should be denied alleging the specified activities kill marine mammals and some commenters suggested that the ongoing whale UMEs, including the whale deaths occurring in the winter of 2022–2023, are linked with ongoing offshore wind survey work (*i.e.*, HRG surveys). One commenter claimed the burden of proof is on NMFS to prove, with evidence, that there is no association between HRG surveys and whale injuries, including “rectified diffusion”, deaths or otherwise assume that offshore wind activity has contributed to these deaths. A commenter also asserted that the activities covered by the ITR and associated LOA are reasonably likely to result in Level A take of North Atlantic right whales that are not covered by the authorization's terms.

Response: Neither the proposed rule or this final rule allow mortality or serious injury of marine mammals to be authorized. The best available science indicates that the anticipated impacts from the specified activities potentially include avoidance, cessation of foraging or communication, TTS and PTS, stress, masking, *etc.* (as described in the Effects of the Specified Activities on Marine Mammals and their Habitat section in the proposed rule). NMFS emphasizes that there is no evidence that noise resulting from offshore wind development-related specified activities would cause marine mammal strandings, and there is no evidence linking recent large whale mortalities and currently ongoing offshore wind activities. The commenters offer no such evidence or other scientific information to substantiate their claim. This point has been well supported by other agencies, including BOEM and the Marine Mammal Commission (Marine Mammal Commission Newsletter, Spring 2023).

There is an ongoing UME for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016, and we provide further information on the humpback UME in the humpback whale subsection in the Description of Marine Mammals in the Specified Geographical Region section of this final rule. Partial or full necropsy examinations were conducted on approximately half of the whales that

recently stranded along the U.S. east coast. Necropsies were not conducted on other carcasses because they were too decomposed, not brought to land, or stranded on protected lands (*e.g.*, national and state parks) with limited or no access. Of the whales examined (roughly 90), about 40 percent had evidence of human interaction, either ship strike or entanglement. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. The remaining 50 necropsied whales either had an undetermined cause of death (due to a limited examination or decomposition of the carcass) or had other causes of death including parasite-caused organ damage and starvation. The best available science indicates that only Level B harassment, or disruption of behavioral patterns (*e.g.*, avoidance), may occur as a result of the Project's HRG surveys. NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity.

The proposed rule and this final rule state that no take of North Atlantic right whales by Level A harassment, mortality, or serious injury was requested or proposed for authorization (see the Estimated Take and Negligible Impact Analysis and Determination sections), and they are not expected based on the best available science.

One commenter cited literature as evidence that seismic surveys in the mid to low frequency range can injure whales, can cause decompression sickness (the bends) and can cause rectified diffusion. The Fernandez (2005) paper cited refers to pathology results from necropsies conducted on beaked whales involved in a mass stranding event in the Canary Islands following high intensity military training exercises involving numerous surface warships and several submarines and mid-frequency tactical sonar activities. NMFS acknowledges the effects of these activities described by the commenter are known; however, the activities in that paper are not analogous to HRG surveys that would be conducted by Avangrid to construct the Project, and the information presented by the commenter is not applicable due to many factors (*e.g.*, pile driving is stationary, versus the sound sources cited, and HRG surveys utilize a much lower source level).

Comment 16: Commenter(s) recommended NMFS consider the impacts of structure presence and operations, including those from operational turbine noise on marine mammals as well as ocean mixing and

vibrations on phytoplankton, zooplankton, and the food chain. Commenter(s) suggested that NMFS did not evaluate the long-term operational and maintenance impacts of the project on marine mammals and ignored the best available science demonstrating behavioral impacts to marine mammals from operational turbines; therefore, NMFS' small numbers and negligible impact findings are arbitrary and capricious.

Response: In the proposed rule, NMFS considered the impacts to marine mammals from operational noise and to their habitat, including prey, from the presence of structures and operations based on the best available science. In this final rule, NMFS has supplemented that analysis with new scientific information that has become available regarding these issues since publishing the proposed rule. This new information does not change our findings. The commenter did not provide scientific evidence that suggests the analysis within the proposed rule was unsupported. NMFS has fully evaluated the potential impacts of both issuing this final rule on marine mammals over the five year effective period of this rulemaking and the potential impacts from long-term operations via the BiOp. We refer the reader to the Effects of the Specified Activities on Marine Mammals and Their Habitat section and the Negligible Impact Determination section in the proposed and this final rule for further details.

Other

Comment 17: Commenter(s) requested that NMFS consideration of LOAs for offshore wind developers be applied equitably across industries (*e.g.*, fishing industry) and that there be a clear threshold for OSW-related takes regionally and across project phases. In addition, the OSW industry must be held accountable for incidental takes from construction and operations separately from the take authorizations for managed commercial fish stocks. Commenters) also asserted the OSW industry must be held accountable for their impacts on marine mammals as other industries are (*e.g.*, seasonal closures on fisheries, marine mammal entanglements).

Response: NMFS considers all ITA requests equally, all takes and regulatory measures are project-specific. NMFS carefully reviews models and take estimate methodology to authorize a number of takes, by species and manner of take that is a likely outcome of the Project. There are several conservative assumptions built into the models to ensure the number of takes

authorized is sufficient based on the description of the Project. Therefore, takes authorized, being specific to a project, are managed separately than takes associated with any other project or industry. Avangrid would be accountable to the measures described in their ITA that were set to achieve “the least practicable impact on such species or stock and its habitat”. These include mitigation, monitoring, and reporting measures (e.g., seasonal closures, gear-specific mitigation measures to avoid entanglements, *etc.*).

Avangrid would be required to submit frequent reports which would identify the number of takes applied to the Project. In the unexpected event that Avangrid exceeds the number of takes authorized for a given species, the MMPA and its implementing regulations state that NMFS shall withdraw or suspend the LOA issued under these regulations, after notice and opportunity for public comment, if it finds the methods of taking or the mitigation, monitoring, or reporting measures are not being substantially complied with, or the taking allowed is having, or may have, more than a negligible impact on the species or stock concerned (16 U.S.C. 1371(a)(5)(B); 50 CFR 216.206(e)). Additionally, failure to comply with the requirements of the LOA may result in civil monetary penalties and knowing violations may result in criminal penalties (16 U.S.C. 1375; 50 CFR 216.206(g)).

Moreover, as noted previously, fishing impacts, and NMFS assessment of them, generally center on entanglement in fishing gear, which is a very acute, visible, and severe impact (*i.e.*, mortality or serious injury). In contrast, the impacts incidental to the specified activities are primarily acoustic in nature and limited to Level A harassment and Level B harassment, there is no anticipated or authorized serious injury or mortality that the fishing industry could theoretically be held accountable for. Any take resulting from the specified activities would not be associated with take authorizations related to commercial fisheries. Neither the MMPA nor our implementing regulations require NMFS to analyze impacts to other industries (e.g., fisheries) from issuance of an ITA pursuant to section 101(a)(5)(A). We note that the New England Wind Final EIS assesses the impacts of both BOEM and NMFS’ actions (approving Avangrid’s activities and authorizing the associated take of marine mammals, respectively) on the human environment, including to fisheries, and NMFS considered the analysis, as appropriate, in the final decisions under

the MMPA. The impacts of commercial fisheries on marine mammals and incidental take for said fishing activities are managed separately from those of non-commercial fishing activities such as offshore wind site characterization surveys, under MMPA section 118.

Comment 18: Commenter(s) questioned what will happen if incidental take is exceeded, and the implications of it.

Response: In the unlikely scenario that Avangrid exceeds their authorized take levels, any further take would be unauthorized and therefore, prohibited under the MMPA. Avangrid could request additional incidental take of marine mammals from their specified activities. This would require NMFS to reanalyze its small numbers and negligible impact determinations and may require reinitiation of the BiOp and supplemental NEPA analysis depending on the specific facts.

Comment 19: Commenter(s) expressed concern about NMFS’ ability to conduct marine mammal assessment aerial surveys would be detrimentally impacted as a result of offshore wind structures, thus impacting NMFS’ ability to continue using current methods to fulfill its mission of precisely and accurately assessing and managing protected species.

Response: NMFS and BOEM have collaborated to establish the “Federal Survey Mitigation Strategy for the Northeast U.S. Region” (Hare *et al.*, 2022). This interagency effort is intended to guide the development and implementation of a program to mitigate impacts of wind energy development on fisheries surveys. For more information on this effort, please see <https://repository.library.noaa.gov/view/noaa/47925>.

Changes From the Proposed to Final Rule

Since the publication of the proposed rule in the **Federal Register** (88 FR 37606, June 8, 2023), NMFS has made changes, where appropriate, in response to public comments and new information provided by Avangrid that are reflected in the regulatory text and preamble text of this final rule. Specifically, as described above, Avangrid refined and updated their acoustic modeling for foundation installation activities since the proposed rule which resulted in changes to the exposure estimates and requested take. These changes are briefly identified below, with more information included in the indicated sections of this final rule:

Changes in Information Provided in the Preamble

The information found in the preamble of the proposed rule was based on the best available information at the time of publication. Since publication of the Proposed Rule, new information has become available, which has been incorporated into this final rule as discussed below.

The following change was made throughout the final rule:

At the request of Park City Wind and consent of Avangrid, references to Park City Wind were replaced with Avangrid and lease number OCS-A 0561 was added, where appropriate, since lease area OCS-A-0534 was segregated.

The following changes were made to the Purpose and Need for Regulatory Action section of the preamble to this final rule:

We have added regulatory definitions under Legal Authority for the Final Action for ease of reference.

The following changes were made to the Summary, Summary of Request and Description of the Specified Activity sections of the preamble to this final rule:

We have included OCS-A 0561 as Avangrid segregated the OCS-A 0534 lease area in to two parts: OCS-A 0534 encompasses phase 1 and 0561 encompasses phase 2.

The following changes are reflected in the Description of Marine Mammals in the Specified Geographical Region section of the preamble to this final rule:

NMFS clarified the boundaries of the specified geographical region such that the Mid-Atlantic Bight is defined as from Cape Hatteras, North Carolina to Cape Cod, Massachusetts and extending into the western Atlantic to the 100-m isobath.

Given the release of NMFS’ draft 2023 stock assessment reports (SARs; 89 FR 5495, January 29, 2024), we have updated the population estimate used in the proposed rule (Hayes *et al.*, 2023) for the North Atlantic right whale (*Eubalaena glacialis*) from 338 to 340 and the total mortality/serious injury (M/SI) amount from 8.1 to 27.2. This increase is due to the inclusion of undetected M/SI (whereas 8.1 accounted only for detected M/SI). As stated in the 2023 draft SARs, the use of the refined methods of Pace *et al.* (2021), the estimated annual rate of total mortality of adults and juveniles for the period 2016–2020 was 27.2, which is over 3 times larger than the 8.1 total derived from reported mortality and serious injury for the same period.

We have also made updates to the UME summaries for North Atlantic right

whales, humpback whales, minke whales, and phocid seals (pinnipeds).

The following changes are reflected in the Estimated Take, Mitigation, and Monitoring and Reporting sections the preamble to this final rule:

NMFS received a number of modeling and density updates from the applicant since the proposed rule, which resulted in associated changes in the size of harassment zones, take numbers, and mitigation zones. As a result of the updated and refined modeling, we have updated the methods by which distances to NMFS harassment thresholds were estimated, the distances to NMFS harassment thresholds, the exposure estimates based on the updated acoustic modeling, and requested and allowable take amounts (which, generally speaking, went down as a result of these modeling refinements). NMFS notes that there were no changes to the number of foundations, construction schedule, or the assumption of 10 dB of noise attenuation as described in the proposed rule. The modeling and density changes are briefly listed here and described in more detail below:

- Upgraded, more refined take estimation modeling of vibratory pile driving, to reflect that which was presented in the proposed rule for impact pile driving (with animats). The revised modeling for vibratory setting of piles (followed by impact pile driving) replaced the practical spreading loss approach with acoustic modeling; and exposures for impact pile driving and vibratory setting were updated using animal movement modeling. This resulted in a notable reduction in exposure ranges and takes by Level B harassment.

- Upgraded sound source propagation modeling of the impact pile driving source, which resulted in little change in take or mitigation zones. The acoustic modeling was upgraded for impact piling as the previous energy-based parabolic equation model used to compute the near-field equivalent source before long range propagation was revised after the proposed rule using JASCO's Full-Wave PE RAM model (FWRAM) to compute the near-field equivalent source before the long-range propagation was computed (also using FWRAM).

- Upgraded sound source propagation modeling of the drilling activity (in lieu of 15 logR spreading), which resulted in some minor reductions in take. The acoustic updated modeling completed for drilling replaced the previous practical spreading loss approach; exposures were calculated by

multiplying the zone of influence (ensonified area) by density.

- Improvements to the apportionment of species takes within species guilds (pilot whales, seals). Updates were made by the applicant to guilded species densities for vibratory setting followed by impact pile driving, impact pile driving alone, and drilling.

- An update to the model assumptions for high frequency species (harbor porpoise). This change reduced the exposure ranges and, subsequently, amount of takes by harassment.

Following the proposed rule, new modeling was performed for vibratory pile driving which replaced the previous practical spreading loss approach that defined the distance to Level B harassment as 50 kilometer (km). For the final rule, acoustic modeling was completed for vibratory setting of piles followed by impact driving, and exposures were modeled using animal movement modeling (animat), mirroring the method described in the proposed rule for impact pile driving. In general, the animat modeling resulted in the exposure distance to Level B harassment per species decreasing (most species' distance to the Level B harassment threshold were around 25 km) and, as marine mammals densities were applied depending on the exposure range using the 95th percentile exposure range (ER_{95%}), exposure estimates and takes decreased. Instead of using a broad 50-km distance for estimating exposure and marine mammal density, such as was done in the proposed rule, the exposure estimates and take applied the marine mammal densities at 10 km, 25 km, or 50 km, using the using the next highest density match to the exposure range. For example, if the ER_{95%} was 8.5 km, the 10 km perimeter would be used. These revisions to the more refined modeling methods of estimating take for vibratory pile driving resulted in notable reductions in the Level B take estimates. The primary model refinement that resulted in the majority of the reduction in exposures and take in this final rule was from this change in vibratory pile driving modeling.

Following the proposed rule, the modeling methodology for impact pile driving was refined. In the prior modeling for impact pile driving, an energy-based parabolic equation (PE) model (JASCO's MONM) was used to compute the near-field equivalent source before long range propagation. For the final rule, JASCO's Full-Wave PE RAM model (FWRAM) was used to compute the near-field equivalent source before the long-range propagation was computed (also using

FWRAM). FWRAM is an improvement because it calculates full synthetic pressure waveforms (in the time domain), as opposed to summed energy independent of time. Like MONM, FWRAM is range dependent for range-varying marine acoustic environments and takes environmental inputs (bathymetry, water sound speed profile, and seabed geoaoustic profile) into account. FWRAM computes pressure waveforms via Fourier synthesis of the modeled acoustic transfer function in closely spaced frequency bands, and employs the array starter method to accurately model sound propagation from a spatially distributed source (MacGillivray and Chapman 2012). Ultimately, little difference was observed between the prior sound fields with near-field equivalents computed using MONM versus the current modeling with FWRAM, though FWRAM is expected to be a more accurate model.

As part of the above modeling updates to impact pile driving and vibratory pile driving followed by impact pile driving (MONM to FWRAM modeling), changes resulted in the exposure ranges for high-frequency cetaceans (harbor porpoise). PE based models such as MONM and FWRAM are particularly well suited for modeling the propagation of low frequency sounds, such as impact pile driving, but are limited in terms of the total and upper frequency range they can accurately and efficiently model (Etter, 2012). For this reason, propagation must be modeled to some upper cut-off frequency. Beyond this frequency, a linear extrapolation (or roll-off) can be assumed in order to extend the results to higher frequencies. The slope of this roll-off is based on measured pile driving data and chosen to be conservative. Selection of a proper upper cut-off frequency depends on available computational resources, as well as the specific implementation of the PE method of a particular model (Laws, 2013). Because of this, and inherent differences of the two modeling methodologies, the cut-off used in the original modeling for the proposed rule was 300 Hz, while the cut-off in the revised model is 1,000 Hz. Therefore, the new modeling represents a more accurate methodology for frequencies between 300 and 1,000 Hz, as full propagation modeling is performed in this frequency range, rather than an approximate extrapolation (or roll-off). Both modeling approaches produce the same results at low frequencies where pile driving sound is dominant, but since the conservatively chosen roll-off started at

300 Hz, there is more higher frequency energy in the original model than in the revised model. For this reason, the two approaches produce similar results for low-frequency cetaceans, but the revised modeling results in substantially different exposure ranges for high-frequency cetaceans. Following the proposed rule, new modeling was performed for drilling which replaced the previous practical spreading loss approach that defined the distance to Level B harassment as 16.6 km. For the final rule, acoustic modeling was completed for drilling and exposures were calculated by multiplying the zone of influence (ensonified area) by density. Rather than using practical spreading, sound propagation is modeled using a combination of an energy-based parabolic equation (PE) model (JASCO's MONM) at frequencies up to 1 kHz, and the BELLHOP ray tracing model (Porter and Liu 1994) from 1 to 25 kHz. BELLHOP is a widely used Gaussian beam ray-trace propagation model, which incorporates bathymetry, sound speed profiles, and a simplified representation of the sea bottom; as sub-bottom layers have a negligible influence on the propagation of acoustic waves with frequencies above 1 kHz. Sound attenuation due to seawater absorption was included, which can be important for frequencies greater than 5 kHz. The drill was approximated as a point source located at mid-water depth. Further details regarding MONM are provided below, in the context of pile driving. The density perimeter was determined using the longest 10-dB attenuated 95th percentile acoustic range to the behavioral threshold ($R_{95\%}$) for all locations, rounded up to the nearest 5 km, and then applied around the entire lease area (*i.e.*, 7.1 km rounded up to 10 km). This new approach is expected to more accurately capture the spatial extent of the sound fields, as it includes an updated source level (191.6 dB) as well as more sophisticated propagation modeling which accounts for bathymetry, sound speed profiles, interaction with the seabed, and seawater absorption. This refinement in the drilling model also resulted in some minor reductions in exposure and take. Further details can be found in the *Modeling and Take Estimates* section.

In order to better reflect available species data specific to the area, we have also updated the methodology for estimating take for species combined into one guild in the Roberts *et al.* density models (harbor seals, grays seals, long-finned pilot whales, and short-finned pilot whales), by using

local abundance data to define how the takes within a guild should be apportioned by species or stock as opposed to using SAR abundance data to define how takes should be apportioned with a guild, and subsequently, updated take by Level B harassment authorized for these species.

As a result of the updated modeling, NMFS has changed (some increases, some decreases) the minimum visibility zone, clearance zones, and shutdown zones for all species during foundation installation activities. The clearance and shutdown zones sizes for each foundation type (*i.e.*, monopile, jacket) are now based on the largest distance to Level A harassment threshold of all the foundation installation methods (*i.e.*, impact pile driving, vibratory pile driving, drilling), with a 20 percent increase to the clearance zone. Avangrid requested, and NMFS has carried forward, zone sizes by the largest foundation type (*i.e.*, monopile, jacket) and hammer size. Lastly, Avangrid did not request different zone sizes based on the 12-m monopile versus the 13-m monopile in their January 2024 Application Update as they did prior to the proposed rule. Instead, Avangrid proposed zone sizes based on the 13-m monopile at 6,000 kJ, though this foundation installation scenario remains unlikely though possible. NMFS has therefore set the zone sizes as the largest across all foundation and hammer sizes for each foundation type (monopile, jacket), regardless if Avangrid choses to install a smaller pile or use a smaller hammer during real-world foundation installation. However, Avangrid may request modifications through adaptive management should sound field verification (SFV) demonstrate noise levels are lower than expected.

As a result of the new modeling, the monopile visual (PSO) and acoustic (PAM) clearance zone sizes for other baleen whales and sperm whale has decreased from 4,700 m for all pile driving and drilling to 3,300 m (all installation methods); the pile driving and drilling shutdown zones has similarly decreased from 4,700 m (12-m) and 5,500 m (13-m) to 2,700 m (all installation methods). The refined modeling for harbor porpoise decreased the zone sizes from 2,300 m (monopile pile driving and drilling) to 250 m, as the maximum injury ($ER_{95\%}$) for harbor porpoise is 240 m. The zone sizes for seals decreased from 1,100 m (monopile impact pile driving) and 1,400 m (monopile vibratory pile driving or drilling) to 200 m (all monopiles and installation methods) as the maximum injury ($ER_{95\%}$) for seals was 0 m. The clearance and shutdown zones for small

whales and dolphins remain unchanged (200 m) as the maximum injury ($ER_{95\%}$) is 0 m. For those species that modeling resulted in less than 200 m Level A harassment distance to threshold, NMFS has set the minimum clearance and shutdown zone size as 200 m to ensure the zones are outside the monopile's noise attenuation system (NAS). This was also the approach in the proposed rule.

Based on the model changes above, the updated jacket (all pin piles) visual (PSO) and acoustic (PAM) clearance zone sizes for other baleen whales and sperm whale has increased from 4,500 m for impact pile driving and 4,700 m for vibratory pile driving and drilling to 4,900 m (all installation methods); the pile driving and drilling shutdown zones has decreased from 4,500 m for impact pile driving and 4,700 m for vibratory pile driving and drilling to 4,100 m (all installation methods). The refined modeling for harbor porpoise decreased the zone sizes from 1,800 m (impact pile driving) and 2,300 m (vibratory pile driving and drilling) to 250 m as the maximum injury ($ER_{95\%}$) for harbor porpoise is 230 m. The zone sizes for seals decreased from 1,400 m (all pile driving and drilling) to 1,000 m (clearance) and 800 m (shutdown) for all installation methods as the maximum injury ($ER_{95\%}$) for seals was 790 m. The clearance and shutdown zones for small whales and dolphins remain unchanged (50 m) as the maximum injury ($ER_{95\%}$) was 0 m. For those species that modeling resulted in less than 50 m Level A harassment distance to threshold, NMFS has set the minimum clearance and shutdown zone size as 50 m to ensure the zones are outside the jacket's noise attenuation system (NAS). This was also the approach in the proposed rule.

NMFS has not changed the North Atlantic right whale shutdown and clearance zones for visual observations (*i.e.*, any distance), NMFS has set the acoustic clearance and shutdown zones during foundation activities for North Atlantic right whale to any acoustic detection within a 12-km acoustic monitoring zone which were previously set to 5,600 m (monopile impact pile driving), 4,500 m (monopile vibratory pile driving and drilling), and 4,500 m (jacket pile driving and drilling). This final rule also clarifies that PAM must be conducted before, during, and after foundation installation and UXO/MEC detonation for North Atlantic right whales but the PAM system should be designed to detect all other marine mammals to the maximum extent practicable.

We updated the minimum visibility zone based on the new modeling from Avangrid (largest ER_{95%} distance to Level A harassment for low-frequency cetacean, not including fin whale), for all species during each foundation installation type then rounded for PSO clarity. As a result of the new modeling, the final rule sets the minimum visibility zone for monopiles at 2,100 m (humpback whale, 2,070 m), 3,400 m for jacket installation (humpback whale, 3,320 m), and 500 m for HRC (unchanged from the proposed rule). As described in the preamble of the proposed rule (page 405), NMFS originally set the minimum visibility zone size based on the North Atlantic right whale ER_{95%} distance to the Level A harassment threshold, assuming 10 dB. NMFS recognizes that a footnote in table 35 of the proposed rule used incorrect terminology stating that the minimum visibility zone for North Atlantic right whale would be “any distance” which contradicted the earlier stated methodology for setting the minimum visibility zone and would not be practicable. As a result of the updated modeling, the minimum visibility zone in this final rule decreased, however, it is still larger than the updated North Atlantic right whale ER_{95%} distance to the Level A harassment threshold, assuming 10 dB. To align with the BiOp, NMFS has used the largest ER_{95%} distance to Level A harassment for low-frequency cetacean, not including fin whale, which uses the distance to Level A harassment for humpback whale which is greater than the ER_{95%} distance to Level A harassment for North Atlantic right whale (monopile 2,070 m vs 1,620 m; jacket 3,320 m vs 2,350 m).

We have reduced takes by Level B harassment for Northern bottlenose whale from 12 to 8 as a result of a typo correction submitted by the applicant in the January 2024 Application Update. The applicant had previously not adjusted the total take request for this rare species by assuming encounters every other year but instead had unintentionally summed all annual takes at the time of the proposed rule. The takes by Level B harassment for Northern bottlenose whale in this final rule have been corrected based on encounters every other year.

NMFS has re-organized and simplified the monitoring and reporting section to avoid repeating entirely the requirements provided in the regulatory text. NMFS has renamed the North Atlantic Right Whale Vessel Strike Avoidance Plan to the Marine Mammal Vessel Strike Avoidance Plan to more accurately reflect that the plan does not

solely apply to North Atlantic right whales.

In response to commenters' concerns regarding noise attenuation, we have added a general requirement that Avangrid must lower noise levels should they exceed those modeled assuming 10 dB of attenuation. Based on multiple commenters' concerns regarding noise attenuation, and as informed by preliminary sound measurements from South Fork Wind, NMFS has added a requirement that two functional noise attenuation devices that reduce noise levels to the modeled harassment isopleths, assuming a 10-dB attenuation, must be used during foundation pile driving. A single bubble curtain alone will not be allowed for use in mitigation.

In response to commenters' concerns on vessel activity relating to the Project, all project vessels must utilize AIS device and must report all MMSI numbers to NMFS Office of Protected Resources;

This final rule clarifies that the mitigation measure restricting Project vessels from traveling over 10 kn (5.14 m/s) in the transit corridor, unless Avangrid conducts real-time acoustic monitoring to detect large whales (including North Atlantic right whales), applies only when other speed restrictions are not in place.

For foundation installation, NMFS notes that it is difficult to specify a reduction in energy for any given hammer because of variation across drivers and installation conditions. Because other industry operators have identified that specific soft-start procedures, such as those included in the proposed rule, may raise concerns regarding engineering feasibility and practicability, we have removed the specifics related to the soft-start procedure identified in the proposed rule (but not the requirement to conduct a soft-start), allowing for flexibility should the need for adjustments to the specific procedures arise. However, any alternative protocol would be as protective as the generic coastal construction soft-start specifications provided in the proposed rule. The final soft-start methodology will be developed by Avangrid, in consultation with NMFS, considering final design details including site-specific soil properties and other considerations.

To align with the BiOp, NMFS has updated the UXO/MEC detonation zones to be specific to charge weight. The clearance zones, which are visually and acoustically monitored, were derived based on an approximate proportion of the size of the Level B harassment (TTS) isopleth then rounded

for PSO clarity. The modeled distances to NMFS harassment thresholds have not changed from the UXO/MEC Acoustic Analysis Report in the application. The clearance zone sizes are contingent on Avangrid being able to demonstrate that they can identify charge weights in the field; if they cannot identify the charge weight sizes in the field then would need to assume the E12 charge weight size for all detonations and must implement the E12 clearance zone. No minimum visibility zone is required for UXO/MEC detonation as the entire visual clearance zone must be clear given the potential for lung and gastrointestinal tract injury.

We updated the process for obtaining NMFS approval for PSO and PAM Operators and have clarified education, training, and experience necessary to obtain NMFS' approval.

To align with the BiOp, we have added a requirement to have at least three active PSOs on the foundation installation platform (*e.g.*, pile driving/drilling vessel) and any dedicated PSO vessel (or equivalent coverage) rather than two PSOs, as was originally described in the proposed rule. Addition of this requirement is based on NMFS' evaluation of PSO coverage abilities for similar projects in the area (*e.g.*, Sunrise Wind) and has found that three PSOs (each covering 120 degrees) will improve the reliability of detection from the PSO platforms (*e.g.*, pile driving/drilling vessel, PSO-dedicated vessel, *etc.*). Previously at least four on-duty PSOs were required to actively observe for marine mammals before, during, and after installation of foundation piles (*i.e.*, monopiles and pin piles), at least two of those PSOs must be stationed and observing on the pile driving vessel and at least two PSOs must be stationed on a secondary, PSO-dedicated vessel. NMFS is now requiring Avangrid to deploy three on-duty PSOs per platform and vessel instead of two. Alternatively, Avangrid may propose an alternative method other than three PSOs per platform that provides equal or greater visual monitoring effectiveness. Similarly, NMFS is now requiring that Avangrid must deploy at least three on-duty PSOs, instead of two on-duty PSOs, on each observation platform for all detonations. To align with the BiOp, NMFS is also requiring the use of two PSO-dedicated vessels in addition to the PSOs on the foundation installation platform.

NMFS added a requirement that a double big bubble curtain must be placed at a distance that would avoid damage to the nozzle holes during all UXO/MEC detonations. NMFS also

added a requirement that a pressure transducer must be used during all UXO/MEC detonations.

Consistent with the BiOp, NMFS added additional details regarding thorough SFV requirements and added a requirement for Abbreviated SFV (consisting of a single recorder with a bottom and mid-water column hydrophone). We have also added requirements that Thorough SFV must be conducted on every pile until measured noise levels are at or below the modeled noise levels, assuming 10 dB; the minimum number of foundations previously required to have SFV has increased and now includes requirements for each construction year; and we have added a requirement that Avangrid must deploy at least eight hydrophones at four locations (one bottom and one mid-water column at each location) along an azimuth that is likely to see lowest propagation loss and two hydrophones (one bottom and one mid-water) at 750 m, 90 degrees from the primary azimuth during installation of all piles where Thorough SFV monitoring is required. Lastly, we have clarified that during Thorough SFV, installation of the next foundation (of the same type/foundation method) may not proceed until Avangrid has reviewed the initial results from the Thorough SFV and determined that there were no exceedances of any distances to the identified thresholds based on modeling assuming 10 dB of attenuation.

We have removed the requirements for reviewing data on an annual and biennial basis for adaptive management and instead will make adaptive management decisions as frequently as new information warrants it.

Changes in the Regulatory Text

As described above regarding changes made to the preamble, we have made the following corresponding and additional changes to the regulatory text in response to new information provided by Avangrid and public comments.

For clarity and consistency, we revised three paragraphs in § 217.320, “Specified activity and specified geographical region,” of the regulatory text to fully describe the specified activity, specified geographical region, and requirements imposed on the LOA Holder (Avangrid) and to clarify that the regulations apply to Avangrid Renewables LLC, as well as its successors or assigns, and those persons it authorizes or funds to conduct activities on its behalf. NMFS has also included the addition of OCS-A 0561 as

a result of the OCS-A 0534 lease segregation.

For clarity, we have specified that any measures in §§ 217.324 and 217.325 required during jacket foundation installation are also required for bottom-frame foundations that utilize pile foundations.

In §§ 217.320, 217.322, 217.323, 217.324, 217.325, 217.326, and 217.327, NMFS has made minor changes to formatting and wording to more clearly state the requirements.

In § 217.324(a), NMFS has clarified that any visual observation of marine mammals, as opposed to only ESA-listed marine mammals, must be communicated to PSOs and vessel captains.

NMFS has clarified language in § 217.324(a) on what public sources Avangrid and its personnel must check and how often to stay informed on North Atlantic right whales detections in the area.

NMFS has added additional clarification on the authority of PSOs and PAM operators in § 217.324(a) to ensure compliance and proper implementation of the regulations.

NMFS has specified that any visual or acoustic detection of a North Atlantic right whale within clearance zones must trigger a delay in commencement of pile driving, drilling, UXO/MEC detonation, and HRG surveys. NMFS has also updated the requirement § 217.324(c)(8)(i) by expanding the terminology of “piles installed” to foundation installation activities, correcting the November 1–December 30 date range to November 1–December 31, and increasing the monitoring zone from 10 to 12 km.

NMFS has added a requirement that all project vessels must utilize AIS and must report all MMSI numbers to NMFS Office of Protected Resources.

NMFS has included a requirement for Avangrid to consent to on-site observations and inspections by Federal personnel during project activities.

NMFS has added a prohibition to interfering with PSO or PAM operator responsibilities.

NMFS has added a requirement for any large whale sighting to be communicated to all project-associated vessels, and for a large whale sighting log sheet to be retained for the vessel captain’s review each day.

In § 217.324(b), NMFS has clarified the minimum separation zone for vessels when encountering a North Atlantic right whale.

In § 217.324(d), NMFS has added a requirement that Avangrid must notify NMFS 48 hours before any planned UXO/MEC detonation event unless this

48-hour notification would create delays to the detonation that would result in imminent risk to human life or safety. NMFS has also added a requirement that Avangrid may detonate a maximum of 10 UXO/MECs, of varying sizes but no larger than 1,000 pounds (lbs; 454 kilograms (kg)) charge weight (*i.e.*, E12), over the effective period of this rulemaking and LOA(s). NMFS has added a requirement that a pressure transducer must be used to monitor pressure levels during all UXO/MEC detonations.

NMFS has clarified the requirement in § 217.324(b) to specify that this measure applies to vessels traveling in the specified geographical region. NMFS has also renamed the North Atlantic Right Whale Vessel Strike Avoidance Plan requirement to the Marine Mammal Vessel Strike Avoidance Plan to more accurately reflect that the plan does not solely apply to North Atlantic right whales.

In consideration of commenters’ concerns regarding strengthening mitigation measures to avoid vessel strike, NMFS has removed the requirement in § 217.324(b)(14) from the proposed rule for any underway vessel to avoid speed over 10 kn (18.5 km/hour) or abrupt changes in course direction until an animal is on a path away from the separation distance. The current requirement in § 217.324(b) requires vessels to steer a course away from, reduce speed and shift engine to neutral if an animal is within the separation distance.

NMFS has clarified the requirement in § 217.324(b)(7) from the proposed rule that a North Atlantic right whale detection triggers a speed restriction for all transiting vessels within 10 km for a 24-hour period (previously 12-hour period). This was previously specific to Slow Zones (*i.e.*, Dynamic Management Areas (DMAs) or acoustically-triggered slow zone), and Seasonal Management Areas (SMAs). NMFS has also added a requirement that vessels must not travel over 10 kn from November 1 through April 30, annually, within the specified geographical region. This measures also now includes a sub-measure that states: if vessel(s) are traveling at speeds greater than 10 kn (11.5 mph) (*i.e.*, no speed restrictions are enacted) in the transit corridor (defined as from a port to the Lease Area or return), in addition to the required dedicated visual observer, LOA Holder must monitor the transit corridor in real-time with PAM prior to and during transits. If a North Atlantic right whale is detected via visual observation or PAM detection within or approaching the transit corridor, all vessels in the transit

corridor must travel at 10 kn (11.5 mph) or less for 24 hours following the detection. Each subsequent detection must trigger a 24-hour reset. A slowdown in the transit corridor expires when there has been no further visual or acoustic detection in the transit corridor in the past 24 hours. The transit corridor must be defined in the Marine Mammal Vessel Strike Avoidance Plan.

NMFS has clarified PAM boundaries for detections of North Atlantic right whales that trigger a delay in the commencement of foundation installation and UXO/MEC detonation.

In response to comments and to align with the BiOp, NMFS has added a requirement that two functional noise attenuation devices that reduce noise levels to the modeled harassment isopleths assuming a 10-dB attenuation, must be used during foundation installation (impact and vibratory pile driving, drilling) and UXO/MEC detonation.

NMFS has clarified requirements for PAM systems, including a requirement for the PAM system to be able to detect a vocalization of North Atlantic right whales up to 12 km away in § 217.324(c). In §§ 217.324 and 217.325, NMFS has removed NMFS-approved PAM systems(s) terminology as NMFS approves PAM plans and not PAM systems.

To align with the BiOp, NMFS has increased the number of on-duty PSOs on the foundation installation platform and the number of PSO-dedicated vessels to improve the reliability of marine mammal detection from the platform in § 217.324(c). The minimum number of PSOs per platform during UXO/MEC detonation has been increased to three in § 217.324(d).

NMFS added requirements related to conducting and reporting on Thorough and Abbreviated SFV to align with the BiOp in § 217.324(c)–(d).

NMFS has clarified requirements for clearance zones, shutdown zones, deactivating acoustic sources when not in use, PSO activity and communication requirements, and vessel operator communication requirements, applying to HRG surveys operating sub-bottom profilers (SBPs) in § 217.324(e) to ensure compliance and proper implementation of the regulations.

NMFS has added a requirement for acoustic source ramp-ups to be scheduled in order to minimize the time spent with the source activated.

For fishery monitoring surveys in § 217.324(f), NMFS has clarified language on emptying survey gear, gear deployment timing, trawl tow times and speed, and visual monitoring efforts.

The following changes are reflected in § 217.325, “Requirements for monitoring and reporting,” and the associated Monitoring and Reporting section of the preamble to this final rule:

NMFS has added a requirement for confirmation of all required training to be documented on a training course log sheet and reported to NMFS before initiating project activities. A description of the training program must be provided to NMFS at least 60 days prior to the initial training before in-water activities begin. NMFS has added a requirement that the marine mammal monitoring team must monitor available sources of information on North Atlantic right whale presence in or near the Project no less than every 4 hours.

NMFS has clarified PAM operator qualifications as well as PSO and PAM training requirements in § 217.235 to ensure compliance and proper implementation of regulations. This additional clarification includes detailed requirements for prior experience, being independent observers, ability for PAM operators to review and classify acoustic detections in real-time, PSO marine mammal identification and behavior training to focus on species specific to the North Western Atlantic Ocean, and PSO and PAM training to have been completed within the past 5 years and have included a certificate of course completion. NMFS has specified that Avangrid must submit the names of PSOs and PAM operators previously approved by NMFS at least 30 days prior to commencement of the specified activities and 15 days prior to when new PSO/PAM operators are required after activities have commenced.

NMFS has specified the following additional details in § 217.325(b) to clarify PSO and PAM operator requirements in order to ensure compliance and proper implementation of regulations: PSOs must monitor for marine mammals prior to, during, and following impact pile driving, vibratory pile driving, drilling, UXO/MEC detonation and HRG surveys that use sub-bottom profilers and monitoring must be done while free from distractions; all on-duty PSOs and on-duty PAM operator(s) are to remain in real-time contact with the on-duty construction personnel responsible for implementing mitigations; and the PAM operator must inform the Lead PSO(s) on duty of animal detections approaching or within applicable ranges of interest to the activity occurring via the data collection software system.

NMFS added requirements related to conducting and reporting on SFV (Thorough and Abbreviated) to align

with the BiOp in § 217.325(c), (d), and (f).

NMFS added a requirement to § 217.325(c) for a Nighttime Monitoring Plan if Avangrid intends to request nighttime foundation installation. No nighttime foundation installation can occur until NMFS reviews and approves the plan.

NMFS clarified requirements for the PAM Plan and Marine Mammal Monitoring Plan to align with the BiOp in § 217.325(d).

NMFS has clarified the reporting requirements, such as, the format of dates must be in the MM/DD/YYYY format, location information must be provided in Decimal Degrees and with the coordinate system information, and which email addresses a report must be submitted to.

In consideration of public comments with concerns for underestimating takes by Level A harassment and Level B harassment, NMFS has added a requirement that if at any time during the Project Avangrid becomes aware of any issue or issues which may (to any reasonable subject-matter expert, including the persons performing the measurements and analysis) call into question the validity of any measured Level A harassment or Level B harassment isopleths to a significant degree, Avangrid must inform NMFS Office of Protected Resources within one business day of becoming aware of this issue or before the next pile is driven, whichever comes first.

NMFS has added specific regional contact information for reporting North Atlantic right whale sightings and stranded, entangled, injured, or dead marine mammals.

NMFS had added a requirement to report observations of any large whale (other than North Atlantic right whales) to the WhaleAlert app.

Recognizing the extensive, frequent, and situational monitoring data and report requirements, NMFS clarified the language describing the annual or biennial review of data to inform adaptive management decisions to indicate that adaptive management decisions may be made at any time, as new information warrants it.

Description of Marine Mammals in the Geographic Area

As noted in the *Changes from the Proposed to Final Rule* section, updates have been made to the abundance estimate for North Atlantic right whales and to the UME summaries of multiple species. These changes are described in detail in the sections below and, otherwise, the marine mammal

information has not changed since the proposed rule.

Thirty-eight marine mammal species under NMFS' jurisdiction have geographic ranges within the western North Atlantic OCS (Hayes *et al.*, 2023). Sections 3 and 4 of Park City Wind's (now Avangrid's) ITA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species (Park City Wind, 2022). Additional information regarding population trends and threats may be found in NMFS's SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's

website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species and stocks for which take is expected and may be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA, and provides the 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 (16 U.S.C. 1362(20)). While no mortality is anticipated or may be authorized, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic and Gulf of Mexico SARs. All values presented in table 2 are the most recent available at the time of publication and are available in NMFS' 2023 draft SARs available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>.

TABLE 2—MARINE MAMMAL SPECIES THAT MAY OCCUR IN THE PROJECT AREA AND BE TAKEN BY HARASSMENT

Common name	Scientific name ¹	Stock	ESA /MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Total annual M/SI ⁴
Order Artiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
<i>Family Balaenidae:</i> North Atlantic right whale ⁵	<i>Eubalaena glacialis</i>	Western Atlantic	E, D, Y	340 (0, 337, 2021); 356 (346–363, 2022).	0.7	27.2
<i>Family Balaenopteridae</i> (rorquals):						
Blue whale	<i>Balaenoptera musculus</i>	Western North Atlantic	E, D, Y	UNK (UNK; 402; 1980–2008).	0.8	0
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	E, D, Y	6,802 (0.24; 5,573; 2021)	11	2.05
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	-, -, Y	1,396 (0; 1,380; 2016)	22	12.15
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	-, -, N	21,968 (0.31; 17,002; 2021).	170	9.4
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	E, D, Y	6,292 (1.02; 3,098; 2021)	6.2	0.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Physeteridae:</i> Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	E, D, Y	5,895 (0.29; 4,639; 2021)	9.28	0.2
<i>Family Kogiidae:</i> Dwarf sperm whale	<i>Kogia sima</i>	Western North Atlantic	-, -, N	9,474 (0.36, 7,080, 2021)	57	UNK
Pygmy sperm whale	<i>Kogia breviceps</i>	Western North Atlantic	-, -, N	9,474 (0.36, 7,080, 2021)	57	UNK
<i>Family Ziphiidae:</i> Cuvier's beaked whale	<i>Ziphius cavirostris</i>	Western North Atlantic	-, -, N	4,670 (0.24, 3,817, 2021)	38	0.2
Blainville's beaked whale ...	<i>Mesoplodon densirostris</i>	Western North Atlantic	-, -, N	2,936 (0.26, 2,374, 2021)	24	0.2
Gervais' beaked whale	<i>Mesoplodon europaeus</i>	Western North Atlantic	-, -, N	8,595 (0.24, 7,022, 2021)	70	0
Sowerby's beaked whale	<i>Mesoplodon bidens</i>	Western North Atlantic	-, -, N	492 (0.50, 340, 2021)	3.4	0
True's beaked whale	<i>Mesoplodon mirus</i>	Western North Atlantic	-, -, N	4,480 (0.34, 3,391, 2021)	34	0.2
Northern bottlenose whale ⁶	<i>Hyperoodon ampullatus</i>	Western North Atlantic	-, -, N	UNK (UNK, UNK, 2016)	UNK	0
<i>Family Delphinidae:</i> Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic	-, -, N	31,506 (0.28, 25,042, 2021).	250	0
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	-, -, N	93,233 (0.71, 54,443, 2021).	544	28
Common bottlenose dolphin ⁷ .	<i>Tursiops truncatus</i>	Western North Atlantic Offshore	-, -, N	64,587 (0.24, 52,801, 2021).	507	28
Clymene dolphin	<i>Stenella clymene</i>	Western North Atlantic	-, -, N	21,778 (0.72, 12,622, 2021).	126	0
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	-, -, N	93,100 (0.56; 59,897; 2021) ⁸ .	1,452	414
Long-finned pilot whales	<i>Globicephala melas</i>	Western North Atlantic	-, -, N	39,215 (0.30; 30,627; 2021).	306	5.7
Short-finned pilot whale ⁸	<i>Globicephala macrorhynchus</i> ...	Western North Atlantic	-, -, Y	18,726 (0.33, 14,292, 2021).	143	218
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	-, -, N	44,067 (0.19, 30,662, 2021).	307	18
False killer whale	<i>Pseudorca crassidens</i>	Western North Atlantic	-, -, N	1,298 (0.72, 775, 2021) ..	7.6	0
Fraser's dolphin ⁹	<i>Lagenodelphis hosei</i>	Western North Atlantic	-, -, N	UNK (UNK, UNK, 2021)	UNK	0

TABLE 2—MARINE MAMMAL SPECIES THAT MAY OCCUR IN THE PROJECT AREA AND BE TAKEN BY HARASSMENT—
Continued

Common name	Scientific name ¹	Stock	ESA /MMPA status; strategic (Y/N) ²	Stock abundance (CV, N_{min} , most recent abundance survey) ³	PBR	Total annual M/SI ⁴
Killer whale ¹⁰	<i>Orcinus orca</i>	Western North Atlantic	-, -, N	UNK (UNK, UNK, 2016)	UNK	0
Melon-headed whale ¹¹	<i>Peponocephala electra</i>	Western North Atlantic	-, -, N	UNK (UNK, UNK, 2021)	UNK	0
Pantropical spotted dolphin	<i>Stenella attenuata</i>	Western North Atlantic	-, D, N	2,757 (0.50, 1,856, 2021)	19	0
Pygmy killer whale ¹²	<i>Feresa attenuata</i>	Western North Atlantic	-, -, N	UNK (UNK, UNK, 2021)	UNK	0
Rough-toothed dolphin ¹³	<i>Steno bredanensis</i>	Western North Atlantic	-, -, N	UNK (UNK, UNK, 2021)	undet	0
Spinner dolphin	<i>Stenella longirostris</i>	Western North Atlantic	-, D, N	3,181 (0.65, 1,930, 2021)	19	0
Striped dolphin	<i>Stenella coeruleoalba</i>	Western North Atlantic	-, -, N	48,274 (0.29, 38,040, 2021).	529	0
White-beaked dolphin	<i>Lagenorhynchus albirostris</i>	Western North Atlantic	-, -, N	536,016 (0.31, 415,344, 2016).	4,153	0
Family Phocoenidae (porpoises):						
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	-, -, N	85,765 (0.53, 56,420, 2021).	649	145
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal ¹⁴	<i>Halichoerus grypus</i>	Western North Atlantic	-, -, N	27,911 (0.20, 23,624, 2021).	1,512	4,570
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	-, -, N	61,336 (0.08, 57,637, 2018).	1,729	339
Harp seal	<i>Pagophilus grownlandicus</i>	Western North Atlantic	-, -, N	7.6M (UNK, 7.1M, 2019)	426,000	178,573
Hooded seal ¹⁵	<i>Cystophora cristata</i>	Western North Atlantic	-, -, N	UNK (UNK, UNK, n/a)	UNK	1680

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies>; Committee on Taxonomy, 2023).

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 can be found online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance.

⁴ These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strike).

⁵ In the proposed rule (87 FR 79072, December 23, 2022), a population estimate of 368 was used which represented the best available science at the time of publication. However, since the publication of the proposed rule, a new estimate ($n=340$) was released in NMFS' draft 2023 SARs and has been incorporated into this final rule. The current draft SAR includes an estimated population (N_{best} 340) based on sighting history through December 2021 (89 FR 5495, January 29, 2024). In October 2023, NMFS released a technical report identifying that the North Atlantic right whale population size based on sighting history through 2022 was 356 whales, with a 95 percent credible interval ranging from 346 to 363 (Linden, 2023); Total annual average observed North Atlantic right whale mortality during the period 2017–2021 was 7.1 animals and annual average observed fishery mortality was 4.6 animals. Numbers presented in this table (27.2 total mortality and 17.6 fishery mortality) are 2016–2020 estimated annual means, accounting for undetected mortality and serious injury.

⁶ The total number of northern bottlenose whales off the eastern U.S. coast is unknown. Present data are insufficient to calculate a minimum population estimate for this species (89 FR 5495, January 29, 2024).

⁷ As noted in the draft 2023 SAR (89 FR 5495, January 29, 2024), abundance estimates may include sightings of the coastal form.

⁸ A key uncertainty exists in the population size estimate for this species based upon the assumption that the logistic regression model accurately represents the relative distribution of short-finned vs. long-finned pilot whales (89 FR 5495, January 29, 2024).

⁹ The total number of Fraser's dolphins off the eastern U.S. coast is unknown. Present data are insufficient to calculate a minimum population estimate for this stock (89 FR 5495, January 29, 2024).

¹⁰ The total number of killer whales off the eastern U.S. coast is unknown. Present data are insufficient to calculate a minimum population estimate for this species (89 FR 5495, January 29, 2024).

¹¹ The population size of this species is unknown as this species was rarely sighted during surveys. Present data are insufficient to calculate a minimum population estimate for this stock (89 FR 5495, January 29, 2024).

¹² The total number of pygmy killer whales off the eastern U.S. coast is unknown. Present data are insufficient to calculate a minimum population estimate for this stock (89 FR 5495, January 29, 2024).

¹³ The abundance estimate for this species is based upon the average of the 2011 and 2016 abundance estimates. However, uncertainties in the abundance estimate exist due to the low number of sightings ($n=1$ in 2011; $n=0$ in 2016), variance in encounter rates, and uncertainty in estimation of detection probability (89 FR 5495, January 29, 2024).

¹⁴ NMFS' stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 394,311. The annual M/SI value given is for the total stock (89 FR 5495, January 29, 2024).

¹⁵ There is uncertainty in available population estimates due to limited surveys, limited reproductive data, and uncertainty in stock relationships and harvest statistics (89 FR 5495, January 29, 2024).

In addition to the species listed in table 2, the Florida manatees (*Trichechus manatus*; a sub-species of the West Indian manatee) has been

previously documented as an occasional visitor to the Northeast region during summer months (U.S. Fish and Wildlife Service (USFWS), 2019). However,

manatees are managed by the USFWS and are not considered further in this document.

As described in the proposed rule, the applicant also requested take for beluga whales (*Delphinapterus leucas*), however, there is no beluga whale stock designated under the MMPA along the U.S. Eastern Seaboard as it is a more northerly species; therefore, they are not considered further in this document. A detailed description of the species likely to be affected by the Project, including brief introductions to the species and relevant stocks, information regarding population trends and threats, and information regarding local occurrence, were provided in the application and the proposed rule (88 FR 37606, June 8, 2023). Other than adjustments to population statistics (e.g., North Atlantic right whale population abundance) and UME updates, we are not aware of any changes in the status of the species and stocks listed in table 2; therefore, detailed descriptions are not provided here. Please refer to the proposed rule for these descriptions (88 FR 37606, June 8, 2023). Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Since the publication of the proposed rule, the following updates have occurred to the below species in regards to general information or their active UMEs.

North Atlantic Right Whale

In January 2024, NMFS released its draft 2023 SARs which updated the population estimate (N_{best}) of North Atlantic right whales to 340 individuals (a decrease from the population estimate in the proposed rule ($n=368$) but an increase from the final 2022 SARs ($n=338$); the annual M/SI value dropped from the final 2022 SAR of 31.2 to 27.2 in the draft 2023 SAR. Beginning in the 2022 SARs, the M/SI for North Atlantic right whale included the addition of estimated undetected mortality and serious injury, which had not been previously included in the SAR. The current population estimate is equal to the North Atlantic Right Whale Consortium's 2022 Annual Report Card, which identifies the population estimate as 340 individuals (Pettis *et al.*, 2023).

As described in the proposed rule, elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast, with the leading category for the cause of death for this UME determined to be "human interaction," specifically from entanglements or vessel strikes. Since publication of the proposed rule, the number of animals considered part of the UME has increased. As of April 12, 2024, there have been 39 confirmed mortalities (dead, stranded, or floaters),

1 pending mortalities, and 34 seriously injured free-swimming whales for a total of 74 whales. The UME also considers animals with sublethal injury or illness (called "morbidity"; $n=52$) bringing the total number of whales in the UME from 74 to 126. More information about the North Atlantic right whale UME is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

Humpback Whale

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. This event was declared a UME in April 2017. Partial or full necropsy examinations have been conducted on approximately half of the 221 known cases (as of May 3, 2024). There has been no update to this UME since the proposed rule. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

Since December 1, 2022, the number of humpback strandings along the mid-Atlantic coast, from North Carolina to New York, has been elevated. In some cases, the cause of death is not yet known; in others, vessel strike has been deemed the cause of death. As the humpback whale population has grown, they are seen more often in the Mid-Atlantic. These whales may be following their prey (small fish) which were reportedly close to shore in the 2022–2023 winter. Changing distributions of prey impact larger marine species that depend on them, and result in changing distribution of whales and other marine life. These prey also attract fish that are targeted by recreational and commercial fishermen, which increases the number of boats and amount of fishing gear in these areas. This nearshore movement increases the potential for anthropogenic interactions, particularly as the increased presence of whales in areas traveled by boats of all sizes increases the risk of vessel strikes.

Minke Whale

Since January 2017, a UME has been declared based on elevated minke whale mortalities detected along the Atlantic coast from Maine through South Carolina. As of May 3, 2024, a total of 168 minke whales have stranded during this UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings have shown evidence of human interactions or infectious disease in several of the

whales, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

Phocid Seals

Since June 2022, elevated numbers of harbor seal and gray seal mortalities have occurred across the southern and central coast of Maine. This event was declared a UME in July 2022 but closed after the proposed rule. The UME Investigative Team reviewed necropsy, histopathology, and diagnostic findings. They determined the UME was attributed to spillover events of the highly pathogenic avian influenza H5N1 virus from infected wild birds to harbor and gray seals. An ongoing HPAI H5N1 global outbreak in domestic and wild birds and wild mammals began in 2021. Live seals showed signs of respiratory and neurological disease including nasal and ocular discharge, coughing, unresponsiveness, and seizures. Eighteen percent of the stranded seals (33 out of 180) were tested for avian influenza via polymerase-chain-reaction. A subset of seals were positive for HPAI H5N1 with preliminary findings confirmed by the United States Department of Agriculture's National Veterinary Services Laboratories. Of the 33 seals tested during the UME period 19 (58 percent) were positive for H5N1 (17 harbor seals; 2 gray seals) and 14 (42 percent) tested negative. Twelve H5N1 positive seals had histopathology conducted; 11 of those seals had lesions (primarily respiratory and/or neurologic) suspected or consistent with avian influenza infection. Sequencing of the H5N1 virus detected in seals suggests the seals were infected from spillover events from infected wild birds to these seals. While the UME was not occurring in the area of the Project, the populations affected by the UME were the same as those potentially affected by the Project. Information on this UME is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species

have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential

techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-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 kilohertz (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, <i>cephalorhynchid</i> , <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65-dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

NMFS notes that in 2019a, Southall *et al.* recommended new names for hearing groups that are widely recognized. However, this new hearing group classification does not change the weighting functions or acoustic thresholds (*i.e.*, the weighting functions and thresholds in Southall *et al.* (2019a) are identical to NMFS 2018 Revised Technical Guidance). When NMFS updates our Technical Guidance, we will be adopting the updated Southall *et al.* (2019a) hearing group classification.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Exposure to underwater noise and explosive detonations from the Project's specified activities have the potential to result in Level A harassment or Level B harassment of marine mammals in the specified geographical region, but no serious injury or mortality. The proposed rule (88 FR 37606, June 8, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise and explosive detonations from the Project's specified activities on marine mammals and their habitat. While some new literature regarding marine mammal distribution and habitat use has been published

since publication of the proposed rule (*e.g.*, Holdman *et al.*, 2023; Meyer-Gutbrod *et al.*, 2023; Van Parijs *et al.*, 2023; Westwell *et al.*, 2024), there is no new information that NMFS is aware of that changes the analysis in the proposed rule. We provide a summary of these papers below.

Holdamn *et al.* (2023) studied harbor porpoise habitats in the Gulf of Maine (GOM) and Southern New England waters providing baseline data on the occurrence and foraging activity of porpoises from 2020 to 2022. Harbor porpoises were present year-round in the GOM with peak detections in the summer and fall. The observed seasonal pattern of harbor porpoise occurrence in this study is consistent with prior information on the general distribution of the GOM/Bay of Fundy stock (Wingfield *et al.*, 2017; NMFS, 2021). In line with previously reported distribution patterns, harbor porpoise occurrence in Southern New England was high in fall, winter and spring, but porpoises were largely absent in the summer. Results from generalized additive models suggest that time of year, hour of day, lunar illumination, and temperature are significant contributors to harbor porpoise presence (detection mainly through echolocation clicks) and/or foraging effort.

Meyer-Gutbrod *et al.* (2023) studied North Atlantic right whale sightings from 1990–2018 to examine patterns in monthly habitat use in 12 high-use areas to broadly characterize new seasonal habitat-use patterns across the core North Atlantic right whale range. As North Atlantic right whale foraging

habitat selection is driven by complex spatial and temporal patterns (*e.g.*, prey abundance), abundances of *Calanus finmarchicus* (a species of copepod and a component of the zooplankton found in the northern Atlantic Ocean) and *Calanus hyperboreus* (species of copepod found in the Arctic Ocean and northern Atlantic Ocean) were also analyzed for decadal variations in the North Atlantic right whale foraging habitats. The research found that in comparison to the 2000s, the 1990s and the 2010s were similar in that North Atlantic right whale sightings (*i.e.*, Sightings Per Unit Effort (SPUE)) declined in the foraging habitats of the Gulf of Maine and Scotian Shelf during the seasons when abundance of *C. finmarchicus* was relatively low (spring, summer, fall). The drop in sightings is associated with extended duration of habitat use by North Atlantic right whales in Cape Cod Bay into the late spring and increased use of Southern New England waters and the Gulf of St. Lawrence in the spring and summer in the 2010s. Summertime declines in the 2010s for copepod abundances in the traditional foraging habitat (*e.g.*, Gulf of Maine) indicate that the increased use of the Gulf of St. Lawrence in more recent years is driven by a decline in prey in traditional foraging habitats rather than by an increase in prey in the new foraging habitat. Overall, while some patterns in seasonal habitat use remained consistent across all three decades, including the winter migration to the Southeast US calving ground and early spring foraging in Cape Cod Bay,

there were notable differences in the seasonality and persistence of North Atlantic right whales in some foraging habitats across the study period which indicate that the North Atlantic right whale distribution patterns are shifting.

Van Parijs *et al.* (2023), provides 2 years of baseline data on cetacean species' presence, vessel activity, and ambient sound levels in the southern New England wind energy area. With eight species/families present in the area for at least 9 months of the year, this area represents an important habitat for cetaceans. Most species showed seasonality, with peak daily presence in winter (harbour porpoise, North Atlantic right, fin, and humpback whales), summer (sperm whales), spring (sei whales), or spring and fall/autumn (minke whales). Delphinids were continuously present and blue whales present only in January. The North Atlantic right whale was present year round with high presence in October through April.

Westell *et al.* (2024) collected baseline data from 2020 to 2022, with six passive acoustic recorders deployed in the vicinity of Nantucket Shoals and Cox's Ledge. Data were analyzed for sperm whale presence, and demographic composition was assessed using interclick intervals. Presence varied by site, season, and year. Sperm whales were detected year-round but the majority (78 percent) of days with acoustic occurrences were between May and August. Sound propagation tests were conducted at two sites and predicted detection ranges within 20–40 km indicate that sperm whales were likely in proximity to the WEA. These results provide a baseline for ongoing sperm whale presence, especially that of social groups which may be more sensitive to disturbance.

Moreover, new data also supports our inclusion of certain mitigation measures in the proposed and this final rule. For example, Crowe *et al.* (2023) discussed the use and importance of real-time data for detecting North Atlantic right whale. The shift in North Atlantic right whale habitat use motivated the integration of additional ways to detect the presence of North Atlantic right whales and passive acoustic detections of right whale vocalizations reported in near real-time became an increasingly important tool to supplement visual sightings. The proposed rule did include real-time and daily awareness measures and sighting communication protocols, NMFS evaluated these measures and added details for clarity or updated the reporting mechanisms, such as in the case of sighting an injured North Atlantic right whale. Davis *et al.*

(2023) analyzed North Atlantic right whale individual upcalls from 2 years of acoustic recordings in southern New England which showed that North Atlantic right whale were detected at least 1 day every week throughout both years, with highest North Atlantic right whale presence from October to April. Within SNE, on average, 95 percent of the time North Atlantic right whales persisted for 10 days, and recurred again within 11 days. An evaluation of the time period over which it is most effective to monitor prior to commencing pile driving activities showed that with 1 h of pre-construction monitoring there was only 4 percent likelihood of hearing a North Atlantic right whale, compared to 74 percent at 18 h. Therefore, monitoring for at least 24 h prior to activity will increase the likelihood of detecting an up-calling North Atlantic right whale.

Since issuance of the proposed rule, a non-peer reviewed report on HRG survey noise has also been released (Rand *et al.*, 2023). The measured data presented in Rand *et al.* (2023) are consistent with our evaluation of sound levels produced by HRG surveys (*i.e.*, received sound levels at the ranges measured) and vessels and do not change our assessments of potential impacts. The analysis of those data in the Rand *et al.* (2023) report, however, includes methodological issues and therefore does not support all of their conclusions.

Since the publication of the proposed rule, new scientific information has become available that provides additional insight into the sound fields produced by turbine operation (HDR, Inc., 2023; Holme *et al.*, 2023). Recently, Holme *et al.* (2023) stated that Tougaard *et al.* (2020) and Stöber and Thomsen (2021) extrapolated levels for larger turbines and should be interpreted with caution since both studies relied on data from smaller turbines (0.45 to 6.15 MW) collected over a variety of environmental conditions. They demonstrated that the model presented in Tougaard *et al.* (2020) tends to overestimate levels (up to approximately 8 dB) measured to those in the field, especially with measurements closer to the turbine for larger turbines. Holme *et al.* (2023) measured operational noise from larger turbines (6.3 and 8.3 MW) associated with three wind farms in Europe and found no relationship between turbine activity (*i.e.*, power production, which is proportional to the blade's revolutions per minute) and noise level. However, it was noted that this missing relationship may have been masked by the area's relatively high ambient noise

sound levels. Sound levels (*i.e.*, root-mean-square (RMS)) of a 6.3 MW direct-drive turbine were measured to be 117.3 dB at a distance of 70 m. However, measurements from 8.3 MW turbines were inconclusive as turbine noise was deemed to have been largely masked by ambient noise.

In addition, operational turbine measurements from the Coastal Virginia Offshore Wind pilot pile project indicated that noise levels from two, 7.8 m monopiles WTGs were higher when compared to Block Island wind farm, likely due to vibrations associated with the monopiles structure (HDR, Inc., 2023). We note that this updated information does not change our assessment for impacts of turbine operational sound on marine mammals. As described in the proposed rule, NMFS will require Avangrid to measure operational noise levels, however, is not authorizing take incidental to operational noise from WTGs.

In addition, recently, a National Academy of Sciences, Engineering, and Medicine (NASEM) panel of independent experts concluded that the impacts of offshore wind operations on North Atlantic right whales and their habitat in the Nantucket Shoals region (a key winter foraging habitat tens of kilometers to the east of the Project area) are uncertain due to the limited data available at this time and recognized what data is available is largely based on models from the North Sea that have not been validated by observations (National Academy of Sciences, 2023). The report also identifies that major oceanographic changes have occurred to the Nantucket Shoals region over the past 25 years and it will be difficult to isolate from the much larger variability introduced by natural and other anthropogenic sources (including climate change). This report is specific to the Nantucket Shoals region which is unlikely to be influenced by any long-term operational effects of the Project; however, the findings in the report align with those presented in the proposed rule. More recently, NMFS concluded ESA consultation on Federal actions associated with the Project, including NMFS's proposal to issue a 5-year rule to Avangrid and BOEM's approval of the Construction and Operation Plan (COP) which covers the 30 years of the Project's operation and subsequent decommissioning.

Similar to the discussion presented in the proposed rule, the BiOp stated the Project will produce a wind wake from operation of the turbines and that the foundations themselves will lead to disruptions in local conditions; the scale of these effects is expected to

range from hundreds of meters and up to 1 km from each foundation and the changes in conditions may alter the distribution of nutrients, primary production, and plankton. The BiOp concluded it is not expected that the impacts to oceanic conditions resulting from the Project will affect the oceanographic forces transporting plankton into the area from the south and east; however, there may be effects on the distribution of plankton more locally. The construction and operation of the Project is not expected to alter this broad current pattern, and thus NMFS expects any alteration of the biomass of plankton in the region, and therefore, the total food supply, to be so small that adverse effects on ESA-listed species are not reasonably certain to occur.

Overall, there is no new scientific information regarding the general anticipated effects of OSW construction on marine mammals and their habitat that was not discussed in the proposed rule. The information and analysis regarding the potential effects on marine mammals and their habitat is incorporated by reference and included in the proposed rule is referenced and used for this final rule and is not repeated here; please refer to the proposed rule (88 FR 37606, June 8, 2023).

Estimated Take

As noted in the Changes from the Proposed to Final Rule section, changes to the estimated and allowable take (*i.e.*, take that may be authorized) for several species have been made since publication of the proposed rule based on new information from Avangrid, recommendations received during the public comment period, and the best available science. This section provides an estimate of the number of incidental takes that may be authorized through this rule, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination. The analysis related to take incidental to HRG surveys, UXO/MEC detonation, and rare species is unchanged since the proposed rule. However, as described above in the Changes from the Proposed section, Avangrid re-evaluated the sound fields generated during foundation installation and corresponding exposure estimates which is further described in the foundation installation take section below. Takes allowed under this rule would primarily be by Level B harassment, as use of the acoustic sources (*i.e.*, impact and vibratory pile driving, drilling, UXO/MEC detonation, site characterization surveys) are

expected to result in disruption of marine mammal behavioral patterns due to exposure to elevated noise levels. Impacts such as masking and TTS can contribute to behavioral disturbances. There is also some potential for auditory injury constituting Level A harassment to occur in select marine mammal species incidental to the specified activities (*i.e.*, impact pile driving and UXO/MEC detonation). For this action, this potential is largely limited to, though not exclusive to, mysticetes due to their hearing sensitivities and the nature of the activities. As described below, the larger distances to the PTS thresholds, when considering marine mammal weighting functions, demonstrate this potential. For mid-frequency hearing sensitivities, when thresholds and weighting and the associated PTS zone sizes are considered, the likelihood for PTS from the noise produced by the Project is less than that for mysticetes. The required 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 may be authorized incidental to the Project. Below, we describe how the take was estimated.

Generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment (as well as impulse metric (Pascal-second) and peak sound pressure level thresholds above which marine mammals may incur non-auditory injury from underwater explosive detonations); (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available. Below, we describe the factors considered here in more detail and present the take estimates.

Marine Mammal Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals are likely to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have

also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed. A summary of all NMFS' thresholds can be found at (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>).

Level B harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, other noises in the area) and the state of the receiving animals (*e.g.*, 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 RMS pressure received levels (SPL) of 120 dB (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 (table 4). 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 (*e.g.*, conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

Avangrid's construction activities include the use of continuous (*e.g.*, vibratory pile driving, drilling) and intermittent (*e.g.*, impact pile driving and HRG acoustic sources) sources; therefore, the 120 and 160 dB re 1 μ Pa (RMS) thresholds are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0; Technical Guidance, 2018) identifies dual criteria to assess auditory injury constituting 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 (*i.e.*, impulsive or non-impulsive sources). As dual metrics, NMFS considers onset of PTS constituting Level A harassment to have occurred when either one of the two metrics is exceeded (*i.e.*, metric resulting in the largest isopleth). The Project includes the use of impulsive and non-impulsive sources.

These thresholds are provided in table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—ONSET OF PTS
[NMFS, 2018]

Hearing group	PTS onset thresholds* (Received Level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{p,0-pk,flat}$: 219 dB; $L_{E,p,LF,24h}$: 183 dB	Cell 2: $L_{E,p,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{p,0-pk,flat}$: 230 dB; $L_{E,p,MF,24h}$: 185 dB	Cell 4: $L_{E,p,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{p,0-pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	Cell 6: $L_{E,p,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{p,0-pk,flat}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	Cell 8: $L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{p,0-pk,flat}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	Cell 10: $L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0-pk}$) has a reference value of 1 μ Pa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.*, 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Explosives Source Thresholds

Based on the best scientific information available, NMFS uses the acoustic and pressure thresholds

indicated in table 5 to predict the onset of PTS and TTS during UXO/MEC detonation. For a single detonation (within a 24-hour period), NMFS relies on the TTS onset threshold to assess the

likelihood for Level B harassment. The final rule is conditioned such that Avangrid would limit detonations to one per day and would be limited to daylight hours only.

TABLE 5—PTS ONSET, TTS ONSET, FOR UNDERWATER EXPLOSIVES
[NMFS, 2018]

Hearing group	PTS impulsive thresholds	TTS impulsive thresholds
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{pk,flat}$: 213 dB; $L_{E,LF,24h}$: 168 dB.
Mid-Frequency (MF) Cetaceans	Cell 4: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 5: $L_{pk,flat}$: 224 dB; $L_{E,MF,24h}$: 170 dB.
High-Frequency (HF) Cetaceans	Cell 7: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 8: $L_{pk,flat}$: 196 dB; $L_{E,HF,24h}$: 140 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 10: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 11: $L_{pk,flat}$: 212 dB; $L_{E,PW,24h}$: 170 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS/TTS onset.

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, ANSI defines peak sound pressure 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 overall marine mammal 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 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.

Additional thresholds for non-auditory injury to lung and gastrointestinal (GI) tracts from the blast shock wave and/or onset of high peak pressures are also relevant (at relatively close ranges) as UXO/MEC detonations, in general, have potential to result in mortality and non-auditory injury (table 6). Marine mammal lung injury criteria

have been developed by the U.S. Navy (DoN (U.S. Department of the Navy), 2017), and adopted by NMFS, and are based on the mass of the animal and the depth at which it is present in the water column due to blast pressure. This means that specific decibel levels for each hearing group are not provided and instead, the criteria are presented as

equations that allow for incorporation of specific mass and depth values. The GI tract injury threshold is based on peak pressure. The modified Goertner equations below represent the potential onset of lung injury and GI tract injury (table 6).

TABLE 6—LUNG AND G.I. TRACT INJURY THRESHOLDS
[DoN, 2017]

Hearing group	Mortality (severe lung injury) *	Slight lung injury *	G.I. tract injury
All Marine Mammals	Cell 1: Modified Goertner model; Equation 1.	Cell 2: Modified Goertner model; Equation 2.	Cell 3: $L_{pk,flat}$: 237 dB.

* Lung injury (severe and slight) thresholds are dependent on animal mass (Recommendation: table C.9 from DoN (2017) based on adult and/or calf/pup mass by species).

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, ANSI defines peak sound pressure 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 overall marine mammal generalized hearing range.

Modified Goertner Equations for severe and slight lung injury (Pascal-second)

Equation 1: $103M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s

Equation 2: $47.5M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s

M = animal (adult and/or calf/pup) mass (kg) (table C.9 in DoN, 2017)

D = animal depth (m)

Below, we discuss the marine mammal density information, acoustic modeling, and take estimation for each of Avangrid’s specified activities. NMFS has carefully considered all information and analysis presented by the applicant as well as all other applicable information and, based on the best available science, concurs that the applicant’s estimates of the types and amounts of take for each species and stock are complete and accurate.

Marine Mammal Density and Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Depending on the species and as described in the take estimation section for each activity, take estimates may be based on the Roberts *et al.* (2023) density estimates, marine mammal monitoring results from HRG surveys, or average group sizes.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team, based on the best available marine mammal data from 1992 to 2022 obtained in a collaboration between Duke University, the Northeast Regional Planning Body, the University of North Carolina Wilmington, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.*, 2016a, 2016b, 2017, 2018, 2020, 2021a, 2021b, 2023), represent the best available science regarding marine mammal densities in the Project Area. More recently, these data have been updated with new modeling results and include density estimates for pinnipeds (Roberts *et al.*, 2016b, 2017, 2018, 2023). Density data are subdivided into five separate raster data layers for each species, including: Abundance (density); 95 percent Confidence Interval of Abundance; 5

percent Confidence Interval of Abundance; Standard Error of Abundance; and Coefficient of Variation of Abundance.

The methods for calculating monthly, seasonal and annual densities have not changed since the proposed rule. For foundation installation, the width of the perimeter around the activity area used to select density data from the Roberts *et al.*, 2022 models was based on the largest 10-dB attenuated exposure range ($ER_{95\%}$; the Level B harassment range) applicable to that activity. The applicant calculated monthly densities for each species using grid cells within the lease area and a perimeter around the lease area that represented the $ER_{95\%}$ ensonified area for each sound-producing activity. The mean density for each month was determined by calculating the unweighted mean of all 5×5 km grid cells partially or fully within the analysis polygon. Densities were computed monthly for the May–December period to coincide with proposed foundation pile driving activities. In cases where monthly densities were unavailable, annual mean densities were used instead. For cases with vibratory setting of piles followed by impact pile driving, and impact pile driving alone (*i.e.*, all pile driving scenarios), densities were calculated within buffered polygons of various ranges around the Lease Area perimeter. The following ranges were pre-selected: 10, 25, and 50 km. For each species, foundation type, and attenuation level, the most appropriate density perimeter was selected from this list. The range was selected using the 95th percentile exposure range ($ER_{95\%}$) for each case, using the next highest range. For example, if the $ER_{95\%}$ was 8.5 km, the 10 km perimeter would be used. In cases where the $ER_{95\%}$ was larger than 50 km, the 50-km perimeter was used. The 50 km limit is derived from studies

of mysticetes that demonstrate received levels, distance from the source, and behavioral context are known to influence the probability of behavioral response (Dunlop *et al.*, 2017).

For drilling, it was assumed that the activity would occur in three areas of interest: J1, M1, and M2 (*i.e.*, three modeled locations). The density perimeter was determined using the longest 10-dB attenuated 95th percentile acoustic range to the behavioral threshold ($R_{95\%}$) for all locations, rounded up to the nearest 5 km, and then applied around the entire lease area (*i.e.*, 7.1 km rounded up to 10 km). Monthly densities were calculated for each species as the average of the densities from all Roberts *et al.*, 2022 model grid cells that overlap partially or completely with the area of interest. Cells entirely on land were not included, but cells that overlap only partially with land were included.

As described in the proposed rule, for UXO/MEC detonations, the applicant commissioned a UXO/MEC desktop study in which a comprehensive historic analysis of all activities which may have contributed to potential UXO/MEC presence in the project area. The applicant evaluated the risk of encountering the potential UXO/MECs and identified areas of moderate risk of UXO/MEC presence then commissioned an acoustic modeling study, as described in the proposed rule. As a result of this process, the largest SEL-based TTS-onset acoustic ranges across all hearing groups was applied to the moderate UXO/MEC risk areas, resulting in a 14.1-km perimeter for the shallow water segment of the OECC and a 13.8-km density perimeter for the deep water segment of the OECC as well as the SWDA.

For HRG surveys, the applicant applied all grid cells within the survey corridor. No buffer was applied given the small distance to Level B

harassment (<200 m) during surveys compared to the grid cell size in the Roberts *et al.*, 2022 density models (5 × 5 km). To estimate densities for the HRG surveys occurring both within the Lease Area and within the export cable routes, the applicant mapped density data from Roberts *et al.* (2023) within the boundary of the Project Area using geographic information systems. The applicant then averaged maximum monthly densities (as reported by Roberts *et al.*, 2023) by season over the survey duration (for winter (December through February), spring (March through May), summer (June through August), and fall (September through November)) within the HRG survey area. The maximum average seasonal density, for each species, was then carried forward in the take calculations (table 6).

For several marine mammal species, Roberts *et al.* (2023) does not differentiate by species and instead combines them into guilds. This is true for long-finned and short-finned pilot whales (pilot whale spp.), beaked whales, and harbor, harp, hooded, and gray seals (seals), where a pooled density by guild is the only value available from the data that is not partitioned by stock.

Below, we describe observational data from monitoring reports and average group size information, both of which are appropriate to inform take estimates for certain activities or species in lieu of density estimates.

For previous modeling efforts' marine mammal densities, for long- and short-finned pilot whales, the guild density from Roberts *et al.* (2016a, 2022b) was scaled by the relative stock sizes based on the best available abundance estimate from the 2023 SARs (Hayes *et al.*, 2022). Similarly, densities were provided for seals as a guild consisting primarily of harbor and gray seals (Roberts *et al.*, 2016a, 2022b), gray and harbor seal densities were scaled by relative 2023 SARs (Hayes *et al.*, 2022) abundance. For the recently updated modeling efforts—vibratory setting followed by impact pile driving, impact pile driving alone, drilling, UXO/MEC detonations, and HRG when calculating exposures for individual pilot whale and seal species, the guild densities provided by Roberts *et al.* (2016a, 2022b) were scaled by the relative abundances of the species in each guild, using the best available estimates of local abundance, to get species-specific density estimates surrounding the Lease Area. In estimating local abundances, all distribution data from the two pilot whale species and three seal species were downloaded from the Ocean

Biodiversity Information System (OBIS) data repository (available at <https://obis.org/>). After reviewing the available datasets, it was deemed that data available in OBIS in Rhode Island and Massachusetts waters are the best available for the three seal species because of their overlap with the Lease Area.

For seals, OBIS reported 86 observations of gray seals, 129 observations of harbor seals, and 93 observations of harp seals. Therefore, the proportions of 0.28 (86/308), 0.42 (129/308), and 0.30 (93/308) were used to scale the seals' guild densities for the three seal species, respectively. The best data available for pilot whales came from AMAPPS data in Rhode Island and Massachusetts waters. The proportions of 0.80 for long-finned and 0.20 for short-finned pilot whales were used (Palka *et al.*, 2021).

For uncommon species, the predicted densities from the Roberts *et al.*, 2022 models are very low and the resulting density-based exposure estimate is less than a single animal or a typical group size for the species. In such cases, densities were not used but the take request is based on the species' average group size (tables 10 and 11). When this occurred, the mean group sizes used to correct Level B harassment take estimates, as shown in tables 10 and 11, for modeled cetacean species were derived from AMAPPS data from 2010–2019 NE shipboard distance sampling surveys (Palka *et al.*, 2021) or informed by data from 2018–2021 HRG surveys conducted near the project area (Vineyard Wind, 2018, 2020a, 2020c, 2021a). Mean group size was calculated as the number of individuals divided by the number of groups from table 6–5 of Palka *et al.* (2021), which summarizes the 2010–2019 AMAPPS NE shipboard distance surveys. Summer sightings (June 1 to August 31) were chosen for these calculations because many species were not observed during fall surveys, and surveys were not conducted during spring or winter. When site assessment survey data showed a larger mean group size than was shown by the AMAPPS data, the site assessment survey group size was applied to take calculations.

In cases where the exposure estimate was less than the mean group size, we predict that if one group member were to be exposed within the Level B harassment threshold, then it is reasonable to expect that all animals in the same group could be. Therefore, for species for which the annual number of predicted exposures above threshold was less than the mean group size, the annual number of expected takes was increased to one mean group size

rounded up to the nearest integer. Correcting for group size for these species is used as a conservative measure to ensure that in the event of a close encounter with the species, a reasonably expected number of individuals (*i.e.*, average group size) is accounted for in the take request.

As described previously, density-based exposure calculations were not conducted for species considered rare in the project area. There are few to zero sightings of these species in the sources used above to calculate group size for the modeled species, so an alternative method had to be developed. Group size calculations for rare species used sighting data from the Ocean Biodiversity Information System database (OBIS, 2021). All records for each of the rare species were extracted from the OBIS database and then filtered to include only the area from approximately Cape Hatteras to the Gulf of Maine (35° N to 43° N) and from the coast (76° W) out to the continental shelf edge (66° W) to provide a more precise estimate of potential group size in the SWDA than would be expected using all OBIS records. The OBIS data were further filtered to remove stranding data, because the group size of stranded animals does not necessarily reflect the group size of free-ranging animals. The one exception to this was the hooded seal—all records of this species in this area from the OBIS database were of single, stranded individuals, and thus a group size of one was used. This number is likely reflective of any free-swimming hooded seal that would occur in the area because this is an Arctic species and only single vagrant animals would be expected. Finally, data from digital aerial surveys were filtered out of this larger dataset because, although useful in determining presence/absence, these data provide no information on group size. The “individualCount” variable in the OBIS data was used to calculate minimum, maximum, and average group sizes for these rare species (table 16 in the ITA application).

For many of these rare species, in particular the delphinids, maximum group sizes in OBIS can be in the hundreds or even up to thousands of animals. However, because these animals are rare in the project area, as it is not their preferred habitat, we think that they would be unlikely to form such large aggregations in this area and, further, it is unlikely that any such large aggregations would all swim with the small HRG Level B harassment zone. Thus, like with uncommon species, the average group size (rounded up to a whole number) based on the previously

described observer data was used in the take calculations for these species instead of the OBIS data to refine the group sizes to what had been previously observed in similar surveys. Group sizes relevant to the project area can be informed by PSO sightings during site characterization surveys (tables 10 and 11). For example, white-beaked dolphins were recorded in both 2019 and 2020 during HRG surveys in this area (Vineyard Wind, 2019, 2020) with the sighting of white-beaked dolphins in 2019 consisting of 30 animals. Other rare species encountered in the survey

area during previous HRG surveys include false killer whales in 2019 (5 individuals) and 2021 (1 individual) (Vineyard Wind, 2020c, 2020b) and killer whales in 2022 (2 individuals; data not yet submitted). For these species the take estimates use the average observed group size from PSO sightings.

Additional detail regarding the density and occurrence as well as the assumptions and methodology used to estimate take for specific activities is included in the activity-specific subsections below and in Section 6.1 of

the ITA application. Average group sizes used in take estimates, where applicable, for all activities are provided in tables 10 and 11.

Tables 7, 8, and 9, below demonstrate all of the densities used in the exposure and take analyses. Densities differed depending on the types of piles installed and manner of take being assessed given the large spatial extent differences between ER_{95%} for Level A harassment and Level B harassment. Tables 10 and 11 show the average marine mammal group sizes calculated based on the methods described above.

TABLE 7—MEAN MONTHLY MARINE MAMMAL DENSITY ESTIMATES (ANIMALS/100 km²) FOR FOUNDATION INSTALLATION IMPACT PILE DRIVING, VIBRATORY PILE SETTING FOLLOWED BY IMPACT PILE DRIVING, AND DRILLING (LEVEL B) CONSIDERING A 10-KM BUFFER AROUND THE LEASE AREA ^a

Species	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Annual mean	May-Dec mean
North Atlantic right whale ^b	0.387	0.461	0.456	0.478	0.295	0.050	0.022	0.018	0.028	0.052	0.068	0.197	0.209	0.091
Fin whale ^b	0.215	0.166	0.107	0.164	0.272	0.256	0.438	0.366	0.227	0.057	0.051	0.141	0.205	0.226
Humpback whale	0.031	0.023	0.043	0.149	0.294	0.307	0.172	0.120	0.167	0.236	0.190	0.030	0.147	0.189
Minke whale	0.113	0.137	0.136	0.806	1.728	1.637	0.700	0.471	0.516	0.465	0.052	0.077	0.570	0.706
Sei whale ^b	0.039	0.021	0.044	0.112	0.192	0.052	0.013	0.011	0.019	0.036	0.079	0.065	0.057	0.058
Sperm whale ^b	0.031	0.011	0.013	0.003	0.014	0.028	0.038	0.107	0.070	0.057	0.031	0.020	0.035	0.046
Atlantic spotted dolphin	0.001	0.000	0.001	0.003	0.018	0.025	0.031	0.054	0.273	0.431	0.179	0.018	0.086	0.128
Atlantic white-sided dolphin	2.049	1.230	0.850	1.313	3.322	3.003	1.392	0.730	1.654	2.431	1.791	2.440	1.850	2.095
Bottlenose dolphin, off-shore	0.495	0.111	0.059	0.156	0.814	1.358	1.479	1.659	1.483	1.337	1.255	1.101	0.942	1.311
Common dolphin	7.130	2.455	1.884	3.258	6.254	13.905	10.533	14.446	25.703	22.676	11.103	10.774	10.844	14.424
Long-finned pilot whale ^c	0.189	0.189	0.189	0.189	0.189	0.189	0.189	0.189	0.189	0.189	0.189	0.189	0.189	0.189
Short-finned pilot whale ^c	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047
Risso's dolphin	0.043	0.004	0.002	0.018	0.096	0.048	0.068	0.128	0.158	0.087	0.120	0.179	0.079	0.111
Harbor porpoise	10.007	10.784	10.277	8.914	6.741	0.960	0.880	0.848	0.988	1.271	1.418	5.812	4.908	2.365
Gray seal ^d	5.395	5.603	4.176	3.203	4.716	0.806	0.088	0.094	0.226	0.500	1.768	4.534	2.592	1.591
Harbor seal ^d	8.093	8.404	6.265	4.804	7.074	1.209	0.132	0.140	0.339	0.750	2.652	6.802	3.889	2.387
Harp seal ^d	5.781	6.003	4.475	3.432	5.053	0.864	0.094	0.100	0.242	0.535	1.894	4.858	2.778	1.705

Note: All densities used for impact pile driving and drilling used the 10-km density table. For vibratory pile driving, for each species, foundation type, and attenuation level, the most appropriate density perimeter was used (10 km, 25 km, 50 km) based on the 95th percentile exposure range (ER_{95%}). Therefore, vibratory pile driving exposure estimates used 10-km for Level A harassment and a mixture of the 25 and 50-km tables for Level B harassment.

^a Density estimates are calculated from the 2022 Duke Habitat-Based Marine Mammal Density Models (Roberts *et al.*, 2016; Roberts *et al.*, 2022).

^b Listed as Endangered under the ESA.

^c Density adjusted by relative local abundance.

^d Gray and harbor seal densities are the seals guild density scaled by their relative local abundances; gray seals are used as a surrogate for harp seals.

TABLE 8—MEAN MONTHLY MARINE MAMMAL DENSITY ESTIMATES (ANIMALS/100 km²) FOR VIBRATORY PILE SETTING FOLLOWED BY IMPACT PILE DRIVING (LEVEL B HARASSMENT ^a) CONSIDERING A 25-KM PERIMETER AROUND THE LEASE AREA

Species	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Annual mean	May-Dec mean
North Atlantic right whale ^b	0.443	0.523	0.493	0.471	0.279	0.052	0.026	0.019	0.029	0.050	0.084	0.257	0.227	0.100
Fin whale ^b	0.213	0.161	0.118	0.165	0.272	0.247	0.391	0.316	0.221	0.068	0.056	0.146	0.198	0.214
Humpback whale	0.034	0.026	0.044	0.146	0.271	0.284	0.156	0.107	0.147	0.202	0.174	0.035	0.135	0.172
Minke whale	0.119	0.138	0.143	0.790	1.617	1.468	0.622	0.397	0.436	0.436	0.054	0.084	0.525	0.639
Sei whale ^b	0.036	0.022	0.045	0.115	0.186	0.053	0.013	0.010	0.017	0.035	0.080	0.066	0.056	0.058
Sperm whale ^b	0.030	0.012	0.012	0.003	0.013	0.028	0.038	0.115	0.059	0.042	0.029	0.021	0.034	0.043
Atlantic spotted dolphin	0.001	<0.001	<0.001	0.003	0.027	0.042	0.034	0.055	0.282	0.577	0.181	0.020	0.102	0.152
Atlantic white-sided dolphin	2.062	1.314	0.913	1.383	3.179	2.994	1.368	0.644	1.532	2.246	1.741	2.357	1.811	2.008
Bottlenose dolphin, off-shore	0.476	0.118	0.066	0.174	0.835	1.390	1.491	1.624	1.528	1.414	1.324	1.077	0.960	1.335
Common dolphin	7.388	2.799	2.212	3.612	6.556	13.827	10.602	13.820	23.538	24.395	12.882	11.716	11.112	14.667
Long-finned pilot whale ^c	0.188	0.188	0.188	0.188	0.188	0.188	0.188	0.188	0.188	0.188	0.188	0.188	0.188	0.188
Short-finned pilot whale ^c	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047
Risso's dolphin	0.051	0.006	0.003	0.021	0.112	0.070	0.092	0.170	0.223	0.122	0.128	0.174	0.098	0.136
Harbor porpoise	9.007	9.787	9.321	8.194	5.913	1.172	1.147	1.030	1.003	1.222	1.421	5.478	4.558	2.298
Gray seal ^d	5.553	5.401	3.946	3.485	5.109	1.750	0.315	0.296	0.497	0.881	2.108	4.485	2.819	1.930

TABLE 8—MEAN MONTHLY MARINE MAMMAL DENSITY ESTIMATES (ANIMALS/100 km²) FOR VIBRATORY PILE SETTING FOLLOWED BY IMPACT PILE DRIVING (LEVEL B HARASSMENT^a) CONSIDERING A 25-KM PERIMETER AROUND THE LEASE AREA—Continued

Species	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Annual mean	May–Dec mean
Harbor seal ^d	8.329	8.101	5.919	5.227	7.664	2.625	0.473	0.443	0.745	1.322	3.161	6.728	4.228	2.895
Harp seal ^d	5.949	5.786	4.228	3.733	5.474	1.875	0.338	0.317	0.532	0.944	2.258	4.806	3.020	2.068

^a The Level B harassment exposure ranges (ER_{95%}) for vibratory pile driving informed which density estimates were used. For species whose exposure range was more than 10 km and up to 25 km, this table's densities were used. For those more than 25 km, the 50 km densities were used.

Density estimates are calculated from the 2022 Duke Habitat-Based Marine Mammal Density Models (Roberts *et al.*, 2016; Roberts *et al.*, 2022).

^b Listed as Endangered under the ESA.

^c Density adjusted by relative local abundance.

^d Gray and harbor seal densities are the seals guild density scaled by their relative local abundances; gray seals are used as a surrogate for harp seals.

TABLE 9—MEAN MONTHLY MARINE MAMMAL DENSITY ESTIMATES (ANIMALS/100 km²) FOR VIBRATORY PILE SETTING FOLLOWED BY IMPACT PILE DRIVING CONSIDERING A 50-KM PERIMETER AROUND THE LEASE AREA^a

Species	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Annual mean	May–Dec mean
North Atlantic right whale ^b	0.565	0.674	0.580	0.511	0.321	0.084	0.055	0.033	0.045	0.055	0.119	0.361	0.284	0.134
Fin whale ^b	0.194	0.158	0.142	0.169	0.256	0.246	0.383	0.316	0.244	0.093	0.060	0.128	0.199	0.216
Humpback whale	0.037	0.030	0.044	0.167	0.270	0.300	0.158	0.096	0.124	0.177	0.164	0.041	0.134	0.166
Minke whale	0.106	0.121	0.138	0.652	1.298	1.163	0.504	0.302	0.338	0.387	0.051	0.080	0.428	0.515
Sei whale ^b	0.030	0.024	0.045	0.123	0.181	0.059	0.016	0.009	0.014	0.034	0.076	0.058	0.056	0.056
Sperm whale ^b	0.031	0.018	0.018	0.005	0.014	0.029	0.039	0.111	0.053	0.035	0.028	0.028	0.034	0.042
Atlantic spotted dolphin	0.002	<0.001	<0.001	0.006	0.073	0.182	0.052	0.084	0.449	1.025	0.238	0.027	0.178	0.266
Atlantic white-sided dolphin	2.430	1.744	1.187	1.652	3.170	3.373	1.468	0.508	1.265	2.153	1.732	2.428	1.926	2.012
Bottlenose dolphin, off-shore	0.691	0.222	0.130	0.293	1.119	1.863	1.924	1.935	2.001	1.972	1.905	1.455	1.293	1.772
Common dolphin	10.202	5.127	4.047	5.422	8.950	18.237	13.103	14.754	22.465	30.637	18.664	15.127	13.895	17.742
Long-finned pilot whale ^c	0.231	0.231	0.231	0.231	0.231	0.231	0.231	0.231	0.231	0.231	0.231	0.231	0.231	0.231
Short-finned pilot whale ^c	0.058	0.058	0.058	0.058	0.058	0.058	0.058	0.058	0.058	0.058	0.058	0.058	0.058	0.058
Risso's dolphin	0.110	0.023	0.009	0.040	0.230	0.227	0.299	0.488	0.642	0.322	0.190	0.218	0.233	0.327
Harbor porpoise	6.731	7.481	7.192	6.632	4.590	1.481	1.388	1.038	0.852	1.130	1.383	4.273	3.681	2.017
Gray seal ^d	5.346	4.893	4.081	4.674	6.820	5.412	1.595	1.318	1.519	2.863	3.322	4.748	3.882	3.450
Harbor seal ^d	8.019	7.339	6.121	7.011	10.229	8.118	2.392	1.977	2.279	4.295	4.982	7.122	5.824	5.174
Harp seal ^d	5.728	5.242	4.372	5.008	7.307	5.798	1.709	1.412	1.628	3.068	3.559	5.087	4.160	3.696

^a Density estimates are calculated from the 2022 Duke Habitat-Based Marine Mammal Density Models (Roberts *et al.*, 2016; Roberts *et al.*, 2022). Species with exposure ranges greater than 25 km used the densities in this table.

^b Listed as Endangered under the ESA.

^c Density adjusted by relative local abundance.

^d Gray and harbor seal densities are the seals guild density scaled by their relative local abundances; gray seals are used as a surrogate for harp seals.

TABLE 10—AVERAGE MARINE MAMMAL SPECIES GROUP SIZES

Species	Number of groups (AMAPPS data) ^a	Number of animals (AMAPPS data) ^a	Mean group size (AMAPPS data) ^a	Mean group size (PSO data) ^b	Group size applied to take request ^c
North Atlantic right whale ^d	2	4	2.0	1.5	2
Fin whale ^d	345	533	1.5	1.6	2
Humpback whale	157	370	2.4	1.5	3
Minke whale	32	32	1.0	1.1	2
Sei whale ^d	20	28	1.4	1.0	2
Sperm whale ^d	298	491	1.6	1.3	2
Atlantic spotted dolphin	60	1,760	29.3	Not observed	30
Atlantic white-sided dolphin	3	61	20.3	27.5	28
Bottlenose dolphin, offshore	345	3,865	11.2	17.9	18
Common dolphin	444	19,802	44.6	14.0	45
Long-finned pilot whale	41	666	16.2	5.6	17
Short-finned pilot whale	230	2,050	8.9	Not observed	9
Risso's dolphin	486	3,131	6.4	Not observed	7
Harbor porpoise	4	6	1.5	1.3	2
Gray seal	145	202	1.4	1.2	2
Harbor seal	145	202	1.4	2.0	2
Harp seal	145	202	1.4	Not observed	2

^a Mean group size for cetaceans from 2010–2019 AMAPPS NE shipboard distance sampling surveys (table 6–5 of Palka *et al.* (2021)), and for seals from 2010–2013 AMAPPS NE aerial surveys for all seals because most were not identified to species (table 19.1 of Palka *et al.* (2017)).

^b Mean group size from 2018–2021 PSO sightings data from 2018–2021 HRG surveys conducted by the Proponent (Vineyard Wind, 2018, 2020a, 2020c, 2021a).

^c Group size used for takes by Level B harassment correction is higher of AMAPPS data and PSO data rounded up to an integer.

^d Listed as Endangered under the ESA.

TABLE 11—AVERAGE MARINE MAMMAL GROUP SIZES USED FOR RARE SPECIES IN TAKE ESTIMATE CALCULATIONS

Species	Minimum group size (OBIS)	Maximum group size (OBIS)	Mean group size (OBIS)	Mean group size (PSO reports)	Group size used in take estimates
Blue whale ^a	1	2	1.0	NA	1
Dwarf sperm whale	1	5	1.7	NA	2
Pygmy sperm whale	1	3	1.3	NA	2
Cuvier's beaked whale	1	10	2.8	NA	3
Blainville's beaked whale	3	4	3.3	NA	4
Gervais' beaked whale	1	12	3.5	NA	4
Sowerby's beaked whale	1	10	3.5	NA	4
True's beaked whale	2	5	2.9	NA	3
Northern bottlenose whale	2	7	3.7	NA	4
Clymene dolphin	2	1,000	166.8	NA	167
False killer whale ^b	1	30	6.3	5	5
Fraser's dolphin	75	250	191.7	NA	192
Killer whale ^b	1	40	7.3	2	2
Melon-headed whale	20	210	108.8	NA	109
Pan-tropical spotted dolphin	3	300	59.3	NA	60
Pygmy killer whale	2	10	4.5	NA	5
Rough-toothed dolphin	3	45	13.1	NA	14
Spinner dolphin	1	170	50.4	NA	51
Striped dolphin	1	500	63.8	NA	64
White-beaked dolphin ^b	1	200	13.5	30	30
Hooded seal ^c	1	1	1.0	NA	1

^a Listed as Endangered under the ESA.

^b Mean group size for these species from 2018–2021 PSO sightings data from 2018–2021 HRG surveys conducted by Park City Wind (Vineyard Wind, 2018, 2020a, 2020c, 2021a).

^c All records of hooded seals in the OBIS database for this region were strandings of single animals.

Modeling and Take Estimation

Avangrid estimated take using both sophisticated sound and animal movement modeling to account for the movement and behavior of marine mammals and their exposure to the underwater sound fields produced during foundation impact and vibratory pile driving, as described below. Avangrid estimated the potential for harassment from drilling, HRG, and UXO/MEC detonations using a simplified “static” method wherein the take estimates are the product of density, ensonified area above the NMFS defined threshold (e.g., unweighted 160 dB SPLrms) levels, and number of days of installation. Animal movement modeling was not conducted for drilling, HRG, and UXO/MEC detonations.

In some cases, the exposure estimates based on either the animal movement modeling or static methods described above directly informed the amount of take requested; in other cases, adjustments were made based on previously collected monitoring data or average group size as described above. In all cases, Avangrid requested, and NMFS may authorize, take based on the highest amount of exposures estimated from any given method.

Below we present the take estimate methodologies associated with each activity.

WTG and ESP Foundation Installation

WTG and ESP installation activities have the likelihood to result in harassment of marine mammals from pile driving and drilling.

Since the proposed rule, the applicant refined the modeling methodology for impact pile driving and vibratory pile setting (section 1.7 in the January 2024 Application Update). In the original modeling (impact pile driving for the July 2022 LOA application), JASCO modeled impact pile driving source characteristics using an energy-based parabolic equation (PE) model (JASCO's Marine Operations Noise Model (MONM)) to compute the near-field equivalent source before long range propagation. In this update, JASCO's Full-Wave PE RAM model (FWRAM) was used to compute the near-field equivalent source before the long-range propagation was computed (also using FWRAM). Using FWRAM over MONM is an improvement because it calculates full synthetic pressure waveforms (in the time domain), as opposed to summed energy independent of time. Like MONM, FWRAM is range dependent for range-varying marine acoustic environments and takes environmental inputs (bathymetry, water sound speed profile, and seabed geoaoustic profile) into account. FWRAM computes pressure waveforms via Fourier synthesis of the modeled acoustic transfer function in closely spaced frequency bands, and employs

the array starter method to accurately model sound propagation from a spatially distributed source (MacGillivray and Chapman, 2012). Ultimately, little difference was observed between the prior sound fields with near-field equivalents computed using MONM versus the current modeling with FWRAM but FWRAM is a more accurate model as it allows direct calculation of peak and RMS sound pressure levels. Both models use a wide-angle parabolic equation solution to the acoustic wave equation (Collins, 1993), based on a version of the US Naval Research Laboratory's Range-dependent Acoustic Model (RAM), which has been modified to account for a solid seabed (Collins, 1993; Zhang and Tindle 1995).

The practical spreading loss approach described for vibratory pile driving in the proposed rule has been replaced with acoustic modeling, similar to the refined impact pile driving methodology. A quantitative acoustic assessment was conducted by Avangrid of the potential impacts to marine mammals from vibratory pile setting followed by impact pile driving activity during installation. As vibratory pile driving will be used on the same foundations subject to impact pile driving (sequentially not concurrently), acoustic modeling was completed for vibratory setting of piles followed by impact pile driving, and exposures were modeled using animal movement

modeling as described in the impact pile driving model. One second long vibratory forcing functions were computed for the 12 and 13 m monopile and the 4-m jacket foundations, using GRL’s Wave Equation Analysis (GRLWEAP, 2010; GRLWEAP Pile Dynamics, 2010). Non-linearities were introduced to the vibratory forcing functions based on the decay rate observed in data measured during vibratory pile driving of smaller

diameter piles (Quijano *et al.*, 2017). The resulting forcing functions serve as inputs to JASCO’s pile driving source model (PDSM) used to estimate an equivalent acoustic source represented by a linear array of monopoles evenly distributed along the pile. Acoustic propagation modeling used FWRAM that combine the outputs of the source model with the spatial and temporal environmental context (*e.g.*, location, oceanographic conditions, and seabed

type) to estimate sound fields. Unchanged from the proposed rule, NMFS notes that no hammer parameters were available for either a 5,000 or 6,000 kJ hammer for use in GRLWEAP 2010; Avangrid modeled energies of the 5,500 kJ hammer were scaled using their stroke length to represent the effect of the forcing functions for the two different hammers approximated.

TABLE 12—KEY PILING ASSUMPTIONS USED IN THE SOURCE MODELING

Foundation type	Modeled maximum impact hammer energy (kJ)	Pile length (m)	Pile wall thickness (mm)	Expected penetration (m)	Max number of piles per day
12-m Monopile	5,000	95	200	40	2
12-m Monopile	6,000	95	200	40	2
13-m Monopile	5,000	95	200	40	2
4-m Pin Pile (Jacket)	3,500	100	100	50	4

Avangrid also updated source and propagation modeling approaches associated with estimating impacts from drilling. The proposed rule assumed an unattenuated source level of 193.3 dB re 1 µPa (as estimated by Austin *et al.* (2018) and therefore, assuming 10 dB of attenuation as sound attenuation measures were proposed to be required, applied a 183.3 dB SPL source level to the analysis. Avangrid had applied a practical spreading loss model (15logR) to that source level, resulting in a 16.6-km distance to NMFS 120 dB SPL Level B harassment threshold. For this final rule, Avangrid modeled drilling noise at the source and conducted more sophisticated propagation modeling. To model drilling, the three representative source levels estimated by Austin *et al.* (2018) for the 10–32,000 Hz band were averaged with an average broadband level of 191.6 dB re 1 µPa2·s m2. These modeling locations were selected as they represent the range of water depths in the Lease Area. MONM was used to predict SEL and SPL sound fields up to 1 kHz at a representative location near the proposed drilling sites considering the influence of bathymetry, seabed, water sound speed, and water attenuation. From 1 to 25 kHz, the BELLHOP ray tracing model (Porter and Liu, 1994) was used to predict sound fields at the same representative location using from 2512 to 5012 geometric beams, increasing the beam coverage with frequency. The total sound energy transmission loss was computed at the center frequencies of decade bands as a function of range and depth from the source. MONM–BELLHOP accounts for sound

attenuation due to energy absorption through ion relaxation and viscosity of water in addition to acoustic attenuation due to reflection at the medium boundaries and internal layers (Fisher and Simmons 1977). The former type of sound attenuation is important for frequencies higher than 5 kHz and cannot be neglected without noticeably affecting the model results. The drill was represented as a point source in the mid-water column at each site. The mid-water depth is a conservative representation of the noise source across the drill bit. The acoustic field in three dimensions was generated by modeling two-dimensional (2-D) vertical planes radially spaced at 2.5° in a 360° swath around the source (*N* × 2-D). Composite broadband received SEL were computed by summing the received decade band levels across frequency and taking the maximum-over-depth. Overall, the average source levels per decade band center frequency were used in MONM to predict SEL and SPL sound fields up to 1 kHz, and a BELLHOP ray tracing model (Porter and Liu 1994) was used from 1–32 kHz, at a representative location near the proposed drilling sites considering the influence of bathymetry, seabed, water sound speed, and water attenuation. The modeled unweighted SPL levels at 750 m were 135.25–136.33 dB re 1 µPa during the summer. The corresponding unweighted cumulative SEL levels at 750 m are 185.07–185.24 dB re 1 µPa2·s during the summer. Similar to the proposed rule, modeling assumed that drilling activity could occur for a full 24 hours during any given day although it is not expected that drilling would be required

up to 24 hours. More details on the drilling modeling methods and assumptions can be found in more detail in the January 2024 Drilling Technical Memo on our website (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-park-city-wind-llc-construction-new-england-wind-offshore-wind>). JASCO conducted exposure modeling for impact driving in the same manner as described in the proposed rule for impact driving. For this final rule, exposure modeling was also conducted for vibratory pile driving (versus the static method applied in the proposed rule). JASCO’s Animal Simulation Model Including Noise Exposure (JASMINE) was used to estimate the closest approach ranges within which 95 percent of simulated animals (animats) were exposed above the relevant regulatory-defined thresholds for injury and behavioral response for marine species that may be near, or in the vicinity of, the proposed foundation piling operations (impact and vibratory). Therefore, JASMINE was used to estimate the probability of exposure of animals to sound arising from impact and vibratory pile driving operations during construction of the Project. Sound exposure models such as JASMINE use simulated animals (animats) to sample the predicted 3-D sound fields with movement rules derived from animal observations. The parameters used for forecasting realistic behaviors (*e.g.*, diving, foraging, aversion, and surface times) are determined and interpreted from marine species studies (*e.g.*, tagging studies) where available, or reasonably

extrapolated from related species (appendix G.2, Hydroacoustic Report January 2024).

The predicted sound fields were sampled by the model receiver in a way that real animals are expected to by programming animats to behave like marine species that may be present near the Project. The output of the simulation is the exposure history for each animat within the simulation. An individual animat's sound exposure level is summed over a specified duration, (*i.e.*, 24 hours (appendix H Hydroacoustic Report January 2024)), to determine its total received acoustic energy (SEL) and maximum received PK and SPL. Received levels are then compared to the threshold criteria described in Section 2.4 (Hydroacoustic Report January 2024) within each analysis period. Appendix H of the Hydroacoustic Report January 2024 provides a fuller description of animal movement modeling and the parameters used in the JASMINE simulations. Due to shifts in animal density and seasonal sound propagation effects, the number of animals predicted to be impacted by the pile driving operations is sensitive to the number of foundations installed during each month.

The animal movement modeling assumed 60 minutes of vibratory setting of piles for all pile types and installation schedules. For piling of monopile foundations, the model assumed 15 minutes between vibratory and impact pile driving to switch equipment. A strike rate of 30 strikes per minute for the 5,000 kJ hammer scenarios, 27.6 strikes per minute for the 6,000 kJ hammer 13 m monopile scenarios, and 25 strikes per minute for the 6,000 kJ hammer 12 m monopile scenarios was used. The model assumed 30 minutes between foundation installation when more than one foundation was installed per day.

For jacket foundations, the number of strikes required to drive each pile as provided by Avangrid is a conservative estimate, in that it is likely to be an overestimate of the actual number of strikes required. The animal movement modeling is based on exposure levels in

a 24 hour period to capture 24-hour cumulative metrics (*i.e.*, SEL), so pile installation is constrained to fit within 24 hours. To accommodate the high number of strikes for jacket foundations within a 24-hour period, a strike rate of 30 per minute was used to model cases where 4 pin piles were installed in one day. Additionally, the time between pile installation each day was 15 minutes between vibratory and impact pile driving to switch equipment and 15 minutes between foundation installations.

When evaluating the potential for injury, the total received acoustic energy (SEL) over a given time period (24 hour) is needed. Vibratory setting of piles followed by impact pile driving may occur for the installation of both monopile and jacket foundations. Although the potential to induce hearing loss is low during vibratory driving, it does introduce sound into the water and must be considered as part of the total received acoustic energy. For this reason, the combined sound energy from vibratory and impact pile driving was computed in the 2024 January Application Update from Avangrid. The PTS onset SEL thresholds are lower for impact piling than for vibratory piling (section 2.4 Hydroacoustic Report January 2024), so when estimating animats exposed to potentially injurious sound levels, the lower thresholds were applied to the total received sound energy level from both sources. Full details on the acoustic model can be found on our website in the Hydroacoustic Report January 2024 at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-park-city-wind-llc-construction-new-england-wind-offshore-wind>.

As previously described, JASCO integrated the results from acoustic source and propagation modeling into an animal movement model to calculate exposure ranges for 17 marine mammal species considered common in the project area. The resulting ranges represent the distances at which marine mammals may incur Level A harassment (*i.e.*, PTS). The exposure ranges also influence the development

of mitigation and harassment zone sizes. The first year of Schedule A includes the potential installation of 13-m monopiles using a 6,000 kJ hammer. In the proposed rule and unchanged in this final rule, this specific configuration was not modeled beyond acoustic source modeling because initial source modeling showed minimal difference between the 12-m and 13-m monopiles (see table 12 in the proposed rule (88 FR 37606, June 8, 2023)). Therefore, Avangrid modeled the 12-m monopile with 6,000 kJ hammer energy which was assumed to be a reasonable replacement for the 13-m. Avangrid assumed that all phase 2 foundations are jackets as their modeling results found that jacket foundations are the most impactful in terms of the Level A cumulative sound exposure metric. Thus, the assumption of all jacket foundations provide an envelope for an up to 13-m monopile installed with a 5,000 or 6,000 kJ hammer. Tables 13 and 14 provide exposure ranges for impact pile driving 12-m and 13-m monopiles and 4-m pin piles (jacket foundations), assuming 10 dB of attenuation. Table 15 provides Level A harassment exposure ranges for vibratory pile driving followed by impact pile driving of 12-m and 13-m monopiles, assuming 10 dB of attenuation. Table 16 provides Level B harassment exposure ranges for vibratory pile driving followed by impact pile driving of 12-m and 13-m monopiles, assuming 10 dB of attenuation. Table 17 provides exposure ranges for vibratory pile driving followed by impact pile driving of 4-m pin piles (jacket foundations), assuming 10 dB of attenuation.

Animat exposure modeling was not conducted for drilling. Instead, exposures were calculated for one day of drilling, modeled at three site locations. Exposures were calculated for each of these locations individually and for the maximum potential exposures using the maximum ensounded area for each threshold. Exposures were estimated using the monthly animal densities from May to December.

TABLE 13—EXPOSURE RANGES (ER_{95%}, km) TO MARINE MAMMAL LEVEL A HARASSMENT (SEL) AND LEVEL B HARASSMENT THRESHOLDS DURING IMPACT PILE DRIVING 12-m AND 13-m MONOPILES, ASSUMING 10 dB ATTENUATION ¹

Marine mammal species	Level A harassment								Level B harassment							
	12-m Monopile				13-m Monopile				12-m Monopile				13-m Monopile			
	5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)	
	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day
North Atlantic right whale ..	1.19	1.41	1.19	1.34	1.19	1.37	1.56	1.62	4.50	4.39	4.91	4.83	4.73	4.51	5.28	5.18
Fin whale	2.00	2.13	2.05	2.16	2.04	2.30	2.14	2.58	4.88	4.92	5.28	5.29	5.08	4.99	5.56	5.40
Humpback whale	1.71	1.78	1.72	1.97	1.87	1.99	1.96	1.99	4.86	4.65	5.26	5.12	5.02	4.93	5.27	5.40
Minke whale	0.82	0.96	0.91	1.12	0.96	1.02	1.22	1.19	4.61	4.32	4.95	4.87	4.44	4.67	5.05	5.05
Sei whale	0.94	1.14	1.36	1.27	1.17	1.30	1.32	1.31	4.72	4.60	5.19	5.17	4.96	4.90	5.44	5.34
Sperm whale	0	0	0	0	0	0	0	0	4.68	4.51	5.22	5.16	4.80	4.84	5.33	5.27
Atlantic spotted dolphin	0	0	0	0	0	0	0	0	4.48	4.18	5.02	4.51	4.74	4.58	4.88	4.84
Atlantic white-sided dolphin	0	0	0	0	0	0	0	0	4.26	4.31	4.87	4.83	4.50	4.47	5.01	4.98
Bottlenose dolphin, off-shore	0	0	0	0	0	0	0	0	3.98	3.79	4.45	4.18	4.09	4.12	4.70	4.65
Common dolphin	0	0	0	0	0	0	0	0	4.47	4.34	4.99	4.88	4.63	4.55	5.28	5.10
Long-finned pilot whale	0	0	0	0	0	0	0	0	4.20	4.09	4.75	4.72	4.39	4.38	4.95	4.76
Short-finned pilot whale	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Risso's dolphin	0	0	0	0	0	0	0	0	4.30	4.20	4.72	4.74	4.55	4.50	4.93	5.05
Harbor porpoise	0	0	0	0	0	0	0	0	4.23	3.94	4.46	4.44	4.49	4.41	4.74	4.75
Gray seal	0	0	0	0	0	0	0	0	5.10	5.13	5.58	5.53	5.42	5.34	5.85	5.77
Harbor seal	0	0	0	0	0	0	0	0	3.80	4.06	4.45	4.41	4.33	4.18	4.43	4.56
Harp seal	0	0	0	0	0	0	0	0	4.86	4.84	5.26	5.31	5.02	4.96	5.50	5.45

¹ The exposure ranges presented here represent the assumption that the pile would be fully installed with an impact hammer.

TABLE 14—EXPOSURE RANGES (ER_{95%}, km) TO MARINE MAMMAL LEVEL A HARASSMENT (SEL) AND LEVEL B HARASSMENT THRESHOLDS DURING IMPACT PILE DRIVING FOUR 4-m PIN PILES PER DAY USING A 3,500 kJ HAMMER, ASSUMING 10 dB ATTENUATION ¹

Marine mammal species	Level A harassment	Level B harassment
North Atlantic right whale	2.35	4.54
Fin whale	3.73	4.66
Humpback whale	2.94	4.65
Minke whale	1.76	4.24
Sei whale	2.10	4.52
Sperm whale	0	4.52
Atlantic spotted dolphin	0	4.47
Atlantic white-sided dolphin	0	4.40
Bottlenose dolphin, offshore	0	4.02
Common dolphin	0	4.48
Long-finned pilot whale	0	4.11
Short-finned pilot whale	0	0
Risso's dolphin	0	4.31
Harbor porpoise	0	4.20
Gray seal	0.79	4.97
Harbor seal	0.02	4.09
Harp seal	0.11	4.65

¹ The exposure ranges presented here represent the assumption that the pile would be fully installed with an impact hammer.

TABLE 15—EXPOSURE RANGES (ER_{95%}, km) TO MARINE MAMMAL LEVEL A HARASSMENT (SEL) THRESHOLDS DURING VIBRATORY PILE SETTING FOLLOWED BY IMPACT PILE DRIVING FOR 12-m AND 13-m MONOPILES, ASSUMING 10 dB ATTENUATION ¹

Marine mammal species	Vibratory + impact pile driving								Vibratory only ²							
	12-m Monopile				13-m Monopile				12-m Monopile				13-m Monopile			
	5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)	
	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day
North Atlantic right whale ..	1.15	0	1.39	1.44	1.29	1.40	1.54	1.59	0	0	0	0	0	0	0	0
Fin whale	2.02	0.02	2.14	2.24	2.10	2.61	2.16	2.69	0.02	0	0.02	0	0	0	0	0
Humpback whale	1.72	0	1.88	1.98	1.90	2.05	1.94	2.07	0	0	0	0	0	0	0	0
Minke whale	0.81	0	1.02	1.21	0.95	0.99	1.20	1.18	0	0	0	0	0	0	0	0
Sei whale	1.15	0	1.64	1.26	1.23	1.30	1.27	1.33	0	0	0	0	0	0	0	0

TABLE 15—EXPOSURE RANGES (ER_{95%}, km) TO MARINE MAMMAL LEVEL A HARASSMENT (SEL) THRESHOLDS DURING VIBRATORY PILE SETTING FOLLOWED BY IMPACT PILE DRIVING FOR 12-m AND 13-m MONOPILES, ASSUMING 10 dB ATTENUATION¹—Continued

Marine mammal species	Vibratory + impact pile driving								Vibratory only ²							
	12-m Monopile				13-m Monopile				12-m Monopile				13-m Monopile			
	5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)	
	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day
Sperm whale	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Atlantic spotted dolphin	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Atlantic white-sided dolphin	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bottlenose dolphin, off-shore	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Common dolphin	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Risso's dolphin	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Long-finned pilot whale	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Short-finned pilot whale	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Harbor porpoise	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Gray seal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Harbor seal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Harp seal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

¹ The exposure ranges presented here represent the assumption that the pile would be partially installed using vibratory pile driving before the remainder is installed with an impact hammer.

² Vibratory only is included to show that the distance to injury is small, however, no pile will be installed using only vibratory pile driving. Due to Avangrid's updated model approach, the combination of vibratory and impact pile driving within the model obscures the true distance to Level A harassment during vibratory pile driving when combined with impact. Therefore, the Level A harassment column of vibratory + impact pile driving is primarily a result of impact pile driving in the new model approach.

TABLE 16—EXPOSURE RANGES (ER_{95%}, km) TO MARINE MAMMAL LEVEL B HARASSMENT THRESHOLDS DURING VIBRATORY PILE SETTING FOLLOWED BY IMPACT PILE DRIVING FOR 12 AND 13-m MONOPILES, ASSUMING 10-dB ATTENUATION¹

Marine mammal species	Impact pile driving								Vibratory only ²							
	12-m Monopile				13-m Monopile				12-m Monopile				13-m Monopile			
	5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)		5,000 kJ hammer (km)		6,000 kJ hammer (km)	
	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day	one pile/day	two piles/day
North Atlantic right whale ..	4.49	4.38	4.91	4.83	4.58	4.52	5.08	5.11	20.96	21.10	20.96	21.10	28.07	27.45	28.07	27.45
Fin whale	4.97	4.89	5.30	5.31	5.12	4.97	5.59	5.49	22.22	22.14	22.22	22.14	29.40	29.41	29.40	29.41
Humpback whale	4.83	4.73	5.35	5.18	5.09	4.95	5.42	5.43	22.26	22.28	22.26	22.28	29.27	29.03	29.27	29.03
Minke whale	4.49	4.43	5.01	4.92	4.62	4.75	5.19	5.21	22.06	21.93	22.06	21.93	28.66	28.38	28.66	28.38
Sei whale	4.60	4.63	5.21	5.24	4.85	5.02	5.38	5.43	22.30	22.08	22.30	22.08	29.29	29.02	29.29	29.02
Sperm whale	4.68	4.59	5.17	5.11	4.87	4.86	5.40	5.28	21.97	21.95	21.97	21.95	29.15	28.87	29.15	28.87
Atlantic spotted dolphin	4.80	4.22	5.17	4.71	4.66	4.68	5.05	4.90	23.35	23.10	23.35	23.10	29.75	30.12	29.75	30.12
Atlantic white-sided dolphin	4.32	4.40	5.08	4.97	4.50	4.57	5.04	5.03	22.07	21.72	22.07	21.72	28.30	28.64	28.30	28.64
Bottlenose dolphin, off-shore	4.03	3.71	4.29	4.41	4.15	4.12	4.61	4.76	21.21	20.81	21.21	20.81	27.88	27.42	27.88	27.42
Common dolphin	4.44	4.34	5.02	4.90	4.61	4.64	5.28	5.19	21.97	21.89	21.97	21.89	29.10	28.53	29.10	28.53
Long-finned pilot whale	4.21	4.20	4.86	4.76	4.50	4.48	4.84	4.83	21.72	21.59	21.72	21.59	27.77	27.45	27.77	27.45
Short-finned pilot whale	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Risso's dolphin	4.42	4.27	4.78	4.71	4.60	4.59	4.99	5.08	21.05	20.79	21.05	20.79	27.16	27.41	27.16	27.41
Harbor porpoise	4.29	3.99	4.56	4.38	4.41	4.37	4.82	4.84	19.32	19.03	19.32	19.03	23.33	23.20	23.33	23.20
Gray seal	5.16	5.13	5.67	5.53	5.42	5.34	5.83	5.78	22.32	22.29	22.32	22.29	29.51	29.53	29.51	29.53
Harbor seal	3.81	4.03	4.35	4.42	4.33	4.15	4.56	4.69	19.80	19.89	19.80	19.89	24.96	24.58	24.96	24.58
Harp seal	5.03	4.90	5.25	5.24	5.11	4.98	5.49	5.48	22.45	22.43	22.45	22.43	29.45	29.44	29.45	29.44

¹ The exposure ranges presented here represent the assumption that the pile would be partially installed using vibratory pile driving before the remainder is installed with an impact hammer.

² No pile will be installed using only vibratory pile driving. Due to Avangrid's updated model approach, the combination of vibratory and impact pile driving within the model results in similar values for impact pile driving during vibratory as compared to impact only piles.

TABLE 17—EXPOSURE RANGES (ER_{95%}, km) TO MARINE MAMMAL LEVEL A HARASSMENT (SEL) AND LEVEL B HARASSMENT THRESHOLDS DURING VIBRATORY PILE SETTING FOLLOWED BY IMPACT PILE DRIVING FOR FOUR 4-m PIN PILES PER DAY USING A 3,500 kJ HAMMER, ASSUMING 10 dB ATTENUATION¹

Marine mammal species	Level A harassment		Level B harassment	
	Vibratory + impact	Vibratory only	Impact	Vibratory only
North Atlantic right whale	2.44	0	4.47	25.66

TABLE 17—EXPOSURE RANGES (ER_{95%}, km) TO MARINE MAMMAL LEVEL A HARASSMENT (SEL) AND LEVEL B HARASSMENT THRESHOLDS DURING VIBRATORY PILE SETTING FOLLOWED BY IMPACT PILE DRIVING FOR FOUR 4-m PIN PILES PER DAY USING A 3,500 kJ HAMMER, ASSUMING 10 dB ATTENUATION ¹—Continued

Marine mammal species	Level A harassment		Level B harassment	
	Vibratory + impact	Vibratory only	Impact	Vibratory only
Fin whale	4.02	0.04	4.63	27.74
Humpback whale	3.32	0	4.70	27.43
Minke whale	1.94	0	4.22	26.94
Sei whale	2.16	0	4.56	28.05
Sperm whale	0	0	4.54	27.11
Atlantic spotted dolphin	0	0	4.50	29.06
Atlantic white-sided dolphin	0	0	4.41	27.16
Bottlenose dolphin, offshore	0	0	4.09	25.85
Common dolphin	0	0	4.46	27.04
Long-finned pilot whale	0	0	4.18	26.89
Short-finned pilot whale	0	0	0	0
Risso's dolphin	0	0	4.30	26.51
Harbor porpoise	0	0	4.21	23.26
Gray seal	0.79	0	4.98	27.41
Harbor seal	0.07	0	4.11	23.55
Harp seal	0.12	0	4.64	27.65

¹ The exposure ranges presented here represent the assumption that the pile would be partially installed using vibratory pile driving before the remainder is installed with an impact hammer.

JASCO also calculated acoustic ranges which represent distances to NMFS's harassment isopleths independent of movement of a receiver. Acoustic ranges are a better representation of distances to NMFS's instantaneous harassment thresholds (*i.e.*, PTS dB peak, and Level B harassment) and can also be used for PTS dB SEL when animal movement modeling is not conducted. As described previously, the distances to the PTS dB SEL threshold are likely an overestimate as it assumes an animal remains at the distance for the entire duration of pile driving. Presented below are the distances to the PTS (dB

peak) threshold and Level B harassment (SPL) thresholds for drilling.

Acoustic modeling assumed that drilling activity could occur for a full 24 hours during any given day. Although drilling is not expected to be required for 24 hours, all modeling assumed 24 hours of drilling to provide the most conservative estimate. Exposures were calculated for one day of drilling. Drilling was modeled at each of the three model site locations (J1, M1, M2). Exposures were calculated for each of these locations individually and also for the maximum potential exposures using the maximum ensonified area for each

threshold. Exposures were estimated using the monthly animal densities from May to December. Maximum predicted injury exposures were <0.01 for modeled marine mammals (see appendix K of the Hydroacoustic Report January 2024), where ranges to injurious thresholds are <200 m for all species.

Acoustic ranges to the Level A harassment threshold and Level B harassment thresholds are in tables 18 and 19, respectively. Mean monthly density estimates for pile driving and drilling, in consideration of the applicable perimeter for each type, are provided in tables 7, 8, and 9.

TABLE 18—ACOUSTIC RANGES (R_{95%}), IN km, TO LEVEL A HARASSMENT THRESHOLDS DURING PILE DRIVING AND DRILLING, ASSUMING 10 dB ATTENUATION

Pile installed	Install method	Hammer energy (kJ)	Activity duration (minutes)	Low-frequency cetacean		Mid-frequency cetacean		High-frequency cetaceans		Phocids	
				Lpk	SEL	Lpk	SEL	Lpk	SEL	Lpk	SEL
Drilling	Drilling	N/A	1,440 (24 hours) .....	.....	0.065	.....	0.0154	.....	.057	.....	0.1059
12-m	Impact	5,000	N/A .....	.....	3.5	.....	.....	0.20	.....	.....	0.40
12-m	Impact	6,000	N/A .....	.....	3.546	.....	.....	0.24	0.02	.....	0.40
13-m	Impact	5,000	N/A .....	.....	4.0	.....	.....	0.25	0.09	.....	0.44
13-m	Impact	6,000	N/A .....	.....	4.041	.....	.....	0.28	0.108	.....	0.451
4-m	Impact	3,500	N/A .....	.....	6.822	.....	.....	0.17	0.428	.....	1.605
12-m	Impact + Vibratory	5,000	N/A .....	.....	3.67	.....	.....	.....	.....	.....	0.42
12-m	Impact + Vibratory	6,000	N/A .....	.....	4.08	.....	.....	.....	0.4	.....	0.49
13-m	Impact + Vibratory	5,000	N/A .....	.....	4.12	.....	.....	.....	0.09	.....	0.45
13-m	Impact + Vibratory	6,000	N/A .....	.....	4.58	.....	.....	.....	0.11	.....	0.53
4-m	Impact + Vibratory	3,500	N/A .....	.....	7.41	.....	.....	.....	0.44	.....	1.74
12-m	Vibratory	N/A	60 .....	.....	0.20	.....	.....	.....	.....	.....	.....
13-m	Vibratory	N/A	60 .....	.....	0.15	.....	.....	.....	.....	.....	.....
4-m	Vibratory	N/A	60 .....	.....	1.13	.....	.....	.....	.....	.....	.....

Note: Values are from the Hydroacoustic Report January 2024.

TABLE 19—ACOUSTIC RANGES ($R_{95\%}$), IN METERS, TO LEVEL B HARASSMENT THRESHOLDS DURING PILE DRIVING AND DRILLING, ASSUMING 10 dB ATTENUATION

Pile installed	Install method	Distance to Level B harassment (km)
Drilling	Drilling	7.054
12-m (5,000 kJ)	Impact	5.07
12-m (6,000 kJ)	Impact	5.456
13-m (5,000 kJ)	Impact	5.39
13-m (6,000 kJ)	Impact	5.716
4-m (3,500 kJ)	Impact	5.016
12-m	Vibratory	22.521
13-m	Vibratory	28.900
4-m	Vibratory	27.896

Unchanged from the proposed rule, to estimate take from foundation installation activities, Avangrid used two pile installation construction schedules (tables 20 and 21). Overall, Construction Schedule A (Schedule A) assumes 52 days of foundation installation activities would occur between May and December in 2026 (year 2) to install 89 monopiles and 2 jacket foundations and 35 days of foundation installation activities would occur in 2027 (year 3) to install 18 monopiles and 24 jacket foundations. As previously described, Park City accounted for 133 piles to be installed in its modeling despite a maximum of 132 foundations actually being installed. In total, based on Schedule A, 87 days of foundation installation activities would occur over 2 years to complete the Project. Construction Schedule B (Schedule B) assumes 38 days of foundation installation activities would occur between May and December in 2026 (year 2) to install 55 monopiles and 3 jacket foundations, 53 days of foundation installation activities would occur in 2027 (year 3) to install 53 jackets, and 22 days of foundation installation activities would occur in 2028 (year 4) to install 22 jackets. In total, based on Schedule B, 113 days of foundation installation activities would occur over 3 years to complete the Project.

Due to the extended duration of Schedule B, the total amount of Level B harassment from foundation installation activities is greater than Schedule A over the 5-year effective period of the final rule. The total 5-year take by Level B harassment in this final rule is therefore generated based on Schedule B. However, annual take estimates assume the yearly worst case scenario exposures for each species for each year from either Construction Schedule A or B. That is, annual take by Level B harassment due to foundation installation activities may use either

Schedule A or B, whichever was more. As previously described, Park City accounted for 133 piles to be installed in its modeling despite a maximum of 132 foundations actually being installed to complete the Project.

Avangrid considered three foundation installation techniques when estimating take: impact pile driving, vibratory pile driving followed by impact pile driving, and drilling (to break up any obstacles should the pile encounter obstructions). Of these, Level A harassment (PTS) has the potential to occur from impact pile driving only. As shown in table 18, vibratory pile driving and drilling produce very small Level A harassment zone sizes that consider static receivers over the duration of the time period considered in the model. For vibratory pile driving, the duration considered was relatively short (60 minutes); however, this represents vibratory pile driving over two piles in which there are several hours in between events and the resulting distances are comparatively small (table 18). Moreover, the implementation of clearance and shut down zones would further reduce the potential for PTS from these activities. Therefore, Avangrid has concluded, and NMFS agrees, the potential for PTS to occur from vibratory pile driving or drilling is discountable. For this reason, Avangrid carried forward the PTS exposure estimates from impact pile driving and no take by Level A harassment was considered for vibratory pile driving or drilling. The maximum take by Level A harassment that may be authorized under this final rule from the foundation activities (*i.e.*, impact pile driving) is in table 24.

To estimate the amount of Level B (behavioral) harassment that may occur incidental to foundation installation, Avangrid considered all three installation methods. As described above, Avangrid conducted exposure modeling to estimate the number of

exposures that may occur from pile driving. The results of the exposure modeling and amount of take Avangrid requested from this activity is provided in the January 2024 Application Update. Avangrid calculated take considering drilling for 48 foundations over 48 days for both Schedule A and Schedule B. In the proposed rule and unchanged in the final rule, Avangrid applied a more traditional approach to estimate take from drilling wherein:

$$\text{Take} = \text{density} \times \text{area ensonified} \times \text{number of days of activity}$$

The resulting monthly and annual take can be found in the January 2024 Application Update.

To avoid overestimating take, the amount of take derived when considering impact driving, vibratory driving, and drilling independently were not summed to produce the amount of annual take Avangrid requested. Instead, Avangrid appropriately deducted the take from drilling when vibratory pile driving and drilling would occur on the same day. This is because the area for vibratory pile driving is much larger than drilling (table 19) and the amount of take by Level B harassment estimated for vibratory pile driving adequately covers potential take from drilling activities. However, because take from pile driving was modeled based on the number of piles while drilling takes were based on the number of days of activity, Avangrid added the take estimates from pile driving all piles to the take estimates from vibratory drilling (with the appropriate discounting) to produce their annual and total take requests.

The amount of Level B harassment take that may be authorized by this final rule represents the amount of take from impact pile driving on days when only impact pile driving could occur plus the amount of take from vibratory pile driving or drilling on the days that either of those activities could occur to avoid double counting.

Table 24 provides the annual take by Level B harassment calculated from pile driving for both Schedule A and, separately, Schedule B. For ease of reference, the construction schedules have been included below in tables 20–21. Table 25 identifies the amount of take for drilling foundation installation activities after removing drilling takes when drilling would occur on the same	day as vibratory pile driving (to avoid double counting). The annual take amounts represent the highest value between both Schedule A and Schedule B while the maximum 5-year take estimates represent the sum of take calculated for each year in Schedule B (as Schedule B has the highest amount of take associated). NMFS retained Avangrid’s request for Level A	harassment from all impact pile driving activities as no Level A harassment from vibratory pile driving or drilling is anticipated (table 24). Table 26 identifies the amount of take for all foundation installation activities combined that was carried forward in the take tables for this final rule.

TABLE 20—PILE INSTALLATION CONSTRUCTION SCHEDULE A YEAR 2 AND 3

Month	Year 2 (2026) ^a										Year 3 (2027)						
	12 m Monopile 5,000 kJ		13 m Monopile 5,000 kJ		4 m Pin pile 3,500 kJ		Total days of impact only piling ^b	Total days with vibratory + impact piling ^b	Days with drilling ^c	Year 2 total days of foundation installation ^c	12 m Monopile 6,000 kJ		4 m Pin pile 3,500 kJ	Total days of impact only piling ^b	Total days with vibratory + impact piling ^b	Days with drilling ^c	Year 3 total days of foundation installation ^c
	1 per day	2 per day	1 per day	2 per day	1 per day	2 per day											
May	4	0	0	0	0	0	4	0	2	4	4	0	0	4	0	1	4
June	2	5	0	0	0	0	5	2	4	7	0	3	0	1	2	2	3
July	0	9	0	0	0	0	5	4	7	9	0	4	0	0	4	2	4
August	0	9	0	0	0	0	3	6	7	9	0	0	8	0	8	4	8
September	0	1	1	6	2	6	6	4	8	10	0	0	7	1	6	2	7
October	0	0	0	6	0	0	3	3	3	6	0	0	6	2	4	2	6
November	0	0	0	3	0	2	2	1	2	3	0	0	2	1	1	2	2
December	0	0	4	0	0	0	4	0	0	4	0	0	1	1	0	0	1
Total	6	24	5	15	2	32	20	33	52	4	7	24	10	25	15	35	35

^a The request is for the 5-year period 2025–2029, during which pile installation is scheduled to begin in 2026. These dates reflect the currently projected construction start year and are subject to change because exact project start dates and construction schedules are not currently available. No concurrent/simultaneous pile driving of foundations is planned.

^b The number of days with vibratory hammering or drilling is based on a percentage of the number of days of pile installation and includes installation of a mix of monopiles at a rate of both one per day and two per day as well as installation of jacket foundations at a rate of four pin piles per day. The number of days of pile installation is unaffected by the number of piles or foundations installed on that day because the SPL 120 dB metric is not cumulative. Level B take was estimated using density-based calculations that assume all animals within the area ensounded to 120 dB are taken as soon as the activity begins and cannot be taken additional times within one day. Only Level B takes are being requested for drilling and vibratory hammering.

^c Avangrid assumed that vibratory hammering and drilling would not occur on the same day, when possible. However, for months when the number of days with vibratory hammering plus the number of days with drilling exceeded the total number of impact piling days that month, and assumed the minimum number of days of overlap possible for these two activities. On the days with overlap between drilling and vibratory hammering, the estimated Level B takes resulting from drilling were not included to avoid double counting taken animals, because all animals within the larger vibratory hammering zone of influence were assumed to have already been taken by that activity. Level B takes for 8 days of drilling in year 2 (2026) and 9 days of drilling in year 3 (2027) shown in Schedule A were thus not included in the total take estimates.

TABLE 21—PILE INSTALLATION CONSTRUCTION SCHEDULE B YEAR 2, 3, AND 4

Month	Year 2 (2026) ^a										Year 3 (2027)						Year 4 (2028)											
	12 m Monopile 5,000 kJ		4 m Pin pile 3,500 kJ		Total days of impact only piling		Total days with vibratory + impact piling ^b		Days with drilling ^c		Year 2 total days of foundation installa- tion ^c		4 m Pin pile 3,500 kJ		Total days of impact only piling		Days with drilling ^c		Year 3 total days of foundation installa- tion ^c		4 m Pin pile 3,500 kJ		Total days of impact only piling		Days with drilling ^c		Year 4 total days of founda- tion installa- tion ^c	
	2 per day		4 per day										4 per day								4 per day							
	1 per day																											
May	4	0	0	0	4	4	0	0	2	4	4	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
June	6	4	0	0	8	0	2	2	4	10	7	9	7	9	4	2	4	9	4	2	4	4	2	2	2	4	4	4
July	0	7	0	0	3	0	4	4	3	7	14	14	9	5	4	3	4	14	4	3	5	5	3	2	2	5	5	5

TABLE 21—PILE INSTALLATION CONSTRUCTION SCHEDULE B YEAR 2, 3, AND 4—Continued

Month	Year 2 (2026) ^a						Year 3 (2027)						Year 4 (2028)			
	12 m Monopile 5,000 kJ		4 m Pin pile 3,500 kJ		Total days of impact only piling		Total days with vibratory + impact piling ^b		Days with drilling ^c		Year 2 total days of foundation installa- tion ^c		4 m Pin pile 3,500 kJ		Total days of impact only piling	
	1 per day	2 per day	4 per day	4 per day	4 per day	4 per day	4 per day	4 per day	4 per day	4 per day	4 per day	4 per day	4 per day	4 per day	4 per day	4 per day
August	1	5	1	6	4	7	14	6	8	4	14	5	3	2	1	5
September	0	3	1	4	4	4	8	3	5	4	8	5	4	1	1	5
October	1	1	1	3	2	3	4	0	4	1	4	1	0	1	1	1
November	2	0	0	1	1	2	2	1	1	1	2	1	0	1	1	1
December	1	0	0	0	0	1	1	1	0	0	1	0	0	0	0	0
Total	15	20	3	18	20	38	53	28	25	19	53	22	13	9	9	22
Total Annual Days	38 days						53 days						22 days			
Total Annual Founda- tions	55 monopiles and 3 jackets						53 jackets						22 jackets			
Total Annual Piles	55 monopiles and 12 pin piles						212 pin piles						88 pin piles			
Total Sched- ule Days ...	113						113									
Total Sched- ule Foun- dations	133						133									
Total Sched- ule Piles ...	367						367									

^a This LOA request is for the 5-year period 2025–2029, during which pile installation is scheduled to begin in 2026. These dates reflect the currently projected construction start year and are subject to change because exact project start dates and construction schedules are not currently available. No concurrent/simultaneous pile driving of foundations is planned.

^b The number of days with vibratory hammering or drilling is based on a percentage of the number of days of pile installation and includes installation of a mix of monopiles at a rate of both one per day and two per day as well as installation of jacket foundations at a rate of four pin piles per day. The number of takes by Level B harassment per day is unaffected by the number of piles or foundations installed on that day because the SPL 120 dB metric is not cumulative. Level B take was estimated using density-based calculations that assume all animals within the area ensounded to 120 dB are taken as the activity begins and cannot be taken additional times within one day. Only Level B takes are being requested for drilling and vibratory hammering.

^c As a conservative measure, it was assumed that vibratory hammering and drilling would not occur on the same day, when possible. However, for months when the number of days with vibratory hammering plus the number of days with drilling exceeded the total number of impact piling days that month, and assumed the minimum number of days of overlap possible for these two activities. On the days with overlap between drilling and vibratory hammering, the estimated Level B takes resulting from drilling were not included to avoid double counting taken animals, because all animals within the larger vibratory hammering zone of influence were assumed to have already been taken by that activity. Level B takes for 9 days of drilling in year 2 (2026), 2 days of drilling in year 3 (2027), and 2 days of drilling in year 4 (2028) shown in Schedule B were thus not included in the total take estimates.

TABLE 22—MARINE MAMMAL EXPOSURE ESTIMATES FOR CONSTRUCTION SCHEDULE A AND SCHEDULE B FOR IMPACT AND VIBRATORY PILE DRIVING, ASSUMING 10 dB NOISE ATTENUATION ^a

Species	Schedule A				Schedule B					
	Level A harassment		Level B harassment		Level A harassment			Level B harassment		
	Year 2	Year 3	Year 2	Year 3	Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
North Atlantic right whale ^c	0.98	1.71	19.36	30.72	0.75	2.88	1.32	13.21	40.53	18.14
Fin whale ^b	5.57	7.75	108.46	152.41	4.24	19.32	7.79	91.43	188.88	67.19
Humpback whale	5.58	8.04	75.24	98.79	3.99	16.51	7.10	62.63	127.85	55.43
Minke whale (migrating) ^b	16.88	29.55	284.57	353.33	15.02	85.85	37.91	259.13	517.67	230.59
Sei whale (migrating) ^b	0.54	1.25	12.02	18.61	0.41	2.36	1.14	8.99	26.18	13.57
Sperm whale ^c	0	0	28.33	47.71	0	0	0	23.63	54.21	17.44
Atlantic spotted dolphin	0	0	81.79	135.51	0	0	0	45.03	137.43	42.41
Atlantic white sided dolphin ..	0	0	951.70	1287.99	0	0	0	754.22	1838.83	832.54
Bottlenose dolphin, offshore ..	0	0	897.08	1663.50	0	0	0	656.25	2164.30	799.98
Common dolphin	0	0	13739.47	23178.10	0	0	0	9842.10	28373.15	10590.19
Long-finned pilot whale	0	0	105.51	164.14	0	0	0	79.13	210.13	78.75
Short-finned pilot whale	0	0	0	0	0	0	0	0	0	0
Risso's dolphin	0	0	168.60	400.34	0	0	0	94.69	458.24	143.19
Harbor porpoise (sensitive) ^b ..	0	0	485.64	717.07	0	0	0	391.52	863.37	337.33
Gray seal	0.01	0.36	593.10	872.72	0.02	0.67	0.32	297.91	1181.15	555.33
Harbor seal	<0.01	0.07	333.67	461.08	<0.01	0.13	0.06	268.75	529.17	272.98
Harp seal	<0.01	0.33	715.48	1212.34	0.03	0.57	0.28	378.60	1674.77	786.14

Note: Each construction schedule includes a combination of pile sizes (4, 12, and 13 m), foundation types (monopiles or jackets), and installation methods (either vibratory setting of piles followed by impact pile driving or impact pile driving alone). Values in **bold** are changed from the proposed rule.

^a Density estimates are calculated from the 2022 Duke Habitat-Based Marine Mammal Density Models (Roberts *et al.*, 2016; Roberts *et al.*, 2022).

^b Listed as Endangered under the ESA.

TABLE 23—MARINE MAMMAL EXPOSURE ESTIMATES FOR DRILLING DURING CONSTRUCTION SCHEDULE A AND SCHEDULE B, ASSUMING 10 dB NOISE ATTENUATION ^a

Species	Schedule A		Schedule B		
	Year 2	Year 3	Year 2	Year 3	Year 4
North Atlantic right whale ^c	2.59	1.32	1.97	1.44	0.98
Fin whale ^c	15.13	6.18	8.83	9.01	3.85
Humpback whale	10.23	4.75	6.74	6.16	3.20
Minke whale (migrating) ^b	38.79	16.85	27.73	25.30	12.87
Sei whale ^c (migrating) ^b	1.92	1.03	1.47	1.12	0.76
Sperm whale ^c	3.17	1.45	1.80	1.75	0.67
Atlantic spotted dolphin	7.42	3.43	4.19	3.51	1.73
Atlantic white sided dolphin	93.80	43.60	63.53	56.43	30.47
Bottlenose dolphin, offshore	77.19	34.63	45.58	44.48	19.90
Common dolphin	877.24	377.50	515.72	485.77	210.11
Long-finned pilot whale	10.16	4.62	6.16	5.85	2.77
Short-finned pilot whale	2.54	1.15	1.54	1.46	0.69
Risso's dolphin	5.73	2.55	3.30	3.11	1.34
Harbor porpoise (sensitive) ^b	71.60	34.46	50.91	39.30	24.34
Gray seal	33.81	19.32	27.62	19.27	14.80
Harbor seal	50.72	28.97	41.43	28.91	22.20
Harp seal	36.23	20.70	29.59	20.65	15.86

Note: No Level A harassment is expected or may be authorized for drilling. Drilling exposure estimates are based on the assumption that 48 days under either Schedule A or Schedule B would require drilling. Estimated exposures are from the full drilling schedule; final take request does not include drilling exposures on days when both vibratory setting and drilling occur on the same day to avoid double counting because all animals within the larger vibratory hammering zone of influence were assumed to have already been taken by that activity. A total of 17 days (8 days in year 1, 9 days in year 2) of drilling exposures in Construction Schedule A were not included in the final take request. A total of 13 days (9 in year 1, 2 in year 2, and 2 in year 3) of drilling exposures in Construction Schedule B were not included in the final take request.

^a Density estimates are calculated from the 2022 Duke Habitat-Based Marine Mammal Density Models (Roberts *et al.*, 2016; Roberts *et al.*, 2022).

^b Listed as Endangered under the ESA.

TABLE 24—MAXIMUM ANNUAL AMOUNT OF TAKE THAT MAY BE AUTHORIZED BY LEVEL A AND LEVEL B HARASSMENTS FROM PILE DRIVING ASSOCIATED WITH WTG AND ESP TOTAL INSTALLATION EVENTS FOR CONSTRUCTION SCHEDULE A AND B, ASSUMING 10 dB OF NOISE ATTENUATION

Species	Year 2 (2026)		Year 3 (2027)		Year 4 (2028)	
	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
North Atlantic right whale ^a	0	18	0	39	0	17
Fin whale	6	100	20	181	8	64
Humpback whale	6	67	17	120	8	52
Minke whale	17	233	86	443	38	193
Sei whale	1	10	3	23	2	12

TABLE 24—MAXIMUM ANNUAL AMOUNT OF TAKE THAT MAY BE AUTHORIZED BY LEVEL A AND LEVEL B HARASSMENTS FROM PILE DRIVING ASSOCIATED WITH WTG AND ESP TOTAL INSTALLATION EVENTS FOR CONSTRUCTION SCHEDULE A AND B, ASSUMING 10 dB OF NOISE ATTENUATION—Continued

Species	Year 2 (2026)		Year 3 (2027)		Year 4 (2028)	
	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
Sperm whale	0	26	0	52	0	17
Atlantic spotted dolphin	0	78	0	136	0	42
Atlantic white sided dolphin	0	794	0	1635	0	736
Bottlenose dolphin, offshore	0	795	0	2007	0	738
Common dolphin	0	11613	0	25942	0	9664
Long-finned pilot whale	0	92	0	193	0	72
Short-finned pilot whale	0	9	0	9	0	9
Risso's dolphin	0	159	0	446	0	139
Harbor porpoise	2	423	11	787	5	295
Gray seal	1	574	1	1172	1	550
Harbor seal	1	304	1	497	1	253
Harp seal	1	685	1	1647	1	770

Note: Schedule A has the maximum amount of take reasonably likely to occur in Y2 and Y3 while Schedule B has the maximum for Y4. Double counting of take has been removed.

^a While exposures were estimated, the level of mitigation required for North Atlantic right whales results in take by Level A harassment to be unlikely to occur, hence, no take by Level A harassment for North Atlantic right whales was requested nor would be authorized by NMFS.

TABLE 25—MAXIMUM ANNUAL AMOUNT OF TAKE THAT MAY BE AUTHORIZED BY LEVEL B HARASSMENT FROM DRILLING ASSOCIATED WITH WTG AND ESP TOTAL INSTALLATION EVENTS FOR CONSTRUCTION SCHEDULE A AND B, ASSUMING 10 dB OF NOISE ATTENUATION

Species	Year 2 (2026)		Year 3 (2027)		Year 4 (2028)	
	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
North Atlantic right whale	0	3	0	2	0	1
Fin whale	0	11	0	9	0	4
Humpback whale	0	9	0	6	0	3
Minke whale	0	32	0	24	0	13
Sei whale	0	2	0	2	0	1
Sperm whale	0	3	0	2	0	1
Atlantic spotted dolphin	0	7	0	3	0	1
Atlantic white sided dolphin	0	80	0	50	0	24
Bottlenose dolphin, offshore	0	57	0	40	0	16
Common dolphin	0	666	0	408	0	156
Long-finned pilot whale	0	8	0	6	0	3
Short-finned pilot whale	0	2	0	2	0	1
Risso's dolphin	0	5	0	3	0	1
Harbor porpoise	0	60	0	36	0	20
Gray seal	0	33	0	19	0	12
Harbor seal	0	49	0	28	0	17
Harp seal	0	35	0	20	0	12

Note: Schedule A has the maximum amount of take reasonably likely to occur in Y2 and Y3 while Schedule B has the maximum for Y4. Take does not include level B harassment from drilling on days when both vibratory setting and drilling occur on the same day to avoid double counting.

TABLE 26—ANNUAL TAKE, BY LEVEL A AND LEVEL B HARASSMENTS, THAT MAY BE AUTHORIZED FOR ALL FOUNDATION INSTALLATION ACTIVITIES FOR CONSTRUCTION SCHEDULE B, ASSUMING 10 dB OF NOISE ATTENUATION ^a

Species	Impact and vibratory pile driving						Drilling		
	Year 2 (2026)		Year 3 (2027)		Year 4 (2028)		Year 2 (2026)	Year 3 (2027)	Year 4 (2028)
	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level B harassment	Level B harassment	Level B harassment
North Atlantic right whale	0	13	0	39	0	17	2	2	1
Fin whale	5	88	20	181	8	64	6	9	4
Humpback whale	4	59	17	120	8	52	5	6	3
Minke whale	16	232	86	443	38	193	21	24	13
Sei whale	1	9	3	23	2	12	2	2	1
Sperm whale	0	23	0	52	0	17	1	2	1
Atlantic spotted dolphin	0	45	0	136	0	42	1	3	1
Atlantic white sided dolphin	0	696	0	1635	0	736	42	50	24
Bottlenose dolphin, offshore	0	622	0	2007	0	738	24	40	16
Common dolphin	0	9332	0	25942	0	9664	204	408	156

TABLE 26—ANNUAL TAKE, BY LEVEL A AND LEVEL B HARASSMENTS, THAT MAY BE AUTHORIZED FOR ALL FOUNDATION INSTALLATION ACTIVITIES FOR CONSTRUCTION SCHEDULE B, ASSUMING 10 dB OF NOISE ATTENUATION^a—Continued

Species	Impact and vibratory pile driving						Drilling		
	Year 2 (2026)		Year 3 (2027)		Year 4 (2028)		Year 2 (2026)	Year 3 (2027)	Year 4 (2028)
	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level B harassment	Level B harassment	Level B harassment
Long-finned pilot whale	0	75	0	193	0	72	4	6	3
Short-finned pilot whale	0	9	0	9	0	9	1	2	1
Rissos dolphin	0	92	0	446	0	139	2	3	1
Harbor porpoise	2	363	11	787	5	295	37	36	20
Gray seal	1	286	1	1172	1	550	25	19	12
Harbor seal	1	253	1	497	1	253	37	28	17
Harp seal	1	361	1	1647	1	770	26	20	12

^a As construction Schedule B has the highest total take by harassment for foundation installation, this table represents the sum of the takes from Schedule B only and not the sum of the preceding columns within the previous tables. Schedule B has been used to set the total 5-Y take amounts that may be authorized for Level B harassment. Take does not include Level B harassment from drilling on days when both vibratory setting and drilling occur on the same day to avoid double counting.

UXO/MEC Detonations

Avangrid may detonate up to 10 UXO/MECs within the project area with no more than six in 2025 (year 1) and four in 2026 (year 2); no more than one detonation per 24-hour period would occur. Avangrid adopted the U.S. Navy's charge weight bins (E4, E6, E8, E10, and E12) to determine potential impacts to marine mammals from UXO/MEC detonation. As described in the proposed rule, Avangrid applied modeling results from the Revolution Wind project to its analysis. This modeling evaluated the effects thresholds for TTS, PTS, non-auditory injury, and mortality based on the appropriate metrics: (1) peak sound pressure level; (2) weighted cumulative SEL; and (3) acoustic impulse. Charge weights of 2.3 kg (5.1 pounds (lbs)), 9.1 kg (20.1 lbs), 45.5 kg (100.3 lbs), 227 kg (500 lbs), and 454 kg (1,000.9 lbs),

which is the largest charge the Navy considers for the purposes of its analyses (see the Description of the Specified Activities section in the proposed rule), were modeled to determine the ranges to mortality, gastrointestinal injury, lung injury, PTS, and TTS thresholds. The exact type and net explosive weight of UXO/MECs that may be detonated are not known at this time. However, based on the results of a UXO/MECs desktop study (Mills, 2021), Avangrid does not expect that 10 of the largest charge weight (bin E12) UXO/MECs will be present, but a combination of different sizes. For the 10 UXO/MECs, the model estimated the E12 charge weight with 2 detonations at 12 m, 3 detonations at 20 m, 3 detonations at 30 m, and 2 detonations at 40 m.

Mortality and non-auditory injury to lung and gastrointestinal organs were considered in the modeling study

(Hannay and Zykov, 2022). As described in the proposed rule, peak pressure and acoustic impulse levels and effects threshold exceedance zones depend only on charge weight, water depth, animal mass, and submersion depth. The maximum distance to gastrointestinal injury (1 percent of exposed animals) due to peak pressure for detonating an E12-size UXO/MEC at all sites assuming 10 dB of attenuation is 125 m (Hannay and Zykov, 2022). The maximum distance modeled to the onset of lung injury due to detonating an E12-size UXO/MEC assuming 10 dB of attenuation is 237 m for baleen whales, 330 m for pilot and minke whales, 448 m for beaked whales, 606 m for delphinids, *Kogia*, and pinnipeds, and 648 m for harbor porpoise (table 27). Assuming 10 dB of attenuation, the impulse-based maximum distance to the onset of mortality is 353 m (porpoises) (table 27).

TABLE 27—UXO/MEC IMPULSE EXCEEDANCE DISTANCES (METERS) FOR MARINE MAMMALS FOR THE DETONATION OF AN E12 UXO/MEC, FOR ONSET OF LUNG INJURY AND MORTALITY AT VARIOUS DEPTHS ASSUMING 10 dB ATTENUATION

Marine mammal group	12 m water depth		20 m water depth		30 m water depth		45 m water depth	
	Calf/pup	Adult	Calf/pup	Adult	Calf/pup	Adult	Calf/pup	Adult
Onset of Lung Injury (m)								
Baleen whales and Sperm whale	151	73	204	80	226	81	237	78
Pilot and Minke whales	192	103	272	126	310	131	330	132
Beaked whales	250	171	366	237	413	267	448	282
Dolphins, <i>Kogia</i> , and Pinnipeds	347	241	508	351	557	400	606	429
Porpoises	377	260	541	381	594	429	648	465
Onset of mortality (m)								
Baleen whales and Sperm whale	90	34	105	34	109	31	108	29
Pilot and Minke whales	120	56	150	58	157	57	162	50
Beaked whales	161	105	206	127	220	132	234	135
Dolphins, <i>Kogia</i> , and Pinnipeds	228	154	285	198	308	211	332	224
Porpoises	248	167	307	215	330	231	353	243

Avangrid will be required to conduct extensive monitoring using both PSOs and PAM operators and clear an area of

marine mammals prior to detonating any UXO/MEC. Given that Avangrid will be employing multiple platforms to

visually monitor marine mammals as well as conducting PAM and must only detonate UXO/MECs during daylight

hours, it is reasonable to conclude that marine mammals will be reliably detected within approximately 660 m of the UXO/MEC being detonated and mortality or non-auditory injury is not likely to occur. As described below, in consideration of the distances to the associated thresholds and the implementation of the required mitigation and monitoring measures, Avangrid did not request and NMFS does not anticipate and may not authorize take by mortality or non-auditory injury. All modeling results, including mortality and non-auditory injury, can be found in appendix A for

Avangrid's ITA application (Hannay and Zykov, 2022), as found on NMFS' website (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>).

Distances to PTS and TTS thresholds for all UXO/MEC charge weights were also calculated by Avangrid. In the proposed rule, we only described the distances to thresholds for the largest E12 charge weight. However, in the event that Avangrid will be able to identify and mitigate at the relevant distances for each specific charge weight, we have incorporated the

maximum values for each charge weight size herein. It is not currently known how easily the size and charge weights of UXO/MECs can be identified in the field. Avangrid must demonstrate to NMFS that it is able to accurately identify charge weights in the field prior to detonation otherwise the largest charge weight, E12, will be assumed and the appropriate associated mitigation and monitoring measures implemented. Tables 28 and 29 contain the maximum (ER_{95%}) modeled distances by Hannay and Zykov (2022) to PTS and TTS thresholds during UXO/MEC detonation for each charge weight bin.

TABLE 28—MAXIMUM SEL-BASED R_{95%} PTS-ONSET RANGES, IN METERS, FROM ALL SITE MODELED DURING UXO/MEC DETONATION BY CHARGE WEIGHT, ASSUMING 10-dB SOUND ATTENUATION

Marine mammal hearing group	2.3 kg (5.1 lbs)		9.1 kg (20.1 lbs)		45.5 kg (100.3 lbs)		227 kg (500 lbs)		454 kg (1,000.9 lbs)	
	R _{max} ^a	R _{95%} ^b	R _{max}	R _{95%}	R _{max}	R _{95%}	R _{max}	R _{95%}	R _{max}	R _{95%}
LFC	632	552	1,230	982	2,010	1,730	3,370	2,970	4,270	3,780
MFC	<50	<50	79	75	175	156	419	337	535	461
HFC	2,100	1,820	3,020	2,590	4,400	3,900	6,130	5,400	6,960	6,200
PP	192	182	413	357	822	690	1,410	1,220	1,830	1,600

Note: LFC = low-frequency cetaceans; MFC = mid-frequency cetaceans; HFC = high-frequency cetaceans; PP = phocid pinnipeds.

^a Represents the maximum distance in any direction that the threshold was exceeded. This metric is often overly conservative for take estimates because it reflects the influence of coherent constructive interference effects, produced by most propagation loss models, due to model approximations of highly uniform environments. In practice, these coherent effects are almost always disrupted by rough interfaces and ocean inhomogeneities.

^b Represents the radius of a circle that encompasses 95 percent of the area predicted by the model to exceed the threshold. The circle radius is typically larger than the maximum distances in most directions, but it cuts off "fingers" of ensonification that protrude in a small number of directions. This metric is typically also conservative, but less so than the R_{max} distance.

TABLE 29—MAXIMUM SEL-BASED R_{95%} TTS-ONSET RANGES, IN METERS, FROM ALL SITE MODELED DURING UXO/MEC DETONATION BY CHARGE WEIGHT, ASSUMING 10-dB SOUND ATTENUATION

Marine mammal hearing group	2.3 kg (5.1 lbs)		9.1 kg (20.1 lbs)		45.5 kg (100.3 lbs)		227 kg (500 lbs)		454 kg (1,000.9 lbs)	
	R _{max} ^a	R _{95%} ^b	R _{max}	R _{95%}	R _{max}	R _{95%}	R _{max}	R _{95%}	R _{max}	R _{95%}
LFC	3,140	2,820	5,230	4,680	8,160	7,490	11,700	10,500	13,500	11,900
MFC	535	453	910	773	1,520	1,240	2,400	2,120	2,930	2,550
HFC	6,920	6,160	8,970	8,000	11,300	10,300	14,600	12,900	15,600	14,100
PP	1,730	1,470	2,710	2,350	4,340	3,820	6,640	5,980	7,820	7,020

Note: LFC = low-frequency cetaceans; MFC = mid-frequency cetaceans; HFC = high-frequency cetaceans; PP = phocid pinnipeds.

^a Represents the maximum distance in any direction that the threshold was exceeded. This metric is often overly conservative for take estimates because it reflects the influence of coherent constructive interference effects, produced by most propagation loss models, due to model approximations of highly uniform environments. In practice, these coherent effects are almost always disrupted by rough interfaces and ocean inhomogeneities.

^b Represents the radius of a circle that encompasses 95 percent of the area predicted by the model to exceed the threshold. The circle radius is typically larger than the maximum distances in most directions, but it cuts off "fingers" of ensonification that protrude in a small number of directions. This metric is typically also conservative, but less so than the R_{max} distance.

To estimate the maximum ensonified zones that could result from UXO/MEC detonations, the area distances in Li and Koessler (2022) table J–5 were multiplied by the highest monthly species density in the deepwater OECC segment and the SWDA for the 20–45 m depths, and by the highest monthly species density in the shallow water OECC segment for the 12 m depth. The result of the areas multiplied by the densities were then multiplied by the number of UXO/MECs estimated at each of the depths to calculate total estimated exposures. To calculate potential marine mammal exposures, Avangrid assumed all charge weights belong in the largest E12 class; therefore, the largest acoustic

range (R_{95%}; assuming 10 dB of attenuation) to PTS and TTS thresholds of a E12 UXO/MEC charge weight were used as radii to calculate the area of a circle ($\pi \times r^2$; where r is the range to the threshold level) for each marine mammal hearing group. The ensonified area distances were multiplied by the highest monthly species density in the deepwater OECC segment and the lease area (SWDA) for the 20–45 m depths, and by the highest monthly species density in the shallow water OECC segment for the 12 m depth (using a 14.1-km buffer) and the combined deepwater segment of the OECC and SWDA (20 m–45 m depths; using a 13.8-km buffer).

As a conservative approach, the month with the highest density among the areas of interest for each species was carried forward to the exposure calculations (*i.e.*, assumed all UXO/MECs would be detonated in the month with the greatest average monthly density). In some cases where monthly densities were unavailable, annual densities were used instead for some species (*i.e.*, blue whales, pilot whale *spp.*). Additionally, the pilot whale guild, harbor seals, gray seals, and harp seals were scaled by relative abundance following the same approach previously described. The resulting maximum density was multiplied by the number of UXO/MECs estimated at each of the

depths to calculate total estimated exposures. Table 30 provides the maximum species-specific densities for the Project and resulting take calculations using the described approach. As described above, Avangrid based the amount of take requested for authorization on the number of exposures estimated assuming 10 dB of attenuation using a NAS, NAS would be required during all detonations.

The likelihood of marine mammal exposures above the PTS threshold is low, especially considering the instantaneous nature of the acoustic signal and that Avangrid would conduct extensive monitoring, delaying a detonation should a marine mammal be within the PTS distances. However, some species, such as harbor porpoise and seals are difficult to detect given the relatively large distances to the high-frequency cetacean Level A harassment (PTS, SEL_{cum}) isopleth applicable to harbor porpoises and the difficulty detecting this species at sea, Avangrid

requested, and NMFS may authorize, takes by Level A harassment of harbor porpoise from UXO/MEC detonations. Similarly, seals are difficult to detect at longer ranges, and although the distance to the phocid hearing group SEL PTS threshold is not as large as those for high-frequency cetaceans, it may not be possible to detect all seals within the PTS threshold distances even with the required monitoring measures. Therefore, Avangrid requested and NMFS may authorize under this rulemaking take by Level A harassment of gray seals, harbor seals, and harp seals incidental to UXO/MEC detonation. Given the extensive monitoring, it is likely that all PTS of large whales would be avoided. However, in the unexpected circumstance that a large whale other than a North Atlantic right whale (*i.e.*, fin whale, humpback whale, minke whale, sei, and sperm whales) is missed during monitoring, Avangrid requested, and NMFS may authorize, a very small

amount of Level A harassment incidental to UXO/MEC detonation. Due to the mitigation and monitoring measures required specifically for North Atlantic right whales (*e.g.*, clearance zone is “any distance”; table 36), it is unlikely that North Atlantic right whales will be missed during monitoring. Therefore, take by Level A harassment is not expected to occur; Avangrid did not request and NMFS is not authorizing take by Level A harassment of North Atlantic right whales. Given that North Atlantic right whales are reported frequently, Avangrid would be required to monitor the sighting network for this species, and conduct acoustic monitoring, it is not expected that a North Atlantic right whale would be missed during monitoring and therefore, Level A harassment of this species is not requested and NMFS may not authorize incidental to UXO/MEC detonation.

TABLE 30—MAXIMUM MONTHLY MARINE MAMMAL DENSITIES (INDIVIDUALS/100 km²) WITHIN THE PROJECT AREA WITH UXO/MEC DETONATION ASSOCIATED LEVEL A HARASSMENT (PTS) AND LEVEL B HARASSMENT (TTS SEL) EXPOSURE ASSUMING 10 dB ATTENUATION, AND ESTIMATED TAKE

Species	Shallow OECC maximum monthly density (individual/100 km ²)	Deep OECC maximum monthly density (individual/100 km ²)	2025 Estimated take		2026 Estimated take	
			Level A harassment	Level B harassment	Level A harassment	Level B harassment
North Atlantic right whale ^{a b}	0.116	0.707	0	14	0	13
Fin whale ^a	0.007	0.425	1	7	1	7
Humpback whale	0.04	0.297	1	5	1	5
Minke whale	0.129	1.72	4	28	3	27
Sei whale ^a	0.034	0.191	1	4	1	3
Sperm whale ^a	0.002	0.112	1	1	1	1
Atlantic spotted dolphin	0.013	0.448	1	1	1	1
Atlantic white-sided dolphin	0.051	3.278	1	3	1	3
Bottlenose dolphin, offshore	0.158	1.631	1	2	1	2
Common dolphin	0.35	24.845	1	19	1	19
Long-finned pilot whale	0	0.135	1	1	1	1
Short-finned pilot whale	0	0.1	1	1	1	1
Risso's dolphin	0.01	0.176	1	1	1	1
Harbor porpoise	1.772	10.608	56	217	51	193
Gray seal	24.506	13.647	8	146	4	80
Harbor seal	55.059	30.662	17	328	8	179
Harp seal	24.506	13.647	8	146	4	80

^a Denotes species listed under the ESA.

^b Due to the extensive mitigation and monitoring measures specific to North Atlantic right whales for UXO/MEC detonations, it is not reasonable to expect that take by Level A harassment will occur, therefore, Avangrid did not request and NMFS may not authorize, take by Level A harassment of North Atlantic right whales.

HRG Surveys

Avangrid's planned HRG survey activity includes the use of impulsive sources (*i.e.*, boomers and sparkers) that have the potential to harass marine mammals. The acoustic sources expected to result in marine mammal harassment, as defined under the MMPA, are provided in table 3 of the proposed rule (88 FR 37606, June 8, 2023) and remain unchanged in this

final rule. If authorized, takes will be by Level B harassment only in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated, even absent mitigation, nor planned to be

authorized. Please see Avangrid's application for details of a quantitative exposure analysis (*i.e.*, calculated distances to Level A harassment isopleths and Level A harassment exposures). Further, there is no evidence to suggest that serious injury or mortality is a potential outcome of exposure to HRG survey sources, and none is anticipated.

Therefore, the potential for Level A harassment from HRG surveys is not evaluated further in this document. Avangrid did not request, and NMFS may not authorize, take by Level A harassment incidental to HRG surveys. No serious injury or mortality is anticipated to result from HRG survey activities.

Specific to HRG surveys, in order to better consider the narrower and directional beams of the sources, NMFS has developed a tool for determining the sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating the extent of Level B harassment isopleths associated with

HRG survey equipment (NMFS, 2020). This methodology incorporates frequency-dependent absorption and some directionality to refine estimated ensonified zones. Avangrid used NMFS' methodology with additional modifications to incorporate a seawater absorption formula and account for energy emitted outside of the primary beam of the source. For sources that operate with different beamwidths, the maximum beam width was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient.

The isopleth distances corresponding to the Level B harassment threshold for

each type of HRG equipment with the potential to result in harassment of marine mammals were calculated per "NOAA Fisheries' Interim Recommendation for Sound Source Level and Propagation Analysis for High Resolution Geophysical Sources." The distances to the 160-dB RMS re 1 μ Pa isopleth for Level B harassment are presented in table 31. Please refer to appendix I in Li and Koessler (2022) of the LOA application for a full description of the methodology and formulas used to calculate distances to the Level B harassment threshold.

TABLE 31—ISOPLETH DISTANCES IN METERS (m) CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD FOR HRG EQUIPMENT

HRG survey equipment	Equipment type	Horizontal distance (m) to Level B harassment threshold	Ensonified area (km ²)
Applied Acoustics AA251 Boomer	SBP: Boomer	178	28.58
GeoMarine Geo Spark 2000 (400 tip)	SBP: Sparker	141	22.62

The survey activities that have the potential to result in Level B harassment (160 dB SPL) include the noise produced by Applied Acoustics AA251 Boomer or GeoMarine Geo Spark 2000 (400 tip) (table 31), of which the Applied Acoustics AA251 Boomer results in the greatest calculated distance to the Level B harassment criteria at 178 m (584 ft). Avangrid has applied the estimated distance of 178 m (584 ft) to the 160 dB_{RMS90} percent re 1 μ Pa Level B harassment criteria as the basis for determining potential take from all HRG sources. All noise-producing survey equipment is assumed to be operated concurrently. Three vessels are assumed to be operating concurrently.

The basis for the take estimate is the number of marine mammals that would be exposed to sound levels in excess of the Level B harassment threshold (160 dB). Typically, this is determined by estimating an ensonified area for the activity, by calculating the area associated with the isopleth distance corresponding to the Level B harassment threshold. This area is then multiplied by marine mammal density estimates in the Project Area and then corrected for seasonal use by marine mammals, seasonal duration of Project-specific noise-generating activities, and estimated duration of individual activities when the maximum noise-generating activities are intermittent or occasional.

The total area ensonified was estimated by considering the distance of the daily vessel track line (determined using the estimated average speed of the vessel and the 24-hour operational period within each of the corresponding survey segments) and the longest horizontal distance to the relevant acoustic threshold from an HRG sound source (full formula in section 6.6 of the ITA application). Using the larger distance of 178 m (164 ft)) to the 160 dB_{RMS90} percent re 1 μ Pa Level B harassment isopleth (table 31), the estimated daily vessel track of approximately 80 km (49.7 mi) per vessel for 24-hour operations, inclusive of an additional circular area to account for radial distance at the start and end of a 24-hour cycle, estimates of the total area ensonified to the Level B harassment threshold per day of HRG surveys were calculated (table 31).

Exposure calculations assumed that there would be 25 days of HRG surveying per year over each of the 5 years. As described in the ITA application, density data were mapped within the boundary of the Project Area using geographic information systems, these data were updated based on the revised data from the Roberts *et al.* (2022) model. Because the exact dates of HRG surveys are unknown, the highest density month for each species was used and carried forward in the take calculations (table 32).

The calculated exposure estimates based on the exposure modeling

methodology described above were compared with the best available information on marine mammal group sizes. Group sizes used for HRG take estimates were the same as those used for impact pile driving take estimation (section 6.1.2 in the ITA application). Avangrid also used data collected by PSOs on survey vessels operating during HRG surveys in 2020–2021 from their nearby Vineyard Wind project area. It was determined that the calculated number of potential takes by Level B harassment based on the exposure modeling methodology above may be underestimates for some species and therefore warranted adjustment using group size to ensure conservatism in the take numbers NMFS may authorize. Despite the relatively small modeled Level B harassment zone (178 m) for HRG survey activities, it was determined that adjustments to the requested numbers of take by Level B harassment for some dolphin species was warranted to be conservative (see below).

For certain species for which the density-based methodology described above may result in potential underestimates of take and Avangrid's PSO sightings data were relatively low, adjustments to the exposure estimates were made based on the best available information on marine mammal group sizes to ensure conservatism. For species with densities too low in the region to provide meaningful modeled

exposure estimates (*i.e.*, rare species), the take request is based on the average group size (table 11). For species not considered rare in the Project Area, but AMAPP data or Avangrid PSO data show a higher group size level than the Roberts *et al.* (2022) model, then the takes by Level B harassment requested

for authorization were adjusted to one group size per day of HRG surveys (table 32).

For species considered rare but that still have the small potential for occurrence in the Project area, takes by Level B harassment during HRG surveys were requested by Avangrid. This

occurred for white-beaked dolphin, killer whale, and false killer whale. Avangrid based their takes requested for authorization on these species by using one group size per year in 3 of 5 years for species. Group sizes used were based on PSO observations during previous HRG surveys.

TABLE 32—MARINE MAMMAL DENSITIES USED IN EXPOSURE ESTIMATES AND ESTIMATED TAKES BY LEVEL B HARASSMENT FROM HRG SURVEYS

Species	Maximum monthly density ^a (No./100 km ²)	Annual exposure using the boomer ^f	Annual exposure using the sparker ^g	Annual level B harassment take	5-Year total level B harassment take
North Atlantic right whale ^b	0.567	4.05	3.21	5	25
Fin whale ^b	0.436	3.11	2.47	4	20
Humpback whale	0.323	2.31	1.83	3	15
Minke whale	1.704	12.17	9.64	13	65
Sei whale ^b	0.193	1.38	1.09	2	10
Sperm whale ^{b,h}	0.111	0.79	0.62	2	10
Atlantic spotted dolphin ^h	0.404	2.88	2.28	30	150
Atlantic white-sided dolphin ^h	3.406	24.34	19.26	28	140
Bottlenose dolphin, offshore ^h	1.753	12.53	9.92	18	90
Common dolphin ^c	28.314	202.3	160.13	203	1,015
Long-finned pilot whale ^{d,h}	0.149	1.06	0.84	17	85
Short-finned pilot whale ^{d,h}	0.11	0.78	0.62	9	45
Risso's dolphin ^h	0.187	1.34	1.06	7	35
False Killer whale ⁱ	N/A	N/A	N/A	5	15
Killer whale ⁱ	N/A	N/A	N/A	2	6
White-beaked dolphin ⁱ	N/A	N/A	N/A	30	90
Harbor porpoise	10.974	78.41	62.07	79	395
Gray seal ^e	27.901	199.35	157.8	200	1,000
Harbor seal ^e	62.687	447.89	354.54	448	2,240
Harp seal ^e	27.901	199.35	157.8	200	1,000

^a Cetacean density values from the Roberts *et al.* (2016, 2022) model.

^b Listed as Endangered under the ESA.

^c Take rounded up to one group size.

^d Long- and short-finned pilot whale densities are the annual pilot whale guild density scaled by their relative abundances.

^e Gray and harbor seal densities are the seals guild density scaled by their relative abundances; gray seals are used as a surrogate for harp seals.

^f Applied Acoustics AA251 boomer.

^g GeoMarine Geo Spark 2000.

^h Annual take by Level B harassment is rounded up to one group size.

ⁱ Rare species total take estimates are based on the assumption that a group would be seen every other year; hence, the 5-yr total is less than the sum of each year.

Total Authorized Take Across All Activities

The amount of Level A harassment and Level B harassment NMFS may be authorizing incidental to all project activities combined (*i.e.*, pile driving and drilling to install WTG and ESP monopile and jacket foundations, UXO/MEC detonations, and HRG surveys) are shown in table 33. The annual amount of take which may be authorized reflects the maximum number of take that may occur in each year, based on Avangrid's current schedules, as provided in table 1. Year 1 (2024) take estimates include HRG surveys and UXO/MEC detonations. Year 2 take includes all activities occurring; WTG and ESP foundation installation, HRG surveys, and UXO/MEC detonation. Year 3 includes WTG and ESP foundation installation and HRG surveys. Year 4 take includes WTG and ESP foundation

installation (assuming construction schedule B) and HRG surveys. Year 5 take includes HRG surveys only. All activities are expected to be completed by 2030, equating to the 5 years of activities, as described in this preamble. NMFS recognizes that schedules may shift due to a number of planning and logistical constraints such that take may be redistributed throughout the 5 years. However, the total 5-year amount of take for each species, shown in table 33, and the maximum annual take in any one year (table 35) must not be exceeded. Additionally, to reduce impacts to marine mammals, NMFS has required several mitigation and monitoring measures, provided in the Mitigation and Monitoring and Reporting sections, which are activity-specific and are designed to minimize acoustic exposures to marine mammal species.

For common and uncommon, though not "rare," species where the exposure

estimate was less than the mean group size, it was assumed that if one group member was exposed, then the entire group would be exposed. For species where the annual number of predicted exposures was less than the mean group size, the annual take was increased to the mean group size rounded up to the nearest integer. The only species this applied to are the sei whale, Atlantic spotted dolphin, Risso's dolphin, and sperm whale. Because pile driving would occur over either 2 or 3 years, the mean group size rule was carried over from each of the annual take estimates to the total take estimates for the entire construction schedule to account for the possibility that a single exposure could occur in every year of a given construction schedule.

For species that are considered rare but still have the slight potential for occurrence in the Project area, Avangrid requested an amount of annual take

assuming one group size of that species may be harassed in any given year. However, due to how rare these species are in the project area, it is not assumed that they would be encountered every year, instead, a group is anticipated to occur only every other year; hence the total amount of take of the 5 years is less than the sum of the annual take across all 5 years. As described above, takes for these species are based on PSO sighting group sizes or on group size from OBIS data. NMFS concurs with this assessment and may authorize takes by Level A harassment and/or Level B harassment for these rare species (table 33).

The amount of take that Avangrid requested, and NMFS may authorize is considered conservative. NMFS does not typically authorize take of rare species in these circumstances; however, given the amount of foundation installation activities that Avangrid is proposing to undertake (*i.e.*, installation of up to 129 WTG and 2–5 ESP positions), the large harassment zone sizes estimated from foundation installation, the duration of the foundation installation (up to 3 years), that marine mammal distribution is changing and that foundation installation is not scheduled to begin until 2026, NMFS is proposing to allow take for rare species. The one exception is the request for take of beluga whales. There is no beluga whale stock in the U.S. Atlantic and the potential for a beluga whale to occur is incredibly

unlikely. Hence, NMFS may not authorize take of beluga whales.

For the species for which modeling was conducted, the allowable take is considered conservative for a number of reasons. The amount of take that may be authorized assumes the most impactful scenario with respect to project design and schedules. As described in the Description of Specific Activities section, Avangrid plans to use monopile and jacket foundations (inclusive of bottom-frame foundations) for all permanent structures (*i.e.*, WTGs and ESPs). The take that NMFS may authorize for pile driving assumed a maximum piling schedule of two monopiles and four pin piles installed per 24-hour period. The take numbers NMFS may authorize for pile driving are conservatively based on the maximum densities across the construction months. The take numbers that NMFS may authorize for Level A harassment do not fully account for the likelihood that marine mammals would avoid a stimulus when possible before the individual accumulates enough acoustic energy to potentially cause auditory injury, nor do these numbers account for the effectiveness of the required mitigation measures.

If authorized, takes by Level A harassment and Level B harassment for the combined activities of pile driving and drilling during the installation of monopiles and pin piles (assuming 10 dB of sound attenuation), UXO/MEC detonation, and HRG surveys are provided in tables 33 and 34. NMFS

also presents the percentage of each marine mammal stock estimated to be taken based on the total amount of annual take in table 35. To inform the negligible impact analysis, NMFS assesses the greatest amount of take of marine mammals allowable in any given year (which in the case of this rule is based on the predicted Year 1 for all species), as well as the total allowable take across all 5 years of the rule. Table 35 also depicts the amount of take relative to each stock assuming that each individual is taken only once, which specifically informs the small numbers determination. Table 34 provides the total take that may be authorized from the entire 5-year effective period of the rule and, if issued, associated LOA.

As a result of the updated modeling for impact pile driving, vibratory pile driving, and drilling, takes by Level A harassment and Level B harassment decreased for many species (values in **bold** in table 33, 34, and 35). Rare species, having not been included in the modeling for the proposed or final rule, as they are based on OBIS or PSO sighting data, are unchanged since the proposed rule with the exception of the Northern bottlenose whale. Northern bottlenose whale takes by Level B harassment decreased from 12 to 8 as a result of a correction submitted in the January 2024 Application Update by Avangrid (as previously described in the *Changes in Information Provided in the Preamble*).

TABLE 33—LEVEL A HARASSMENT AND LEVEL B HARASSMENT TAKES FOR ALL ACTIVITIES THAT MAY BE AUTHORIZED DURING THE CONSTRUCTION AND DEVELOPMENT OF THE PROJECT OVER 5 YEARS

Species	Year 1		Year 2		Year 3		Year 4		Year 5		Total 5–y take	
	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
North Atlantic right whale	0	19	0	39	0	46	0	23	0	5	0	126
Blue whale	0	0	1	2	1	2	1	2	0	0	2	4
Fin whale	1	11	7	122	20	194	8	72	0	4	35	386
Humpback whale	1	8	7	84	17	129	8	58	0	3	31	421
Minke whale	4	41	20	305	86	480	38	219	0	13	147	301
Sei whale	1	6	2	17	3	27	2	15	0	2	8	74
Sperm whale	1	3	1	32	0	56	0	20	0	2	2	110
Dwarf sperm whale	0	0	2	2	2	2	2	2	0	0	4	8
Pygmy sperm whale	0	0	2	2	2	2	2	2	0	0	4	8
Cuvier's beaked whale	0	0	0	3	0	3	0	3	0	0	0	6
Blainville's beaked whale	0	0	0	4	0	4	0	4	0	0	0	8
Gervais' beaked whale	0	0	0	4	0	4	0	4	0	0	0	8
Sowerby's beaked whale	0	0	0	4	0	4	0	4	0	0	0	8
True's beaked whale	0	0	0	3	0	3	0	3	0	0	0	6
Northern bottlenose whale ^d	0	0	0	4	0	4	0	4	0	0	0	8
Atlantic spotted dolphin	1	31	1	116	0	169	0	73	0	30	2	382
Atlantic white sided dolphin	1	31	1	905	0	1713	0	788	0	28	2	3331
Bottlenose dolphin, offshore	1	20	1	872	0	2065	0	772	0	18	2	3543
Clymene dolphin	0	0	0	167	0	167	0	167	0	0	0	334
Common dolphin	1	222	1	12501	0	26553	0	10023	0	203	2	46761
Long-finned pilot whale	1	18	1	118	0	216	0	92	0	17	2	442
Short-finned pilot whale	1	10	1	21	0	20	0	19	0	9	2	80
Risso's dolphin	1	8	1	172	0	456	0	147	0	7	2	722
False killer whale	0	5	0	7	0	12	0	7	0	5	0	25
Fraser's dolphin	0	0	0	192	0	192	0	192	0	0	0	384
Killer whale	0	2	0	8	0	10	0	8	0	2	0	10
Melon-headed whale	0	0	0	109	0	109	0	109	0	0	0	218
Pantropical Spotted dolphin	0	0	0	60	0	60	0	60	0	0	0	120
Pygmy killer whale	0	0	0	5	0	5	0	5	0	0	0	10
Rough-toothed dolphin	0	0	0	14	0	14	0	14	0	0	0	28
Spinner dolphin	0	0	0	51	0	51	0	51	0	0	0	102
Striped dolphin	0	0	0	64	0	64	0	64	0	0	0	128
White-beaked dolphin	0	30	0	14	0	14	0	14	0	30	0	150
Harbor porpoise	56	296	53	755	11	902	5	394	0	79	125	2468
Gray seal	8	346	5	887	1	1391	1	762	0	200	15	3290
Harbor seal	17	776	9	980	1	973	1	718	0	448	28	3860
Harp seal	8	346	5	1000	1	1867	1	982	0	200	15	4077
Hooded seal	0	0	0	1	0	1	0	1	0	0	0	2

Note: The annual takes are the maximum between the two construction schedules (A or B); therefore, year 2 is the maximum annual takes under Schedule A while years 3 and 4 are the maximum annual takes under Schedule B. As the total 5–Y takes for Schedule B are more than Schedule A, the total takes that may be authorized is based on Schedule B. Therefore, the sum of the annual takes that may be authorized do not add up to the total 5–Y takes which may be authorized. Values in **bold** for the 5–Y takes are less than in the proposed rule.

^a The final rule and LOA, if issued, would be effective from March 27, 2025 to March 26, 2030.

^b For days when pile installation includes both vibratory setting and drilling, only the vibratory setting Level B harassment takes are included (because more takes are predicted for this activity) and not the drilling Level B takes to avoid double counting. For the purpose of this take request, year 1 is assumed to be 2025. These dates reflect the currently projected construction start year and are subject to change because exact project start dates and construction schedules are not currently available.

^c Rare species in the project area. Rare species total take estimates for the project are based on the assumption that a group would be seen every other year; hence, the 5–Y total is less than the sum of all years combined.

^d Northern bottlenose whale takes by Level B harassment has been decreased from 12 to 8 as a result of a typo correction submitted in the January 2024 Application Update by Avangrid. Avangrid had previously not adjusted the total take request for this rare species by assuming encounters every other year but instead had unintentionally summed all annual takes at the time of the proposed rule.

^e The amount of total takes for 5–Y, is the sum of the 5–Y takes by Level A harassment and takes by Level B harassment.

In making the negligible impact determination and the necessary small numbers finding, NMFS assesses the maximum total number of takes (Level A harassment and Level B harassment) of marine mammals species or stocks allowable within any one year, and in the negligible impact determination we also assess the impacts of the total take allowable over the 5-year period. In this calculation, the maximum estimated number of Level A harassment takes in any one year is summed with the maximum estimated number of Level B

harassment takes in any one year for each species to yield the highest number of estimated take that could occur in any year (table 35). We recognize that certain activities could shift within the 5-year effective period of the rule and the rule allows for that flexibility, however, the takes are not allowed to exceed the maximum annual take shown in table 35 in any year. Of note, the maximum amount of take by Level A harassment is higher for some species in year 1 due to UXO/MEC detonations, though year 3 has the maximum amount

of take when takes by Level A harassment is combined with those from Level B harassment. As schedules may shift, and to not underestimate the amount of takes by harassment, the takes under UXO/MEC detonation have been moved to Year 3 (table 34). Year 3 is the year with the maximum amount of take for foundation installation and maximum amount of take when Level A harassment and Level B harassment are combined (table 34).

TABLE 34—MAXIMUM NUMBER OF TAKES BY HARASSMENT THAT MAY BE AUTHORIZED UNDER YEAR 1 UXO/MEC DETONATION ADDED TO THE MAXIMUM NUMBER OF TAKES THAT MAY BE AUTHORIZED FOR YEAR 3 TO CREATE THE MAXIMUM ANNUAL TAKES

Species	UXO/MEC maximum year 1 Level A harassment	UXO/MEC maximum year 1 Level B harassment	Year 3 maximum Level A harassment	Year 3 maximum Level B harassment	Total maximum annual Level A harassment ^a	Total maximum annual Level B harassment ^a
North Atlantic right whale ^c	0	14	0	46	0	60
Blue whale ^{c,d}	0	0	1	2	1	2
Fin whale ^c	1	7	20	194	21	201
Humpback whale	1	5	17	129	18	134
Minke whale	4	28	86	480	90	508
Sei whale ^c	1	4	3	27	4	31
Sperm whale ^c	1	1	0	56	1	57
Dwarf sperm whale ^d	0	0	2	2	2	2
Pygmy sperm whale ^d	0	0	2	2	2	2
Cuvier's beaked whale ^d	0	0	0	3	0	3
Blainville's beaked whale ^d	0	0	0	4	0	4
Gervais' beaked whale ^d	0	0	0	4	0	4
Sowerby's beaked whale ^d	0	0	0	4	0	4
True's beaked whale ^d	0	0	0	3	0	3
Northern bottlenose whale ^d	0	0	0	4	0	4
Atlantic spotted dolphin ^d	1	1	0	169	1	170
Atlantic white-sided dolphin	1	3	0	1713	1	1716
Bottlenose dolphin, offshore	1	2	0	2065	1	2067
Clymene dolphin ^d	0	0	0	167	0	167
Common dolphin	1	19	0	26553	1	26572
Long-finned pilot whale	1	1	0	216	1	217
Short-finned pilot whale	1	1	0	20	1	21
Risso's dolphin	1	1	0	456	1	457
False killer whale	0	0	0	12	0	12
Fraser's dolphin ^d	0	0	0	192	0	192
Killer whale ^d	0	0	0	10	0	10
Melon-headed whale ^d	0	0	0	109	0	109
Pantropical Spotted dolphin ^d	0	0	0	60	0	60
Pygmy killer whale ^d	0	0	0	5	0	5
Rough-toothed dolphin ^d	0	0	0	14	0	14
Spinner dolphin ^d	0	0	0	51	0	51
Striped dolphin ^d	0	0	0	64	0	64
White-beaked dolphin ^d	0	0	0	44	0	44
Harbor porpoise	56	217	11	902	67	1119
Gray seal	8	146	1	1391	9	1537
Harbor seal	17	328	1	973	18	1301
Harp seal	8	146	1	1867	9	2013
Hooded seal ^d	0	0	0	1	0	1

^a The maximum values is the sum of the Year 1 takes by harassment for UXO/MECs and the takes by harassment for all year 3 activities (foundation installation and HRG). Values in bold are the result of the addition of UXO/MEC takes to year 3 takes.

^b Using the draft 2023 stock assessment report (SAR) at time of publication as it represents the best available science (89 FR 5495, January 29, 2024).

^c Listed as Endangered under the ESA.

^d Rare species in the project area. The number of Level A harassment and Level B harassment takes calculated for rare species is based on the mean group size assuming a 3 year construction schedule (all rare species) and encounters during HRG surveys for white-beaked dolphin, killer whale, and false killer whale.

TABLE 35—MAXIMUM NUMBER OF TAKES (LEVEL A HARASSMENT AND LEVEL B HARASSMENT) THAT MAY BE AUTHORIZED IN ANY ONE YEAR OF THE PROJECT AND THE PERCENT OF STOCK THAT WOULD BE TAKEN BASED ON THE MAXIMUM ANNUAL TAKE THAT MAY BE AUTHORIZED

Species	NMFS stock abundance ^b	Maximum annual Level A harassment	Maximum annual Level B harassment	Maximum annual take	Percent of stock taken based on maximum annual take ^a
North Atlantic right whale ^c	340	0	60	60	17.65
Blue whale ^{c,d}	402	1	2	3	0.75
Fin whale ^c	6802	21	201	222	3.26
Humpback whale	1396	18	134	152	10.89
Minke whale	21968	90	508	598	2.72
Sei whale ^c	6292	4	31	35	0.56
Sperm whale ^c	5895	1	57	58	0.98
Dwarf sperm whale ^d	9474	2	2	4	0.04
Pygmy sperm whale ^d	9474	2	2	4	0.04
Cuvier's beaked whale ^d	4670	0	3	3	0.06
Blainville's beaked whale ^d	2936	0	4	4	0.14
Gervais' beaked whale ^d	8595	0	4	4	0.05
Sowerby's beaked whale ^d	492	0	4	4	0.81
True's beaked whale ^d	4480	0	3	3	0.07
Northern bottlenose whale ^d	UNK	0	4	4	UNK
Atlantic spotted dolphin ^d	31506	1	170	171	0.54
Atlantic white-sided dolphin	93233	1	1716	1717	1.84
Bottlenose dolphin, offshore	64587	1	2067	2068	3.20
Clymene dolphin ^d	21778	0	167	167	0.77
Common dolphin	93100	1	26572	26573	28.54
Long-finned pilot whale	39215	1	217	218	0.56
Short-finned pilot whale	18726	1	21	22	0.12
Risso's dolphin	44067	1	457	458	1.04
False killer whale	1298	0	12	12	0.92
Fraser's dolphin ^d	UNK	0	192	192	UNK
Killer whale ^d	UNK	0	10	10	UNK
Melon-headed whale ^d	UNK	0	109	109	UNK
Pantropical Spotted dolphin ^d	2757	0	60	60	2.18
Pygmy killer whale ^d	UNK	0	5	5	UNK
Rough-toothed dolphin ^d	UNK	0	14	14	UNK
Spinner dolphin ^d	3181	0	51	51	1.60
Striped dolphin ^d	48274	0	64	64	0.13
White-beaked dolphin ^d	536016	0	44	44	0.01
Harbor porpoise	85765	67	1119	1186	1.38
Gray seal	27911	9	1537	1546	5.54
Harbor seal	61336	18	1301	1319	2.15
Harp seal	760000	9	2013	2022	0.03
Hooded seal ^d	UNK	0	1	1	UNK

Note: Year 3 of the project is expected to have the greatest amount of Level B harassment take possible. However, the years where UXO/MEC detonation could occur (currently scheduled for only years 1 and 2) have a higher amount of take by Level A harassment for some species; as the UXO/MEC detonation may shift, the Year 1 UXO/MEC takes were added to the foundation installation and HRG year 3 takes. Values in **bold** are a result of UXO/MEC takes by harassment being added to the Year 3 take amounts.

^a The values in this column represent the assumption that each take that may be authorized would occur to a unique individual. Given the scope of work proposed, this is highly unlikely for species common to the project area (e.g., North Atlantic right whales, humpback whales) such that the actual percentage of the population taken is less than the percentages identified here.

^b Using the draft 2023 stock assessment report (SAR) at time of publication as it represents the best available science (89 FR 5495, January 29, 2024).

^c Listed as Endangered under the ESA.

^d Rare species in the project area. The number of Level A harassment and Level B harassment takes calculated for rare species is based on the mean group size assuming a 3-year construction schedule (all rare species) and encounters during HRG surveys for white-beaked dolphin, killer whale, and false killer whale.

Mitigation

As noted in the Changes from the Proposed to Final Rule section, NMFS has added several new mitigation requirements and clarified a few others and has changed the minimum visibility zone for mysticetes and shutdown zone for North Atlantic right whales. These changes are described in detail in the sections below. Besides these changes, the required measures remain the same

as those described in the proposed rule. However, NMFS has also re-organized and simplified the section to avoid full duplication of the specific requirements that are fully described in the regulatory text.

In order to promulgate a rulemaking under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable adverse

impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS' regulations require applicants for ITAs to include information about the availability and feasibility (e.g., economic and technological) of equipment, methods, and manner of

conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (*e.g.*, likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (*i.e.*, the probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (*i.e.*, the probability if implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider factors such as cost, impact on operations, personnel safety, and practicality of implementation, and, in the case of a military readiness activity, impact on the effectiveness of the military readiness activity.

The mitigation strategies described below are consistent with those required and successfully implemented under previous ITAs issued in association with in-water construction activities (*e.g.*, soft-start, establishing shutdown zones). Additional measures have also been incorporated to account for the fact that the construction activities would occur offshore. Modeling was performed to estimate harassment zones, which were used to inform mitigation measures for the Project's activities to minimize Level A harassment and Level B harassment to the extent practicable, while providing estimates of the areas within which Level B harassment might occur.

Generally speaking, the mitigation measures considered and required here fall into three categories: temporal (*i.e.*, seasonal and daily) and spatial work restrictions, real-time measures (*e.g.*, shutdown, clearance, and vessel strike avoidance), and noise attenuation/reduction measures. Temporal and spatial work restrictions are designed to avoid or minimize operations when marine mammals are concentrated or engaged in behaviors that make them more susceptible or make impacts more likely, in order to reduce both the number and severity of potential takes,

and are effective in reducing both chronic (longer-term) and acute effects. Real-time measures, such as implementation of shutdown and clearance zones, as well as vessel strike avoidance measures, are intended to reduce the probability or severity of harassment by taking steps in real time once a higher-risk scenario is identified (*e.g.*, once animals are detected within an impact zone). Noise attenuation measures such as bubble curtains are intended to reduce the noise at the source, which reduces both acute impacts, as well as the contribution to aggregate and cumulative noise that may result in longer term chronic impacts.

Below, we briefly describe the required training, coordination, and vessel strike avoidance measures that apply to all activity types, and in the following subsections we describe the measures that apply specifically to foundation installation, UXO/MEC detonations, and HRG surveys. Details on specific requirements can be found in 50 CFR part 217, subpart GG, set out at the end of this rule.

Training and Coordination

NMFS requires all Avangrid employees and contractors conducting activities on the water, including but not limited to, all vessel captains and crew to be trained in marine mammal detection and identification, communication protocols, and all required measures to minimize impacts on marine mammals and support Avangrid's compliance with the LOA, if issued. Additionally, all relevant personnel and the marine mammal species monitoring team(s) are required to participate in joint, onboard briefings prior to the beginning of project activities. The briefing must be repeated whenever new relevant personnel (*e.g.*, new PSOs, construction contractors, relevant crew) join the Project before work commences. During this training, Avangrid is required to instruct all project personnel regarding the authority of the marine mammal monitoring team(s). For example, the HRG acoustic equipment operator, pile driving personnel, *etc.*, is required to immediately comply with any call for a delay or shutdown by the Lead PSO. Any disagreement between the Lead PSO and the Project personnel must only be discussed after delay or shutdown has occurred. In particular, all captains and vessel crew must be trained in marine mammal detection and vessel strike avoidance measures to ensure marine mammals are not struck by any project or project-related vessel.

Prior to the start of in-water construction activities, vessel operators

and crews will receive training about marine mammals and other protected species known or with the potential to occur in the Project Area, making observations in all weather conditions, and vessel strike avoidance measures. In addition, training will include information and resources available regarding applicable Federal laws and regulations for protected species. Avangrid will provide documentation of training to NMFS. Since the proposed rule, NMFS has added requirements for a description of the training program to be provided to NMFS at least 60 days prior to the initial training before in-water activities begin and for confirmation of all required training to be documented on a training course log sheet and reported to NMFS Office of Protected Resources prior to initiating project activities. These measures were added in response to several commenters' concerns regarding strengthening mitigation and monitoring measures.

North Atlantic Right Whale Awareness Monitoring

Avangrid must use available sources of information on North Atlantic right whale presence, including daily monitoring of the Right Whale Sightings Advisory System, monitoring of Coast Guard VHF Channel 16 throughout each day to receive notifications of any sightings, and information associated with any regulatory management actions (*e.g.*, establishment of a zone identifying the need to reduce vessel speeds). Maintaining daily awareness and coordination affords increased protection of North Atlantic right whales by understanding North Atlantic right whale presence in the area through ongoing visual and PAM efforts and opportunities (outside of Avangrid's efforts), and allows for planning of construction activities, when practicable, to minimize potential impacts on North Atlantic right whales. The vessel strike avoidance measures apply to all vessels associated with the Project within U.S. waters and on the high seas.

Vessel Strike Avoidance Measures

This final rule contains numerous vessel strike avoidance measures that reduce the risk that a vessel and marine mammal could collide. While the likelihood of a vessel strike is generally low, vessel strikes are one of the most common ways that marine mammals are seriously injured or killed by human activities. Therefore, enhanced mitigation and monitoring measures are required to further avoid vessel strikes to the extent practicable. While many of

these measures are proactive, intended to avoid the heavy use of vessels during times when marine mammals of particular concern may be in the area, several are reactive and occur when a marine mammal is sighted by project personnel. The mitigation requirements are described generally here and in detail in the regulatory text at the end of this final rule (50 CFR 217.324(b)). Avangrid will be required to comply with these measures, except under circumstances when doing so would create an imminent and serious threat to a person or vessel, or to the extent that a vessel is unable to maneuver and, because of the inability to maneuver, the vessel cannot comply.

While underway, Avangrid is required to monitor for and maintain a safe distance from marine mammals, and operate vessels in a manner that reduces the potential for vessel strike. Regardless of the vessel's size, all vessel operators, crews, and dedicated visual observers (*i.e.*, PSO or trained crew member) must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course as appropriate to avoid striking any marine mammal. The dedicated visual observer, equipped with suitable monitoring technology (*e.g.*, binoculars, night vision devices), must be located at an appropriate vantage point for ensuring vessels are maintaining required vessel separation distances from marine mammals (*e.g.*, 500 m from North Atlantic right whales).

All project vessels, regardless of size, must maintain the following minimum separation zones: 500 m from North Atlantic right whales; 100 m from sperm whales and non-North Atlantic right whale baleen whales; and 50 m from all delphinid cetaceans and pinnipeds (an exception is made for those species that approach the vessel (*i.e.*, bow-riding dolphins)). If any of these species are sighted within their respective minimum separation zone, the underway vessel must shift its engine to neutral and the engines must not be engaged until the animal(s) have been observed to be outside of the vessel's path and beyond the respective minimum separation zone. If a North Atlantic right whale is observed at any distance by any project personnel or acoustically detected, project vessels must reduce speeds to 10 knots (kn). Additionally, in the event that any project-related vessel, regardless of size, observes any large whale (other than a North Atlantic right whale) within 500 m of an underway vessel, the vessel is required to shift engines into neutral. The vessel shall remain in neutral until the North Atlantic right whale has

moved beyond 500 m and the 10 kn speed restriction will remain in effect as outlined in 50 CFR 217.314(b). When NMFS vessel speed restrictions are not in effect and a vessel is traveling at greater than 10 kn, in addition to the required dedicated visual observer, Avangrid is required to monitor the transit corridor in real-time with PAM prior to and during transits. To maintain awareness of North Atlantic right whale presence in the Project Area, vessel operators, crew members, and the marine mammal monitoring team will monitor U.S. Coast Guard VHF Channel 16, WhaleAlert, the Right Whale Sighting Advisory System (RWSAS), and the PAM system. Any North Atlantic right whale or large whale detection will be immediately communicated to PSOs, PAM operators, and all vessel captains.

All vessels will be equipped with an AIS and Avangrid must report all MMSI numbers to NMFS Office of Protected Resources prior to initiating in-water activities. The requirement for vessels to be equipped with AIS has been added since the proposed rule to increase the accountability of project vessels. Avangrid will submit a NMFS-approved Marine Mammal Vessel Strike Avoidance Plan at least 180 days prior to commencement of vessel use.

Compliance with these measures will reduce the likelihood of vessel strike to the extent practicable. These measures increase awareness of marine mammals in the vicinity of project vessels and require project vessels to reduce speed when marine mammals are detected (by PSOs, PAM, and/or through another source, *e.g.*, RWSAS) and maintain separation distances when marine mammals are encountered. While visual monitoring is useful, reducing vessel speed is one of the most effective, feasible options available to reduce the likelihood of, and effects from, a vessel strike. Numerous studies have indicated that slowing the speed of vessels reduces the risk of lethal vessel collisions, particularly in areas where right whales are abundant and vessel traffic is common and otherwise traveling at high speeds (Vanderlaan and Taggart, 2007; Conn and Silber, 2013; Van der Hoop *et al.*, 2014; Martin *et al.*, 2015; Crum *et al.*, 2019).

Given the inherent low probability of vessel strike, combined with the vessel strike avoidance measures included herein, NMFS considers the potential for vessel strike to be unlikely and would not allow take from this activity under this final rule.

Seasonal and Daily Restrictions

Temporal and spatial restrictions in places where marine mammals are concentrated, engaged in biologically important behaviors, and/or present in sensitive life stages are effective measures for reducing the magnitude and severity of human impacts. The temporal restrictions required here are built around the protection of North Atlantic right whales. Based upon the best scientific information available (Roberts *et al.*, 2023), the highest densities of North Atlantic right whales in the Project Area are expected during the months of January through April, with an increase in density starting in December and continuing through May. However, North Atlantic right whales may be present in the Project Area throughout the year.

NMFS is requiring seasonal work restrictions to minimize noise exposure to North Atlantic right whales incidental to certain specified activities to the extent practicable. These seasonal work restrictions are expected to greatly reduce the number of takes of North Atlantic right whales that otherwise may have occurred without seasonal restrictions. These seasonal restrictions also afford protection to other marine mammals that are known to use the Project Area with greater frequency during winter months, including other baleen whales.

As described previously, no impact pile driving or drilling activities may occur January 1 through April 30 (and December 1 through May 31 for vibratory pile driving). As described in the proposed rule and carried forward in this final rule, Avangrid is to install the foundations as quickly as possible and avoid impact pile driving and drilling in December to the maximum extent practicable; however, impact pile driving and drilling may occur in December if it is unavoidable and only upon approval from NMFS. Avangrid did not propose to conduct vibratory pile driving in May or December and doing so is not considered in the take estimates. As such, this final rule establishes a seasonal restriction of no vibratory pile driving from December 1 through May 31.

No more than two foundation monopiles or four pin piles for jacket foundations (or bottom-frame foundations) would be installed per day. Monopiles must be no larger than 13 m in diameter and pin piles must be no larger than 4 m in diameter. For all monopiles and pin piles, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must

be used. Hammer energies must not exceed 6,000 kJ for monopile installation or 3,500 kJ for pin pile installation. No more than one pile may be installed at a given time (*i.e.*, concurrent/simultaneous pile driving and drilling may not occur).

Pile driving and drilling (*i.e.*, foundation installation) must not be initiated earlier than 1 hour after civil sunrise or later than 1.5 hours prior to civil sunset. Generally, foundation installation may continue after dark when the installation of the same pile began during daylight (1.5 hours before civil sunset), when clearance zones were fully visible for at least 30 minutes and must proceed for human safety or installation feasibility reasons. The exception to these limitations would be if Avangrid submits, and NMFS approves, an Alternative Monitoring Plan as part of the Foundation Installation and Marine Mammal Monitoring Plan (*i.e.*, Nighttime Monitoring Plan) that reliably demonstrates the efficacy of detecting marine mammals at night with its proposed devices. Nighttime hours are defined as the hours between 1.5 hours prior to civil sunset until 1 hour after civil sunrise. Foundation installation will not be initiated when the minimum visibility zones cannot be fully visually monitored, as determined by the lead PSO on duty.

As with foundation installation, NMFS is similarly restricting UXO/MEC detonations December through May, annually; however, Avangrid may detonate a UXO/MEC in December or May with NMFS' advanced approval on a case-by-case basis. NMFS is requiring this seasonal work restriction to minimize the North Atlantic right whales risk of exposure to noise incidental to foundation installation and UXO/MEC detonation. These seasonal work restrictions are expected to greatly reduce the number of takes of North Atlantic right whales that would have otherwise occurred should all activities be conducted during these months. These seasonal restrictions also afford protection to other marine mammals that are known to use the project area with greater frequency during winter months, including other baleen whales. No more than one UXO/MEC may be detonated per 24-hour period. Moreover, detonations may only occur during daylight hours.

Given the very small harassment zones resulting from HRG surveys and that the best available science indicates that any harassment from HRG surveys, should a marine mammal be exposed, would manifest as minor behavioral harassment only (*e.g.*, potentially some

avoidance of the vessel). NMFS is not requiring any seasonal and daily restrictions for HRG surveys.

More information on activity-specific seasonal and daily restrictions can be found in the regulatory text at the end of this rule.

Noise Abatement Systems

Avangrid is required to employ noise abatement systems (NASs) during all foundation installation (*i.e.*, impact pile driving, vibratory pile driving, and drilling) activities and UXO/MEC detonations to reduce the sound pressure levels that are transmitted through the water to reduce ranges to acoustic thresholds and minimize any acoustic impacts resulting from these activities. Avangrid is required to use at least two NASs to ensure that measured sound levels do not exceed the levels modeled for a 10-dB sound level reduction for foundation installation, which is likely to include a double big bubble curtain or a double big bubble curtain combined with other NAS (*e.g.*, hydro-sound damper, or an Adbm Helmholtz resonator), as well as the adjustment of operational protocols to minimize noise levels. As part of adaptive management, should the research and development phase of newer systems demonstrate effectiveness, Avangrid may submit data on the effectiveness of these systems and request approval from NMFS to use them during foundation installation and UXO/MEC detonation activities.

Two categories of NASs exist: primary and secondary. A primary NAS would be used to reduce the level of noise produced by foundation installation activities at the source, typically through adjustments on to the equipment (*e.g.*, hammer strike parameters). Primary NASs are still evolving and will be considered for use during mitigation efforts when the NAS has been demonstrated as effective in commercial projects. However, as primary NASs are not fully effective at eliminating noise, a secondary NAS would be employed. The secondary NAS is a device or group of devices that would reduce noise as it was transmitted through the water away from the pile, typically through a physical barrier that would reflect or absorb sound waves and therefore, reduce the distance the higher energy sound propagates through the water column. Together, these systems must reduce noise levels to those not exceeding modeled ranges to Level A harassment and Level B harassment isopleths corresponding to those modeled assuming 10-dB sound attenuation, pending results of SFV (see

the *Sound Field Verification* section below and 50 CFR part 217).

Noise abatement systems, such as bubble curtains, are used to decrease the sound levels radiated from a source. Bubbles create a local impedance change that acts as a barrier to sound transmission. The size of the bubbles determines their effective frequency band, with larger bubbles needed for lower frequencies. There are a variety of bubble curtain systems, confined or unconfined bubbles, and some with encapsulated bubbles or panels. Attenuation levels also vary by type of system, frequency band, and location. Small bubble curtains have been measured to reduce sound levels but effective attenuation is highly dependent on depth of water, current, and configuration and operation of the curtain (Austin *et al.*, 2016; Koschinski and Lüdemann, 2013). Bubble curtains vary in terms of the sizes of the bubbles and those with larger bubbles tend to perform a bit better and more reliably, particularly when deployed with two separate rings (Bellmann, 2014; Koschinski and Lüdemann, 2013; Nehls *et al.*, 2016). Encapsulated bubble systems (*e.g.*, Hydro Sound Dampers (HSDs)), can be effective within their targeted frequency ranges (*e.g.*, 100–800 Hz), and when used in conjunction with a bubble curtain appear to create the greatest attenuation. The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. Dähne *et al.* (2017) found that single bubble curtains that reduce sound levels by 7 to 10 dB reduced the overall sound level by approximately 12 dB when combined as a double bubble curtain for 6-m steel monopiles in the North Sea. During installation of monopiles (consisting of approximately 8 m in diameter) for more than 150 WTGs in comparable water depths (>25 m) and conditions in Europe indicate that attenuation of 10 dB is readily achieved (Bellmann, 2019; Bellmann *et al.*, 2020) using single BBCs for noise attenuation.

When a double big bubble curtain is used (noting a single bubble curtain is not allowed), Avangrid is required to maintain numerous operational performance standards. These standards are defined in the regulatory text at the end of this rule, and include, but are not limited to, construction contractors must train personnel in the proper balancing of airflow to the bubble ring and Avangrid must submit a performance test and maintenance

report to NMFS within 72 hours following the performance test. Corrections to the attenuation device to meet regulatory requirements must occur prior to use during foundation installation activities. In addition, a full maintenance check (e.g., manually clearing holes) must occur prior to each pile being installed. If Avangrid uses a noise mitigation device in addition to a double big bubble curtain, similar quality control measures are required. Should the research and development phase of newer systems demonstrate effectiveness, as part of adaptive management, Avangrid may submit data on the effectiveness of these systems and request approval from NMFS to use them during foundation installation activities.

Avangrid is required to submit an SFV plan to NMFS for approval at least 180 days prior to installing foundations. They are also required to submit interim and final SFV data results to NMFS and make corrections to the NASs in the case that any SFV measurements demonstrate noise levels are above those modeled assuming 10 dB. These frequent and immediate reports allow NMFS to better understand the sound fields to which marine mammals are being exposed and require immediate corrective action should they be misaligned with anticipated noise levels within our analysis.

Noise abatement devices are not required during HRG surveys. Regarding HRG surveys, NAS cannot practicably be employed around a moving survey ship, but Avangrid is required to make efforts to minimize source levels by using the lowest energy settings on equipment that has the potential to result in harassment of marine mammals (e.g., boomers) and turning off equipment when not actively surveying. Overall, minimizing the amount and duration of noise in the ocean from any of the Project's activities through use of all means necessary (e.g., noise abatement, turning off power) will effect the least practicable adverse impact on marine mammals.

Clearance and Shutdown Zones

NMFS requires the establishment of both clearance and, where technically feasible, shutdown zones during project activities that have the potential to result in harassment of marine mammals. The purpose of "clearance" of a particular zone is to minimize potential instances of auditory injury and more severe behavioral disturbances by delaying the commencement of an activity if marine mammals are near the activity. The purpose of a shutdown is to prevent a

specific acute impact, such as auditory injury or severe behavioral disturbance of sensitive species, by halting the activity.

All relevant clearance and shutdown zones during project activities would be monitored by NMFS-approved PSOs and PAM operators as described in the regulatory text at the end of this rule. At least one PAM operator must review data from at least 24 hours prior to foundation installation and UXO/MEC detonations and must actively monitor hydrophones for 60 minutes prior to commencement of these activities. Any North Atlantic right whale sighting at any distance by foundation installation PSOs, or acoustically detected within the PAM monitoring zone (12 km), triggers a delay to commencing pile driving and shutdown. Any large whale sighted by a PSO or acoustically detected by a PAM operator that cannot be identified as a non-North Atlantic right whale must be treated as if it were a North Atlantic right whale.

Prior to the start of certain specified activities (i.e., foundation installation, UXO/MEC detonation, and HRG surveys), Avangrid must ensure designated areas (i.e., clearance zones as provided in tables 36 and 37) are clear of marine mammals prior to commencing activities to minimize the potential for and degree of harassment. For foundation installation and UXO/MEC detonations, PSOs must visually monitor clearance zones for marine mammals for a minimum of 60 minutes prior to the activity. During this period, the clearance zones will be monitored by both PSOs and a PAM operator. Prior to the starting these activities, Avangrid will ensure the area is clear of marine mammals, per the clearance zones in tables 36 and 37, to minimize the potential for, and the degree of, harassment. All clearance zones must be confirmed to be free of marine mammals for 30 minutes immediately prior to starting a pile driving (including soft-start), drilling, or UXO/MEC detonation. If a marine mammal is observed within a clearance zone during the pre-start clearance period, the activity will be delayed and may not begin until the animal(s) has been observed exiting its respective zone, or until an additional time period has elapsed with no further sightings (i.e., 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species). In addition, foundation installation and UXO/MEC detonation will be delayed upon a confirmed PAM detection of a North Atlantic right whale if the PAM detection is confirmed to have been located within the North Atlantic right whale PAM Clearance zone. PSO and

PAM must continue throughout the duration of foundation installation and UXO/MEC detonation and for 30 minutes post-completion of the activity. In the event that a large whale is sighted or acoustically detected that cannot be confirmed as a non-North Atlantic right whale, it must be treated as if it were a North Atlantic right whale. Because UXO/MEC detonations are instantaneous, no shutdown is possible; therefore, there are clearance zones but no shutdown zones for UXO/MEC detonations (table 37).

Clearance and shutdown zones have been developed in consideration of modeled distances to relevant PTS thresholds with respect to minimizing the potential for take by Level A harassment. The clearance and shutdown zones for North Atlantic right whales during monopile and jacket foundation installation are visual observations at any distance by PSOs or any acoustic detection within the PAM monitoring zone (12 km). The visual and acoustic clearance zones for large whales other than North Atlantic right whales are 3,300 m (monopile) and 4,900 m (jacket), which corresponds to the largest modeled exposure range ($ER_{95\%}$) distances to Level A harassment thresholds (SEL and peak) under all scenarios for all whales, plus 20 percent, then rounded up for PSO clarity (table 36). The visual and acoustic shutdown zones for large whales other than North Atlantic right whales are 2,700 m (monopile) and 4,100 m (jacket) for all other large whales. These distances are also larger than the largest Level A harassment modeled exposure range ($ER_{95\%}$) for impact pile driving and impact+vibratory pile driving. The clearance and shutdown zones for other species, which are expected to reduce the likelihood and amount of Level A harassment and the severity of Level B harassment, are shown in table 36 and will effect the least practicable adverse impact (LPAI). For North Atlantic right whales, there is an additional requirement that the clearance zone may only be declared clear if no confirmed North Atlantic right whale acoustic detections (in addition to visual) have occurred during the 60-minute monitoring period.

Once an activity begins, any marine mammal entering their respective shutdown zone would trigger the activity to cease. In the case of foundation installation, the shutdown requirement may be waived if it is not practicable to shutdown the equipment due to imminent risk of injury or loss of life to an individual, risk of damage to a vessel that creates risk of injury or

loss of life for individuals, or where the lead engineer determines there is pile refusal or pile instability. In situations when shutdown is called for during impact pile driving, but Avangrid determines shutdown is not practicable due to aforementioned emergency reasons, reduced hammer energy must be implemented when the lead engineer determines it is practicable.

Specifically, pile refusal or pile instability could result in not being able to shut down pile driving immediately. Pile refusal occurs when the pile driving sensors indicate the pile is approaching refusal and a shut-down would lead to a stuck pile which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Pile instability occurs when the pile is unstable and unable to stay standing if the piling vessel were to "let go". During these periods of instability, the lead engineer may determine a shut-down is not feasible because the shut-down combined with impending weather conditions may require the piling vessel to "let go", which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Avangrid must document and report to NMFS all cases where the emergency exemption is taken.

After shutdown, foundation installation may be reinitiated once all clearance zones are clear of marine mammals for the minimum species-specific periods, or, if required to maintain pile stability, at which time the lowest hammer energy must be used to maintain stability. If foundation installation has been shut down due to the presence of a North Atlantic right whale, pile driving must not restart until the North Atlantic right whale has neither been visually or acoustically detected by PSOs and PAM operators for 30 minutes. Upon re-starting pile driving, soft-start protocols must be followed if pile driving has ceased for 30 minutes or longer.

The clearance and shutdown zone sizes vary by species and are shown in tables 36 and 37. Avangrid is allowed to request modification to these zone sizes pending results of SFV (see the regulatory text at the end of this rule). Any changes to zone size would be part of adaptive management and would require NMFS' approval. The 12 km PAM monitoring zone for North Atlantic right whales has been carried forward from the proposed rule into this final rule. The clearance and shutdown zones for North Atlantic right whales have been increased to any visual distance by foundation installation PSOs and any

acoustic detection within the 12-km PAM monitoring zone. The increase to these zones also increases protections for North Atlantic right whales during impact pile driving.

In addition to the clearance and shutdown zones that would be monitored both visually and acoustically, NMFS is requiring Avangrid to establish a minimum visibility zone during foundation installation activities to ensure both visual and acoustic methods are used in tandem to detect marine mammals resulting in maximum detection capability. No minimum visibility zone is required for UXO/MEC detonation as the entire visual clearance zone must be clear given the potential for lung and GI injury. The minimum visibility zone for foundation installation activities (pile driving and drilling) would extend from the location of the pile being driven out to 2.1 km (monopiles) and 3.4 km (jacket). This value corresponds to just greater than the modeled maximum ER_{95%} distances to the Level A harassment threshold for North Atlantic right whales, assuming 10 dB of attenuation. The entire minimum visibility zone must be visible for a full 60 minutes immediately prior to commencing pile driving and drilling. The entire clearance zone must be visible for a full 60 minutes immediately prior to commencing UXO/MEC detonation.

For HRG surveys, there are no mitigation measures prescribed for sound sources operating at frequencies greater than 180 kHz, as these would be expected to fall outside of marine mammal hearing ranges and would not result in harassment. However, all HRG survey vessels would be subject to the aforementioned vessel strike avoidance measures described earlier in this section. Furthermore, due to the frequency range and characteristics of some of the sound sources associated with lesser impacts, shutdown, clearance, and ramp-up procedures are not planned to be conducted during HRG surveys utilizing only non-impulsive sources (e.g., other parametric sub-bottom profilers). Shutdown, clearance, and ramp-up procedures are planned to be conducted during HRG surveys utilizing SBPs and other non-parametric sub-bottom profilers (planned survey equipment are in table 31). PAM would not be required during HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impacts during HRG survey activities is limited.

Avangrid will be required to implement a 30-minute clearance period of the clearance zones (table 36) immediately prior to the commencing of the survey, or when there is more than a 30-minute break in survey activities and PSOs have not been actively monitoring. If a marine mammal is observed within a clearance zone during the clearance period, ramp up (described below) may not begin until the animal(s) have been observed voluntarily exiting its respective clearance zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes and pinnipeds, and 30 minutes for all other species). When the clearance process has begun in conditions with good visibility, including via the use of night vision equipment (*i.e.*, infrared (IR)/thermal camera), and the Lead PSO has determined that the clearance zones are clear of marine mammals, survey operations would be allowed to commence (*i.e.*, no delay is required) despite periods of inclement weather and/or loss of daylight.

Once the survey has commenced, Avangrid would be required to shut down SBPs if a marine mammal enters a respective shutdown zone (table 36). In cases where the shutdown zones become obscured for brief periods due to inclement weather, survey operations would be allowed to continue (*i.e.*, no shutdown is required) so long as no marine mammals have been detected. The use of SBPs will not be allowed to commence or resume until the animal(s) has been confirmed to have left the shutdown zone or until a full 15 minutes (for small odontocetes and seals) or 30 minutes (for all other marine mammals) have elapsed with no further sighting. Any large whale sighted by a PSO within 1,000 m of the SBPs that cannot be identified as a non-North Atlantic right whale would be treated as if it were a North Atlantic right whale for the purposes of mitigation implementation.

Once the survey has commenced, Avangrid would be required to shut down SBPs if a marine mammal enters a respective shutdown zone (table 36). In cases when the shutdown zones become obscured for brief periods due to inclement weather, survey operations would be allowed to continue (*i.e.*, no shutdown is required) so long as no marine mammals have been detected. The use of SBPs will not be allowed to commence or resume until the animal(s) has been confirmed to have left the shutdown zone or until a full 15 minutes (for small odontocetes and seals) or 30 minutes (for all other marine

mammals) have elapsed with no further sighting. Any large whale sighted by a PSO within 1,000 m of the SBPs that cannot be identified as a non-North Atlantic right whale would be treated as if it were a North Atlantic right whale.

If a SBP is shut down for reasons other than mitigation (*e.g.*, mechanical difficulty) for less than 30 minutes, it would be allowed to be activated again

without ramp-up only if (1) PSOs have maintained constant observation, and (2) no additional detections of any marine mammal occurred within the respective shutdown zones. If a SBP was shut down for a period longer than 30 minutes, then all clearance and ramp-up procedures would be required, as previously described.

For any other in-water construction heavy machinery activities (*e.g.*, trenching, cable laying, *etc.*), if a marine mammal is on a path towards and about to enter or comes within 10 m (32.8 ft) of equipment, Avangrid is required to cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment.

TABLE 36—MINIMUM VISIBILITY, CLEARANCE, SHUTDOWN, AND LEVEL B HARASSMENT ZONES DURING FOUNDATION INSTALLATION AND HRG

Activity	Marine mammal	Minimum visibility zone (m) ⁴	Visual and acoustic clearance zone (m) ⁵	Visual and acoustic shutdown zone (m) ⁶	Acoustic monitoring zone (m)	Vessel separation zone (m)
Monopile ¹	North Atlantic right whale	2,100	Any distance visual detection from PSOs, any acoustic detection within 12-km acoustic monitoring zone.		7 12,000	500
	Other baleen and sperm		3,300	2,700		
	Small whales and dolphins		200	200		100
	Harbor porpoise		250	250		50
	Seals		200	200		50
Jacket ²	North Atlantic right whale	3,400	Any distance visual detection from PSOs, any acoustic detection within 12-km acoustic monitoring zone.		7 12,000	500
	Other baleen and sperm		4,900	4,100		
	Small whales and dolphins		200	200		100
	Harbor porpoise		250	250		50
	Seals		1,000	800		50
HRG ³	North Atlantic right whale	500	500	500	N/A	500
	All other ESA		500	100		100
	All other non-ESA		100	100		50

¹ The zones for monopiles apply to all impact pile driving, vibratory pile driving, and drilling activities and are based on the largest distances to Level A harassment ER_{95%} thresholds across the monopile and hammer sizes (*i.e.*, 12m, 13m, 5,000 kJ, 6,000 kJ). The exact size may be modified through adaptive management should SFV demonstrate noise levels are lower or higher than expected. New zone sizes will be based on the definition provided in footnotes 5 and 6.

² The zones for the 4-m jacket pin piles apply to impact pile driving, vibratory pile driving, and drilling activities and are based on the largest distances to Level A harassment ER_{95%} thresholds. The exact zone size may be modified through adaptive management should SFV demonstrate noise levels are lower or higher than expected. New zone sizes will be based on the definition provided in footnotes 5 and 6.

³ HRG zones are limited to visual clearance and shutdown zones as PAM is not required. Clearance and shutdown zones apply only when operating sound sources covered under the specified activities that may result in take (*i.e.*, SBPs).

⁴ The minimum visibility zone is based on the largest distance to the Level A harassment ER_{95%} for low-frequency cetaceans, not including fin whales, rounded up for PSO clarity. The entire minimum visibility zone must be visible for a full 60 minutes immediately prior to commencing pile driving and drilling.

⁵ The clearance zone for "other baleen and sperm" is based on the largest distance to the Level A harassment ER_{95%} of the species group plus a 20 percent increase and then rounded up for PSO clarity. The clearance zones for the other species groups, not including North Atlantic right whale, is set as a minimum of 200 m for those species whose distance to Level A harassment was less than 200 m so as to place the clearance zone outside the NAS. For harbor porpoise, Avangrid proposed, and NMFS accepted, a zone of 250 m though the distance to Level A harassment ER_{95%} was modeled at less than 200 m, therefore, no additional increase is warranted for the clearance zone. For seals, as its distance to Level A harassment was more than 200 m, the clearance zone was set as the largest distance to the Level A harassment ER_{95%} of the species group plus a 20 percent increase and then rounded up for PSO clarity.

⁶ The shutdown zone for "other baleen and sperm" is based on the largest distance to the Level A harassment ER_{95%} then rounded up for PSO clarity. The shutdown zones for the other species groups, not including North Atlantic right whale, is set as a minimum of 200 m for those species whose distance to Level A harassment was less than 200 m so as to place the shutdown zone outside the NAS. For harbor porpoise, Avangrid proposed, and NMFS accepted, a zone of 250 m though the distance to Level A harassment ER_{95%} was modeled at less than 200 m. For seals during jacket foundation installation, the distance to Level A harassment was more than 200 m (790 m) so the shutdown zone was rounded up to 800 m.

⁷ The PAM system must be designed to detect all marine mammals to the maximum extent practicable, maximize baleen whale detections, and must be capable of detecting North Atlantic right whales at 12 km. NMFS recognizes that other marine mammals (*e.g.*, harbor porpoise) may not be detected at 12 km.

TABLE 37—CLEARANCE, LEVEL A HARASSMENT, AND LEVEL B HARASSMENT ZONES DURING UXO/MEC DETONATIONS, BY CHARGE WEIGHT AND ASSUMING 10 dB OF SOUND ATTENUATION

UXO/MEC charge weights	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds
E4 (2.3 kg):				
Level A harassment (m)	552	50	1,820	182
Level B harassment (m)	282	453	6,160	1,470
Clearance Zone (m) ^{a b c}	* 2,500	500	2,500	1,000
E6 (9.1 kg):				
Level A harassment (m)	982	75	2,590	357
Level B harassment (m)	4,680	773	8,000	2,350
Clearance Zone (m) ^{a b c}	* 4,000	600	4,000	1,500
E8 (45.5 kg):				
Level A harassment (m)	1,730	156	3,900	690
Level B harassment (m)	7,490	1,240	10,300	3,820

TABLE 37—CLEARANCE, LEVEL A HARASSMENT, AND LEVEL B HARASSMENT ZONES DURING UXO/MEC DETONATIONS, BY CHARGE WEIGHT AND ASSUMING 10 dB OF SOUND ATTENUATION—Continued

UXO/MEC charge weights	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds
Clearance Zone (m) ^{a b c}	* 6,000	1,000	6,000	3,000
E10 (227 kg):				
Level A harassment (m)	2,970	337	5,400	1,220
Level B harassment (m)	10,500	2,120	12,900	5,980
Clearance Zone (m) ^{a b c}	* 9,000	1,500	9,000	4,000
E12 (454 kg):				
Level A harassment (m)	3,780	461	6,200	1,600
Level B harassment (m)	11,900	2,550	14,100	7,020
Clearance Zone (m) ^{a b c}	* 10,000	2,000	10,000	5,000

* The clearance zone size for the North Atlantic right whale is “any distance”. Detonation must not occur if a North Atlantic right whale is visually or acoustically detected at any distance from the detonation site.

^a The clearance zones, which are visually and acoustically monitored, presented here for the Level B harassment thresholds were derived based on an approximate proportion of the size of the Level B harassment (TTS) isopleth. The clearance zone sizes are contingent on Avangrid being able to demonstrate that they can identify charge weights in the field; if they cannot identify the charge weight sizes in the field then Avangrid would need to assume the E12 charge weight size for all detonations and must implement the E12 clearance zone. No minimum visibility zone is required for UXO/MEC detonation as the entire clearance zone must be visually clear.

^b Some of the zones have been rounded for PSO clarity.

^c The exact zone sizes may be modified through adaptive management should SFV demonstrate noise levels are lower or higher than expected.

NMFS also notes that for any UXO/MECs that require removal, Avangrid is required to implement the ALARP process. This process would require Avangrid to undertake “lift-and-shift” (*i.e.*, physical removal) and then lead up to in situ disposal, which could include low-order (deflagration) to high-order (detonation) methods of removal. Another potential approach involves the cutting of the UXO/MEC to extract any explosive components. Implementing the ALARP approach would minimize potential impacts to marine mammals as UXOs/MECs would only be detonated as a last resort.

Soft-Start/Ramp-Up

The use of a soft-start or ramp-up procedure is believed to provide additional protection to marine mammals by warning them or providing them with a chance to leave the area, prior to the hammer or HRG equipment operating at full capacity. Soft-start typically involves initiating hammer operation at a reduced energy level relative to full operating capacity followed by a waiting period. Typically, NMFS requires a soft-start procedure of the applicant performing four to six strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes. For foundation installation, NMFS notes that it is difficult to specify a reduction in energy for any given hammer because of variation across drivers and installation conditions. The final methodology will be developed by Avangrid, in consultation with NMFS, considering final design details including site-specific soil properties and other considerations. A general soft-start

requirement for impact pile driving is incorporated into the regulations. HRG survey operators are required to ramp-up sources when the acoustic sources are used unless the equipment operates on a binary on/off switch. The ramp-up would involve starting from the smallest setting and gradually increasing to the operating level over a period of approximately 30 minutes.

Soft-start and ramp-up will be required at the beginning of each day's activity and at any time following a cessation of activity of 30 minutes or longer. Prior to soft-start or ramp-up beginning, the operator must receive confirmation from the PSO that the clearance zone is clear of any marine mammals.

Fishery Monitoring Surveys

While the likelihood of Avangrid's fishery monitoring surveys impacting marine mammals is minimal, NMFS requires Avangrid to adhere to gear and vessel mitigation measures to reduce potential impacts to the extent practicable. In addition, all crew undertaking the fishery monitoring survey activities are required to receive protected species identification training prior to activities occurring and attend the aforementioned onboarding training. The specific requirements that NMFS has set for the fishery monitoring surveys can be found in the regulatory text at the end of this rule.

Based on our evaluation of the mitigation measures, as well as other measures considered by NMFS, NMFS has determined that these measures will provide the means of affecting the least practicable adverse impact on the affected species or stocks and their

habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

As noted in the Changes from the Proposed to Final Rule section, we have added, modified, or clarified a number of monitoring and reporting measures since the proposed rule. These changes are described in detail below. Since the proposed rule, we have increased the number of required active PSOs per platform (*i.e.*, foundation installation vessel, dedicated PSO vessels) during foundation installation activities from two to three PSOs. This requirement will increase monitoring effort to promote more effective detection of marine mammals during foundation installation activities. In addition, we have added specific requirements for SFV monitoring.

In order to promulgate a rulemaking for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS

should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (*i.e.*, individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (*i.e.*, behavioral or physiological) to acoustic stressors (*i.e.*, acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and/or
- Mitigation and monitoring effectiveness.

Separately, monitoring is also regularly used to support mitigation implementation (*i.e.*, mitigation monitoring) and monitoring plans typically include measures that both support mitigation implementation and increase our understanding of the impacts of the activity on marine mammals.

During the planned activities, visual monitoring by NMFS-approved PSOs would be conducted before, during, and after all impact pile driving, vibratory pile driving, drilling, UXO/MEC detonations, and HRG surveys. PAM would be also conducted during impact pile driving, vibratory pile driving, drilling, and UXO/MEC detonations. Visual observations and acoustic detections would be used to support the activity-specific mitigation measures (*e.g.*, clearance zones). To increase understanding of the impacts of the activity on marine mammals, PSOs must record all incidents of marine mammal occurrence at any distance from the foundation installation locations (*i.e.*, location of impact pile driving, vibratory pile driving, and drilling), near the HRG acoustic sources, and during UXO/MEC detonations. PSOs

would document all behaviors and behavioral changes, in concert with distance from an acoustic source. Further, SFV during foundation installation and UXO/MEC detonation is required to ensure compliance and that the potential impacts are within the bounds of that analyzed. The required monitoring, including PSO and PAM Operator qualifications, is described below, beginning with PSO measures that are applicable to all the aforementioned activities and PAM (for specific activities).

Protected Species Observer and PAM Operator Requirements

Avangrid is required to employ NMFS-approved PSOs and PAM operators. PSOs are trained professionals who are tasked with visually monitoring for marine mammals during pile driving, drilling, UXO/MEC detonation, and HRG surveys. The primary purpose of a PSO is to carry out the monitoring, collect data, and, when appropriate, call for the implementation of mitigation measures. In addition to visual observations, NMFS requires Avangrid to conduct PAM by PAM operators during impact pile driving, vibratory pile driving, drilling, UXO/MEC detonation, and vessel transit.

The inclusion of PAM, which would be conducted by NMFS-approved PAM operators, following standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind, combined with visual data collection, is a valuable way to provide the most accurate record of species presence as possible. These two monitoring methods are well understood to provide best results when combined together (*e.g.*, Barlow and Taylor, 2005; Clark *et al.*, 2010; Gerrodette *et al.*, 2011; Van Parijs *et al.*, 2021). Acoustic monitoring, in addition to visual monitoring, increases the likelihood of detecting marine mammals within the shutdown and clearance zones of project activities, which when applied in combination of required shutdowns helps to further reduce the risk of marine mammals being exposed to sound levels that could otherwise result in acoustic injury or more intense behavioral harassment.

The exact configuration and number of PAM systems depends on the size of the zone(s) being monitored, the amount of noise expected in the area, and the characteristics of the signals being monitored. More closely-spaced hydrophones would allow for more directionality and range to the vocalizing marine mammals. Larger baleen cetacean species (*i.e.*,

mysticetes), which produce loud and lower-frequency vocalizations, may be able to be heard with fewer hydrophones spaced at greater distances. However, smaller cetaceans (*e.g.*, mid-frequency delphinids; odontocetes) may necessitate more hydrophones and to be spaced closer together given the shorter range of the shorter, mid-frequency acoustic signals (*e.g.*, whistles and echolocation clicks). As there are no “perfect fit” single-optimal-array configurations, these setups would need to be considered on a case-by-case basis during the PAM Plan review.

NMFS does not formally administer any PSO or PAM operator training programs or endorse specific providers but will approve PSOs and PAM operators that have successfully completed courses that meet the curriculum and training requirements referenced below and further specified in the regulatory text at the end of this rule. PSOs can act as PAM operators or visual PSOs (but not simultaneously) as long as they demonstrate that their training and experience are sufficient to perform each task.

NMFS will provide PSO and PAM operator approvals to ensure that PSOs and PAM operators have the necessary training and/or experience to carry out their duties competently. In order for PSOs and PAM operators to be approved, NMFS must review and approve PSO and PAM operator resumes indicating successful completion of an acceptable training course. PSOs and PAM operators must have previous experience observing marine mammals and must have the ability to work with all required and relevant software and equipment. NMFS may approve PSOs and PAM operators as conditional or unconditional. A conditional approval may be given to one who is trained but has not yet attained the requisite experience. An unconditional approval is given to one who is trained and has attained the necessary experience. The specific requirements for conditional and unconditional approval can be found in the regulatory text at the end of this rule.

Conditionally-approved PSOs and PAM operators must be paired with an unconditionally-approved PSO (or PAM operator, as appropriate) to ensure that the quality of marine mammal observations and data recording is kept consistent. Additionally, activities requiring PSO and/or PAM operator monitoring must have a lead on duty. The visual PSO field team, in conjunction with the PAM team, (*i.e.*, together, the marine mammal

monitoring team), would have a lead member (designated as the “Lead PSO” or “Lead PAM operator”) who would be required to meet the unconditional approval standard.

Although PSOs and PAM operators must be approved by NMFS, third-party observer providers and/or companies seeking PSO and PAM operator staffing should expect that those having satisfactorily completed acceptable training and with the requisite experience (if required) will be quickly approved. Avangrid is required to request PSO and PAM operator approvals 60 days prior to those personnel commencing work. An initial list of previously approved PSO and PAM operators must be submitted by Avangrid at least 30 days prior to the start of the Project. Should Avangrid require additional PSOs or PAM operators throughout the Project, Avangrid must submit a subsequent list of pre-approved PSOs and PAM operators to NMFS at least 15 days prior to planned use of that PSO or PAM operator. A PSO may be trained and/or experienced as both a PSO and PAM operator and may perform either duty, pursuant to scheduling requirements.

A minimum number of PSOs would be required to actively observe for the presence of marine mammals during certain project activities, generally speaking, with more PSOs being required as the mitigation zone sizes increase. A minimum number of PAM operators would be required to actively monitor for the presence of marine mammals during foundation installation and UXO/MEC detonations. The types of equipment required (*e.g.*, big eyes on the pile driving vessel) are also designed to increase marine mammal detection capabilities. Specifics on these types of requirements can be found in the regulations at the end of this rule.

At least three PSOs must be on duty at a time on the foundation installation vessel/platform and UXO/MEC monitoring platform. A minimum of three PSOs must be active on a dedicated PSO vessel. If a dedicated PSO vessel is selected, the vessel must be located at the best vantage point to observe and document marine mammal sightings in proximity to the clearance and, if applicable, shutdown zones.

At least one PSO must be on-duty during HRG surveys conducted during daylight hours; and at least two PSOs must be on-duty during HRG surveys conducted during nighttime.

As part of their monitoring duties, PSOs and PAM operators are responsible for data collection. The data collected by PSO and PAM operators and subsequent analysis provide the

necessary information to inform an estimate of the amount of take that occurred during the Project, better understand the impacts of the Project on marine mammals, address the effectiveness of monitoring and mitigation measures, and to adaptively manage activities and mitigation in the future. Data reported includes information on marine mammal sightings (*e.g.*, numbers of animals and their behavior), activity occurring at time of sighting, monitoring conditions, and if mitigative actions were taken. Specific data collection requirements are contained within the regulations at the end of this rule.

Avangrid is required to submit a Foundation Installation Monitoring Plan and a PAM Plan to NMFS 180 days in advance of foundation installation activities. The Plan must include details regarding PSO and PAM monitoring protocols and equipment proposed for use, as described in the regulatory text at the end of this rule. NMFS must approve the plan prior to foundation installation activities commencing. Specific details on NMFS’ PSO or PAM operator qualifications and requirements can be found in 50 CFR part 217, subpart GG, set out at the end of this rule.

Sound Field Verification

Previously in the proposed rule, Avangrid had to conduct SFV measurements during all UXO/MEC detonations, and all pile driving and drilling activities associated with the installation of, at minimum, the first three monopile foundations. SFV measurements must continue until at least three consecutive piles demonstrate distances to thresholds that are at or below those modeled assuming 10 dB of attenuation. Subsequent SFV measurements are also required should larger piles be installed or additional piles be driven that are anticipated to produce longer distances to harassment isopleths than those previously measured (*e.g.*, higher hammer energy, greater number of strikes, *etc.*).

For the final rule, NMFS has expanded this requirement for SFV during foundation installation to align with the BiOp. At minimum, Thorough SFV must be conducted in: the first construction year for the first three monopiles installed with only an impact hammer; the first three monopiles installed with a vibratory hammer followed by an impact hammer; the first two jacket foundations (all piles) installed; the first foundation (regardless of type) where drilling (*i.e.*, relief drilling) is used; all monopiles and the first jacket foundation (all piles)

installed in December (winter sound speed profile); and, the first foundation for any foundation scenarios that were modeled for the exposure analysis (*e.g.*, rated hammer energy, number of strikes, representative location) that does not fall into one of the previously listed categories (*e.g.*, if the first two jacket foundation are installed with an impact hammer only, Thorough SFV would be required for the first jacket foundation installed with vibratory and impact pile driving). Without exception, Thorough SFV is required for all UXO/MEC detonations.

After the first construction year, if there are no changes to the pile driving equipment (*i.e.*, same hammer, same Noise Attenuation System)—the first monopile and first jacket foundation (all piles) must have Thorough SFV; if changes to the equipment (*e.g.*, different hammer, different noise attenuation system)—the Thorough SFV requirements from the first construction year apply. Any foundation type or technique included in the requirements for the first construction year that was not installed until a subsequent construction year (*e.g.*, if drilling is not used until year 2 or 3, the first foundation where drilling is used must have Thorough SFV). During Thorough SFV, installation of the next foundation (of the same type/foundation method) may not proceed until Avangrid has reviewed the initial results from the Thorough SFV and determined that there were no exceedances of any distances to the identified thresholds based on modeling assuming 10 dB of attenuation.

If any of the Thorough SFV measurements from any pile indicate that the distance to any isopleth of concern for any species is greater than those modeled assuming 10 dB of attenuation, Avangrid must notify NMFS within 24 hours of reviewing the Thorough SFV measurements and must implement the measures described in detail in the regulatory text at the end of this final rule for the next pile of the same type/installation methodology, as applicable.

Abbreviated SFV monitoring must be performed on all foundation installations for which the complete SFV monitoring described above is not conducted. In addition, SFV measurements must be conducted upon commencement of turbine operations to estimate turbine operational source levels, in accordance with a NMFS-approved Foundation Installation Pile Driving SFV Plan. The measurements and reporting associated with SFV can be found in the regulatory text at the end of this rule. The requirements are

extensive to ensure monitoring is conducted appropriately and the reporting frequency is such that Avangrid is required to make adjustments quickly (*e.g.*, ensure bubble curtain hose maintenance, check bubble curtain air pressure supply, add additional sound attenuation, *etc.*) to ensure marine mammals are not experiencing noise levels above those considered in this analysis. For recommended SFV protocols for impact pile driving, please consult International Organization for Standardization (ISO) 18406, "Underwater acoustics—Measurement of radiated underwater sound from percussive pile driving" (2017).

Reporting

Prior to any construction activities occurring, Avangrid will provide a report to NMFS Office of Protected Resources that demonstrates that all Avangrid personnel, including the vessel crews, vessel captains, PSOs, and PAM operators, have completed all required trainings.

NMFS will require standardized and frequent reporting from Avangrid during the life of the regulations and the LOA. All data collected relating to the Project will be recorded using industry-standard software (*e.g.*, Mysticetus or a similar software) installed on field laptops and/or tablets. Avangrid is required to submit weekly, monthly, annual, situational, and final reports. The specifics of what we require to be reported can be found in the regulatory text at the end of this final rule.

Weekly Report—During foundation installation activities, Avangrid would be required to compile and submit weekly marine mammal monitoring reports for foundation installation activities to NMFS Office of Protected Resources that document the daily start and stop of all pile-driving and drilling activities, the start and stop of associated observation periods by PSOs, details on the deployment of PSOs, a record of all detections of marine mammals (acoustic and visual), any mitigation actions (or if mitigation actions could not be taken, provide reasons why), and details on the noise abatement system(s) (*e.g.*, system type, distance deployed from the pile, bubble rate, *etc.*), and abbreviated SFV results. Weekly reports will be due on Wednesday for the previous week (Sunday to Saturday). The weekly reports are also required to identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is complete, weekly reports would no longer be required.

Monthly Report—Avangrid is required to compile and submit monthly reports to NMFS Office of Protected Resources that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, and route), number of piles installed, number of UXO/MECs detonated, all detections of marine mammals, and any mitigative actions taken. Monthly reports would be due on the 15th of the month for the previous month. The monthly report would also identify which turbines become operational and when, and a map must be provided. Once all foundation pile installation is complete, monthly reports would no longer be required.

Annual Reporting—Avangrid is required to submit an annual marine mammal monitoring (both PSO and PAM) report to NMFS Office of Protected Resources by March 31, annually, describing, in detail, all of the information required in the monitoring section above for the previous calendar year. A final annual report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report.

Final Reporting—Avangrid must submit its draft 5-year report(s) to NMFS Office of Protected Resources. The report must contain, but is not limited to, a description of activities conducted (including GIS files where relevant), and all visual and acoustic monitoring, including SFV and monitoring effectiveness, conducted under the LOA within 90 calendar days of the completion of activities occurring under the LOA. A final 5-year report must be prepared and submitted within 60 calendar days following receipt of any NMFS comments on the draft report.

Situational Reporting—Specific situations encountered during the development of the Project require immediate reporting. For instance, if a North Atlantic right whale is observed at any time by PSOs or project personnel, the sighting must be immediately reported to NMFS, or, if not feasible, as soon as possible and no longer than 24 hours after the sighting. If a North Atlantic right whale is acoustically detected at any time via a project-related PAM system, the detection must be reported as soon as possible and no longer than 24 hours after the detection to NMFS via the 24-hour North Atlantic right whale Detection Template (<https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>). Calling the hotline is

not necessary when reporting PAM detections via the template.

If a sighting of a stranded, entangled, injured, or dead marine mammal occurs, the sighting would be reported within 24 hours to NMFS Office of Protected Resources, the NMFS Greater Atlantic Stranding Coordinator for the New England/Mid-Atlantic area (866-755-6622) in the Northeast Region (if in the Southeast Region (NC to FL), contact 877-942-5343), and the U.S. Coast Guard within 24 hours.

In the event of a vessel strike of a marine mammal by any vessel associated with the Project or if project activities cause a non-auditory injury or death of a marine mammal, Avangrid must immediately report the incident to NMFS. If in the Greater Atlantic Region (Maine to Virginia), Avangrid must call the NMFS Greater Atlantic Stranding Hotline. Separately, Avangrid must also and immediately report the incident to NMFS Office of Protected Resources and GARFO. Avangrid must immediately cease all on-water activities, including pile driving, until NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the MMPA. NMFS Office of Protected Resources may impose additional measures covered in the adaptive management provisions of this rule to minimize the likelihood of further prohibited take and ensure MMPA compliance. Avangrid may not resume their activities until notified by NMFS.

In the event of any lost gear associated with the fishery surveys, Avangrid must report to the GARFO as soon as possible or within 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear.

The specifics of what NMFS Office of Protected Resources requires to be reported is listed at the end of this rulemaking in the regulatory text.

Sound Field Verification—Avangrid is required to submit interim SFV reports after each foundation installation and UXO/MEC detonation monitored as soon as possible but within 48 hours for Thorough SFV. Abbreviated SFV reports must be included in the weekly monitoring reports. A final SFV report for all foundation installations and UXO/MEC detonations will be required within 90 days following completion of acoustic monitoring.

Adaptive Management

These regulations contain an adaptive management component. Our understanding of the effects of offshore wind construction activities (e.g., acoustic stressors) on marine mammals continues to evolve, which makes the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations.

The monitoring and reporting requirements in this final rule will provide NMFS with information that helps us to better understand the impacts of the Project's activities on marine mammals and informs our consideration of whether any changes to mitigation and monitoring are appropriate. The use of adaptive management allows NMFS to consider new information and modify mitigation, monitoring, or reporting requirements, as appropriate, with input from Avangrid regarding practicability, if such modifications will have a reasonable likelihood of more effectively accomplishing the goal of the measures.

The following are some of the possible sources of new information to be considered through the adaptive management process: (1) results from monitoring reports, including the weekly, monthly, situational, and annual reports required; (2) results from research on marine mammals, noise impacts, or other related topics; and (3) any information that reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA. Adaptive management decisions may be made at any time, as new information warrants it. NMFS may consult with Avangrid regarding the practicability of the modifications.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" by mortality, serious injury, or by Level A harassment and Level B harassment,

we consider other factors, such as the likely nature of any behavioral responses (e.g., intensity, duration), the context of any such responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

In the Estimated Take section, we estimated the maximum number of takes by Level A harassment and Level B harassment that are reasonably expected to occur from the specified activities based on the methods described. The impact that any given take would have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (e.g., the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, *etc.*). In this final rule, we evaluate the likely impacts of the enumerated harassment takes that may be authorized in the context of the specific circumstances surrounding these predicted takes. We also collectively evaluate this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific discussions that support our negligible impact conclusions for each stock. As described above, no serious injury or mortality is expected or may be authorized for any species or stock.

The Description of the Specified Activities section describes Avangrid's specified activities that may result in take of marine mammals and an estimated schedule for conducting those activities. Avangrid has provided a realistic construction schedule although we recognize schedules may shift for a variety of reasons (e.g., weather or supply delays). However, the total amount of take would not exceed the 5-year totals and maximum annual total in any given year indicated in tables 33 and 35, respectively.

We base our analysis and negligible impact determination on the maximum number of takes expected to occur

annually and across the 5-year effective period of these regulations, as well as extensive qualitative consideration of other contextual factors that influence the severity and nature of impact the takes have on the affected individuals and the number and the number of individuals affected. As stated before, the number of takes, both maximum annual and 5-year total, alone are only a part of the analysis.

To avoid repetition, we provide some general analysis in this Negligible Impact Analysis and Determination section that applies to all the species listed in table 2, given that some of the anticipated effects of Avangrid's construction activities on marine mammals are expected to be relatively similar in nature. Then, we subdivide into more detailed discussions for mysticetes, odontocetes, and pinnipeds which have broad life-history traits that support an overarching discussion of some factors considered within the analysis for those groups (e.g., habitat-use patterns, high-level differences in feeding strategies).

Last, we provide a negligible impact determination for each species or stock, providing species or stock-specific information or analysis, where appropriate, for example, for North Atlantic right whales, given their population status. Organizing our analysis by grouping species or stocks that share common traits or that would respond similarly to effects of Avangrid's activities and then providing species- or stock-specific information allows us to avoid duplication while ensuring that we have analyzed the effects of the specified activities on each affected species or stock. It is important to note that in the group or species sections, we base our negligible impact analysis on the maximum annual take that is predicted under the 5-year rule and that the negligible impact determination also examines the total taking over the 5-year period; however, the majority of the impacts are associated with WTG foundation and ESP foundation installation, which would occur largely during years 2 and 3 (2026 through 2027). The estimated take in the other years is expected to be notably less, which is reflected in the total take that would be allowable under the rule (table 33).

As described previously, no serious injury or mortality is anticipated or may be authorized in any LOA issued under this rule. Non-auditory injury (e.g., lung injury or gastrointestinal injury from UXO/MEC detonation) is also not anticipated and would not be authorized in any LOA issued under this rule. Any Level A harassment that

may be authorized would be in the form of auditory injury (*i.e.*, PTS).

The amount of harassment Avangrid has requested, and NMFS may authorize, is based on exposure models that consider the outputs of acoustic source and propagation models and other data such as frequency of occurrence or group sizes. Several conservative parameters and assumptions are ingrained into these models, such as assuming forcing functions that consider direct contact with piles (*i.e.*, no cushion allowances) and application of the highest species density monthly among the areas of interest (*i.e.*, Lease Area, cable route) for each species was applied to the exposure calculations. The exposure model results do not reflect any mitigation measures (other than 10-dB sound attenuation) or avoidance response. The amount of take requested and that may be authorized in a LOA also reflects careful consideration of other data (*e.g.*, group size data, PSO data). As described above, while current planning includes pile installation divided between 2 or 3 years (Schedule A or Schedule B), the maximum annual take estimates assume the maximum amount of take between the two schedules, to allow flexibility should schedules change again. For all species, the amount of take that may be authorized represents the maximum amount of Level A harassment and Level B harassment reasonably expected to occur.

Behavioral Disturbance

In general, NMFS anticipates that impacts on an individual that has been harassed are likely to be more intense when exposed to higher received levels and for a longer duration, though this is in no way a strictly linear relationship for behavioral effects across species, individuals, or circumstances, and less severe impacts result when exposed to lower received levels for a brief duration. However, there is also growing evidence of the importance of contextual factors such as distance from a source in predicting marine mammal behavioral response to sound (*i.e.*, sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (DeRuiter and Doukara, 2012; Falcone *et al.*, 2017)). As described in the “Potential Effects to Marine Mammals and their Habitat” section of the proposed rule, the intensity and duration of any impact resulting from exposure to the specified activities is dependent upon a number of contextual factors including, but not limited to, sound source frequencies,

whether the sound source is moving towards the animal, hearing ranges of marine mammals, behavioral state at time of exposure, status of individual exposed (*e.g.*, reproductive status, age class, health) and an individual's experience with similar sound sources. Southall *et al.* (2021), Ellison *et al.* (2012), and Moore and Barlow (2013), among others, emphasize the importance of context (*e.g.*, behavioral state of the animals, distance from the sound source) in evaluating behavioral responses of marine mammals to acoustic sources.

Harassment of marine mammals may result in behavioral modifications (*e.g.*, avoidance, temporary cessation of foraging or communicating, changes in respiration or group dynamics, masking) or may result in auditory impacts such as hearing loss. In addition, some of the lower-level physiological stress responses (*e.g.*, change in respiration, change in heart rate) discussed previously would likely co-occur with the behavioral modifications, although these physiological responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. Takes by Level B harassment, then, may have a stress-related physiological component as well; however, we would not expect the specified activities to produce conditions of long-term and continuous exposure to noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

In the range of exposures that might result in Level B harassment (which by nature of the way it is modeled/counted, occurs within 1 day), the less severe end might include exposure to comparatively lower levels of a sound, at a greater distance from the animal, for a few or several minutes. A less severe exposure of this nature could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time, or breaking off one or a few feeding bouts. More severe effects could occur if an animal gets close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe avoidance response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day or more. Such severe behavioral effects are expected to occur infrequently, though, and given the extensive mitigation and monitoring measures included in this rule, we

expect severe behavioral effects to be minimized.

Many species perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.*, a 24-hour cycle). Behavioral reactions to noise exposure, when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat, are more likely to be significant if they last more than 1 day or recur on subsequent days (Southall *et al.*, 2007) due to diel and lunar patterns in diving and foraging behaviors observed in many cetaceans (Baird *et al.*, 2008; Barlow *et al.*, 2020; Henderson *et al.*, 2016; Schorr *et al.*, 2014). It is important to note the water depth in the Project Area is shallow (2 to 62 m) and deep diving species, such as sperm whales, are not expected to be engaging in deep foraging dives when exposed to noise above NMFS harassment thresholds during the specified activities. Therefore, we do not anticipate impacts to deep foraging behavior to be impacted by the specified activities.

It is important to identify that the estimated number of takes for each stock does not necessarily equate to the number of individual marine mammals expected to be harassed (which may be lower, depending on the circumstances), but rather to the instances of take (*e.g.*, exposures above the Level B harassment thresholds) that may occur. These instances may represent either brief exposures of seconds for UXO/MEC detonations, seconds to minutes for HRG surveys, or, in some cases, longer durations of exposure within (but not exceeding) a day (*e.g.*, pile driving). Some members of a species or stock may experience one exposure (*i.e.*, be taken on one day) as they move through an area, while other individuals may experience recurring instances of take over multiple days throughout the year, in which case the number of individuals taken is smaller than the total estimated take for that species or stock. In short, for species that are more likely to be migrating through the area and/or for which only a comparatively smaller number of takes are predicted (*e.g.*, some of the mysticetes), it is more likely that each take represents a different individual. However, for non-migrating species and/or species with larger amounts of predicted take, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be taken across multiple days.

For Avangrid, impact pile driving of foundation piles is most likely to result in a higher magnitude and severity of behavioral disturbance than other

activities (*i.e.*, drilling, vibratory pile driving, UXO/MEC detonation, and HRG surveys). Impact pile driving has higher source levels and longer durations (on an annual basis) than vibratory pile driving or drilling activities. HRG survey equipment also produces much higher frequencies than pile driving, resulting in minimal sound propagation. While UXO/MEC detonations may have higher source levels, impact pile driving is planned for longer durations (*i.e.*, a maximum of 10 UXO/MEC detonations are planned, which would result in only instantaneous exposures).

While foundation installation impact pile driving is anticipated to be most impactful for these reasons, impacts are minimized through implementation of mitigation measures, including soft-starts, use of a sound attenuation system, the implementation of clearance zones that would facilitate a delay of pile driving commencement, and the implementation of shutdown zones. For example, given sufficient notice through the use of soft-start, marine mammals are expected to move away from a sound source that is disturbing prior to becoming exposed to very loud noise levels. The requirement to couple visual monitoring and PAM before and during all foundation installation and UXO/MEC detonations would increase the overall capability to detect marine mammals rather than when one method is used alone. Measures such as the requirement to apply sound attention devices and implement clearance zones also apply to UXO/MEC detonation(s), which also have the potential to elicit more severe behavioral reactions in the unlikely event that an animal is relatively close to the explosion in the instant that it occurs; hence, severity of behavioral responses are expected to be lower than would be the case without mitigation.

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more severe response, if they are not expected to be repeated over numerous or sequential days, impacts to individual fitness are not anticipated. Also, the effect of disturbance is strongly influenced by whether it overlaps with biologically important habitats when individuals are present—avoiding biologically important habitats will reduce the likelihood of more significant behavioral impacts, for example reduced or lost foraging (Keen *et al.*, 2021). Nearly all studies and experts agree that infrequent exposures

of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.*, 2018; Harris *et al.*, 2017; King *et al.*, 2015; National Academy of Science, 2017; New *et al.*, 2014; Southall *et al.*, 2007; Villegas-Amtmann *et al.*, 2015).

Temporary Threshold Shift

TTS is one form of Level B harassment that marine mammals may incur through exposure to the specified activities and, as described earlier, the takes by Level B harassment may represent takes in the form of direct behavioral disturbance, TTS, or both. As discussed in the “Potential Effects of Specified Activities on Marine Mammals and their Habitat” section of the proposed rule, in general, TTS can last from a few minutes to days, be of varying degree, and occur across different frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Impact and vibratory pile driving, drilling, and UXO/MEC detonation are broadband noise sources but generate sounds in the lower frequency ranges (with most of the energy below 1–2 kHz, but with a small amount of energy ranging up to 20 kHz); therefore, in general and all else being equal, we would anticipate the potential for TTS is higher in low-frequency cetaceans (*i.e.*, mysticetes) than other marine mammal hearing groups, and would be more likely to occur in frequency bands in which they communicate. However, we would not expect the TTS to span the entire communication or hearing range of any species given that the frequencies produced by these activities do not span entire hearing ranges for any particular species. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalizations, the frequency range of TTS from the Project's pile driving, drilling, and UXO/MEC detonation activities would not typically span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues for any given species. The required mitigation measures further reduce the potential for TTS in mysticetes.

Generally, both the degree of TTS and the duration of TTS would be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously (refer back to Estimated Take

section). However, source level alone is not a predictor of TTS. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the required mitigation and the nominal speed of the receiving animal relative to the stationary sources such as impact pile driving. The recovery time is also of importance when considering the potential impacts from TTS. In TTS laboratory studies (as discussed in the “Potential Effects of the Specified Activities on Marine Mammals and their Habitat” section of the proposed rule), some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day or less (often in minutes) and we note that while the pile-driving activities last for hours a day, it is unlikely that most marine mammals would stay in the close vicinity of the source long enough to incur more severe TTS. UXO/MEC detonation also has the potential to result in TTS. However, given the duration of exposure is extremely short (milliseconds), the degree of TTS (*i.e.*, the amount of dB shift) is expected to be small and TTS duration is expected to be short (minutes to hours). Overall, given the small number of times that any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the unlikely scenario that any TTS overlapped the entirety of a critical hearing range, it is unlikely that TTS (of the nature expected to result from the Project's activities) would result in behavioral changes or other impacts that would impact any individual's (of any hearing sensitivity) reproduction or survival.

Permanent Threshold Shift

NMFS may authorize a very small amount of take by PTS to some marine mammal individuals. The numbers of annual takes by Level A harassment that may be authorized are relatively low for all marine mammal stocks and species (table 35). The only activity incidental to which we anticipate PTS may occur is from exposure to impact pile driving and UXO/MEC detonations, which produce sounds that are both impulsive and primarily concentrated in the lower frequency ranges (below 1 kHz) (David, 2006; Krumpel *et al.*, 2021).

There are no PTS data on cetaceans and only one recorded instance of PTS being induced in older harbor seals (Reichmuth *et al.*, 2019). However, available TTS data of mid-frequency hearing specialists exposed to mid- or high-frequency sounds (Southall *et al.*, 2007; NMFS, 2018; Southall *et al.*, 2019)

suggest that most threshold shifts occur in the frequency range of the source up to one octave higher than the source. We would anticipate a similar result for PTS. Further, no more than a small degree of PTS is expected to be associated with any of the incurred Level A harassment, given that it is unlikely that animals would stay in the close vicinity of a source for a duration long enough to produce more than a small degree of PTS. Given UXO/MEC detonation is instantaneous, the potential for PTS is not a function of duration. NMFS recognizes the distances to PTS thresholds may be large for certain species (e.g., over 4 km based on the largest charge weights; table 37); however, there would be multiple vessels/platforms equipped with PSOs as well as activity PAM requirements to observe and acoustically detect marine mammals. A marine mammal within the PTS zone would trigger a delay to detonation; thereby minimizing potential for PTS for all marine mammal species and ensuring that any PTS that does occur is of a relatively low degree.

PTS would consist of minor degradation of hearing capabilities occurring predominantly at frequencies one-half to one octave above the frequency of the energy produced by pile driving or instantaneous UXO/MEC detonations (*i.e.*, the low-frequency region below 2 kHz) (Cody and Johnstone, 1981; McFadden, 1986; Finneran, 2015), not severe hearing impairment. If hearing impairment occurs from either impact pile driving or UXO/MEC detonation, 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. Avangrid estimates 10 UXO/MECs may be detonated and the exposure analysis assumes the worst-case scenario that all of the UXO/MECs found would consist of the largest charge weight of UXO/MEC (E12; 454 kg). However, it is highly unlikely that all charges would be this maximum size; thus, the amount of Level A harassment that may occur incidental to the detonation of the UXO/MECs would likely be less than what is estimated here. In addition, during impact pile driving, given sufficient notice through use of soft-start prior to implementation of full hammer energy during impact pile driving, marine mammals are expected to move away from a sound source that is annoying prior to it resulting in severe PTS.

Auditory Masking or Communication Impairment

The ultimate potential impacts of masking on an individual are similar to those discussed for TTS (e.g., decreased ability to communicate, forage effectively, or detect predators), but an important difference is that masking only occurs during the time of the signal, versus TTS, which continues beyond the duration of the signal. Masking may also result from the sum of exposure to multiple signals, none of which might individually cause TTS. Fundamentally, masking is referred to as a chronic effect because one of the key potential harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency).

As our analysis has indicated, for this project we expect that impact pile driving foundations have the greatest potential to mask marine mammal signals, and this pile driving may occur for several, albeit intermittent, hours per day, for multiple days per year. Masking is fundamentally more of a concern at lower frequencies (which are pile-driving dominant frequencies) because low frequency signals propagate significantly further than higher frequencies. Low frequency signals are also more likely to overlap with the narrower low frequency calls of mysticetes, many non-communication cues related to fish and invertebrate prey, and geologic sounds that inform navigation. However, the area in which masking would occur for all marine mammal species and stocks (e.g., predominantly in the vicinity of the foundation pile being driven) is small relative to the extent of habitat used by each species and stock.

In summary, the nature of the specified activities, paired with habitat use patterns by marine mammals, makes it unlikely that the level of masking that could occur would have the potential to affect reproductive success or survival.

Impacts on Habitat and Prey

Construction activities (*i.e.*, foundation installation and UXO/MEC detonation) may result in fish and invertebrate mortality or injury very close to the source, and all of the

specified activities may cause some fish to leave the area of disturbance. It is anticipated that any mortality or injury would be limited to a very small subset of available prey and the implementation of mitigation measures such as the use of a NAS during foundation installation and UXO/MEC detonations would further limit the degree of impact. Behavioral changes in prey in response to construction activities could temporarily impact marine mammals' foraging opportunities in a limited portion of the foraging range but, because of the relatively small area of the habitat that may be affected at any given time (e.g., around a pile being driven), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Cable presence is not anticipated to impact marine mammal habitat as these would be buried, and any electromagnetic fields emanating from the cables are not anticipated to result in consequences that would impact marine mammals prey to the extent they would be unavailable for consumption.

The presence of wind turbines within the Lease Area could have longer-term impacts on marine mammal habitat, as the Project would result in the persistence of the structures within marine mammal habitat for more than 30 years. The presence of an extensive number of structures such as wind turbines are, in general, likely to result in local and broader oceanographic effects in the marine environment, and may disrupt dense aggregations and distribution of marine mammal zooplankton prey through altering the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Chen *et al.*, 2021; Johnson *et al.*, 2021; Christiansen *et al.*, 2022; Dorrell *et al.*, 2022). However, the scale of impacts is difficult to predict and may vary from hundreds of meters for local individual turbine impacts (Schultze *et al.*, 2020) to large-scale changes stretching hundreds of kilometers (Christiansen *et al.*, 2022).

As discussed in the "Potential Effects of the Specified Activities on Marine Mammals and their Habitat" section of the proposed rule, the Project would consist of no more than 132 foundation positions (WTGs and ESPs) in the Lease Area, which will gradually become operational following construction completion and by the end of this rule. While there are likely to be oceanographic impacts from the presence of the Project, meaningful oceanographic impacts relative to stratification and mixing that would

significantly affect marine mammal habitat and prey over large areas in key foraging habitats during the effective period of the regulations are not anticipated. Although this area supports aggregations of zooplankton (*i.e.*, baleen whale prey) that could be impacted if long-term oceanographic changes occurred, prey densities are typically significantly less in the Project Area than in known baleen whale foraging habitats to the east and north (*e.g.*, south of Nantucket and Martha's Vineyard, Great South Channel). For these reasons, if oceanographic features are affected by the Project during the effective period of the regulations, the impact on marine mammal habitat and their prey is likely to be comparatively minor.

The New England Wind BiOp provided an evaluation of the presence and operation of the Project on, among other species, listed marine mammals and their prey. Overall, the BiOp concluded that impacts from loss of soft bottom habitat from the presence of turbines and placement of scour protection as well as any beneficial reef effects, are expected to be so small that they cannot be meaningfully measured, evaluated, or detected and are, therefore, insignificant. The BiOp also concluded that while the presence and operation of the wind farm may change the distribution of plankton with the wind farm, these changes are not expected to affect the oceanographic forces transporting zooplankton into the area. Regional distribution of plankton may vary from pre-wind facility conditions; however, given the lack of a known bathymetric feature that aggregates zooplankton prey in the lease area and acknowledging the information and uncertainty presented in the BiOp, the BiOp was not able to conclude that adverse effects on North Atlantic right whale foraging success due to near-field effects are reasonably certain to occur. Relative to far-field effects (tens of kilometers from the outermost row of foundations in the New England Wind lease area), the BiOp does not anticipate disruption to conditions that would aggregate prey in or outside the WFA that would have significant effects on ESA listed species. This is due to the scale of the project and its location in the center of the southern New England region and away from Nantucket Shoals and the tidal jet along the edge of Nantucket Shoals that are thought to aggregate zooplankton prey in that region.

Therefore, the BiOp concluded that an overall reduction in biomass of plankton is not an anticipated outcome of operating the Project. Thus, because broader changes in the biomass of

zooplankton are not anticipated, any higher trophic level impacts are also not anticipated. That is, no effects to pelagic fish or benthic invertebrates that depend on plankton as forage food are expected to occur. Zooplankton, fish, and invertebrates are all considered marine mammal prey and, as fully described in the BiOp, measurable, detectable, or significant changes to marine mammal prey abundance and distribution from wind farm operation are not anticipated.

Mitigation To Reduce Impact on All Species

This rule includes an extensive suite of mitigation measures designed to minimize impacts on all marine mammals, with a focus on North Atlantic right whales. The Mitigation section discusses the manner in which the required mitigation measures reduce the magnitude and/or severity of the take of marine mammals, including the following. For installation of foundation piles, 10 overarching mitigation measures are required, which are intended to reduce both the number and intensity of marine mammal takes: (1) seasonal/time of day work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection within specifically designated zones that would trigger a delay or shutdown); (3) use of PAM to acoustically detect marine mammals, with a focus on detecting baleen whales (with any detection within designated zones triggering delay or shutdown); (4) implementation of clearance zones; (5) implementation of shutdown zones; (6) use of soft-start (impact pile driving only); (7) use of noise attenuation technology; (8) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Avangrid personnel must be reported to PSOs; (9) SFV monitoring; and (10) vessel strike avoidance measures to reduce the risk of a collision with a marine mammal and vessel. For UXO/MEC detonation, all the same measures as foundation installation are required except for soft-start and shutdown zones; neither are possible as a detonation is an instantaneous event. Lastly, for HRG surveys, we are requiring six measures: (1) measures specifically for Vessel Strike Avoidance; (2) specific requirements during daytime and nighttime HRG surveys; (3) implementation of clearance zones; (4) implementation of shutdown zones; (5) use of ramp-up of acoustic sources; and (6) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal

sighting(s) by Avangrid personnel must be reported to PSOs.

For activities with large harassment isopleths, Avangrid is committed to reducing the noise levels generated to the lowest levels practicable and is required to ensure that they do not exceed a noise footprint above that which was modeled, assuming a 10-dB attenuation. Use of a soft-start during impact pile driving will allow animals to move away from (*i.e.*, avoid) the sound source prior to applying higher hammer energy levels needed to install the pile (*i.e.*, Avangrid will not use a hammer energy greater than necessary to install piles). Similarly, ramp-up during HRG surveys would allow animals to move away and avoid the acoustic sources before they reach their maximum energy level. For all activities, clearance zone and shutdown zone implementation, which are required when marine mammals are within given distances associated with certain impact thresholds for all activities, will reduce the magnitude and severity of marine mammal take. Additionally, the use of multiple PSOs (*e.g.*, WTG and ESP foundation installation, UXO/MEC detonation, HRG surveys), PAM operators (for foundation installation and UXO/MEC detonation), and maintaining awareness of marine mammal sightings reported in the region during all specified activities will aid in detecting marine mammals that would trigger the implementation of the mitigation measures. The reporting requirements including SFV reporting (for foundation installation and foundation operation), will assist NMFS in identifying if impacts beyond those analyzed in this final rule are occurring, potentially leading to the need to enact adaptive management measures in addition to or in place of the mitigation measures.

Mysticetes

Six mysticete species (comprising six stocks) of cetaceans (*i.e.*, North Atlantic right whale, blue whale, humpback whale, fin whale, sei whale, and minke whale) may be taken by harassment. These species, to varying extents, utilize the specified geographical region, including the Project Area, for the purposes of migration, foraging, and socializing. Mysticetes are in the low-frequency hearing group.

Behavioral data on mysticete reactions to pile-driving noise are scant. Kraus *et al.* (2019) predicted that the three main impacts of offshore wind farms on marine mammals would consist of displacement, behavioral disruptions, and stress. Broadly, we can look to studies that have focused on

other noise sources such as seismic surveys and military training exercises, which suggest that exposure to loud signals can result in avoidance of the sound source (or displacement if the activity continues for a longer duration in a place where individuals would otherwise have been staying, which is less likely for mysticetes in this area), disruption of foraging activities (if they are occurring in the area), local masking around the source, associated stress responses, impacts to prey, and TTS or PTS (in some cases).

Mysticetes encountered in the Project Area are expected to be migrating or foraging. The extent to which an animal engages in these behaviors in the area is species-specific and varies seasonally. Given that feeding Biologically Important Areas (BIAs) for the North Atlantic right whale, humpback whale, fin whale, sei whale, and minke whale exist to the east and north of the Project Area (LaBrecque *et al.*, 2015; Van Parijs *et al.*, 2015), many mysticetes are expected to predominantly be migrating through the Project Area towards or from these feeding grounds. While we acknowledged above that mortality, hearing impairment, or displacement of mysticete prey species may result locally from impact pile driving and UXO/MEC detonations, given the very short duration of and broad availability of prey species in the area and the availability of alternative suitable foraging habitat for the mysticete species most likely to be affected, any impacts on mysticete foraging is expected to be minor. Whales temporarily displaced from the Project Area are expected to have sufficient remaining feeding habitat available to them and would not be prevented from feeding in other areas within the biologically important feeding habitats found further north. In addition, any displacement of whales or interruption of foraging bouts would be expected to be relatively temporary in nature.

The potential for repeated exposures is dependent upon the residency time of whales with migratory animals unlikely to be exposed on repeated occasions and animals remaining in the area to be more likely exposed repeatedly. For mysticetes, where relatively low numbers of species-specific take by Level B harassment are predicted (compared to the abundance of each mysticete species or stock; see table 35) and movement patterns suggest that individuals would not necessarily linger in a particular area for multiple days, each predicted take likely represents an exposure of a different individual, with perhaps a subset of takes for a few species potentially representing a few

repeated of a limited number of individuals across multiple days. In other words, the behavioral disturbance to any individual mysticete would, therefore, be expected to mostly likely occur within a single day within a year, or potentially across a few days, and would not be expected to impact reproduction or survival. In general, the duration of exposures would not be continuous throughout any given day and pile driving would not occur on all consecutive days within a given year due to weather delays or any number of logistical constraints Avangrid has identified. Species-specific analysis regarding potential for repeated exposures and impacts is provided below.

Fin, blue, minke, sei, and humpback whales are the only mysticete species for which PTS is anticipated and may be authorized. As described previously, PTS for mysticetes from some project activities may overlap frequencies used for communication, navigation, or detecting prey. However, given the nature and duration of the activity, the mitigation measures, and likely avoidance behavior, any PTS is expected to be of a small degree, would be limited to frequencies where pile-driving noise is concentrated (*i.e.*, only a small subset of their expected hearing range) and would not be expected to impact reproductive success or survival.

North Atlantic Right Whale

North Atlantic right whales are listed as endangered under the ESA and as both a depleted and strategic stock under the MMPA. As described in the “Potential Effects to Marine Mammals and Their Habitat” section of the proposed rule, North Atlantic right whales are threatened by a low population abundance, higher than average mortality rates, and lower than average reproductive rates. Recent studies have reported individuals showing high stress levels (*e.g.*, Corkeron *et al.*, 2017) and poor health, which has further implications on reproductive success and calf survival (Christiansen *et al.*, 2020; Stewart *et al.*, 2021; Stewart *et al.*, 2022). As described below, a UME has been designated for North Atlantic right whales. Given this, the status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis and consideration. No Level A harassment, serious injury, or mortality is anticipated or may be authorized for this species.

For North Atlantic right whales, this rule may authorize up to 126 takes, by Level B harassment only, over the 5-year period, with a maximum annual

allowable take of 60 (equating to approximately 17.65 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation or UXO/MEC detonations (*e.g.*, years when only HRG surveys would be occurring). The Project Area is known as a migratory corridor for North Atlantic right whales and given the nature of migratory behavior (*e.g.*, continuous path), as well as the low number of total takes, we anticipate that few, if any, of the instances of take would represent repeat takes of any individual.

The highest density of North Atlantic right whales in the Project Area occurs in the winter (tables 7–9). The New York Bight, including the Project Area, may be a stopover site for migrating North Atlantic right whales moving to or from southeastern calving grounds. As described above, the Project Area represents part of an important migratory area for right whales. Quintana-Rizzo *et al.* (2021) noted that southern New England, northeast of the Project Area, may be a stopover site for migrating right whales moving to or from southeastern calving grounds. The North Atlantic right whales observed during the study period were primarily concentrated in the northeastern and southeastern sections of the MA WEA during the summer (June–August) and winter (December–February). North Atlantic right whale distribution did shift to the west into the Rhode Island/Massachusetts Wind Energy Area (RI/MA WEA) in the spring (March–May). Overall, the Project Area contains habitat less frequently utilized by North Atlantic right whales than the more northerly southern New England region.

In general, North Atlantic right whales in the Project Area are expected to be engaging in migratory behavior. Given the species’ migratory behavior in the Project Area, we anticipate individual whales would be typically migrating through the area during most months when foundation installation and UXO/MEC detonation would occur, given the strict seasonal restrictions on foundation installation and UXO/MEC detonations from January through April, rather than lingering in the Project Area for extended periods of time. Other work that involves either much smaller harassment zones (*e.g.*, HRG surveys) or is limited in amount (*e.g.*, UXO/MEC detonation) may also occur during periods when North Atlantic right whales are using the habitat for migration. Therefore, it is likely that many of the takes would occur to separate individual whales, each

disturbed on no more than 1 day. It is important to note that the activities occurring from December through May that may impact North Atlantic right whales would be primarily HRG surveys, which would not result in very high received levels, if any at all, because of both the lower sources and the mitigation and monitoring measures that avoid or minimize impacts. Across all years, while it is possible an animal could have been exposed during a previous year, the low amount of take that may be authorized during the 5-year period of the rule makes this scenario possible but unlikely. However, if an individual were to be exposed during a subsequent year, the impact of that exposure is likely independent of the previous exposure and would cause no additive effect given the duration between exposures.

As described in the Description of Marine Mammals in the Geographic Area section of the proposed rule, North Atlantic right whales are presently experiencing an ongoing UME (beginning in June 2017). Preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales. Given the current status of the North Atlantic right whale, the loss of even one individual could significantly impact the population. No mortality, serious injury, or injury of North Atlantic right whales as a result of the Project is expected or may be authorized. Any disturbance to North Atlantic right whales due to the specified activities is expected to result in temporary avoidance of the immediate area of construction. As no injury, serious injury, or mortality is expected or may be authorized, and Level B harassment of North Atlantic right whales will be reduced to the level of least-practicable adverse impact through use of mitigation measures, the number of takes of North Atlantic right whales that may be authorized would not exacerbate or compound the effects of the ongoing UME.

As described in the general *Mysticetes* section above, foundation installation is likely to result in the highest amount of annual take and is of greatest concern given loud source levels. This activity would likely be limited to up to 113 days over a maximum of 3 years, during times when, based on the best available scientific data, North Atlantic right whales are less frequently encountered due to their migratory behavior. The potential types, severity, and magnitude of impacts are also anticipated to mirror that described in the general *Mysticetes* section above, including avoidance (the

most likely outcome), changes in foraging or vocalization behavior, masking, a small amount of TTS, and temporary physiological impacts (e.g., change in respiration, change in heart rate). Importantly, the effects of the activities are expected to be sufficiently low-level and localized to specific areas as to not meaningfully impact important behaviors such as migratory behavior of North Atlantic right whales. These takes are expected to result in temporary behavioral reactions, such as slight displacement (but not abandonment) of migratory habitat or temporary cessation of feeding. Further, given these exposures are generally expected to occur to different individual right whales migrating through (i.e., many individuals would not be impacted on more than 1 day in a year), and with some subset potentially being exposed on no more than a few days within the year, they are unlikely to result in energetic consequences that could affect reproduction or survival of any individuals.

Overall, NMFS expects that any behavioral harassment of North Atlantic right whales incidental to the specified activities would not result in changes to their migration patterns or foraging success, as only temporary avoidance of an area during construction is expected to occur. As described previously, North Atlantic right whales migrating through the Project Area are not expected to remain in this habitat for extensive durations, and any temporarily displaced animals would be able to return to or continue to travel through and forage in these areas once activities have ceased.

Although acoustic masking may occur in the vicinity of the foundation installation activities, based on the acoustic characteristics of noise associated with pile driving and drilling (e.g., frequency spectra, short duration of exposure) and construction surveys (e.g., intermittent signals), NMFS expects masking effects to be minimal (e.g., effects of foundation installation) and for HRG surveys, would not appreciably occur given the directionality of the signals for the HRG survey equipment planned for use and the brief period for when an individual mammal would likely be exposed. In addition, masking would likely only occur during the period of time that a North Atlantic right whale is in the relatively close vicinity of pile driving, which is expected to be intermittent within a day, and confined to the months in which North Atlantic right whales are at lower densities and primarily moving through the area, anticipated mitigation effectiveness, and

likely avoidance behaviors. TTS is another possible form of Level B harassment that could result in brief periods of slightly reduced hearing sensitivity, affecting behavioral patterns by making it more difficult to hear or interpret acoustic cues within the frequency range (and slightly above) of sound produced during impact pile driving. However, any TTS would likely be of low amount, limited duration, and limited to frequencies where most construction noise is centered (i.e., below 2 kHz). NMFS expects that right whale hearing sensitivity would return to pre-exposure levels shortly after migrating through the area or moving away from the sound source.

As described in the “Potential Effects to Marine Mammals and Their Habitat” section of the proposed rule, the distance of the receiver to the source influences the severity of response, with greater distances typically eliciting less severe responses. NMFS recognizes North Atlantic right whales migrating could be pregnant females (in the fall) and mothers with older calves (in the spring) and that these animals may slightly alter their migration course in response to any foundation pile driving. However, as described in the “Potential Effects to Marine Mammals and Their Habitat” section of the proposed rule, we anticipate that course diversion would be of small magnitude. Hence, while some avoidance of the pile-driving activities may occur, we anticipate any avoidance behavior of migratory North Atlantic right whales would be similar to that of gray whales (Tyack *et al.*, 1983), on the order of hundreds of meters up to 1 to 2 km. This diversion from a migratory path otherwise uninterrupted by the Project’s activities is not expected to result in meaningful energetic costs that would impact annual rates of recruitment of survival. NMFS expects that North Atlantic right whales would be able to avoid areas during periods of active noise production while not being forced out of this portion of their habitat.

North Atlantic right whale presence in the Project Area is year-round. However, abundance during summer months is lower compared to the winter months, with spring and fall serving as “shoulder seasons” wherein abundance waxes (fall) or wanes (spring). Given this year-round habitat usage, in recognition that where and when whales may actually occur during project activities is unknown as it depends on the annual migratory behaviors, NMFS is requiring a suite of mitigation measures designed to reduce impacts to North Atlantic right whales to the maximum extent practicable.

These mitigation measures (*e.g.*, seasonal/daily work restrictions, vessel separation distances, reduced vessel speed) would not only avoid the likelihood of vessel strikes but also would minimize the severity of behavioral disruptions by minimizing impacts (*e.g.*, through sound reduction using attenuation systems and reduced temporal overlap of project activities and North Atlantic right whales). This would further ensure that the number of takes by Level B harassment that are estimated to occur are not expected to affect reproductive success or survivorship by detrimental impacts to energy intake or cow/calf interactions during migratory transit. However, even in consideration of recent habitat-use and distribution shifts, Avangrid would still be installing foundations when the presence of North Atlantic right whales is expected to be lower.

As described in the Description of Marine Mammals in the Geographic Area section, Avangrid would be constructed within the North Atlantic right whale migratory corridor BIA, which represents areas and months within which a substantial portion of a species or population is known to migrate. The area over which North Atlantic right whales may be harassed is relatively small compared to the width of the migratory corridor. The width of the migratory corridor in this area is approximately 300 km while the width of the Lease Area, at the longest point, is approximately 50 km and the width of the ensonified area with the largest distance to Level B harassment for North Atlantic right whale during foundation installation (vibratory pile driving) is approximately 105 km from the westernmost point to easternmost point. North Atlantic right whales may be displaced from their normal path and preferred habitat in the immediate activity area primarily from pile-driving activities; however, we do not anticipate displacement to be of high magnitude (*e.g.*, beyond a few kilometers). Thereby, any associated bio-energetic expenditure is anticipated to be small. There are no known North Atlantic right whale feeding, breeding, or calving areas within the Project Area. Prey species are mobile (*e.g.*, calanoid copepods can initiate rapid and directed escape responses) and are broadly distributed throughout the Project Area (noting again that North Atlantic right whale prey is not particularly concentrated in the Project Area relative to nearby habitats). Therefore, any impacts to prey that may occur are also unlikely to impact North Atlantic right whales.

The most significant measure to minimize impacts to individual North Atlantic right whales during monopile installations is the seasonal moratorium on foundation installation for all piles from January 1 through April 30 (with no impact pile driving or drilling scheduled in December and no vibratory pile driving in May and December, though pile driving may occur in December if it is unavoidable and only upon approval from NMFS) when North Atlantic right whale abundance in the Project Area is expected to be highest. UXO/MEC detonations would also be restricted from December through May. NMFS also expects this measure to greatly reduce the potential for mother/calf pairs to be exposed to foundation installation noise above the Level B harassment threshold during their annual spring migration through the Project Area from calving grounds to primary foraging grounds (*e.g.*, Cape Cod Bay). NMFS expects that the severity of any take of North Atlantic right whales would be reduced due to the additional mitigation measures that would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed.

Foundation installation and UXO/MEC detonation may only begin in the absence of North Atlantic right whales, as determined by visual and PAM. If foundation installation or UXO/MEC detonation has commenced, NMFS anticipates North Atlantic right whales would avoid the area, utilizing nearby waters to carry on pre-exposure behaviors. However, foundation installation must be shut down if a North Atlantic right whale is sighted at any distance, unless a shutdown is not feasible due to risk of injury or loss of life. Shutdown may occur anywhere if North Atlantic right whales are seen within or beyond the Level B harassment zone, further minimizing the duration and intensity of exposure. NMFS anticipates that if North Atlantic right whales go undetected and are exposed to foundation installation or UXO/MEC detonation noise, it is unlikely a North Atlantic right whale would approach the source location to the degree that they would purposely expose themselves to very high noise levels. These measures are designed to avoid PTS and also reduce the severity of Level B harassment, including the potential for TTS. While some TTS could occur, given the planned mitigation measures (*e.g.*, delay pile driving upon a sighting or acoustic detection and shutting down upon a

sighting or acoustic detection), the potential for TTS to occur is low.

The clearance and shutdown measures are most effective when detection efficiency is maximized, as the measures are triggered by a visual or acoustic detection. To maximize detection efficiency, NMFS requires the combination of PAM and visual observers. NMFS is requiring communication protocols with other project vessels, and other heightened awareness efforts (*e.g.*, daily monitoring of North Atlantic right whale sighting databases) such that as a North Atlantic right whale approaches the source, and thereby could be exposed to higher noise energy levels, PSO detection efficacy would increase, the whale would be detected, and a delay to commencing foundation installation or shutdown (if feasible) would occur. In addition, the implementation of a soft-start for impact pile driving would provide an opportunity for whales to move away from the source if they are undetected, reducing their received levels. Further, Avangrid will not install pile foundations simultaneously. North Atlantic right whales would, therefore, not be exposed to concurrent impact pile driving on any given day and the area ensonified at any given time would be limited. The UXO/MEC detonations mitigation measures described above would further reduce the potential to be exposed to high received levels.

For HRG surveys, the maximum distance to the Level B harassment threshold is 178 m. The estimated take, by Level B harassment only, associated with HRG surveys is to account for any North Atlantic right whale sightings PSOs may miss when HRG acoustic sources are active. However, because of the short maximum distance to the Level B harassment isopleth (178 m), the requirement that vessels maintain a distance of 500 m from any North Atlantic right whales, the fact whales are unlikely to remain in close proximity to an HRG survey vessel for any length of time, and that the acoustic source would be shut down if a North Atlantic right whale is observed within 500 m of the source, any exposure to noise levels above the harassment threshold (if any) would be very brief. To further minimize exposures, ramp-up of sub-bottom profilers must be delayed during the clearance period if PSOs detect a North Atlantic right whale, or any other ESA-listed species, within 500 m of the acoustic source. With implementation of the mitigation requirements, take by Level A harassment is unlikely and, therefore, NMFS would not plan to authorize. Potential impacts associated with Level

B harassment would include low-level, temporary behavioral modifications, most likely in the form of avoidance behavior. Given the high level of precautions taken to minimize both the amount and intensity of Level B harassment on North Atlantic right whales, it is unlikely that the anticipated low-level exposures would lead to reduced reproductive success or survival.

As described above, no serious injury or mortality, or Level A harassment, of North Atlantic right whale is anticipated or may be authorized. Extensive North Atlantic right whale-specific mitigation measures beyond the robust suite required for all species are expected to further minimize the amount and severity of Level B harassment. Given the documented habitat use within the area, the majority of the individuals predicted taken (*i.e.*, no more than 126 instances of take, by Level B harassment, over the course of the 5-year rule, with an annual maximum of no more than 60 takes) would be impacted on only 1, or maybe 2, days in a year, and any impacts to North Atlantic right whales are expected to be in the form of lower-level behavioral disturbance. Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take, by Level B harassment only, anticipated and that may be authorized would have a negligible impact on the North Atlantic right whale.

Blue Whale

The blue whale, including the Western North Atlantic stock, is listed as Endangered under the ESA, and as both Depleted and Strategic under the MMPA. There are no known areas of specific biological importance in or around the project area, nor are there any UMEs. The actual abundance of the stock is likely significantly greater than what is reflected in each SAR because, as noted in the SARs, the most recent population estimates are primarily based on surveys conducted in U.S. waters and the stock's range extends well beyond the U.S. exclusive economic zone (EEZ). No serious injury or mortality is anticipated or may be authorized for this species.

The rule would allow for the authorization of up to 6 takes, by harassment only, over the 5-year period. The maximum annual allowable take by

Level A harassment and Level B harassment, would be 1 and 2, respectively (combined, this annual take ($n=3$) equates to approximately 0.75 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HR surveys would be occurring). Based on the migratory nature of blue whales and the fact that there are neither feeding nor reproductive areas documented in or near the project area, and in consideration of the very low number of predicted annual takes, it is unlikely that the predicted instances of takes would represent repeat takes of any individual—in other words, each take likely represents one whale exposed on one day within a year.

With respect to the severity of those individual takes by behavioral Level B harassment, we would anticipate impacts to be limited to low-level, temporary behavioral responses with avoidance and potential masking impacts in the vicinity of the turbine installation to be the most likely type of response. Any potential PTS or TTS would be concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of sei whales. Any hearing ability temporarily impaired from TTS is anticipated to return to pre-exposure conditions shortly after the exposures cease (*e.g.*, if the animal moves away or the source stops). Any avoidance of the project area due to the Project's activities would be expected to be temporary.

Given the magnitude and severity of the impacts discussed above, and in consideration of the proposed mitigation and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take (by harassment only) anticipated and that may be authorized would have a negligible impact on the Western North Atlantic stock of blue whales.

Fin Whale

The fin whale is listed as Endangered under the ESA, and the western North Atlantic stock is considered both Depleted and Strategic under the MMPA. No UME has been designated for this species or stock. No serious injury or mortality is anticipated or may be authorized for this species. Fin whales are present in the waters off of

Massachusetts year-round and are one of the most frequently observed large whales and cetaceans in continental shelf waters, principally from Cape Hatteras in the Mid-Atlantic northward to Nova Scotia, Canada (Sergeant, 1977; Sutcliffe and Brodie, 1977; Cetacean and Turtle Assessment Program (CETAP), 1982; Hain *et al.*, 1992; Geo-Marine, 2010; BOEM, 2012; Edwards *et al.*, 2015; Hayes *et al.*, 2022).

The rule would allow for the authorization of up to 421 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 21 and 201, respectively. Combined, this annual take ($n=222$) equates to approximately 3.26 percent of the stock abundance, if each take were considered to be of a different individual, with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HRG surveys would be occurring). Given the project overlaps a small portion of a fin whale feeding BIA (2,933 km²) in the months the project will occur and that southern New England is generally considered a feeding area, it is likely that some subset of the individual whales exposed could be taken several times annually.

Level B harassment is expected to be in the form of behavioral disturbance, primarily resulting in avoidance of the Project Area where foundation installation is occurring, and some low-level TTS and masking that may limit the detection of acoustic cues for relatively brief periods of time. Any potential PTS would be minor (*i.e.*, limited to a few dB) and any TTS would be of short duration and concentrated at half or one octave above the frequency band of pile-driving noise with most sound below 2 kHz, which does not include the full predicted hearing range of fin whales.

Fin whales are present in the waters off of New England year-round and are one of the most frequently observed large whales and cetaceans in continental shelf waters, principally from Cape Hatteras, North Carolina in the Mid-Atlantic northward to Nova Scotia, Canada (Sergeant, 1977; Sutcliffe and Brodie, 1977; CETAP, 1982; Hain *et al.*, 1992; Geo-Marine, 2010; BOEM 2012; Edwards *et al.*, 2015; Hayes *et al.*, 2022). In the Project Area, fin whales densities are highest in the winter and summer months (Roberts *et al.*, 2023) though detections do occur in spring and fall (Watkins *et al.*, 1987; Clark and Gagnon, 2002; Geo-Marine, 2010; Morano *et al.*, 2012). However, fin whales feed more extensively in waters in the Great South Channel north to the

Gulf Maine into the Gulf of St. Lawrence, areas north and east of the Project Area (89 FR 5495, January 29, 2024).

As described previously in the proposed rule, the project area slightly overlaps a small fin whale feeding BIA that is active from March to October. Foundation installations and UXO/MEC detonations have seasonal work restrictions such that the temporal overlap between these project activities and the active BIA timeframe would exclude the months of March or April. We anticipate that if foraging is occurring in the Project Area and foraging whales are exposed to noise levels of sufficient strength, they would avoid the Project Area and move into the remaining area of the feeding BIA that would be unaffected to continue foraging without substantial energy expenditure or, depending on the time of year, travel to the larger year-round feeding BIA. Given the availability of other nearby feeding habitat, any impacts from any of the planned activities to feeding activities are not anticipated to have significant impacts on fin whale energetics or fitness.

Given the magnitude and severity of the impacts discussed above, including no more than 421 takes by harassment only over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 21 and 201, respectively, and in consideration of the required mitigation and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and that may be authorized will have a negligible impact on the western North Atlantic stock of fin whales.

Humpback Whale

The West Indies DPS of humpback whales is not listed as threatened or endangered under the ESA. However, as described in the Description of Marine Mammals in the Geographic Area, humpback whales along the Atlantic Coast have been experiencing an active UME as elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately 40 percent had evidence of human interaction (*i.e.*, vessel strike or entanglement). Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS of which the Gulf of Maine stock is a part)

remains stable at approximately 12,000 individuals.

The rule would allow for the authorization of up to 301 takes by Level B harassment only over the 5-year period. No take by Level A harassment may be authorized. The maximum annual allowable take by Level A harassment and Level B harassment would be 18 and 134, respectively (this maximum annual take ($n=152$) equates to approximately 10.89 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HRG surveys would be occurring). Among the activities analyzed, foundation installation is likely to result in the highest amount of Level A harassment and Level B harassment annual take (*i.e.*, 17 and 126, respectively) of humpback whales.

A recent study examining humpback whale occurrence in the New York Bight area has shown that humpback whales exhibit extended occupancy (mean 37.6 days) in the Bight area and were likely to return from one year to the next (mean 31.3 percent). Whales were also seen at a variety of other sites in the New York Bight within the same year, suggesting that they may occupy this broader area throughout the feeding season. The majority of whales were seen during summer (July–September, 62.5 percent), followed by autumn (October–December, 23.5 percent), and spring (April–June, 13.9 percent) (Brown *et al.*, 2022). These data suggest that the 0 and 63 maximum annual instances of predicted takes by Level A harassment and Level B harassment, respectively, could consist of individuals exposed to noise levels above the harassment thresholds once during migration through the Project Area and/or individuals exposed on multiple days if they are utilizing the area as foraging habitat. The Lease Area, which is 321 km², comprises only a minor portion of the New York Bight area (43,388 km²), and a few repeated takes of the same individuals would be unlikely to meaningfully impact the energetics of any individuals given the availability of favorable foraging habitat across the Bight.

For all the reasons described in the *Mysticetes* section above, we anticipate any potential PTS and TTS would be concentrated at one half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz), which does not include the full predicted hearing range of baleen whales. If TTS is incurred, hearing sensitivity would likely return to pre-

exposure levels relatively shortly after exposure ends. Any masking or physiological responses would also be of low magnitude and severity for reasons described above.

Given the magnitude and severity of the impacts discussed above, including no more than 301 takes over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment of 18 and 134, respectively, and in consideration of the required mitigation measures and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and may be authorized will have a negligible impact on the Gulf of Maine stock of humpback whales.

Minke Whale

Minke whales are not listed under the ESA, and the Canadian East Coast stock is neither considered depleted nor strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the Project Area. As described in the Description of Marine Mammals in the Geographic Area section, a UME has been designated for this species but is pending closure. No serious injury or mortality is anticipated or authorized for this species.

The rule would allow for the authorization of up to 1,193 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment would be 90 and 508, respectively (combined, this annual take ($n=598$) equates to approximately 2.72 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HRG surveys would be occurring).

Minke whales are common offshore the U.S. Eastern Seaboard with a strong seasonal component in the continental shelf and in deeper, off-shelf waters (CETAP, 1982; Hayes *et al.*, 2022). In the Project Area, minke whales are predominantly migratory and their known feeding areas are to the north, including a feeding BIA in the southwestern Gulf of Maine and George's Bank. Therefore, they would be more likely to be moving through the Project Area, with each take representing a separate individual. However, it is possible that some subset

of the individual whales exposed could be taken up to a few times annually.

As described in the Description of Marine Mammals in the Geographic Area section, there is a UME for Minke whales, along the Atlantic coast from Maine through South Carolina, with highest number of deaths in Massachusetts, Maine, and New York, and preliminary findings in several of the whales have shown evidence of human interactions or infectious diseases. However, we note that the population abundance is greater than 21,000 and the take that may be authorized through this action is not expected to exacerbate the UME in any way.

We anticipate the impacts of this harassment to follow those described in the general *Mysticetes* section above. Any potential PTS would be minor (*i.e.*, limited to a few dB) and any TTS would be of short duration and concentrated at one half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz), which does not include the full predicted hearing range of minke whales. Level B harassment would be temporary, with primary impacts being temporary displacement of the Project Area but not abandonment of any migratory or foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than 1,193 takes of the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 90 and 508, respectively), and in consideration of the required mitigation and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and that may be authorized will have a negligible impact on the Canadian Eastern Coastal stock of minke whales.

Sei Whale

Sei whales are listed as Endangered under the ESA, and the Nova Scotia stock is considered both depleted and strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the Project Area and no UME has been designated for this species or stock. No serious injury or mortality is anticipated or may be authorized for this species.

The rule would allow for the authorization of up to 74 takes, by harassment only, over the 5-year period. The maximum annual allowable take by

Level A harassment and Level B harassment would be 4 and 31, respectively (combined, this annual take ($n=35$) equates to approximately 0.56 percent of the stock abundance, if each take were considered to be of a different individual). Similar to other mysticetes, we would anticipate the number of takes to represent individuals taken only once or, in rare cases two or three times, as most whales in the Project Area would be migrating. To a small degree, sei whales may forage in the Project Area, although the currently identified foraging habitats (BIAs) are to the northeast of the area in which the specified activities would occur (LaBrecque *et al.*, 2015).

With respect to the severity of those individual takes by behavioral Level B harassment, we would anticipate impacts to be limited to low-level, temporary behavioral responses with avoidance and potential masking impacts in the vicinity of the turbine installation to be the most likely type of response. Any potential PTS and TTS would likely be concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz), which does not include the full predicted hearing range of sei whales. Moreover, any TTS would be of a small degree. Any avoidance of the Project Area due to the Project's activities would be expected to be temporary.

Given the magnitude and severity of the impacts discussed above (including no more than 74 takes of the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment of 4 and 31, respectively), and in consideration of the required mitigation and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and that may be authorized will have a negligible impact on the Nova Scotia stock of sei whales.

Odontocetes

In this section, we include information that applies to all of the odontocete species and stocks addressed below. Odontocetes include dolphins, porpoises, and all other whales possessing teeth, and we further divide them into the following subsections: sperm whales, small whales and dolphins, and harbor porpoises. These subsections include more specific information, as well as conclusions, for each stock represented.

The takes that may be authorized for odontocetes are incidental to the specified activities. No serious injury or mortality may be authorized. We anticipate that, given ranges of individuals (*i.e.*, that some individuals remain within a small area for some period of time), and non-migratory nature of some odontocetes in general (especially as compared to mysticetes), a larger subset of these takes are more likely to represent multiple exposures of some number of individuals than is the case for mysticetes, though some takes may also represent one-time exposures to an individual. Foundation installation is likely to disturb odontocetes to the greatest extent, compared to UXO/MEC detonations and HRG surveys. While we do expect animals to avoid the area during foundation installation and UXO/MEC detonations, their habitat range is extensive compared to the area ensonified during these activities. In addition, UXO/MEC detonations are instantaneous; therefore, any disturbance would be very limited in time.

As described earlier, Level B harassment may include direct disruptions in behavioral patterns (*e.g.*, avoidance, changes in vocalizations (from masking) or foraging), as well as those associated with stress responses or TTS. Odontocetes are highly mobile species, and, similar to mysticetes, NMFS expects any avoidance behavior to be limited to the area near the sound source. Passive acoustic data show that odontocete foraging dives may be disrupted by exposure to loud sounds (Madsen *et al.*, 2006; Miller *et al.*, 2009; see "Diving and Foraging" in the proposed rule). However, as stated in the proposed rule, changes in dive behavior in response to noise exposure can vary widely and the changes may be a result of exposure to a sound source or a natural variation in behavior. As foraging behavior may be temporarily affected in the vicinity of the sound source (*e.g.*, reduced dive rates, temporary area avoidance), NMFS expects that foraging efforts would shift to other nearby foraging areas away from the sound source but does not expect this to occur for a long duration but be limited to when sound sources (*e.g.*, pile driving, near instantaneous UXO/MEC detonation) are active. We do not expect foraging to be appreciably reduced from HRG surveys given the minor nature of disturbance associated with the activity and evidence that some odontocete species do not appear disturbed at all from these surveys (*e.g.*, bow riding dolphins). While masking could also

occur during foundation installation (e.g., to vocalizations, echolocation; see “Vocalizations and Auditory Masking” section in the proposed rule for a detailed discussion), it would only occur in the vicinity of and during the duration of the activity, and would not generally occur in a frequency range that overlaps most odontocete communication or any echolocation signals. The mitigation measures (e.g., use of sound attenuation systems, implementation of clearance and shutdown zones) would also minimize received levels such that the severity of any behavioral response would be expected to be less than exposure to unmitigated noise exposure.

Any masking or TTS effects are anticipated to be of low severity. First, while the frequency range of pile driving, the most impactful planned activity in terms of response severity, falls within a portion of the frequency range of most odontocete vocalizations, odontocete vocalizations span a much wider range than the low frequency construction activities planned for the project. Also, as described above, recent studies suggest odontocetes have a mechanism to self-mitigate the impacts of noise exposure (i.e., reduce hearing sensitivity), which could potentially reduce TTS impacts. Any masking or TTS is anticipated to be limited and would typically only interfere with communication within a portion of an odontocete’s range and as discussed earlier, the effects would only be expected to be of a short duration and for TTS, a relatively small degree.

Furthermore, odontocete echolocation occurs predominantly at frequencies significantly higher than low frequency construction activities. Therefore, there is little likelihood that threshold shift would interfere with feeding behaviors. For HRG surveys, the sources operate at higher frequencies than foundation installation activities and UXO/MEC detonations. However, sounds from these sources attenuate very quickly in the water column, as described above. Therefore, any potential for PTS and TTS and masking is very limited. Further, odontocetes (e.g., common dolphins, spotted dolphins, and bottlenose dolphins) have demonstrated an affinity to bow-ride actively surveying HRG surveys. Therefore, the severity of any harassment, if it does occur, is anticipated to be minimal based on the lack of avoidance previously demonstrated by these species.

The waters off the coast of Massachusetts are used by several odontocete species. However, none except the sperm whale are listed under

the ESA, and there are no known habitats of particular importance. In general, odontocete habitat ranges are far-reaching along the Atlantic coast of the United States, and the waters off of Massachusetts, including the Project Area, do not contain any particularly unique odontocete habitat features.

Sperm Whale

Sperm whales are listed as endangered under the ESA, and the North Atlantic stock is considered both Depleted and Strategic under the MMPA. The North Atlantic stock spans the East Coast out into oceanic waters well beyond the U.S. EEZ. Although listed as endangered, the primary threat faced by the sperm whale across its range (i.e., commercial whaling) has been eliminated. Current potential threats to the species globally include vessel strikes, entanglement in fishing gear, anthropogenic noise, exposure to contaminants, climate change, and marine debris. There is no currently reported trend for the stock and, although the species is listed as endangered under the ESA, there are no current related issues or events associated with the status of the stock that cause particular concern (e.g., no UMEs). There are no known areas of biological importance (e.g., critical habitat or BIAs) in or near the Project Area. No mortality or serious injury is anticipated or may be authorized for this species.

The rule would allow for the authorization of up to 2 takes by Level A harassment and 108 takes by Level B harassment ($n=110$), over the 5-year period. No serious injury or mortality may be authorized. The maximum annual allowable take by Level A harassment would be 1 and Level B harassment would be 57, which equates to approximately 0.98 percent of the stock abundance, if each take were considered to be of a different individual, with lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). Given sperm whale’s preference for deeper waters, especially for feeding, it is unlikely that individuals will remain in the Project Area for multiple days, and therefore, the estimated takes likely represent exposures of different individuals on 1 day annually.

If sperm whales are present in the Project Area during any Project activities, they will likely be only transient visitors and not engaging in any significant behaviors. Further, the potential for TTS is low for reasons described in the general *Odontocetes* section, but if it does occur, any hearing

shift would be small and of a short duration. Because whales are not expected to be foraging in the Project Area, neither direct behavioral disturbance nor TTS are not expected to interfere with foraging behavior. The most likely impact would be avoidance of the ensonified areas around the activities during the time that the activities are occurring.

Given the magnitude and severity of the impacts discussed above (i.e., no more than 2 takes by Level A harassment and 108 takes by Level B harassment, over the course of the 5-year rule, and a maximum annual allowable take of 58), and in consideration of the required mitigation and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and that may be authorized will have a negligible impact on the North Atlantic stock of sperm whales.

Dolphins and Small Whales (Including Delphinids)

The twenty-six species and stocks included in this group (which are indicated in table 2 in the Delphinidae, Ziphiidae, and Kogiidae families) are not listed under the ESA, however, pantropical spotted dolphins and spinner dolphins are listed as Depleted under the MMPA and Short-finned pilot whales are listed as Strategic under the MMPA. The remaining species are not listed as depleted or strategic under the MMPA. There are no known areas of specific biological importance in or around the project area for any of these species, nor has a UME been designated for any. No serious injury or mortality is anticipated or may be authorized for these species.

The eighteen delphinid species with take that may be authorized for the Project are Atlantic spotted dolphin, Atlantic white-sided dolphin, bottlenose dolphin, Clymene dolphin, common dolphin, long-finned pilot whale, short-finned pilot whale, Risso’s dolphin, false killer whale, Fraser’s dolphin, killer whale, melon-headed whale, pantropical spotted dolphin, pygmy killer whale, rough-toothed dolphin, spinner dolphin, striped dolphin, and white-beaked dolphin.

Many of these delphinid species are rare for the project area, with preferred habitat at much deeper water depths or different water temperatures than what are found within the project area. For instance, the Clymene dolphin, false killer whale, Fraser’s dolphin, melon-

headed whale, pantropical spotted dolphin, pygmy killer whale, rough-toothed dolphin, and spinner dolphin prefer tropical to subtropical waters but have, on occasion, been sighted in deep waters at or beyond the continental shelf break in the New England area during the summer months (Hayes *et al.*, 2019; Hayes *et al.*, 2020). Striped dolphins are found in warm-temperate to tropical waters but prefer continental slope waters offshore to the Gulf Stream, when in the New England area they have only been sighted at water depths deeper than 900 m (Hayes *et al.*, 2020). White-beaked dolphins prefer colder waters and are found more northerly than the project area in the western Gulf of Maine and around Cape Cod (Hayes *et al.*, 2020). Killer whales, a rarity in the New England area, prefer much deeper and colder waters than those in the New England area (Waring *et al.*, 2015).

For seventeen of the Delphinid species, the rule would allow for the authorization of up to between 10 and 3,543 takes (depending on species), by harassment only, over the 5-year period. The maximum annual allowable take for these species by Level A harassment and Level B harassment, would range from 0 to 1 and 5 to 2,067, respectively, (combined, this annual take ($n=5$ to 2,068) equates to approximately 0.1 to 3.20 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HR surveys would be occurring).

For common dolphins, the eighteenth of the delphinid species, the rule would allow for the authorization of up to 46,761 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment is 1 and by Level B harassment is 26,572 (combined, this annual take ($n=26,573$) equates to approximately 28.54 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HR surveys would be occurring). Given both the comparatively higher number of takes and the higher number of takes relative to the stock abundance, as well as the residential tendencies of this species, while some of the takes likely represent exposures of different individuals on 1 or 2 days a year, it is likely that some subset of the individuals exposed could be taken several times annually. As described above for odontocetes broadly, given the comparatively higher number of

estimated takes for some species and the behavioral patterns of odontocetes, we anticipate that a fair number of these instances of take in a day represent multiple exposures of a smaller number of individuals, meaning the actual number of individuals taken is lower. Although some amount of repeated exposure to some individuals is likely given the duration of activity planned for the specified activities, the intensity of any Level B harassment combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would not impact the reproduction or survival of any individuals.

For Atlantic white-sided dolphin and Bottlenose dolphin, given the relatively higher number of takes and as compared to the abundance, while many of the takes likely represent exposures of different individuals on one day a year, some subset of the individuals exposed could be taken up to a few times annually. For the remaining Delphinids, given they are considered rare or uncommon in the area, it is unlikely that individuals would remain in the project area for multiple days, and therefore the estimated takes likely represent exposures of different individuals on one day each annually.

The six Ziphiidae species with take that may be authorized for the Project are Cuvier's beaked whale, Blainville's beaked whale, Gervais' beaked whale, Sowerby's beaked whale, True's beaked whale, and Northern bottlenose whale. The two species of Kogiidae with take that may be authorized for the Project are the dwarf sperm whale and pygmy sperm whale. These species are rare for the project area and prefer habitat at much deeper water depths than what are found within the project area. For instance, the beaked whales and Kogiidae species have been sighted in deep waters at or beyond the continental shelf break in the New England area (Hayes *et al.*, 2020). The Northern bottlenose whales are extremely uncommon or rare in waters of the U.S and are rarely in waters less than 2,000 m deep (Waring *et al.*, 2015). For these eight species, the rule would allow for the authorization of up to between 6 and 8 takes for each species, by harassment only, over the 5-year period. The maximum annual allowable take for these species by Level A harassment and Level B harassment, would range from 0 to 2 and 2 to 4, respectively (combined, this annual take ($n=3$ to 4) equates to approximately <0.1 percent of the stock abundance for each species, if each take were considered to be of a different individual), with far lower numbers

than that expected in the years without foundation installation (*e.g.*, years when only HR surveys would be occurring). Given this species is considered rare in the area and prefers deeper waters, especially for feeding, it is unlikely that individuals would remain in the project area for multiple days, and therefore the estimated takes likely represent exposures of different individuals on one day each annually.

The number of takes, likely movement patterns of the affected species, and the intensity of any Level A or B harassments, combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would not impact the fitness, reproduction or survival of any individuals. Some species, such as the common dolphin, are gregarious in nature (*i.e.*, travel in large groups) with high densities in the project area, which results in a relatively higher amount of take. While delphinids may be taken on several occasions, none of these species are known to have small home ranges within the project area or known to be particularly sensitive to anthropogenic noise. The potential for PTS in dolphins and small whales is very low and, if PTS does occur, would occur to a limited number of individuals, be of small degree, and would be limited to the frequency ranges of the activity which does not span across most of their hearing range. Some TTS can also occur but, again, it would be limited to the frequency ranges of the activity and any loss of hearing sensitivity is anticipated to return to pre-exposure conditions shortly after the animals move away from the source or the source ceases.

Beaked whales are known to be particularly sensitive to anthropogenic noise (*e.g.*, Southall *et al.*, 2017; Clowewiak *et al.*, 2017); however, the project area does not contain primary beaked whale habitat and only two to three groups of beaked whales could be harassed by Project activities. Further, beaked whales are deep diver foragers and the shallow-water project area does not contain suitable beaked whale foraging habitat. Hence, no foraging impacts are anticipated.

Given the magnitude and severity of the impacts discussed above, and in consideration of the proposed mitigation and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take (by harassment only) that may be authorized would have a negligible

impact on all of the species and stocks addressed in this section.

Harbor Porpoise

Harbor porpoises are not listed as Threatened or Endangered under the ESA, and the Gulf of Maine/Bay of Fundy stock is neither considered depleted or strategic under the MMPA. The stock is found predominantly in northern United States coastal waters, at less than 150 m depth and up into Canada's Bay of Fundy, between New Brunswick and Nova Scotia. Although the population trend is not known, there are no current related issues or events associated with the status of the stock that cause particular concern (e.g., no UMEs).

The rule would allow for the authorization of up to 2,468 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment would be 67 and 1,119, respectively (combined, this annual take ($n=1,186$) equates to approximately 1.38 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). Given the number of takes, while many of the takes likely represent exposures of different individuals on 1 day a year, some subset of the individuals exposed could be taken up to a few times annually. No serious injury or mortality may be authorized.

Regarding the severity of takes by Level B harassment, because harbor porpoises are particularly sensitive to noise, it is likely that a fair number of the responses could be of a moderate nature, particularly to pile driving. In response to pile driving, harbor porpoises are likely to avoid the area during construction, as previously demonstrated in Tougaard *et al.* (2009) in Denmark, in Dahne *et al.* (2013) in Germany, and in Vallejo *et al.* (2017) in the United Kingdom, although a study by Graham *et al.* (2019) may indicate that the avoidance distance could decrease over time. However, foundation installation is scheduled to occur off the coast of Massachusetts and, given alternative foraging areas, any avoidance of the area by individuals is not likely to impact the reproduction or survival of any individuals.

With respect to PTS and TTS, the effects on an individual are likely relatively low given the frequency bands of pile driving (most energy below 2 kHz) compared to harbor porpoise hearing (150 Hz to 160 kHz peaking around 40 kHz). Specifically, TTS is

unlikely to impact hearing ability in their more sensitive hearing ranges, or the frequencies in which they communicate and echolocate. We expect any PTS that may occur to be within the very low end of their hearing range where harbor porpoises are not particularly sensitive and any PTS would be of small magnitude. As such, any PTS would not interfere with key foraging or reproductive strategies necessary for reproduction or survival.

As discussed in the draft 2023 SARs (89 FR 5495, January 29, 2024), harbor porpoises are seasonally distributed. During fall (October–December) and spring (April–June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south. During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina, and lower densities are found in waters off New York to New Brunswick, Canada. In non-summer months they have been seen from the coastline to deep waters (i.e., >1800 m; Westgate *et al.*, 1998), although the majority are found over the continental shelf. While harbor porpoises are likely to avoid the area during any of the Project's construction activities, as demonstrated during European wind farm construction, the time of year in which work would occur is when harbor porpoises are not in highest abundance, and any work that does occur would not result in the species' abandonment of the waters off of Massachusetts.

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and that may be authorized will have a negligible impact on the Gulf of Maine/Bay of Fundy stock of harbor porpoises.

Phocids (Harbor Seals, Gray Seals, and Harp Seals)

The harbor seal, gray seal, harp seal, and hooded seal are not listed under the ESA, and neither the western North Atlantic stock of gray seal, western North Atlantic stock of harp seal, nor the western North Atlantic stock of harbor seal are considered depleted or strategic under the MMPA. There are no known areas of specific biological importance in or around the Project Area. As described in the Description of Marine Mammals in the Geographic

Area section, a UME has been designated for harbor seals and gray seals and is described further below. No serious injury or mortality is anticipated or may be authorized for these species.

For the four seal species, the rule would allow for the authorization of up to between 2 and 4,077 takes for each species by harassment only over the 5-year period. The maximum annual allowable take for these species by Level A harassment and Level B harassment, respectively, would be 0 and 1 (hooded seals), 18 and 1,301 (harbor seals), 9 and 1,537 (gray seal), and 9 to 2,013 (harp seals) (this annual take equates to approximately <0.1 percent of the stock abundance for harp seals, 5.54 percent of the stock abundance for gray seals, and 2.15 percent of the stock abundance for harbor seals). The population abundance of hooded seal is unknown but, considering that no more than one hooded seal would be taken by Level B harassment annually, it would be reasonable to assume this would constitute a small percentage of the stock. For the four species, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). Though gray seals, harbor seals, and harp seals are considered migratory and no specific feeding areas have been designated in the area, the higher number of takes relative to the stock abundance suggests that while some of the takes likely represent exposures of different individuals on 1 day a year, it is likely that some subset of the individuals exposed could be taken several times annually. For hooded seals, given this species is considered rare in the area, it is unlikely that individuals would remain in the project area for multiple days, and therefore the estimated takes likely represent exposures of different individuals on one day each annually.

Harbor, gray, and harp seals occur in Massachusetts waters most often in winter (December through May), when most foundation installation and UXO/MEC detonations would not occur due to seasonal restrictions on conducting these activities). Seals are also more likely to be close to shore (e.g., closer to the edge of the area ensounded above NMFS' harassment threshold), such that exposure to foundation installation would be expected to be at comparatively lower levels. Take of these species is noise from pile driving, drilling, UXO/MEC detonations, and HRG surveys.

There are no gray seal pupping colonies or known haul-out sites near

the Project Area, although gray seals may haul out at known harbor seal haul out sites. The nearest known gray seal pupping sites are greater than 100 nautical miles (nmi) (185 km) away, at Muskeget Island in the Nantucket Sound, Monomoy National Wildlife Refuge, and in eastern Maine (Rough, 1995). Known haul out locations are located closer to Monomoy Refuge and on Nantucket in Massachusetts (Kenney and Vigness-Raposa, 2010). Harbor seals have the potential to occur in areas adjacent to the export cable corridors and landfall sites. Although there are no known harbor seal haul outs in the Project Area, harbor seals occur throughout the Massachusetts coastline and have the potential to haul out at many beach sites. As the closest documented pinniped haul out sites are located further than 150 km away from the Project Area, NMFS does not expect any harassment to occur and would not plan to authorize any take from in-air impacts on hauled-out seals.

As described in the “Potential Effects to Marine Mammals and Their Habitat” section in the proposed rule, construction of wind farms in Europe resulted in pinnipeds temporarily avoiding construction areas but returning within short time frames after construction was complete (Carroll *et al.*, 2010; Hamre *et al.*, 2011; Hastie *et al.*, 2015; Russell *et al.*, 2016; Brasseur *et al.*, 2010). Effects on pinnipeds that are taken by Level B harassment in the Project Area would likely be limited to reactions such as avoidance in the form of increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals would simply move away from the sound source and be temporarily displaced from those areas (Lucke *et al.*, 2006; Edren *et al.*, 2010; Skeate *et al.*, 2012; Russell *et al.*, 2016). Given the low anticipated magnitude of impacts from any given exposure (*e.g.*, temporary avoidance), even repeated Level B harassment across a few days of some small subset of individuals, is unlikely to result in impacts on the reproduction or survival of any individuals. Moreover, pinnipeds would benefit from the mitigation measures described in 50 CFR part 217.

As described above, noise from UXO/MEC detonation is low frequency and, while any PTS and TTS that does occur would fall within the lower end of pinniped hearing ranges (50 Hz to 86 kHz), PTS and TTS would not occur at frequencies where pinniped hearing is most sensitive. In summary, any PTS and TSS would be of small degree and not occur across the entire, or even most

sensitive, hearing range. Hence, any impacts from PTS and TTS are likely to be of low severity and not interfere with behaviors critical to reproduction or survival.

For harbor seals, the population abundance is over 61,000 and the annual mortality/serious injury (M/SI; 339) for the seals is well below PBR (*i.e.*, 1,729) (89 FR 5495, January 29, 2024). The population abundance for gray seals in the United States is over 27,000, with an estimated overall abundance, including seals in Canada, of approximately 366,400 (89 FR 5495, January 29, 2024). In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic, as well as in Canada (89 FR 5495, January 29, 2024). For harp seals and hooded seals, for which there is no recent UME, the total U.S. fishery-related mortality and serious injury for this stock is very low relative to the stock size and can be considered insignificant and approaching zero mortality and serious injury rate (Hayes *et al.*, 2019; Hayes *et al.*, 2022). The harp seal stock abundance appears to have stabilized (Hayes *et al.*, 2022).

Given the magnitude and severity of the impacts from the specified activities discussed above, and in consideration of the required mitigation and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and may be authorized will have a negligible impact on harbor, gray, harp, and hooded seals.

Negligible Impact Determination

No mortality or serious injury is anticipated to occur or may be authorized. As described in the analysis above, the impacts resulting from the Project's activities cannot be reasonably expected to, and are not reasonably likely to, adversely affect any of the species or stocks through effects on annual rates of recruitment or survival. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required mitigation and monitoring measures, NMFS finds that the marine mammal take from all of the specified activities combined will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers; therefore, in practice, and where estimated numbers are available, NMFS compares the number of individuals estimated to be taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS may authorize incidental take by Level A harassment and/or Level B harassment of 38 species of marine mammals (with 38 managed stocks). The maximum number of instances of takes by combined Level A harassment and Level B harassment possible within any one year relative to the best available population abundance is less than one-third for all species and stocks potentially impacted. Unless otherwise noted, the small numbers analysis conservatively assumes each take occurs to a different individual in the population.

For 28 stocks, less than 6 percent of the stock abundance may be authorized for take by harassment under this final rule. Specific to the North Atlantic right whale, the maximum amount of take reasonably likely to occur per year, which is by Level B harassment only, is 60, or 17.65 percent of the stock abundance, assuming that each instance of take represents a different individual. Please see table 35 for information relating to this small numbers analysis.

For seven species, there are no current abundance estimates available; hence the percentage of the population taken is unknown. However, these constitute rare species and only a small amount of take may be authorized each year under this final rule. For three of these species, no more than five takes per year may be authorized under this final rule (hooded seal, pygmy killer whale, and northern bottlenose whale). For the melon-headed whale, Fraser's dolphin, and killer whale, a maximum of 109, 192, and 10, respectively, takes are allowed under this final rule, based on the prediction that a group may be encountered up to a few times during

the activity and representing approximately one to three average group sizes. Hence, the amount of take for all rare species with unknown populations can reasonably be considered a small number.

Based on the analysis contained herein of the activities (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Classification

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the promulgation of rulemakings, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, and in this case, consulted with the NOAA GARFO.

This final rule allows for the take of five marine mammal species listed under the ESA: the North Atlantic right, blue, sei, fin, and sperm whale. The Permit and Conservation Division requested initiation of section 7 consultation with NMFS GARFO on May 9, 2023 for the promulgation of the rulemaking. NMFS GARFO issued a BiOp on February 16, 2024, concluding that the promulgation of the rule and issuance of LOAs thereunder is not likely to jeopardize the continued existence of threatened and endangered species under NMFS' jurisdiction and is not likely to result in the destruction or adverse modification of designated or proposed critical habitat. The BiOp is available at <https://repository.library.noaa.gov/view/noaa/60610>.

Avangrid is required to abide by the promulgated regulations, as well as the reasonable and prudent measure and

terms and conditions of the BiOp and Incidental Take Statement, as issued by NMFS.

National Environmental Policy Act

To comply with NEPA (42 U.S.C. 4321 *et seq.*) and the NOAA Administrative Order 216–6A, NMFS must evaluate our proposed action (*i.e.*, promulgation of regulation) and alternatives with respect to potential impacts on the human environment. NMFS participated as a cooperating agency on the BOEM 2024 Final EIS (FEIS), which was finalized on March 1, 2024, and is available at: <https://www.boem.gov/renewable-energy/state-activities/new-england-wind-formerly-vineyard-wind-south>. In accordance with 40 CFR 1506.3, NMFS independently reviewed and evaluated the 2024 New England Wind FEIS and determined that it is adequate and sufficient to meet our responsibilities under NEPA for the promulgation of this rule and issuance of the associated LOA. NMFS, therefore, has adopted the 2024 New England Wind FEIS through a joint Record of Decision (ROD) with BOEM. The joint ROD for adoption of the 2024 New England Wind FEIS and promulgation of this final rule and subsequent issuance of a LOA can be found at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork

Reduction Act unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOA, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS.

Coastal Zone Management Act

The Coastal Zone Management Act requires that any applicant for a required Federal license or permit to conduct an activity, within the coastal zone or within the geographic location descriptions (*i.e.*, areas outside the coastal zone in which an activity would have reasonably foreseeable coastal effects), affecting any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal management program. As required, in June 2022, Park City Wind (now Avangrid) submitted a Federal consistency certification to Massachusetts Coastal Zone Management's (MA CZM) and to the Rhode Island Coastal Resources Management Council (CRMC) for approval of the COP by BOEM and the issuance of an Individual Permit by United States Army Corps of Engineers, under sections 10 and 14 of the Rivers and Harbors Act and section 404 of the Clean Water Act (15 CFR part 930, subpart E).

NMFS determined that Avangrid's application for MMPA ITRs is an unlisted activity under the State of New York's coastal management program and, thus, is not subject to Federal consistency requirements in the absence of the receipt and prior approval of an unlisted activity review request from the State by the Director of NOAA's Office for Coastal Management. Pursuant to 15 CFR 930.54, NMFS published a NOR for the application in the **Federal Register** on August 22, 2022 (87 FR 51345), and published the proposed rule on June 8, 2023 (88 FR 37606). The states of Massachusetts and Rhode Island did not request approval from the Director of NOAA's Office for Coastal Management to review the application as an unlisted activity, and the time period for making such request has expired. Therefore, NMFS has determined the ITA is not subject to Federal consistency review.

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Endangered and threatened species, Fish, Fisheries, Marine mammals, Penalties, Reporting and recordkeeping requirements, Wildlife.

Dated: May 28, 2024.

Samuel D. Rauch III,

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

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Add subpart GG, consisting of §§ 217.320 through 217.329, to read as follows:

Subpart GG—Taking Marine Mammals Incidental to the New England Wind Project Offshore of Massachusetts

Sec.

- 217.320 Specified activity and specified geographical region.
217.321 Effective dates.
217.322 Permissible methods of taking.
217.323 Prohibitions.
217.324 Mitigation requirements.
217.325 Requirements for monitoring and reporting.
217.326 Letter of Authorization.
217.327 Modifications of Letter of Authorization.
217.328—217.329 [Reserved]

Subpart GG—Taking Marine Mammals Incidental to the New England Wind Project Offshore of Massachusetts

§ 217.320 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to activities associated with Phase 1 and Phase 2 of the New England Wind project (hereafter referred to as the

“Project”) developed by Avangrid Renewables, LLC, and its successors or assigns (hereafter referred to as the “LOA Holder”), and those persons it authorizes or funds to conduct activities on its behalf in the area outlined in paragraph (b) of this section. Requirements imposed on LOA Holder must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The specified geographical region is the Mid-Atlantic Bight, defined as waters from Cape Hatteras, North Carolina to Cape Cod, Massachusetts and extending into the west Atlantic to the 100-m isobath, and includes, but it not limited to, the Bureau of Ocean Energy Management (BOEM) Lease Area Outer Continental Shelf (OCS)-A 0534, OCS-A 0561, and portions of OCS-A 0501 Commercial Lease of Submerged Lands for Renewable Energy Development, along export cable routes, and at the sea-to-shore transition points in Barnstable County, Massachusetts.

(c) 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.

§ 217.321 Effective dates.

Regulations in this subpart are effective from March 27, 2025, through March 26, 2030.

§ 217.322 Permissible methods of taking.

Under a Letter of Authorization (LOA) issued pursuant to § 216.106 of this chapter and § 217.326 or § 217.327, LOA Holder, and those persons it authorizes or funds to conduct activities on its behalf, may incidentally, but not intentionally, take marine mammals within the area described in § 217.320(b) in the following ways, provided LOA Holder is in complete compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA:

(a) By Level B harassment associated with the acoustic disturbance of marine mammals by impact and vibratory pile driving and drilling (foundation installation), UXO/MEC detonations, and HRG site characterization surveys;

(b) By Level A harassment associated with the acoustic disturbance of marine mammals by impact pile driving of WTG and ESP foundations and UXO/MEC detonations;

(c) Take by mortality or serious injury of any marine mammal species is not authorized; and

(d) The incidental take of marine mammals by the activities listed in paragraphs (a) and (b) of this section is limited to the following species:

TABLE 1 TO PARAGRAPH (d)

Marine mammal species	Scientific name	Stock
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic.
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic.
Blainville's beaked whale	<i>Mesoplodon densirostris</i>	Western North Atlantic.
Blue whale	<i>Balaenoptera musculus</i>	Western North Atlantic.
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic, offshore.
Clymene dolphin	<i>Stenella clymene</i>	Western North Atlantic.
Cuvier's beaked whale	<i>Ziphius cavirostris</i>	Western North Atlantic.
Dwarf sperm whale	<i>Kogia sima</i>	Western North Atlantic.
False killer whale	<i>Pseudorca crassidens</i>	Western North Atlantic.
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic.
Fraser's dolphin	<i>Lagenodelphis hosei</i>	Western North Atlantic.
Gervais' beaked whale	<i>Mesoplodon europaeus</i>	Western North Atlantic.
Gray seal	<i>Halichoerus grypus</i>	Western North Atlantic.
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy.
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic.
Harp seal	<i>Pagophilus groenlandicus</i>	Western North Atlantic.
Hooded seal	<i>Cystophora cristata</i>	Western North Atlantic.
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine
Killer whale	<i>Orcinus orca</i>	Western North Atlantic.
Long-finned pilot whale	<i>Globicephala melas</i>	Western North Atlantic.
Melon-headed whale	<i>Peponocephala electra</i>	Western North Atlantic.
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal.
North Atlantic right whale	<i>Eubalaena glacialis</i>	Western North Atlantic.
Northern bottlenose whale	<i>Hyperoodon ampullatus</i>	Western North Atlantic.

TABLE 1 TO PARAGRAPH (d)—Continued

Marine mammal species	Scientific name	Stock
Pantropical spotted dolphin	<i>Stenella attenuata</i>	Western North Atlantic.
Pygmy killer whale	<i>Feresa attenuata</i>	Western North Atlantic.
Pygmy sperm whale	<i>Kogia breviceps</i>	Western North Atlantic.
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic.
Rough-toothed dolphin	<i>Steno bredanensis</i>	Western North Atlantic.
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia.
Short-beaked common dolphin	<i>Delphinus delphis</i>	Western North Atlantic.
Short-finned pilot whale	<i>Globicephala macrorhynchus</i>	Western North Atlantic.
Sowerby's beaked whale	<i>Mesoplodon bidens</i>	Western North Atlantic.
Sperm whale	<i>Physeter macrocephalus</i>	Western North Atlantic.
Spinner dolphin	<i>Stenella longirostris</i>	Western North Atlantic.
Striped dolphin	<i>Stenella coeruleoalba</i>	Western North Atlantic.
True's beaked whale	<i>Mesoplodon mirus</i>	Western North Atlantic.
White-beaked dolphin	<i>Lagenorhynchus albirostris</i>	Western North Atlantic.

§ 217.323 Prohibitions.

Except for the takings described in § 217.322 and authorized by a LOA issued under § 217.326 or § 217.327, it is unlawful for any person to do any of the following in connection with the activities described in this subpart:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under this subpart;

(b) Take any marine mammal not specified in § 217.322(d);

(c) Take any marine mammal specified in § 217.322(d) in any manner other than as specified in § 217.322(a) and (b); or

(d) Take any marine mammal specified in § 217.322(d), after NMFS Office of Protected Resources determines such taking results in more than a negligible impact on the species or stocks of such marine mammals.

§ 217.324 Mitigation requirements.

When conducting the specified activities in the specified geographical region, LOA Holder must implement the following mitigation measures contained in this section and any LOA issued under §§ 217.326 and 217.327. These mitigation measures include, but are not limited to:

(a) *General conditions.* LOA Holder must comply with the following general measures:

(1) A copy of any issued LOA must be in the possession of LOA Holder and its designees, all vessel operators, visual protected species observers (PSOs), passive acoustic monitoring (PAM) operators, pile driver operators, and any other relevant designees operating under the authority of the issued LOA;

(2) LOA Holder must conduct training for construction, survey, and vessel personnel and the marine mammal monitoring team (PSO and PAM operators) prior to the start of all in-water construction activities in order to

explain responsibilities, communication procedures, marine mammal detection and identification, mitigation, monitoring, and reporting requirements, safety and operational procedures, and authorities of the marine mammal monitoring team(s). This training must be repeated for new personnel who join the work during the project. A description of the training program must be provided to NMFS at least 60 days prior to the initial training before in-water activities begin. Confirmation of all required training must be documented on a training course log sheet and reported to NMFS Office of Protected Resources prior to initiating project activities;

(i) A copy of the Marine Mammal Monitoring Plan must be made available on all vessels and staffed platforms. A simple guide must be included with the Marine Mammal Monitoring Plan to aid personnel in identifying species if they are observed in the vicinity of the project area.

(ii) [Reserved]

(3) Prior to and when conducting any in-water activities and vessel operations, LOA Holder personnel and contractors (e.g., vessel operators, PSOs) must use available sources of information on North Atlantic right whale presence in or near the Project Area including daily monitoring of the Right Whale Sightings Advisory System, and monitoring of Coast Guard VHF Channel 16 throughout the day to receive notification of any sightings and/or information regarding the establishment of mandatory or voluntary speed restrictions (e.g., Dynamic Management Areas (DMAs), Seasonal Management Areas (SMAs), and/or acoustically-triggered slow zones), and any information regarding North Atlantic right whale sighting locations to provide situational awareness for both vessel operators, PSO(s), and PAM operators; The marine

mammal monitoring team must monitor these systems no less than every 4 hours;

(4) Any marine mammal observed by project personnel must be immediately communicated to any on-duty PSOs, PAM operator(s), and all vessel captains. Any large whale observation or acoustic detection by PSOs or PAM operators must be conveyed to all vessel captains;

(5) LOA Holder must establish and implement minimum visibility, clearance, and shutdown zones as described in the LOA. For North Atlantic right whales, any visual detection by a PSO at any distance or acoustic detection by PAM operators within the PAM monitoring zone (where applicable for the specified activities) must trigger a delay to the commencement of pile driving (i.e., impact pile driving and vibratory pile driving) and drilling;

(6) PSOs and PAM operators have the authority to call for a delay or shutdown to an activity, and LOA Holder must instruct all vessel personnel regarding the authority of the PSOs and PAM operators. If a delay to commencing an activity is called for by the Lead PSO or PAM operator, LOA Holder must take the required mitigative action. If a shutdown of an activity is called for by a PSO or PAM operator, LOA Holder must take the required mitigative action unless shutdown would result in imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. Any disagreement between the PSO, PAM operator, and the activity operator regarding delays or shutdowns must only be discussed after the mitigative action has occurred;

(7) If an individual from a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized take number has been met, is observed entering or within the relevant

clearance zone prior to beginning a specified activity (e.g., pile driving (impact and vibratory), drilling, UXO/MEC detonations, and HRG acoustic sources), the activity must be delayed. If an activity is ongoing and individual from a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized take number has been met, is observed entering or within the relevant shutdown zone, the activity must be shut down (i.e., cease) immediately, unless shutdown would result in imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. The activity must not commence or resume until the animal(s) has been confirmed to have left the clearance area and is on a path away from the applicable zone or after 15 minutes with no further sightings for small odontocetes and pinnipeds or 30 minutes with no further sightings for all other species;

(8) Foundation installation (i.e., impact and vibratory pile driving, drilling), UXO/MEC detonation, and HRG survey activities must only commence when minimum visibility zones (for UXO/MEC detonations the visual clearance zones) are fully visible (e.g., not obscured by darkness, rain, fog, etc.) and the clearance zones are clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to initiation of equipment (i.e., vibratory and impact pile driving, drilling, UXO/MEC detonations, and HRG surveys that use boomers, sparkers). Any marine mammals observed within a clearance or shutdown zone must be allowed to remain in the area (i.e., must leave of their own volition) prior to commencing foundation installation activities, UXO/MEC detonation, or HRG surveys;

(9) In the event that a large whale species is sighted or acoustically detected that cannot be confirmed as a non-North Atlantic right whale, it must be treated as if it were a North Atlantic right whale for purposes of mitigation;

(10) For in-water construction heavy machinery activities listed in § 217.320(c), if a marine mammal is on a path towards or comes within 10 meters (m; 32.8 feet (ft)) of equipment, LOA Holder must cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment;

(11) All vessels must be equipped with a properly installed, operational Automatic Identification System (AIS) device and LOA Holder must report all Maritime Mobile Service Identify

(MMSI) numbers to NMFS Office of Protected Resources;

(12) By accepting the LOA, LOA Holder consents to on-site observation and inspections by Federal agency personnel (including NOAA personnel) during activities described in this subpart, for the purposes of evaluating the implementation and effectiveness of measures contained within the LOA and this subpart; and

(13) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with a PSO, PAM operator, or vessel crew member acting as an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment. Personnel may report any violations to the NMFS Office of Law Enforcement.

(b) *Vessel strike avoidance measures.* LOA Holder must comply with the following vessel strike avoidance measures while in the specified geographical region, unless a deviation is necessary to maintain safe maneuvering speed and justified because the vessel is in an area where oceanographic, hydrographic, and/or meteorological conditions severely restrict the maneuverability of the vessel; an emergency situation presents a threat to the health, safety, life of a person; or when a vessel is actively engaged in emergency rescue or response duties, including vessel-in-distress or environmental crisis response. An emergency is defined as a serious event that occurs without warning and requires immediate action to avert, control, or remedy harm.

(1) Prior to the start of the Project's activities involving vessels, all vessel personnel must receive a protected species training that covers, at a minimum: Identification of marine mammals that have the potential to occur in the specified geographical region; detection and observation methods in good weather conditions (i.e., clear visibility, low winds, low sea states) and bad weather conditions (i.e., fog, high winds, high sea states, with glare); sighting communication protocols; all vessel strike avoidance mitigation requirements; and information and resources available to the project personnel regarding the applicability of Federal laws and regulations for protected species. This training must be repeated for any new vessel personnel who join the Project.

(i) Confirmation of the vessel personnel's training and understanding

of the LOA requirements must be documented on a training course log sheet and reported to NMFS Office of Protected Resources prior to vessel activities.

(ii) [Reserved]

(2) All vessel operators and dedicated visual observers must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course to avoid striking any marine mammal;

(3) All underway vessels operating at any speed must have a dedicated visual observer on duty at all times to monitor for marine mammals within a 180 degree direction of the forward path of the vessel (90 degree port to 90 degree starboard) located at an appropriate vantage point for ensuring vessels are maintaining appropriate separation distances. Dedicated visual observers may be third-party observers (i.e., NMFS-approved PSOs; see § 217.325(a)) or trained crew members (see paragraph (b)(1) of this section). Dedicated visual observers must be equipped with alternative monitoring technology (e.g., night vision devices, infrared cameras) for periods of low visibility (e.g., darkness, rain, fog, etc.). The dedicated visual observer must not have any other duties while observing for marine mammals and must receive prior training on protected species detection and identification, vessel strike avoidance procedures, how and when to communicate with the vessel captain, and reporting requirements in this subpart;

(4) All vessel operators and dedicated visual observers on each transiting vessel must continuously monitor U.S. Coast Guard VHF Channel 16, at the onset of transiting through the duration of transiting, over which North Atlantic right whale sightings are broadcasted. At the onset of transiting and at least once every 4 hours, vessel operators and/or trained crew member(s) must also monitor the project's Situational Awareness System (if applicable), WhaleAlert, and relevant NOAA information systems such as the Right Whale Sighting Advisory System (RWSAS) for the presence of North Atlantic right whales. Any large whale sighting by any Project personnel must be communicated immediately to all project-associated vessels;

(5) Any observations of any large whale by any LOA Holder staff or contractor, including vessel crew, must be communicated immediately to on-duty PSOs, PAM operators, and all vessel captains to increase situational awareness;

(6) All vessel operators must abide by existing applicable vessel speed

regulations (50 CFR 224.105). Nothing in this subpart exempts vessels from any other applicable marine mammal speed or approach regulations;

(7) Vessels, regardless of size, must not travel over 10 kn (11.5 mph) from November 1st through April 30th, annually, in the specified geographical region. During all other time periods, all vessels must transit active Slow Zones (*i.e.*, DMAs or acoustically-triggered slow zone), and SMAs at 10 kn or less (11.5 mph);

(i) If vessel(s) are traveling at speeds greater than 10 kn (11.5 mph) (*i.e.*, no speed restrictions are enacted) in the transit corridor (defined as from a port to the Lease Area or return), in addition to the required dedicated visual observer, LOA Holder must monitor the transit corridor in real-time with PAM prior to and during transits.

(ii) [Reserved]

(8) All vessels operators, regardless of their vessel's size, must immediately reduce speed to 10 kn or less when any large whale (other than a North Atlantic right whale), mother/calf pairs, or large assemblages of cetaceans are observed within 500 m (0.31 mi) of a transiting vessel;

(9) All vessels, regardless of size, must immediately reduce speed to 10 kn (11.5 mph) or less for at least 24 hours when a North Atlantic right whale is sighted at any distance by any project related personnel or acoustically detected by any project-related PAM system. Each subsequent observation or acoustic detection in the Project area must trigger an additional 24-hour period. If a North Atlantic right whale is reported via any of the monitoring systems (described in paragraph (b)(4) of this section) within 10 km of a transiting vessel(s), that vessel must operate at 10 kn (11.5 mph) or less for 24 hours following the reported detection. A slowdown in the transit corridor expires when there has been no further visual or acoustic detection in the transit corridor in the past 24 hours;

(10) All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If underway, all vessels must steer a course away from any sighted North Atlantic right whale at 10 kn (11.5 mph) or less such that the 500-m minimum separation distance requirement is not violated. If a North Atlantic right whale is sighted within 500 m of an underway vessel, that vessel must turn away from the whale(s), reduce speed and shift the engine to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 500 m. All vessels must comply with

North Atlantic right whale approach restrictions at 50 CFR 224.103(c);

(11) All vessels must maintain a minimum separation distance of 100 m (328 ft) from sperm whales and non-North Atlantic right whale baleen whales. If one of these species is sighted within 100 m of a transiting vessel, that vessel must turn away from the whale(s), reduce speed, and shift the engine(s) to neutral. Engines must then not be engaged until the whale has moved outside of the vessel's path and beyond 100 m;

(12) All vessels must maintain a minimum separation distance of 50 m from all delphinid cetaceans and pinnipeds with an exception made for those that approach the vessel (*e.g.*, bow-riding dolphins). If a delphinid cetacean or pinniped is sighted within 50 m of a transiting vessel, that vessel must turn away from the animal(s), reduce speed, and shift the engine to neutral, with an exception made for those that approach the vessel (*e.g.*, bow-riding dolphins). Engines must not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m;

(13) When a marine mammal(s) is sighted while a vessel is transiting, the vessel must take action as necessary to avoid violating the relevant separation distances (*e.g.*, attempt to remain parallel to the animal's course, slow down, and avoid abrupt changes in direction until the animal has left the area). This measure does not apply to any vessel towing gear or any situation where respecting the relevant separation distance would be unsafe (*i.e.*, any situation where the vessel is navigationally constrained);

(14) All vessels underway must not divert or alter course to approach any marine mammal; and

(15) LOA Holder must submit a Marine Mammal Vessel Strike Avoidance Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to the planned start of vessel activity. The plan must provide details on the vessel-based observer and PAM protocols for transiting vessels. The plan must also provide details on the transit corridor. If a plan is not submitted and approved by NMFS prior to vessel operations, all project vessels must travel at speeds of 10 kn (11.5 mph) or less. LOA Holder must comply with any approved Marine Mammal Vessel Strike Avoidance Plan.

(c) *WTG and ESP foundation installation.* The following requirements apply to impact and vibratory pile driving and drilling activities associated with the installation of WTG and ESP foundations:

(1) Impact pile driving and drilling must not occur January 1 through April 30, annually. Impact pile driving and drilling must not be planned in December; however, it may only occur if necessary to complete the Project within a given year with prior approval by NMFS. LOA Holder must notify NMFS in writing by September 1 of that year that pile driving or drilling cannot be avoided and circumstances are expected to necessitate pile driving or drilling in December;

(2) Vibratory pile driving (*e.g.*, vibratory setting of piles) must not occur December 1–May 31, annually;

(3) Monopiles must be no larger than 13-m in diameter. Pin piles must be no larger than 4 m in diameter. During all monopile and pin pile installation, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Hammer energies must not exceed 6,000 kilojoules (kJ) for monopile installations and 3,500 kJ for pin pile installation. No more than two monopiles or four pin piles may be installed per day. No concurrent pile driving (*i.e.*, impact pile driving or vibratory pile driving) or drilling may occur. All mitigation measures required for or applicable to jacket foundations are required for bottom-frame foundations that utilize pile foundations;

(i) LOA Holder must not initiate foundation installation (impact pile driving, vibratory pile driving, and drilling) except during daylight hours; daylight hours are defined as no earlier than 1 hour after civil sunrise and no later than 1.5 hours prior to civil sunset. Foundation installation may only continue into darkness if stopping operations represents a risk to human health, safety, and/or pile stability; and

(ii) LOA Holder must not initiate pile driving or drilling earlier than 1 hour after civil sunrise or later than 1.5 hours prior to civil sunset, unless LOA Holder submits, and NMFS approves, an Alternative Monitoring Plan for Nighttime Foundation Installation (*i.e.*, Nighttime Foundation Installation Plan), that demonstrates the efficacy of their night vision devices to effectively monitor the mitigation zones. LOA Holder must submit this plan or plans (if separate Daytime Reduced Visibility and Nighttime Monitoring Plans are prepared) at least 180 calendar days before foundation installation is planned to begin. This plan(s) must include, but is not limited to, a complete description of how LOA Holder will monitor foundation installation activities during reduced visibility conditions (*e.g.*, rain, fog) and

at night, including proof of the efficacy of monitoring devices (e.g., mounted thermal/infrared camera systems, handheld or wearable night vision devices NVDs, spotlights) in detecting marine mammals over the full extent of the required clearance and shutdown zones, including demonstration that the full extent of the minimum visibility zones can be effectively and reliably monitored. The plan must identify the efficacy of the technology at detecting marine mammals in the clearance and shutdown zones under all the various conditions anticipated during construction, including varying weather conditions, sea states, and in consideration of the use of artificial lighting. If the plan does not include a full description of the proposed technology, monitoring methodology, and data demonstrating to NMFS Office of Protected Resources' satisfaction that marine mammals can reliably and effectively be detected within the clearance and shutdown zones for monopiles and pin pile before and during pile driving and drilling, nighttime foundation installation (unless a pile was initiated 1.5 hours prior to civil sunset) may not occur. Additionally, this plan must contain a thorough description of how LOA Holder will monitor foundation installation activities during daytime when unexpected changes to lighting or weather occur during pile driving (i.e., impact or vibratory) or drilling that prevent visual monitoring of the full extent of the clearance and shutdown zones.

(4) LOA Holder must utilize soft-start at the beginning of monopile and pin pile impact pile driving and at any time following a cessation of impact pile driving of 30 minutes or longer;

(5) LOA Holder must establish clearance and shutdown zones, which must be measured using the radial distance around the pile driving or drilling location;

(6) LOA Holder must utilize PSO(s) and PAM operator(s), as described in § 217.325. At least nine on-duty PSOs must be actively observing marine mammals before, during, and after installation of foundation piles (i.e., monopiles and pin piles). At least three on-duty PSOs must be stationed and observing on the foundation installation vessel/platform. A minimum of three PSOs must be active on each of the two dedicated PSO vessels. On-duty PSOs must be located at the best vantage point to observe and document marine mammal sightings in proximity to the clearance and, if applicable, shutdown zones. Concurrently, at least one PAM operator must be actively monitoring for

marine mammals with PAM 60 minutes before, during, and 30 minutes after pile driving and drilling in accordance with a NMFS-approved PAM Plan;

(7) PSOs must visually monitor clearance zones for marine mammals for a minimum of 60 minutes prior to commencing pile driving or drilling. At least one PAM operator must review data from at least 24 hours prior to pile driving or drilling and actively monitor hydrophones for 60 minutes prior to, at all times during, and for 30 minutes after pile driving and drilling. The entire minimum visibility zone must be visible (i.e., not obscured by dark, rain, fog, etc.) for a full 60 minutes immediately prior to commencing pile driving or drilling. All clearance zones must be confirmed to be free of marine mammals for 30 minutes immediately prior to the beginning of pile driving, drilling, and soft-start procedures. PAM operators must immediately communicate all detections of marine mammals at any distance to the Lead PSO, including any determination regarding species identification, distance, and bearing and the degree of confidence in the determination;

(8) If a marine mammal is detected within or about to enter the applicable clearance zones during the clearance periods defined in paragraph (c)(7) of this section, activities must be delayed until the animal has been visually observed exiting the clearance zone or until a specific time period has elapsed with no further sightings. The specific time periods are 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species;

(i) For foundation installation activities between May 1–May 14 and November 1–December 31, if a North Atlantic right whale is observed at any distance or acoustically detected within the PAM monitoring zone of the pile being driven (impact or vibratory) or area being drilled, pile driving and drilling must be delayed or stopped (unless activities must proceed for human safety or installation feasibility concerns) and may not resume until the following day or until the animal is confirmed to have exited the zone via aerial or additional vessel surveys;

(ii) [Reserved]

(9) LOA Holder must deploy at least two functional noise abatement systems that reduce noise levels to the modeled harassment isopleths, assuming 10-dB attenuation, during all pile driving and drilling and comply with the following measures:

(i) A single bubble curtain must not be used;

(ii) A big double bubble curtain may be used without being paired with another noise attenuation device;

(iii) The bubble curtain(s) must distribute air bubbles using an air flow rate of at least $0.5 \text{ m}^3/(\text{min} \cdot \text{m})$. The bubble curtain(s) must surround 100 percent of the piling perimeter throughout the full depth of the water column. In the unforeseen event of a single compressor malfunction, the offshore personnel operating the bubble curtain(s) must adjust the air supply and operating pressure such that the maximum possible noise attenuation performance of the bubble curtain(s) is achieved;

(iv) The lowest bubble ring must be in contact with the seafloor for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100-percent seafloor contact;

(v) No parts of the ring or other objects may prevent full seafloor contact with a bubble curtain ring;

(vi) Construction contractors must train personnel in the proper balancing of airflow to the bubble curtain ring. LOA Holder must provide NMFS Office of Protected Resources with a bubble curtain performance test and maintenance report to review within 72 hours after each pile using a bubble curtain is installed. Additionally, a full maintenance check (e.g., manually clearing holes) must occur prior to each pile being installed;

(vii) Corrections to the bubble ring(s) to meet the performance standards in this paragraph (c)(9) must occur prior to pile driving and drilling of foundation piles. For any noise mitigation device in addition to the bubble curtain, LOA Holder must inspect and carry out appropriate maintenance on the system and ensure the system is functioning properly prior to every pile driving event; and

(viii) LOA Holder must inspect and carry out appropriate maintenance on the noise attenuation system prior to every foundation installation event (i.e., for each pile driven foundation) and UXO/MEC detonation and prepare and submit a Noise Attenuation System (NAS) inspection/performance report to NMFS Office of Protected Resources. For piles for which Thorough sound field verification (SFV) is carried out, this report must be submitted as soon as it is available, but no later than when the interim SFV report is submitted for the respective pile.

(10) PAM operator(s) must review data from at least 24 hours prior to pile driving and drilling and actively monitor hydrophones for 60 minutes prior to pile driving and drilling. All

clearance zones must be acoustically confirmed to be free of marine mammals for 60 minutes before activities can begin immediately prior to starting vibratory pile driving, drilling, and a soft-start of impact pile driving. PAM operators will continue to monitor for marine mammals for at least 30 minutes after pile driving or drilling concludes. The exact details for PAM requirements must be submitted to NMFS within the PAM plan;

(i) LOA Holder must implement PAM in accordance with the NMFS-approved PAM Plan, as described in § 217.325(c)(9). The PAM system components (*i.e.*, acoustic buoys) must not be placed closer than 1 km (0.6 mi) to the pile being driven so that the activities do not mask the PAM system. LOA Holder must demonstrate and prove the detection range of the system they plan to deploy while considering potential masking from concurrent pile-driving and vessel noise. The PAM system must be designed to detect all marine mammals to the maximum extent practicable, maximize baleen whale detections, and must be capable of detecting North Atlantic right whales within the PAM monitoring zone;

(ii) [Reserved]

(11) For North Atlantic right whales, any visual observation by a PSO at any distance or acoustic detection within the PAM Monitoring Zone must trigger a delay to the commencement of pile driving. The North Atlantic right whale clearance zone may only be declared clear if no North Atlantic right whale acoustic or visual detections have occurred within the clearance zone during the 60-minute monitoring period. Any large whale sighting by a PSO or detected by a PAM operator that cannot be identified as a non-North Atlantic right whale must be treated as if it were a North Atlantic right whale;

(12) If a marine mammal is detected (visually or acoustically) entering or within the respective shutdown zone after pile driving has begun, the PSO or PAM operator must call for a shutdown of pile driving or drilling. If a marine mammal is detected entering or within the respective shutdown zone after pile driving or drilling has begun, LOA Holder must stop pile driving or drilling immediately unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual or risk of damage to a vessel that creates risk of injury or loss of life for individuals, or the lead engineer determines there is pile refusal or pile instability. If pile driving or drilling is not shut down, LOA Holder must reduce hammer energy to the lowest level practicable and the reason(s) for

not shutting down must be documented and reported to NMFS Office of Protected Resources within the applicable monitoring reports (*e.g.*, weekly, monthly) (see § 217.325(f));

(13) A visual observation or acoustic detection of a North Atlantic right whale at any distance by PSOs or an acoustic detection within the PAM monitoring zone triggers shutdown requirements under paragraph (c)(12) of this section. If pile driving or drilling has been shut down due to the presence of a North Atlantic right whale, pile driving or drilling may not restart until the North Atlantic right whale has neither been visually or acoustically detected by on-duty PSOs and PAM operators for 30 minutes;

(14) If pile driving or drilling has been shut down due to the presence of a marine mammal other than a North Atlantic right whale, pile driving or drilling must not restart until either the marine mammal(s) has voluntarily left the specific clearance zones and has been visually or acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred. The specific time periods are 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other marine mammal species. In cases where these criteria are not met, pile driving may restart only if necessary to maintain pile stability at which time LOA Holder must use the lowest hammer energy practicable to maintain stability; and

(15) LOA Holder must conduct SFV during the following foundation installation activities in accordance with the following requirements:

(i) For the first construction year, Thorough SFV must be conducted for the first three monopiles installed with only an impact hammer (*i.e.*, impact pile driving); the first three monopiles installed with a vibratory hammer (*i.e.*, vibratory pile driving or setting) followed by an impact hammer; the first two jacket foundations (all piles) installed; the first foundation (regardless of type) where drilling is used; the first monopile and first jacket foundation (all piles) installed in December (winter sound speed profile); and, the first foundation for any foundation scenarios that were modeled for the exposure analysis (*e.g.*, rated hammer energy, number of strikes, representative location) that does not fall into one of the previously listed categories (*e.g.*, if the first two jacket foundation are installed with only an impact hammer, Thorough SFV would be required for the first jacket foundation installed with vibratory and impact pile driving);

(ii) For any subsequent construction year, Thorough SFV must be conducted on the first monopile and first jacket foundation (all piles) if there are no changes to the pile driving equipment (*e.g.*, same hammer, same Noise Attenuation System); Thorough SFV requirements for the first construction year apply if a revised Facilities Design Report and Fabrication and Installation Report (FDR/FIR) or other information is submitted to BOEM and Bureau of Safety and Environmental Enforcement (BSEE) that details changes to the equipment (*e.g.*, different hammer, different noise attenuation system); if any foundation type or technique included in the requirements for the first construction year that was not installed until a subsequent construction year (*e.g.*, if drilling is not used until year 2 or 3, the first foundation where relief drilling is used must have Thorough SFV);

(iii) During Thorough SFV, installation of the next foundation (of the same type/foundation method) may not proceed until LOA Holder has reviewed the initial results from the Thorough SFV and determined that there were no exceedances of any distances to the identified thresholds based on modeling assuming 10 dB attenuation. Subsequent SFV measurements are also required should larger piles be installed or if additional monopiles are driven that may produce louder sound fields than those previously measured (*e.g.*, higher hammer energy, greater number of strikes, *etc.*). If any of the Thorough SFV measurements from any pile indicate that the distance to any isopleth of concern for any species is greater than those modeled assuming 10 dB attenuation, LOA Holder must notify NMFS within 24 hours of reviewing the Thorough SFV measurements and must implement the following measures for the next pile of the same type/installation methodology, as applicable;

(iv) If any of the Thorough SFV measurements indicate that the distances to level A thresholds for marine mammals (peak or cumulative) are greater than the modeled distances (assuming 10 dB attenuation), the clearance and shutdown zones for subsequent piles of the same type (*e.g.*, if triggered by SFV results for a monopile, for the next monopile) must be increased so that they are at least the size of the distances to those thresholds as indicated by SFV. For every 1,500 m that a marine mammal clearance or shutdown zone is expanded, additional PSOs must be deployed from additional platforms/vessels to ensure adequate and complete monitoring of the

expanded shutdown and/or clearance zone; LOA Holder must deploy any additional PSOs consistent with the approved Marine Mammal Monitoring Plan in consideration of the size of the new zones and the species that must be monitored use of the expanded clearance and shutdown zones must continue for additional piles until LOA Holder requests and receives concurrence from NMFS Office of Protected Resources and Greater Atlantic Regional Fisheries Office (GARFO) to revert to the original clearance and shutdown zones. LOA Holder must identify one or more additional, modified, and/or alternative noise attenuation measure(s) and/or operational change(s) included in the approved SFV plan that is expected to reduce sound levels to the modeled distances and must implement that measure for the next pile of the same type and pile driving method that is installed (e.g., if triggered by SFV results for a monopile installed with vibratory pile driving followed by impact pile driving, for the next monopile with vibratory pile driving followed by impact pile driving). Attenuation measures that could reduce sound levels to the modeled distances include but are not limited to adding a noise attenuation device, adjusting hammer operations, and adjusting or otherwise modifying the noise mitigation system. LOA Holder must provide written notification to NMFS Office of Protected Resources of the changes implemented within 24 hours of their implementation. Following installation of a pile with additional, alternative, or modified noise attenuation measures/operational changes if Thorough SFV results indicate that all isopleths of concern are within distances to isopleths of concern modeled assuming 10 dB attenuation, Thorough SFV must be conducted on two additional piles of the same type/installation method (for a total of at least three piles with consistent noise attenuation measures). If the Thorough SFV results from all three of those piles are within the distances to isopleths of concern modeled assuming 10 dB attenuation, then LOA Holder must continue to implement the approved additional, alternative, or modified noise attenuation measures/operational changes. LOA Holder can request concurrence from NMFS Office of Protected Resources to return to the original clearance and shutdown zones;

(v) In addition to this SFV monitoring, which will follow a specific comprehensive methodology described in the SFV Plan required in

§ 217.325(c)(8), LOA Holder also must conduct Abbreviated SFV for all other foundations, using at least one acoustic recorder for every foundation for which thorough SFV monitoring is not conducted. Abbreviated SFV consists of: SFV measurements made at a single acoustic recorder, consisting of a near-bottom and mid-water hydrophone, at approximately 750 m from the pile, in the direction of lowest modeled transmission loss, to record sounds throughout the duration of all pile driving (inclusive of relief drilling) of each foundation. If measured levels from Abbreviated SFV for any pile are greater than expected levels, LOA Holder must evaluate the available information from the pile installation to determine if there is an identifiable cause of the exceedance (i.e., a failure of the noise attenuation system), identify and implement corrective action, and report this information to NMFS Office of Protected Resources within 48 hours of completion of the installation of the pile (inclusive of all pile driving and drilling), during which the exceedance occurred. If LOA Holder can demonstrate that the exceedance was the result of a failure of the noise attenuation system (e.g., loss of a generator supporting a bubble curtain such that one bubble curtain failed during pile driving) that can be remedied in a way that returns the noise attenuation system to pre-failure conditions, LOA Holder can request concurrence from NMFS Office of Protected Resources to proceed without Thorough SFV monitoring that would otherwise be required within 72 hours. LOA Holder is required to remedy any such failure of the noise attenuation system prior to carrying out any additional pile driving or drilling.

(vi) Thorough SFV measurements must be made at a minimum of four distances from the pile(s) being driven, along a single transect, in the direction of lowest transmission loss (i.e., projected lowest transmission loss coefficient), including, but not limited to, 750 m (2,460 ft) and three additional ranges, including at least, the modeled Level B harassment isopleth zones assuming 10 dB attenuation. At least one additional measurement at an azimuth 90 degrees from the array at 750 m must be made. At each location, there must be a near bottom and mid-water column hydrophone (measurement system).

(vii) The recordings must be continuous throughout the duration of all pile driving and drilling of each foundation.

(viii) The SFV measurement systems must have a sensitivity appropriate for

the expected sound levels from pile driving and drilling received at the nominal ranges throughout the installation of the pile. The frequency range of SFV measurement systems must cover the range of at least 20 hertz (Hz) to 20 kilohertz (kHz); The SFV measurement systems must be designed to have omnidirectional sensitivity and so that the broadband received level of all pile driving and drilling activities exceeds the system noise floor by at least 10 dB. The dynamic range of the SFV measurement system must be sufficient such that at each location, and the signals avoid poor signal-to-noise ratios for low amplitude signals and avoid clipping, nonlinearity, and saturation for high amplitude signals.

(ix) All hydrophones used in SFV measurements systems are required to have undergone a full system, traceable laboratory calibration conforming to International Electrotechnical Commission (IEC) 60565, or an equivalent standard procedure, from a factory or accredited source to ensure the hydrophone receives accurate sound levels, at a date not to exceed 2 years before deployment. Additional in situ calibration checks using a pistonphone are required to be performed before and after each hydrophone deployment. If the measurement system employs filters via hardware or software (e.g., high-pass, low-pass, etc.), which is not already accounted for by the calibration, the filter performance (i.e., the filter's frequency response) must be known, reported, and the data corrected before analysis.

(x) LOA Holder must be prepared with additional equipment (hydrophones, recording devices, hydrophone calibrators, cables, batteries, etc.), which exceeds the amount of equipment necessary to perform the measurements, such that technical issues can be mitigated before measurement.

(xi) LOA Holder must submit interim reports within 48 hours after each foundation is measured with Thorough SFV (§ 217.325(10) for interim and final reporting requirements).

(xii) If any of the interim Thorough SFV reports submitted indicate that SFV measurements exceed the modeled distances to Level A harassment and Level B harassment thresholds assuming 10-dB attenuation, then LOA Holder must implement additional measures on all subsequent foundations to ensure the measured Level A and Level B harassment isopleths do not exceed those modeled for foundation installation, assuming 10dB attenuation. LOA Holder must also increase clearance and shutdown zone sizes to

those identified by NMFS until SFV measurements on at least three additional foundations demonstrate acoustic distances to harassment thresholds meet or are less than those modeled assuming 10-dB of attenuation. For every 1,500 m that a marine mammal clearance or shutdown zone is expanded, additional PSOs must be deployed from additional platforms/vessels to ensure adequate and complete monitoring of the expanded shutdown and/or clearance zone; LOA Holder must optimize the noise attenuation systems (e.g., ensure hose maintenance, pressure testing, etc.) to, at least, meet noise levels modeled, assuming 10-dB attenuation, within three piles or else foundation installation activities must cease until NMFS and LOA Holder can evaluate the situation and ensure future piles will not exceed noise levels modeled assuming 10-dB attenuation.

(xiii) If SFV measurements collected during installation of foundation piles indicate ranges to the isopleths, corresponding to Level A harassment and Level B harassment thresholds, are greater than the ranges predicted by modeling (assuming 10 dB attenuation), LOA Holder must implement additional noise mitigation measures prior to installing the next foundation. Additional acoustic measurements must be taken after each modification.

(xiv) If, after additional measurements conducted pursuant to requirements of paragraph (c)(15)(i) and (ii) of this section, acoustic measurements indicate that ranges to isopleths corresponding to the Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10-dB attenuation), LOA Holder may request to NMFS Office of Protected Resources a modification of the clearance and shutdown zones. For NMFS Office of Protected Resources to consider a modification request for reduced zone sizes, LOA Holder must have conducted SFV measurements on an additional three foundations and ensure that subsequent foundations would be installed under conditions that are predicted to produce smaller harassment zones than those modeled assuming 10-dB of attenuation.

(xiv) LOA Holder must conduct SFV measurements during turbine operations to estimate turbine operational source levels and transmission loss rates, in accordance with a NMFS-approved SFV Plan.

(d) *UXO/MEC detonations.* The following requirements apply to Unexploded Ordnances and Munitions and Explosives of Concern (UXO/MEC) detonations:

(1) Upon encountering a UXO/MEC, LOA Holder must only resort to high-order removal (i.e., detonation) if all other means of removal are impracticable (i.e., As Low As Reasonably Practicable (ALARP) risk mitigation procedure)) and this determination must be documented and submitted to NMFS;

(i) LOA Holder may detonate a maximum of 10 UXO/MECs, of varying sizes but no larger than 1,000 pounds (lbs; 454 kilograms (kg)) charge weight (i.e., E12), over the effective period of this rulemaking and LOA(s);

(ii) LOA Holder must provide NMFS Office of Protected Resources with notification of planned UXO/MEC detonation as soon as possible but at least 48 hours prior to the planned detonation, unless this 48-hour notification would create delays to the detonation that would result in imminent risk to human life or safety.

(2) UXO/MEC detonations must not occur from December 1 through May 31, annually; however, LOA Holder may detonate a UXO/MEC in December or May with NMFS' approval on a case-by-case basis;

(3) UXO/MEC detonations must only occur during daylight hours (1 hour after civil sunrise through 1.5 hours prior to civil sunset);

(4) No more than one detonation can occur within a 24-hour period;

(5) LOA Holder must deploy dual noise abatement systems during all UXO/MEC detonations and comply with the following requirements related to noise abatement:

(i) A single bubble curtain must not be used;

(ii) A big double bubble curtain may be used without being paired with another noise attenuation device;

(iii) The bubble curtain(s) must distribute air bubbles using an air flow rate of at least 0.5 m³/(min*m). The bubble curtain(s) must surround 100 percent of the UXO/MEC detonation perimeter throughout the full depth of the water column. In the unforeseen event of a single compressor malfunction, the offshore personnel operating the bubble curtain(s) must make appropriate adjustments to the air supply and operating pressure such that the maximum possible noise attenuation performance of the bubble curtain(s) is achieved;

(iv) The lowest bubble ring must be in contact with the seafloor for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100-percent seafloor contact;

(v) No parts of the ring or other objects may prevent full seafloor contact;

(vi) Construction contractors must train personnel in the proper balancing of airflow to the ring. Construction contractors must submit an inspection/performance report for approval by LOA Holder within 72 hours following the performance test. LOA Holder must then submit that report to NMFS Office of Protected Resources;

(vii) Corrections to the bubble ring(s) to meet the performance standards in this paragraph (d)(5) must occur prior to UXO/MEC detonations. If LOA Holder uses a noise mitigation device in addition to the bubble curtain, LOA Holder must maintain similar quality control measures as described in this paragraph (d)(5); and

(viii) LOA Holder must inspect and carry out appropriate maintenance on the noise attenuation system prior to every foundation installation event (i.e., for each pile driven foundation) and UXO/MEC detonation and prepare and submit a NAS inspection/performance report to NMFS Office of Protected Resources. For activities which Thorough SFV is carried out, this report must be submitted as soon as it is available, but no later than when the interim SFV report is submitted for the respective pile.

(6) LOA Holder must conduct SFV during all UXO/MEC detonations at a minimum of three locations (at two water depths at each location) from each detonation in a direction toward deeper water in accordance with the following requirements:

(i) LOA Holder must empirically determine source levels (peak and cumulative sound exposure level), the ranges to the isopleths corresponding to the Level A harassment and Level B harassment thresholds in meters, and the transmission loss coefficient(s). LOA Holder may estimate ranges to the Level A harassment and Level B harassment isopleths by extrapolating from in-situ measurements conducted at several distances from the detonation location monitored.

(ii) The SFV measurement systems must have a sensitivity appropriate for the expected sound levels from detonations received at the nominal ranges throughout the detonation; the frequency range of the SFV measurement systems must cover the range of at least 20 Hz to 20 kHz; and the SFV measurement systems will be designed to have omnidirectional sensitivity and will be designed so that the predicted broadband received level of all UXO/MEC detonations exceeds the system noise floor by at least 10 dB.

The dynamic range of the SFV measurement systems must be sufficient such that at each location, the signals avoid poor signal-to-noise ratios for low amplitude signals and the signals avoid clipping, nonlinearity, and saturation for high amplitude signals.

(iii) All hydrophones used in SFV measurements systems are required to have undergone a full system, traceable laboratory calibration conforming to IEC 60565, or an equivalent standard procedure, from a factory or accredited source to ensure the hydrophone receives accurate sound levels, at a date not to exceed 2 years before deployment. Additional in situ calibration checks using a pistonphone are required to be performed before and after each hydrophone deployment. If the measurement system employs filters via hardware or software (*e.g.*, high-pass, low-pass, *etc.*), which is not already accounted for by the calibration, the filter performance (*i.e.*, the filter's frequency response) must be known, reported, and the data corrected before analysis.

(iv) LOA Holder must be prepared with additional equipment (hydrophones, recording devices, hydrophone calibrators, cables, batteries, *etc.*), which exceeds the amount of equipment necessary to perform the measurements, such that technical issues can be mitigated before measurement.

(v) LOA Holder must submit interim reports within 48 hours after each UXO/MEC detonation is measured (see § 217.325(f)(10) for interim and final reporting requirements).

(vi) If SFV measurements collected during UXO/MEC detonation indicate ranges to the isopleths, corresponding to Level A harassment and Level B harassment thresholds, are greater than the ranges predicted by modeling (assuming 10 dB attenuation), LOA Holder must implement additional noise mitigation measures prior to the next UXO/MEC detonation. Additional acoustic measurements must be taken after each modification. LOA Holder must also increase the clearance zone size to reflect the results of SFV in collaboration with NMFS Office of Protected Resources. Use of the expanded clearance zone must continue for all additional detonations until LOA Holder requests and receives concurrence from NMFS Office of Protected Resources to revert to the original clearance zone. LOA Holder must provide written notification to NMFS Office of Protected Resources of the changes planned for the next detonation within 24 hours of implementation.

(vii) LOA Holder must optimize the noise attenuation systems (*e.g.*, ensure hose maintenance, pressure testing, *etc.*) to, at least, meet noise levels modeled, assuming 10-dB attenuation. UXO/MEC detonation activities must cease until NMFS and LOA Holder can evaluate the situation and ensure future detonations will not exceed noise levels modeled assuming 10-dB attenuation.

(viii) LOA Holder must identify one or more additional, modified, and/or alternative noise attenuation measures or other change to the detonation plans (included in the SFV Plan) that is expected to reduce sound levels to the modeled distances. These measures must be implemented for the next detonation.

(7) LOA Holder must establish and implement clearance zones for UXO/MEC detonation using both visual and acoustic monitoring, as described in the LOA;

(8) At least six on-duty PSOs must be actively observing marine mammals before, during, and after any UXO/MEC detonation. At least three on-duty PSOs must be stationed and observing on a vessel as close as safely possible to the detonation site and, in addition, at least three on-duty PSOs must be stationed on an additional PSO-dedicated vessel or aerial platform. Concurrently, at least one acoustic monitoring PSO (*i.e.*, passive acoustic monitoring (PAM) operator) must be actively monitoring for marine mammals with PAM before, during, and after detonation;

(i) Clearance zones must be increased to reflect the results of SFV. For every 1,500 m that a clearance zone is expanded, additional PSOs must be deployed from additional platforms/vessels to ensure adequate and complete monitoring of the expanded zone.

(ii) [Reserved]

(9) If the clearance zone is larger than 2 km (based on charge weight), LOA Holder must deploy an additional PSO-dedicated vessel or aircraft with at least three on-duty PSOs stationed on it and actively observing for marine mammals. If the clearance zone is larger than 5 km (based on charge weight), an aerial platform must be used unless LOA Holder is unable to secure an aerial platform(s) with the appropriately trained pilots and PSOs. In such a case, the LOA Holder must submit an alternative monitoring plan at least 90 days before any UXO/MEC detonation that would describe how they would effectively monitor clearance zones beyond 5 km, including an explanation of additional vessels/platforms and PSO deployments. This plan must be approved by NMFS before any UXO/MEC detonation may occur;

(i) If an aircraft is used, two on-duty PSOs must be used and located at the appropriate vantage point on the aircraft. These additional PSOs would maintain watch during the same time period as the PSOs on the primary monitoring vessel.

(10) At least one PAM operator must review data from at least 24 hours prior to a detonation and actively monitor hydrophones for 60 minutes prior to detonation. All clearance zones must be acoustically confirmed to be free of marine mammals for 60 minutes prior to commencing a detonation. PAM operators will continue to monitor for marine mammals at least 30 minutes after a detonation;

(11) All clearance zones must be visually confirmed to be free of marine mammals for 30 minutes before a detonation can occur. All on-duty PSOs must also maintain watch for 30 minutes after the detonation event;

(12) If a marine mammal is observed entering or within the relevant clearance zone prior to the initiation of a detonation, detonation must be delayed and must not begin until either the marine mammal(s) has voluntarily left the specific clearance zones and have been visually and acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections. The specific time periods are 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other marine mammal species;

(13) For North Atlantic right whales, any visual observation or acoustic detection must trigger a delay to the detonation of a UXO/MEC. Any large whale sighting by a PSO or detected by a PAM operator that cannot be identified by species must be treated as if it were a North Atlantic right whale; and

(14) A pressure transducer must be used to monitor pressure levels during all UXO/MEC detonations.

(e) *HRG surveys.* The following requirements apply to HRG surveys operating sub-bottom profilers (SBPs) (*i.e.*, boomers, sparkers):

(1) SBPs (hereinafter referred to as "acoustic sources") must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Acoustic sources must be used at the lowest practicable source level to meet the survey objective, when in use, and must be turned off when they are not necessary for the survey;

(2) LOA Holder is required to have at least one PSO on active duty per HRG vessel during HRG surveys that are conducted during daylight hours (*i.e.*,

from 30 minutes prior to civil sunrise through 30 minutes following civil sunset) and at least two PSOs on active duty per vessel during HRG surveys that are conducted during nighttime hours;

(3) LOA Holder is required to ramp-up SBPs prior to commencing full power, unless the equipment operates on a binary on/off switch, and ensure visual clearance zones are fully visible (e.g., not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to the initiation of survey activities using acoustic sources specified in the LOA;

(4) Ramp-ups must be scheduled so as to minimize the time spent with the source activated. Prior to a ramp-up procedure starting or activating acoustic sources, the acoustic source operator (operator) must notify a designated PSO of the planned start of ramp-up as agreed upon with the Lead PSO. The notification time should not be less than 60 minutes prior to the planned ramp-up or activation in order to allow the PSOs time to monitor the clearance zone(s) for 30 minutes prior to the initiation of ramp-up or activation (pre-start clearance). During this 30-minute pre-start clearance period, the entire applicable clearance zones must be visible. Ramp-up may occur at times of poor visibility, including nighttime, only if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up;

(i) A PSO conducting pre-start clearance observations must be notified again immediately prior to reinitiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.

(ii) [Reserved]

(5) Prior to starting the survey and after receiving confirmation from the PSOs that the clearance zone is clear of any marine mammals, LOA Holder is required to ramp-up acoustic sources to half power for 5 minutes prior to commencing full power, unless the source operates on a binary on/off switch (in which case ramp-up is not required). LOA Holder must also ensure visual clearance zones are fully visible (e.g., not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to the initiation of survey activities using acoustic sources; Ramp-up and activation must be delayed if a marine mammal(s) enters its respective shutdown zone. Ramp-up and activation may only be reinitiated if the animal(s) has been observed exiting its respective shutdown zone or until 15 minutes for

small odontocetes and pinnipeds, and 30 minutes for all other species, has elapsed with no further sightings;

(6) LOA Holder must establish and implement clearance and shutdown zones for HRG surveys using visual monitoring; LOA Holder must implement a 30-minute clearance period of the clearance zones immediately prior to the commencing of the survey or when there is more than a 30 minute break in survey activities or PSO monitoring. A clearance period is a period when no marine mammals are detected in the relevant zone;

(7) If a marine mammal is observed within a clearance zone during the clearance period, ramp-up or acoustic surveys may not begin until the animal(s) has been observed voluntarily exiting its respective clearance zone or until a specific time period has elapsed with no further sighting. The specific time period is 15 minutes for small odontocetes and pinnipeds, and 30 minutes for all other species;

(8) Any large whale sighted by a PSO within 1 km of the acoustic source(s) that cannot be identified by species must be treated as if it were a North Atlantic right whale and LOA Holder must apply the mitigation measure applicable to this species;

(9) In any case when the clearance process has begun in conditions with good visibility, including via the use of night vision equipment (infrared (IR)/thermal camera), and the Lead PSO has determined that the clearance zones are clear of marine mammals, survey operations may commence (i.e., no delay is required) despite periods of inclement weather and/or loss of daylight.

(10) Once the survey has commenced, LOA Holder must shut down acoustic sources if a marine mammal enters a respective shutdown zone, except in cases when the shutdown zones become obscured for brief periods due to inclement weather, survey operations may continue (i.e., no shutdown is required) so long as no marine mammals have been detected. The shutdown requirement does not apply to small delphinids of the following genera: *Delphinus*, *Stenella*, *Lagenorhynchus*, and *Tursiops*. If there is uncertainty regarding the identification of a marine mammal species (i.e., whether the observed marine mammal belongs to one of the delphinid genera for which shutdown is waived), the PSOs must use their best professional judgment in making the decision to call for a shutdown. Shutdown is required if a delphinid that belongs to a genus other than those specified in this paragraph

(e)(10) is detected in the shutdown zone;

(11) If an acoustic source has been shut down due to the presence of a marine mammal, the use of an acoustic source may not commence or resume until the animal(s) has been confirmed to have left the Level B harassment zone or until a full 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other marine mammals have elapsed with no further sighting;

(12) LOA Holder must immediately shutdown any acoustic source if a marine mammal is sighted entering or within its respective shutdown zones. If there is uncertainty regarding the identification of a marine mammal species (i.e., whether the observed marine mammal belongs to one of the delphinid genera for which shutdown is waived), the PSOs must use their best professional judgment in making the decision to call for a shutdown. Shutdown is required if a delphinid that belongs to a genus other than those specified in paragraph (e)(10) of this section is detected in the shutdown zone;

(13) If an acoustic source is shut down for a period longer than 30 minutes, all clearance and ramp-up procedures must be initiated. If an acoustic source is shut down for reasons other than mitigation (e.g., mechanical difficulty) for less than 30 minutes, acoustic sources may be activated again without ramp-up only if PSOs have maintained constant observation and no additional detections of any marine mammal occurred within the respective shutdown zones; and

(14) If multiple HRG vessels are operating concurrently, any observations of marine mammals must be communicated to PSOs on all nearby survey vessels.

(f) *Fisheries monitoring surveys.* The following measures apply to fishery monitoring surveys:

(1) All captains and crew conducting fishery surveys must be trained in marine mammal detection and identification. Marine mammal monitoring will be conducted by the captain and/or a member of the scientific crew before within 1 nautical mile (nmi) (1.85 km; 1.2 mi) and 15 minutes prior to deploying gear), during, and for 15 minutes after haul back;

(2) Survey gear will be deployed as soon as possible once the vessel arrives on station. Gear must not be deployed if there is a risk of interaction with marine mammals. Gear may be deployed after 15 minutes of no marine mammal sightings within 1 nmi (1.85 km; 1.2 mi) of the sampling station;

(3) LOA Holder and/or its cooperating institutions, contracted vessels, or commercially-hired captains must implement the following “move-on” rule: If marine mammals are sighted within 1 nmi (1.2 mi) of the planned location and 15 minutes before gear deployment, then LOA Holder and/or its cooperating institutions, contracted vessels, or commercially-hired captains, as appropriate, must move the vessel away from the marine mammal to a different section of the sampling area. If, after moving on, marine mammals are still visible from the vessel, LOA Holder and its cooperating institutions, contracted vessels, or commercially-hired captains must move again or skip the station;

(4) If a marine mammal is at risk of interacting with deployed gear, all gear must be immediately removed from the water. If marine mammals are sighted before the gear is fully removed from the water, the vessel must slow its speed and maneuver the vessel away from the animals to minimize potential interactions with the observed animal;

(5) LOA Holder must maintain visual marine mammal monitoring effort during the entire period of time that gear is in the water (*i.e.*, throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, LOA Holder must take the most appropriate action to avoid marine mammal interaction;

(6) All fisheries monitoring gear must be fully cleaned and repaired (if damaged) before each use/deployment;

(7) LOA Holder’s fixed gear must comply with the Atlantic Large Whale Take Reduction Plan regulations at 50 CFR 229.32 during fisheries monitoring surveys;

(8) Trawl tows will be limited to a maximum of a 20-minute trawl time and must not exceed 3.0 kn (3.45 mph);

(9) All gear must be emptied as close to the deck/sorting area and as quickly as possible after retrieval;

(10) During trawl surveys, vessel crew must open the codend of the trawl net close to the deck in order to avoid injury to animals that may be caught in the gear;

(11) During any survey that uses vertical lines, buoy lines will be weighted and will not float at the surface of the water and all groundlines will consist of sinking line. All groundlines must be composed entirely of sinking line. Buoy lines must utilize weak links. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be

knots. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited;

(12) All in-water survey gear, including buoys, must be properly labeled with the scientific permit number or identification as LOA Holder-related research gear. All labels and markings on the gear, buoys, and buoy lines must also be compliant with the applicable regulations, and all buoy markings must comply with instructions received by the NOAA GARFO Protected Resources Division;

(13) All survey gear must be removed from the water whenever not in active survey use (*i.e.*, no wet storage);

(14) All reasonable efforts, that do not compromise human safety, must be undertaken to recover gear; and

(15) All lost gear associated with the fishery surveys must be reported to NOAA GARFO Protected Resources Division (nmfs.gar.incidental-take@noaa.gov) within 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear.

§ 217.325 Monitoring and reporting requirements.

LOA Holder must implement the following monitoring and reporting requirements when conducting the specified activities:

(a) *Protected species observer (PSO) and passive acoustic monitoring (PAM) operator qualifications.* LOA Holder must implement the following measures applicable to PSOs and PAM operators:

(1) LOA Holder must use independent, NMFS-approved PSOs and PAM operators meaning that the PSOs and PAM operators must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant crew with regard to the presence of protected species and mitigation requirements;

(2) All PSOs and PAM operators must have successfully attained a bachelor’s degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO or PAM operator has acquired the relevant skills through a suitable amount of alternate experience. Requests for such a waiver must be submitted to NMFS Office of Protected Resources and must include written justification containing

alternative experience. Alternate experience that may be considered includes but is not limited to: previous work experience conducting academic, commercial, or government sponsored marine mammal visual and/or acoustic surveys; or previous work experience as a PSO/PAM operator. All PSO’s and PAM operators should demonstrate good standing and consistently good performance of all assigned duties;

(3) All PSOs and PAM operators must successfully complete a required training course within the last 5 years, including obtaining a certificate of course completion;

(4) PSOs must have visual acuity in both eyes (with correction of vision being permissible) sufficient enough to discern moving targets on the water’s surface with the ability to estimate the target size and distance (binocular use is allowable); ability to conduct field observations and collect data according to the assigned protocols; sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations; writing skills sufficient to document observations, including but not limited to, the number and species of marine mammals observed, the dates and times of when in-water construction activities were conducted, the dates and time when in-water construction activities were suspended to avoid potential incidental take of marine mammals from construction noise within a defined shutdown zone, and marine mammal behavior; and the ability to communicate orally, by radio, or in-person, with project personnel to provide real-time information on marine mammals observed in the area;

(5) PSOs and PAM operators are responsible for obtaining NMFS’ approval. NMFS may approve PSOs and PAM operators as conditional or unconditional. A conditionally-approved PSO or PAM operator may be one who has completed training in the last 5 years but has not yet attained the requisite field experience. An unconditionally approved PSO or PAM operator is one who has completed training within the last 5 years and attained the necessary experience (*i.e.*, demonstrate experience with monitoring for marine mammals at clearance and shutdown zone sizes similar to those produced during the respective activity). Lead PSO(s) and Lead PAM operator(s) must be unconditionally approved and have a minimum of 90 days in a northwestern Atlantic Ocean offshore environment performing the role (either visual or acoustic), with the conclusion of the most recent relevant experience not

more than 18 months previous. A conditionally approved PSO or PAM operator must be paired with an unconditionally approved PSO or PAM operator;

(i) PSOs for HRG surveys may be unconditionally or conditionally approved. PSOs and PAM operators for foundation installation and UXO/MEC detonation must be unconditionally approved;

(ii) LOA Holder must submit NMFS previously approved PSOs and PAM operators to NMFS Office of Protected Resources for review and confirmation of their approval for specific roles at least 30 days prior to commencement of the activities requiring PSOs/PAM operators or 15 days prior to when new PSOs/PAM operators are required after activities have commenced;

(iii) For prospective PSOs and PAM operators not previously approved, or for PSOs and PAM operators whose approval is not current, LOA Holder must submit resumes for approval at least 60 days prior to PSO and PAM operator use. Resumes must include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO or PAM operator experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training and include which specific roles and activities the PSOs/PAM operators are being requested for. PAM operator experience must also include the information described in paragraph (a)(5)(iv) of this section;

(iv) PAM operators are responsible for obtaining NMFS approval. To be approved as a PAM operator, the person must meet the following qualifications: The PAM operator must demonstrate that they have prior large whale PAM experience with real-time acoustic detection systems and/or have completed specialized training for operating PAM systems that will be used for the Project; PAM operators must demonstrate that they are able to detect and identify Atlantic Ocean marine mammals sounds, in particular: North Atlantic right whale sounds, humpback whale sounds, and that they are able to deconflict humpback whale sounds from similar North Atlantic right whale sounds, and other co-occurring species' sounds in the area including sperm whales; must be able to distinguish between whether a marine mammal or other species sound is detected, possibly detected, or not detected and similar terminology must be used across companies/projects; where localization of sounds or deriving bearings and distance are possible, the

PAM operators must have demonstrated experience in the localization of sounds or deriving bearings and distance; PAM operators must be independent observers (*i.e.*, not construction personnel); PAM operators must demonstrate experience with relevant acoustic software and equipment; PAM operators must have the qualifications and relevant experience/training to safely deploy and retrieve equipment and program the software, as necessary; PAM operators must be able to test software and hardware functionality prior to operation; and PAM operators must have evaluated their acoustic detection software using the PAM Atlantic baleen whale annotated data set available at National Centers for Environmental Information (NCEI) and provide evaluation/performance metric;

(6) All PSOs must be trained in northwestern Atlantic Ocean marine mammal identification and behaviors and must be able to conduct field observations and collect data according to assigned protocols. Additionally, PSOs must have the ability to work with all required and relevant software and equipment necessary during observations (as described in paragraphs (b)(5) and (6) of this section);

(7) At least one on-duty PSO and PAM operator, where applicable, for each activity (*i.e.*, foundation installation, UXO/MEC detonation activities, and HRG surveys) must be designated as the Lead PSO. The Lead PSO must be unconditionally approved; and

(8) PSOs may work as PAM operators and vice versa, pending NMFS-approval; however, they may only perform one role at any one time and must not exceed work time restrictions, which will be tallied cumulatively.

(b) *General PSO and PAM operator requirements.* The following measures apply to PSOs and PAM operators and must be implemented by LOA Holder:

(1) PSOs must monitor for marine mammals prior to, during, and following pile driving, drilling, UXO/MEC detonation activities, and HRG surveys that use sub-bottom profilers (with specific monitoring durations and needs described in paragraphs (c) through (f) of this section, respectively). Monitoring must be done while free from distractions and in a consistent, systematic, and diligent manner;

(2) PAM operator(s) must acoustically monitor for marine mammals prior to, during, and following all pile driving, drilling, and UXO/MEC detonation activities. PAM operators may be located on a vessel or remotely on-shore but must have the appropriate equipment (*i.e.*, computer station

equipped with a data collection software system available wherever they are stationed) and be in real-time communication with PSOs and transiting vessel captains;

(3) All PSOs must be located at the best vantage point(s) on any platform, as determined by the Lead PSO, in order to obtain 360-degree visual coverage of the entire clearance and shutdown zones around the activity area, and as much of the Level B harassment zone as possible, PAM operators may be located on a vessel or remotely on-shore. The PAM operator(s) must assist PSOs in ensuring full coverage of the clearance and shutdown zones;

(4) All on-duty visual PSOs must remain in real-time contact with the on-duty PAM operator(s). PAM operators must immediately communicate all acoustic detections of marine mammals to PSOs, including any determination regarding species identification, distance, and bearing (where relevant) relative to the pile being driven and the degree of confidence (*e.g.*, detected, possibly detected, not detected) in the determination. All on-duty Lead PSOs and PAM operator(s) must remain in contact with the on-duty construction personnel responsible for implementing mitigations (*e.g.*, delay to pile driving or UXO/MEC detonation) to ensure communication on marine mammal observations can easily, quickly, and consistently occur between all on-duty PSOs, PAM operator(s), and on-water Project personnel.

(i) The on-duty PAM operator(s) must inform the on-duty Lead PSO(s) of animal detections approaching or within applicable ranges of interest to the activity occurring via the data collection software system, (*e.g.*, Mysticetus or similar system) who must be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (*i.e.*, delay, shutdown); and

(ii) Any visual observations of marine mammals by any Project personnel must be communicated immediately to on-duty PSOs and vessel captains associated with other Project vessels to increase situational awareness.

(5) PSOs must use high magnification (25x) binoculars, standard handheld (7x) binoculars, and the naked eye to search continuously for marine mammals. During pile driving and drilling, at least the PSOs on the pile driving and drilling platform(s) and any dedicated PSO vessel that may be used must be equipped with functional Big Eye binoculars (*e.g.*, 25 x 150; 2.7 view angle; individual ocular focus; height control). These must be pedestal mounted on the deck at the best vantage

point that provides for optimal sea surface observation and PSO safety. A minimum of three on-duty PSOs must be active on a dedicated PSO vessel. PAM operators must have the appropriate equipment (*i.e.*, a computer station equipped with a data collection software system available wherever they are stationed) in accordance with a NMFS-approved PAM Plan;

(6) During all acoustic monitoring periods during the Project, PAM operators must use PAM systems approved by NMFS;

(7) During periods of low visibility (*e.g.*, darkness, rain, fog, poor weather conditions, *etc.*), PSOs must use alternative technology (*e.g.*, infrared or thermal cameras) to monitor the clearance and shutdown zones as approved by NMFS;

(8) PSOs and PAM operators must not exceed 4 consecutive watch hours on duty at any time, must have a 2-hour (minimum) break between watches, and must not exceed a combined watch schedule of more than 12 hours in a 24-hour period;

(9) Any PSO or PAM operator has the authority to call for a delay or shutdown of project activities;

(10) PSOs must remain in real-time contact with the PAM operators and construction personnel responsible for implementing mitigation (*e.g.*, delay to pile driving or UXO/MEC detonation) to ensure communication on marine mammal observations can easily, quickly, and consistently occur between all on-duty PSOs, PAM operator(s), and on-water Project personnel; and

(11) LOA Holder is required to use available sources of information on North Atlantic right whale presence to aid in monitoring efforts. These include daily monitoring of the Right Whale Sightings Advisory System, consulting of the WhaleAlert app, and monitoring of the Coast Guard's VHF Channel 16 throughout the day to receive notifications of any sightings and information associated with any DMA, to plan construction activities and vessel routes, if practicable, to minimize the potential for co-occurrence with North Atlantic right whales.

(c) *PSO and PAM operator requirements during WTG and ESP foundation installation.* The following measures apply to PSOs and PAM operators during WTG and ESP foundation installation and must be implemented by LOA Holder:

(1) PSOs and PAM operator(s) must monitor for marine mammals 60 minutes prior to, during, and 30 minutes following all pile-driving and drilling. If PSOs cannot visually monitor the minimum visibility zone prior to

pile driving and drilling at all times using the equipment described in paragraphs (b)(5) and (7) of this section, pile driving and drilling operations must not commence or must shutdown if they are currently active;

(2) All PSOs and PAM operators must begin monitoring 60 minutes prior to pile driving and drilling, during, and for 30 minutes after the activity. Pile driving and drilling must only commence when the minimum visibility zone is fully visible (*e.g.*, not obscured by darkness, rain, fog, *etc.*) and the clearance zones are clear of marine mammals for at least 30 minutes, as determined by the Lead PSO, immediately prior to the initiation of pile driving or drilling. PAM operators must assist the visual PSOs in monitoring by conducting PAM activities 60 minutes prior to any pile driving or drilling, during, and after for 30 minutes for the appropriate size PAM clearance zone (dependent on season). The entire minimum visibility zone must be clear for at least 30 minutes, with no marine mammal detections within the visual or PAM clearance zones prior to the start of pile driving or drilling;

(3) LOA Holder must conduct PAM for at least 24 hours immediately prior to pile driving and drilling activities. The PAM operator must review all detections from the previous 24-hour period immediately prior to pile driving or drilling.

(4) During use of any real-time PAM system, at least one PAM operator must be designated to monitor each system by viewing data or data products that would be streamed in real-time or in near real-time to a computer workstation and monitor;

(5) The PAM operator must inform the Lead PSO(s) on duty of animal detections approaching or within applicable ranges of interest to the pile driving activity via the data collection software system (*i.e.*, Mysticetus or similar system) who will be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (*i.e.*, delay or shutdown);

(6) All monitoring and reporting measures required for or applicable to jacket foundations are required for bottom-frame foundations that utilize pile foundations;

(7) LOA Holder must prepare and submit a Marine Mammal Monitoring Plan to NMFS Office of Protected Resources for review and approval at least 180 days before the planned start of any pile driving or drilling and abide by the plan if approved. LOA Holder must obtain both NMFS Office of

Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division's concurrence with this plan prior to the start of any pile driving or drilling. The plan must include final foundation project design (*e.g.*, number and type of piles, hammer type, noise abatement systems, anticipated start date, *etc.*) and all information related to PAM and PSO monitoring protocols for foundation installation activities. No foundation pile installation can occur without NMFS' approval of the plan;

(8) LOA Holder must submit an SFV plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of foundation installation activities and abide by the plan if approved. At minimum, the SFV Plan must describe how LOA Holder would ensure that the required foundation installation sites selected for SFV measurements are representative of the rest of the installation sites such that future pile installation events are anticipated to produce similar sound levels to those piles measured. In the case that these sites/scenarios are not determined to be representative of all other pile installation sites, LOA Holder must include information in the SFV Plan on how additional sites/scenarios would be selected for SFV measurements. This SFV Plan must also include methodology for collecting, analyzing, and preparing SFV measurement data for submission to NMFS Office of Protected Resources and describe how the effectiveness of the noise attenuation methodology would be evaluated based on the results. SFV for pile driving and drilling must not occur until NMFS approves the SFV Plan for this activity;

(9) LOA Holder must submit a Passive Acoustic Monitoring Plan (PAM Plan) to NMFS Office of Protected Resources for review and approval at least 180 days prior to the planned start of foundation installation activities and abide by the plan if approved. The PAM Plan must include a description of all proposed PAM equipment, address how the proposed passive acoustic monitoring must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind. The plan must describe all proposed PAM equipment, procedures, and protocols including proof that vocalizing North Atlantic right whales will be detected within the PAM Monitoring Zone. No pile installation can occur if LOA Holder's PAM Plan does not receive approval from NMFS Office of Protected Resources and NMFS

GARFO Protected Resources Division; and

(10) LOA Holder must submit a Nighttime Monitoring Plan for foundation installation if LOA Holder intends to pile drive or drill outside the daily restriction in § 217.324(c). This plan must be submitted to NMFS Office of Protected Resources at least 180 calendar days before foundation installation is planned to begin. This plan(s) must contain a thorough description of how LOA Holder will monitor foundation installation activities (drilling, vibratory and impact pile driving) and at night, including proof of the efficacy of monitoring devices (*e.g.*, mounted thermal/infrared camera systems, hand-held or wearable NVDs, spotlights) in detecting marine mammals over the full extent of the required clearance and shutdown zones, including demonstration that the full extent of the minimum visibility zones can be effectively and reliably monitored. The plan must identify the efficacy of the technology at detecting marine mammals and sea turtles in the clearance and shutdown zones under all the various conditions anticipated during construction, including varying weather conditions, sea states, and in consideration of the use of artificial lighting. If the plan does not include a full description of the proposed technology, monitoring methodology, and data demonstrating to NMFS' satisfaction that marine mammals can reliably and effectively be detected within the clearance and shutdown zones for monopiles and jacket foundations before and during foundation installation (drilling, vibratory and impact pile driving), nighttime foundation installation must not occur; the only exception would be if safety necessitates continuing pile installation after dark for a foundation that was initiated 1.5 hours prior to civil sunset, in which case the Low Visibility components of the Monitoring Plan would be implemented.

(d) *PSO requirements during UXO/MEC detonations.* The following measures apply to PSOs UXO/MEC detonations and must be implemented by LOA Holder:

(1) All on-duty visual PSOs must remain in contact with the on-duty PAM operator, who would monitor the PAM systems for acoustic detections of marine mammals in the area, regarding any animal detection that might be approaching or found within the applicable zones no matter where the PAM operator is stationed (*e.g.*, onshore or on a vessel);

(2) If PSOs cannot visually monitor the clearance zone at all times using the

equipment described in paragraphs (b)(5) and (7) of this section; UXO/MEC operations must not commence or must shutdown if they are currently active;

(3) All PSOs must begin monitoring 60 minutes prior to UXO/MEC detonation, during, and for 30 minutes after the activity. UXO/MEC detonation must only commence when the minimum visibility zone is fully visible (*e.g.*, not obscured by darkness, rain, fog, *etc.*) and the clearance zones are clear of marine mammals for at least 30 minutes, as determined by the Lead PSO, immediately prior to the initiation of detonation. PAM operators must assist the visual PSOs in monitoring by conducting PAM activities 60 minutes prior to any UXO/MEC detonation, during, and after for 30 minutes for the appropriate size PAM clearance zone. The entire clearance zone must be clear for at least 30 minutes, with no marine mammal detections within the visual or PAM clearance zones prior to the initiation of detonation;

(4) For North Atlantic right whales, any visual or acoustic detection must trigger a delay to the commencement of UXO/MEC detonation. In the event that a large whale is sighted or acoustically detected that cannot be confirmed by species, it must be treated as if it were a North Atlantic right whale;

(5) LOA Holder must conduct PAM for at least 24 hours immediately prior to foundation installation and UXO/MEC detonation activities;

(6) During use of any real-time PAM system, at least one PAM operator must be designated to monitor each system by viewing data or data products that would be streamed in real-time or in near real-time to a computer workstation and monitor;

(7) LOA Holder must use a minimum of one PAM operator to actively monitor for marine mammals before, during, and after UXO/MEC detonation. The PAM operator must assist visual PSOs in ensuring full coverage of the clearance and shutdown zones. The PAM operator must inform the Lead PSO(s) on duty of animal detections approaching or within applicable ranges of interest to the activity occurring via the data collection software system (*i.e.*, Mysticetus or similar system) who will be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (*i.e.*, delay or shutdown);

(8) PSOs and PAM operators must be on watch for a maximum of 4 consecutive hours, followed by a break of at least 2 hours between watches, and may not exceed a combined watch schedule of more than 12 hours in a single 24-hour period;

(9) LOA Holder must prepare and submit a Marine Mammal Monitoring Plan to NMFS Office of Protected Resources for review and approval at least 180 days before the start of any detonation and abide by the plan if approved. LOA Holder must obtain both NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division's concurrence with this Plan prior to the start of any UXO/MEC detonation. The plan must include a description of how all relevant mitigation and monitoring requirements contained in the LOA and those included as part of the action will be implemented; a pile driving installation summary and sequence of events; a description of all monitoring equipment and evidence (*i.e.*, manufacturer's specifications, reports, testing) that it can be used to effectively monitor and detect marine mammals in the identified clearance and shutdown zones (*i.e.*, field data demonstrating reliable and consistent ability to detect large whales at the relevant distances in the conditions planned for use); communications and reporting details; final UXO/MEC detonation project design (*e.g.*, number and type of UXO/MECs, removal method(s), charge weight(s), anticipated start date, *etc.*) and all information related to PAM and PSO monitoring protocols (including number and location of PSOs) for UXO/MEC activities. The Plan(s) must demonstrate sufficient PSO and PAM Operator staffing (in accordance with watch shifts), PSO and PAM Operator schedules, and contingency plans for instances if additional PSOs and PAM Operators are required including any expansion of clearance and/or shutdown zones that may be required as a result of SFV. The plan(s) must contain a thorough description of how LOA Holder will monitor foundation installation activities (drilling, vibratory and impact pile driving) during reduced visibility conditions (*e.g.* rain, fog) and in other low visibility conditions, including proof of the efficacy of monitoring devices (*e.g.*, mounted thermal/infrared camera systems, hand-held or wearable NVDs, spotlights) in detecting marine mammals over the full extent of the required clearance and shutdown zones, including demonstration that the full extent of the minimum visibility zones can be effectively and reliably monitored. The plan must identify the efficacy of the technology at detecting marine mammals in the clearance and shutdown zones under all the various conditions anticipated during

construction, including varying weather conditions, sea states, and in consideration of the use of artificial lighting. The plan must contain a thorough description of how LOA Holder will monitor foundation installation activities during daytime when unexpected changes to lighting or weather occur during pile driving that prevent visual monitoring of the full extent of the clearance and shutdown zones. No UXO/MEC detonation can occur without NMFS' approval of the Plan;

(10) A Passive Acoustic Monitoring Plan ("PAM Plan") must be submitted to NMFS Office of Protected Resources for review and approval at least 180 days prior to the planned start of foundation installation and prior to the start of any UXO/MEC detonation(s). The authorization to take marine mammals would be contingent upon NMFS Office of Protected Resources approval of the PAM Plan. The Plan must include a description of all proposed PAM equipment and hardware, the calibration data, bandwidth capability and sensitivity of hydrophones, and address how the proposed passive acoustic monitoring will follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind (Van Parijs *et al.*, 2021). The Plan must describe and include all procedures, documentation, and protocols including information (*i.e.*, testing, reports, equipment specifications) to support that it will be able to detect vocalizing whales within the clearance and shutdown zones, including deployment locations, procedures, detection review methodology, and protocols; hydrophone detection ranges with and without foundation installation activities and data supporting those ranges; communication time between call and detection, and data transmission rates between PAM Operator and PSOs on the pile driving vessel; where PAM Operators will be stationed relative to hydrophones and PSOs on pile driving vessel calling for delay/shutdowns; and a full description of all proposed software, call detectors, and filters. The Plan must also incorporate the requirements relative to North Atlantic right whale reporting. No UXO/MEC detonation can occur if LOA Holder's PAM Plan does not receive approval from NMFS Office of Protected Resources and NMFS GARFO Protected Resources Division; and

(11) LOA Holder must submit an SFV plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned UXO/

MEC detonation activities and abide by the plan if approved. LOA Holder must obtain both NMFS Office of Protected Resources and NMFS GARFO Protected Resources Division's concurrence with this Plan prior to the start of any UXO/MEC detonations. At minimum, the SFV Plan must include methodology for collecting, analyzing, and preparing SFV measurement data for submission to NMFS Office of Protected Resources and describe how the effectiveness of the noise attenuation methodology would be evaluated based on the results. SFV for UXO/MEC detonation must not occur until NMFS approves the SFV Plan for this activity.

(e) *PSO requirements during HRG surveys.* The following measures apply to PSOs during HRG surveys using boomers, and sparkers and must be implemented by LOA Holder:

(1) Between four and six PSOs must be present on every 24-hour survey vessel and two to three PSOs must be present on every 12-hour survey vessel;

(2) At least one PSO must be on active duty monitoring during HRG surveys conducted during daylight (*i.e.*, from 30 minutes prior to civil sunrise through 30 minutes following civil sunset) and at least two PSOs must be on activity duty monitoring during HRG surveys conducted at night;

(3) PSOs on HRG vessels must begin monitoring 30 minutes prior to activating acoustic sources, during the use of these acoustic sources, and for 30 minutes after use of these acoustic sources has ceased. Any observations of marine mammals must be communicated to PSOs on all nearby survey vessels during concurrent HRG surveys; and

(4) During daylight hours when survey equipment is not operating, LOA Holder must ensure that visual PSOs conduct, as rotation schedules allow, observations for comparison of sighting rates and behavior with and without use of the specified acoustic sources. Off-effort PSO monitoring must be reflected in the monthly PSO monitoring reports.

(f) *Reporting.* LOA Holder must comply with the following reporting measures:

(1) Prior to initiation of the specified activities, LOA Holder must demonstrate in a report submitted to NMFS Office of Protected Resources that all required training for LOA Holder personnel (including the vessel crews, vessel captains, PSOs, and PAM operators) has been completed;

(2) LOA Holder must use a standardized reporting system during the effective period of the LOA. All data collected related to the Project must be recorded using industry-standard

software that is installed on field laptops and/or tablets. Unless stated otherwise, all reports must be submitted to NMFS Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*), dates must be in MM/DD/YYYY format, and location information must be provided in Decimal Degrees and with the coordinate system information (*e.g.*, NAD83, WGS84, *etc.*);

(3) For all monitoring efforts and marine mammal sightings, the following information must be collected and reported to NMFS Office of Protected Resources: Date and time that monitored activity begins or ends; the construction activities occurring during each observation period; the watch status (*i.e.*, sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform); the PSO who sighted the animal; the time of sighting; the weather parameters (*e.g.*, wind speed, percent cloud cover, visibility); the water conditions (*e.g.*, Beaufort sea state, tide state, water depth); all marine mammal sightings, regardless of distance from the construction activity; species (or lowest possible taxonomic level possible); the pace of the animal(s); the estimated number of animals (minimum/maximum/high/low/best); the estimated number of animals by cohort (*e.g.*, adults, yearlings, juveniles, calves, group composition, *etc.*); the description (*i.e.*, as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics); the description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling) and observed changes in behavior, including an assessment of behavioral responses thought to have resulted from the specific activity; the animal's closest distance and bearing from the pile being driven or specified HRG equipment and estimated time entered or spent within the Level A harassment and/or Level B harassment zone(s); the activity at time of sighting (*e.g.*, vibratory installation/removal, impact pile driving, construction survey), use of any noise attenuation device(s), and specific phase of activity (*e.g.*, ramp-up of HRG equipment, HRG acoustic source on/off, soft-start for pile driving, active pile driving, *etc.*); the marine mammal occurrence in Level A harassment or Level B harassment zones; the description of any mitigation-related action implemented, or mitigation-related actions called for but not implemented, in response to the sighting (*e.g.*, delay, shutdown, *etc.*) and

time and location of the action; and other human activity in the area, and; other applicable information, as required in any LOA issued under the final rule;

(4) If a marine mammal is acoustically detected during PAM monitoring, the following information must be recorded and reported to NMFS Office of Protected Resources: Location of hydrophone (latitude & longitude; in Decimal Degrees) and site name; bottom depth and depth of recording unit (in meters); recorder (model & manufacturer) and platform type (*i.e.*, bottom-mounted, electric glider, *etc.*), and instrument ID of the hydrophone and recording platform (if applicable); time zone for sound files and recorded date/times in data and metadata (in relation to Universal Coordinated Time (UTC); *i.e.*, Eastern Standard Time (EST) time zone is UTC-5); duration of recordings (start/end dates and times; in International Organization for Standardization (ISO) 8601 format, yyyy-mm-ddTHH:MM:SS.sssZ); deployment/retrieval dates and times (in ISO 8601 format); recording schedule (must be continuous); hydrophone and recorder sensitivity (in dB re 1 microPascal (μPa)); calibration curve for each recorder; bandwidth/sampling rate (in Hz); sample bit-rate of recordings; and, detection range of equipment for relevant frequency bands (in meters);

(5) For each detection, the following information must be noted:

(i) Species identification (if possible); call type and number of calls (if known); temporal aspects of vocalization (date, time, duration, *etc.*; date times in ISO 8601 format); confidence of detection (detected, or possibly detected); comparison with any concurrent visual sightings; location and/or directionality of call (if determined) relative to acoustic recorder or construction activities; location of recorder and construction activities at time of call; name and version of detection or sound analysis software used, with protocol reference; minimum and maximum frequencies viewed/monitored/used in detection (in Hz); and name of PAM operator(s) on duty.

(ii) [Reserved]

(6) LOA Holder must compile and submit weekly reports to NMFS Office of Protected Resources that document the daily start and stop of all pile driving, drilling, UXO/MEC detonations, and HRG survey associated with the Project; the foundation/pile ID, type of pile, pile diameter, start and finish time of each drilling and pile driving event, hammer log (number of strikes, max hammer energy, duration of

piling) per pile, any changes to noise attenuation systems and/or hammer schedule, the start and stop of associated observation periods by PSOs and PAM operators; details on the deployment of PSOs and PAM operators; a record of all detections of marine mammals (acoustic and visual) including time (UTC) of sighting/detection, species ID, behavior, distance (meters) from vessel to animal at time of sighting/detection (meters), animal distance (meters) from pile installation vessel and UXO/MEC detonation site, vessel/project activity at time of sighting/detection, platform/vessel name, and mitigation measures taken (if any) and reason. Sightings/detections during pile driving, drilling, and UXO/MEC activities (clearance, active pile driving and drilling, post-pile driving and drilling and detonation) and all other (transit, opportunistic, *etc.*) sightings/detection must be reported and identified as such; any mitigation actions (or if mitigation actions could not be taken, provide reasons why); and details on the noise attenuation system(s) used and its performance. Weekly reports are due on Wednesday for the previous week (Sunday—Saturday), can consist of Quality Assurance/Quality Compliance (QA/QC) reviewed data, and must include the information required under this section. The weekly report must also identify which turbines become operational and when (a map must be provided). This weekly report must also identify when, what charge weight size, and where UXO/MECs are detonated (a map must also be provided). The weekly reports must also confirm that the required SFV was carried out for each pile and UXO/MEC detonation and that results were reviewed on the required timelines. Abbreviated SFV reports must be appended to the weekly report. Once all foundation pile installation and UXO/MEC detonations are completed, weekly reports are no longer required by LOA Holder;

(7) LOA Holder must compile and submit monthly reports to NMFS Office of Protected Resources that include a summary of all information in the weekly reports, including project activities carried out in the previous month, including dates and location of any fisheries surveys carried out, vessel transits (number, type of vessel, MMIS number, number of transits, vessel activity, and route (origin and destination, including transits from all ports, foreign and domestic)), cable installation activities (including sea to shore transition), number of piles installed and pile IDs, UXO/MEC

detonation, all detections of marine mammals (sightings/detections must include species ID, time, date, initial detection distance, vessel/platform name, vessel activity, vessel speed, bearing to animal, project activity), and any mitigative action taken (or if mitigation actions could not be taken, provide reasons why). Monthly reports are due on the 15th of the month for the previous month. The monthly report must also identify which turbines become operational and when (a map must be provided). This weekly report must also identify when, what charge weight size, and where UXO/MECs are detonated (a map must also be provided);

(8) LOA Holder must submit a draft annual report to NMFS Office of Protected Resources no later than 90 days following the end of a given calendar year. LOA Holder must provide a final report within 30 days following resolution of NMFS's comments on the draft report. The draft and final reports must detail the following:

(i) A summary of all activities conducted, the dates and locations of all fisheries surveys, including location and duration for all trawl surveys summarized by month, number of vessel transits inclusive of port of origin and destination, and a summary table of any observations and captures of Endangered Species Act (ESA) listed species during these surveys. The report must also summarize all acoustic telemetry and benthic monitoring activities that occurred, inclusive of vessel transits. Each annual report is due by February 15 (*e.g.*, the report for 2024 activities is due by February 15, 2025). The total number of marine mammals of each species/stock detected and how many were within the designated Level A harassment and Level B harassment zone(s) with comparison to authorized take of marine mammals for the associated activity type; marine mammal detections and behavioral observations before, during, and after each activity; what mitigation measures were implemented (*i.e.*, number of shutdowns or clearance zone delays, *etc.*) or, if no mitigative actions was taken, why not; operational details (*i.e.*, days and duration of impact and vibratory pile driving, days and duration of drilling, days and number of UXO/MEC detonations, days and amount of HRG survey effort, *etc.*); any PAM systems used; The results, effectiveness, and which noise attenuation systems were used during relevant activities (*i.e.*, impact and vibratory pile driving, drilling, and UXO/MEC detonations); summarized

information related to situational reporting; and any other important information relevant to the Project, including additional information that may be identified through the adaptive management process. The final annual report must be prepared and submitted within 30 calendar days following the receipt of any comments from NMFS Office of Protected Resources on the draft report. If no comments are received from NMFS Office of Protected Resources within 60 calendar days of NMFS Office of Protected Resources' receipt of the draft report, the report must be considered final.

(ii) [Reserved]

(9) LOA Holder must submit its draft final report to NMFS Office of Protected Resources on all visual and acoustic monitoring conducted within 90 calendar days of the completion of the specified activities. A 5-year report must be prepared and submitted within 60 calendar days following receipt of any NMFS Office of Protected Resources comments on the draft report. If no comments are received from NMFS Office of Protected Resources within 60 calendar days of NMFS Office of Protected Resources receipt of the draft report, the report shall be considered final. The draft and final 5-year report must include, but is not limited to: the total number (annually and across all 5 years) of marine mammals of each species/stock detected and how many were detected within the designated Level A harassment and Level B harassment zone(s) with comparison to authorized take of marine mammals for the associated activity; a summary table(s) indicating the amount of each activity type (*e.g.*, pile installation, UXO/MEC detonations, HRG) completed in each of the 5 years and total; Geographic Information System (GIS) shapefile(s) of the final location of all piles, cable routes, and other permanent structures including an indication of what year installed and began operating; GIS shapefile of all North Atlantic right whale sightings, including dates and group sizes; a 5-year summary and evaluation of all SFV data collected; a 5-year summary and evaluation of all PAM data collected; a 5-year summary and evaluation of marine mammal behavioral observations; a 5-year summary and evaluation of mitigation and monitoring implementation and effectiveness; and a list of recommendations to inform environmental compliance assessments for future offshore wind actions;

(10) LOA Holder must submit a SFV plan at least 180 days prior to the planned start of vibratory and impact pile driving, drilling, and UXO/MEC

detonations. The plan must detail all plans and procedures for noise attenuation, including procedures for adjusting and optimizing the noise attenuation system(s), maintenance procedures and timelines, and detail the available contingency noise attenuation measures/systems if distances to modeled isopleths of concern are exceeded (as documented during SFV). At minimum, the plan must describe how LOA Holder would ensure that the first three monopile and two jacket (using pin piles) foundation installation sites selected for SFV are representative of the rest of the monopile and pin pile installation sites. LOA Holder must provide justification for why these locations are representative of the scenario modeled. The plan must describe how LOA Holder will conduct the required Abbreviated SFV, inclusive of requirements to review results within 24 hours and triggers for Thorough SFV. The plan must provide a table of the identification number and coordinates of each foundation location, and specify the underwater acoustics analysis model scenario against which each foundation location's SFV results will be compared. The plan(s) must also include the piling schedule and sequence of events, communication and reporting protocols, and methodology for collecting, analyzing, and preparing SFV data for submission to NMFS, including instrument deployment, locations of all hydrophones (including direction and distance from the pile), hydrophone sensitivity, recorder/measurement layout, and analysis methods. The plan must also identify the number and distance of relative location of hydrophones for Thorough and Abbreviated SFV. The plan must include a template of the interim report to be submitted and describe all the information that will be reported in the SFV Interim Reports including the number, location, depth, distance, and predicted and actual isopleth distances that will be included in the final report(s). The plan must describe how the interim SFV report results will be evaluated against the modeled results, including which modeled scenario the results will be reported against, and include a decision tree of what happens if measured values exceed predicted values. The plan must address how LOA Holder will implement the measures associated with the required SFV which includes, but is not limited to, identifying additional or modified noise attenuation measures (*e.g.*, additional noise attenuation device, adjust hammer operations, adjust or modify the noise mitigation system) that will be applied

to reduce sound levels if measured distances are greater than those modeled as well as implementation of any expanded clearance or shutdown zones, including deployment of additional PSOs. In the case that these sites/scenarios are not determined to be representative of all other monopile/pin pile installation sites, LOA Holder must include information on how additional sites/scenarios would be selected for SFV. The plan must also include methodology for collecting, analyzing, and preparing SFV data for submission to NMFS Office of Protected Resources. The plan must describe how the effectiveness of the noise attenuation methodology would be evaluated based on the results.

(i) LOA Holder must also provide, as soon as they are available but no later than 48 hours after each installation, the initial results of the SFV measurements to NMFS Office of Protected Resources in an interim report after each monopile for the first three piles, after two jacket foundation using pin piles are installed, and after each UXO/MEC detonation; The plan must describe how LOA Holder will conduct the required Thorough SFV for all planned UXO/MEC detonations. Thorough SFV consists of: SFV measurements made at a minimum of four distances from the detonation, along a single transect, in the direction of lowest transmission loss (*i.e.*, projected lowest transmission loss coefficient), including, but not limited to, 750 m and three additional ranges selected such that measurement of identified isopleths are accurate, feasible, and avoid extrapolation. At least one additional measurement at an azimuth 90 degrees from the array at approximately 750 m must be made. At each location, there must be a near bottom and mid-water column hydrophone (measurement systems). The plan must describe how the interim SFV report results will be evaluated against the modeled results and decision tree of what happens if measured values exceed predicted values. The plan must address how LOA Holder will implement the measures associated with the required SFV which includes, but is not limited to, identifying additional or modified noise attenuation measures (*e.g.*, additional noise attenuation device, adjust hammer operations, adjust or modify the noise mitigation system) that will be applied to reduce sound levels if measured distances are greater than those modeled as well as implementation of any expanded clearance or shutdown zones, including deployment of additional PSOs;

(ii) The interim report must include data from hydrophones identified for interim reporting in the SFV Plan and include a summary of pile installation activities (pile diameter, pile weight, pile length, water depth, sediment type, hammer type, total strikes, total installation time (start time, end time), duration of pile driving, max single strike energy, NAS deployments), pile location, recorder locations, modeled and measured distances to thresholds, received levels (rms, peak, and sound exposure level (SEL)) results from Conductivity, Temperature, and Depth (CTD) casts/sound velocity profiles, signal and kurtosis rise times, pile driving plots, activity logs, weather conditions. Additionally, any important noise attenuation device malfunctions (suspected or definite), must be summarized and substantiated with data (e.g. photos, positions, environmental data, directions, *etc.*). Such malfunctions include gaps in the bubble curtain, significant drifting of the bubble curtain, and any other issues which may indicate sub-optimal mitigation performance or are used by LOA Holder to explain performance issues;

(iii) The SFV plan must also include how operational noise would be monitored. LOA Holder must estimate source levels (at 10 m from the operating foundation) based on received levels measured at distances described in a NMFS-approved SFV plan for operations. These data must be used to identify estimated transmission loss rates. Operational parameters (e.g., direct drive/gearbox information, turbine rotation rate) as well as sea state conditions and information on nearby anthropogenic activities (e.g., vessels transiting or operating in the area) must be reported;

(iv) For those foundations and UXO/MEC detonations requiring Thorough SFV measurements, LOA Holder must provide the initial results of the SFV measurements to NMFS Office of Protected Resources in an interim report after each foundation installation event as soon as they are available and prior to any subsequent foundation installation, but no later than 48 hours after each completed foundation installation event. The report must include hammer energies/schedule used during pile driving or UXO/MEC weight (including donor charge weight), the model-estimated acoustic ranges (R95%) to compare with the real-world sound field measurements, estimated source levels at 1 m and/or 10 m, peak sound pressure level (SPLpk) and median, mean, maximum, and minimum root-mean-square sound pressure level that contains 90 percent of the acoustic

energy (SPLrms) and sound exposure level (SEL, in single strike for pile driving (SELs-s) and SELcum) for each hydrophone, including at least the maximum, arithmetic mean, minimum, median (L50) and L5 (95 percent exceedance) statistics for each metric; estimated marine mammal Level A harassment and Level B harassment acoustic isopleths, calculated using the maximum-over-depth L5 (95 percent exceedance level, maximum of both hydrophones) of the associated sound metric; comparison of modeled results assuming 10-dB attenuation against the measured marine mammal Level A harassment and Level B harassment acoustic isopleths; estimated transmission loss coefficients; pile identifier name, location of the pile and each hydrophone array in latitude/longitude; depths of each hydrophone; one-third-octave band single strike SEL spectra; if filtering is applied, full filter characteristics must be reported; and hydrophone specifications including the type, model, and sensitivity. LOA Holder must also report any immediate observations which are suspected to have a significant impact on the results including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices. If any in situ calibration checks for hydrophones reveal a calibration drift greater than 0.75 dB, pistonphone calibration checks are inconclusive, or calibration checks are otherwise not effectively performed, LOA Holder must indicate full details of the calibration procedure, results, and any associated issues in the 48-hour interim reports;

(v) All results from Abbreviated SFV must be included in the weekly reports. The report must include estimated source levels at 1 m or 10 m and the measured SELcum noise levels at distance. Any indications that distances to the identified Level A harassment and Level B harassment thresholds for marine mammals were exceeded must be addressed by LOA Holder, including an explanation of factors that contributed to the exceedance and corrective actions that were taken to avoid exceedance on subsequent piles;

(vi) The final results of all SFV measurements from each foundation installation and UXO/MEC detonations must be submitted as soon as possible, but no later than within 90 days following completion of each event's SFV measurements. The final results of Thorough SFV for UXO/MEC detonations must be submitted as soon as possible, but no later than within 90 days following completion of each

UXO/MEC detonation. Within 60 days of the end of each construction season, LOA Holder must compile and submit all final Abbreviated SFV reports. The final reports must include all details included in the interim report and descriptions of any notable occurrences, explanations for results that were not anticipated, or actions taken during foundation installation. The final report must also include at least the maximum, mean, minimum, median (L50) and L5 (95 percent exceedance) statistics for each metric; the SEL and SPL power spectral density and/or one-third octave band levels (usually calculated as decade band levels) at the receiver locations should be reported; range of transmission loss coefficients; the local environmental conditions, such as wind speed, transmission loss data collected on-site (or the sound velocity profile); baseline pre- and post-activity ambient sound levels (broadband and/or within frequencies of concern); a description of depth and sediment type, as documented in the Construction and Operation Plan (COP), at the recording and foundation installation and UXO/MEC detonation locations; the extents of the measured Level A harassment and Level B harassment zone(s); hammer energies required for pile installation and the number of strikes per pile; and charge weights and other relevant characteristics of UXO/MEC detonations; the hydrophone equipment and methods (*i.e.*, recording device, bandwidth/sampling rate, distance from the monopile/pin pile and/or UXO/MEC where recordings were made; depth of recording device(s)); a description of the SFV measurement hardware and software, including software version used, calibration data, bandwidth capability and sensitivity of hydrophone(s), any filters used in hardware or software, any limitations with the equipment, and other relevant information; the spatial configuration of the noise attenuation device(s) relative to the pile and/or UXO/MEC charge; a description of the noise abatement system and operational parameters (e.g., bubble flow rate, distance deployed from the pile and/or UXO/MEC, *etc.*) and any action taken to adjust the noise abatement system. A discussion which includes any observations which are suspected to have a significant impact on the results including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices. LOA Holder must submit a revised report within 30 days following

receipt of NMFS' comments on the draft final report;

(vii) LOA Holder must submit SFV results from UXO/MEC detonation monitoring in a report prior to detonating a subsequent UXO/MEC or within the relevant weekly report, whichever comes first. The report must include, at minimum, the size of UXO/MEC detonated and donor charge weight, why detonation was necessary, current speeds, SELcum, a description of the noise abatement system and operational parameters (e.g., bubble flow rate, distance deployed from the detonation, etc.) and any action taken to adjust the noise abatement system, modeled and SFV-based estimated ranges to all relevant NMFS explosive thresholds (including those from pressure transducer measurements); and

(viii) If at any time during the project LOA Holder becomes aware of any issue or issues which may (to any reasonable subject-matter expert, including the persons performing the measurements and analysis) call into question the validity of any measured Level A harassment or Level B harassment isopleths to a significant degree, which were previously transmitted or communicated to NMFS Office of Protected Resources, LOA Holder must inform NMFS Office of Protected Resources within 1 business day of becoming aware of this issue or before the next pile is driven, whichever comes first.

(11) If a North Atlantic right whale is acoustically detected at any time by a project-related PAM system, LOA Holder must ensure the detection is reported as soon as possible to NMFS, but no longer than 24 hours after the detection via the 24-hour North Atlantic right whale Detection Template (<https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>). Calling the hotline is not necessary when reporting PAM detections via the template. Full detection data, metadata, and location of recorders (or GPS tracks, if applicable) from all real-time hydrophones used for monitoring during construction must be submitted within 90 calendar days following completion of activities requiring PAM for mitigation via the ISO standard metadata forms available on the NMFS Passive Acoustic Reporting System website (<https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>). Submit the completed data templates to nmfs.nec.pacmdata@noaa.gov. The full acoustic recordings from real-time systems must also be sent to the NCEI for archiving within 90 days following

completion of activities requiring PAM for mitigation. Submission details can be found at: <https://www.ncei.noaa.gov/products/passive-acoustic-data>;

(12) LOA Holder must submit situational reports if the following circumstances occur, including all instances wherein an exemption is taken must be reported to NMFS Office of Protected Resources within 24 hours, in specific circumstances, including but not limited to the following:

(i) All sightings of North Atlantic right whale must be reported immediately (no later than 24 hours). If a North Atlantic right whale is sighted with no visible injuries or entanglement at any time by project PSOs or project personnel, LOA Holder must immediately report the sighting to NMFS. If immediate reporting is not possible, the report must be submitted as soon as possible but no later than 24 hours after the initial sighting. All North Atlantic right whale acoustic detections within a 24-hour period should be collated into one spreadsheet and reported to NMFS as soon as possible but no later than 24 hours.

(A) To report sightings and acoustic detections, download and complete the Real-Time North Atlantic Right Whale Reporting Template spreadsheet found here: <https://www.fisheries.noaa.gov/resource/document/template-datasheet-real-time-north-atlantic-right-whale-acoustic-and-visual>. Save the completed spreadsheet as a .csv file and email it to NMFS Northeast Fisheries Science Center Protected Species Division (NEFSC-PSD) (ne.rw.survey@noaa.gov), NMFS GARFO Protected Species Division (PRD) (nmfs.gar.incidental-take@noaa.gov), and NMFS Office of Protected Resources (pr.itp.monitoringreports@noaa.gov). If the sighting is in the Southeast (North Carolina through Florida), report via the template and to the Southeast Hotline 877-WHALE-HELP (877-942-5343) with the observation information provided below (PAM detections are not reported to the Hotline). If unable to report a sighting through the spreadsheet within 24 hours, call the relevant regional hotline (Greater Atlantic Region [Maine through Virginia] Hotline 866-755-6622; Southeast Hotline 877-WHALE-HELP) with the observation information provided below (PAM detections are not reported to the Hotline).

(B) The following information must be reported: the time (note time format), date (MM/DD/YYYY), location (latitude/longitude in decimal degrees; coordinate system used) of the observation, number of whales, animal description/certainty of observation

(follow up with photos/video if taken), reporter's contact information, and lease area number/project name, PSO/personnel name who made the observation, and PSO provider company (if applicable) (PAM detections are not reported to the Hotline). If unable to report via the template or the regional hotline, enter the sighting via the WhaleAlert app (<http://www.whalealert.org/>). If this is not possible, report the sighting to the U.S. Coast Guard via channel 16. The report to the Coast Guard must include the same information as would be reported to the Hotline (see above). PAM detections are not reported to WhaleAlert or the U.S. Coast Guard.

(C) If a large whale species is observed that is not a North Atlantic right whale, LOA Holder must report the sighting via the WhaleAlert app (<http://www.whalealert.org/>) as soon as possible but within 24 hours.

(ii) In the event that personnel involved in the Project discover a stranded, entangled, injured, or dead marine mammal, LOA Holder must immediately report the observation to NMFS. If in the Greater Atlantic Region (Maine through Virginia), call the NMFS Greater Atlantic Stranding Hotline (866-755-6622), and if in the Southeast Region (North Carolina through Florida) call the NMFS Southeast Stranding Hotline (877-WHALE-HELP (877-942-5343)). Separately, LOA Holder must report, within 24 hours, the incident to NMFS Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov) and, if in the Greater Atlantic Region to the NMFS GARFO (nmfs.gar.incidental-take@noaa.gov) or if in the Southeast Region, to the NMFS Southeast Regional Office (SERO; secmammalreports@noaa.gov). Note, the stranding hotline may request the report be sent to the local stranding network response team. The report must include contact information (e.g., name, phone number, etc.); time, date, and location (i.e., specify coordinate system) 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); photographs or video footage of the animal(s) (if available); and general circumstances under which the animal was discovered.

(iii) In the event of a suspected or confirmed vessel strike of a marine mammal by any vessel associated with the Project or other means by which Project activities caused a non-auditory injury or death of a marine mammal,

LOA Holder must immediately report the incident to NMFS. If in the Greater Atlantic Region (Maine through Virginia), call the NMFS Greater Atlantic Stranding Hotline (866-755-6622), and if in the Southeast Region (North Carolina through Florida) call the NMFS Southeast Stranding Hotline (877-WHALE-HELP (877-942-5343)). Separately, LOA Holder must immediately report the incident to NMFS Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov) and, if in the Greater Atlantic Region to the NMFS GARFO (nmfs.gar.incidental-take@noaa.gov) or if in the Southeast Region, to the NMFS SERO (secmammalreports@noaa.gov). The report must include time, date, and location (*i.e.*, specify coordinate system) of the incident; species identification (if known) or description of the animal(s) involved (*i.e.*, identifiable features including animal color, presence of dorsal fin, body shape and size, *etc.*); vessel strike reporter information (name, affiliation, email for person completing the report); vessel strike witness (if different than reporter) information (*e.g.*, name, affiliation, phone number, platform for person witnessing the event, *etc.*); vessel name and/or MMSI number; vessel size and motor configuration (inboard, outboard, jet propulsion); vessel's speed leading up to and during the incident; vessel's course/heading and what operations were being conducted (if applicable); part of vessel that struck marine mammal (if known); vessel damage notes; status of all sound sources in use at the time of the strike; if the marine mammal was seen before the strike event; description of behavior of the marine mammal before the strike event (if seen) and behavior immediately following the strike; description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike; environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility, *etc.*) immediately preceding the strike; estimated (or actual, if known) size and length of marine mammal that was struck; if available, description of the presence and behavior of any other marine mammals immediately preceding the strike; other animal-specific details if known (*e.g.*, length, sex, age class); behavior or estimated fate of the marine mammal post-strike (*e.g.*, dead, injured but alive, injured and moving, external visible wounds (linear wounds, propeller wounds, non-cutting blunt-force trauma wounds), blood or tissue

observed in the water, status unknown, disappeared); to the extent practicable, any photographs or video footage of the marine mammal(s); and, any additional notes the witness may have from the interaction. For any numerical values provided (*i.e.*, location, animal length, vessel length, *etc.*), please provide if values are actual or estimated. LOA Holder must immediately cease activities until the NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA(s). NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. LOA Holder must not resume their activities until notified by NMFS Office of Protected Resources.

(13) LOA Holder must report any lost gear associated with the fishery surveys to the NOAA GARFO-PRD (nmfs.gar.incidental-take@noaa.gov) as soon as possible or within 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear;

(14) LOA Holder must provide NMFS Office of Protected Resources with notification of planned UXO/MEC detonation as soon as possible but at least 48 hours prior to the planned detonation, unless this 48-hour notification would create delays to the detonation that would result in imminent risk of human life or safety. This notification must include the coordinates of the planned detonation, the estimated charge size, and any other information available on the characteristics of the UXO/MEC. If an UXO/MEC detonation occurs, within 72 hours after a detonation but before the next detonation, whichever is sooner, LOA Holder must report to NMFS Office of Protected Resources the time, date, location (latitude/longitude Decimal Degrees), charge weight size, justification on why detonation was necessary and other means of removal or avoidance could not occur, all detections of marine mammals within the UXO/MEC zones, and any mitigative action taken; and

(15) Performance reports for piles with SFV must be submitted by LOA Holder with the weekly pile driving reports. For UXO/MEC detonations, the report must be submitted as soon as it is available, but no later than when the interim SFV report is submitted for the UXO/MEC detonation.

(16) Performance reports for each bubble curtain deployed must include water depth, current speed and direction, wind speed and direction, bubble curtain deployment/retrieval date and time, bubble curtain hose length, bubble curtain radius (distance from pile), diameter of holes and hole spacing, air supply hose length, compressor type (including rated Cubic Feet per Minute (CFM) and model number), number of operational compressors, performance data from each compressor (including Revolutions Per Minute (RPM), pressure, start times, and stop times), free air delivery (m^3/min), total hose air volume ($\text{m}^3/(\text{min m})$), schematic of GPS waypoints during hose laying, maintenance procedures performed (pressure tests, inspections, flushing, re-drilling, and any other hose or system maintenance) before and after installation and timing of those tests, and the length of time the bubble curtain was on the seafloor prior to foundation installation.

(i) The report must include any important observations regarding performance (before, during, and after pile installation or UXO/MEC detonation), such as any observed weak areas of low pressure. The report may also include any relevant video and/or photographs of the bubble curtain(s) operating during pile driving (inclusive of relief drilling) and UXO/MEC detonation.

(ii) [Reserved].

§ 217.326 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, LOA Holder must apply for and obtain an LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed March 26, 2030, the expiration date of this subpart.

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, LOA Holder must apply for and obtain a modification of the LOA as described in § 217.327.

(d) The LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOA must be based on a determination that the level of taking must be consistent with the findings made for the total taking

allowable under the regulations of this subpart.

(f) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.327 Modifications of Letter of Authorization.

(a) A LOA issued under §§ 217.322 and 217.326 or this section for the activity identified in § 217.320(c) shall be modified, upon request by LOA Holder, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, or reporting measures required by the previous LOA under this subpart were implemented.

(b) For a LOA modification request by the applicant that includes changes to the activity or the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), the LOA shall be modified, provided that:

(1) NMFS determines that the changes to the activity or the mitigation, monitoring, or reporting do not change the findings made for the regulations in this subpart and do not result in more than a minor change in the total estimated number of takes (or distribution by species or years), and

(2) NMFS may publish a notice of proposed modified LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) A LOA issued under §§ 217.322 and 217.326 or this section for the activities identified in § 217.320(a) may be modified by NMFS Office of Protected Resources under the following circumstances:

(1) Through adaptive management, NMFS may modify (including remove, revise, or add to) the existing mitigation, monitoring, or reporting measures after consulting with LOA Holder regarding the practicability of the modifications, if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring measures set forth in this subpart;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting

measures in an LOA include, but are not limited to:

(A) Results from LOA Holder's monitoring;

(B) Results from other marine mammals and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by this subpart or subsequent LOA.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) If the NMFS Office of Protected Resources determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in the LOA issued pursuant to §§ 217.322 and 217.326 or this section, a LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

§§ 217.328–217.329 [Reserved]

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Part III

Department of Homeland Security

Coast Guard

46 CFR Parts 11 and 12

Implementation of Training Requirements for Personnel Serving on U.S.-Flagged Passenger Ships That Carry More Than 12 Passengers on International Voyages; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 11 and 12

[Docket No. USCG–2022–0649]

RIN 1625–AC68

Implementation of Training Requirements for Personnel Serving on U.S.-Flagged Passenger Ships That Carry More Than 12 Passengers on International Voyages

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its merchant mariner training regulations to implement amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and the Seafarers' Training, Certification and Watchkeeping Code, to require personnel serving on U.S.-flagged passenger ships carrying more than 12 passengers on international voyages to complete passenger ship emergency familiarization. The proposed rule would expand the applicability of the existing crowd management training requirement to include specified ratings on passenger ships. These required trainings would promote the safety of life at sea.

DATES: Comments and related material must be received by the Coast Guard on or before September 19, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0649 using the Federal Decision-Making Portal at www.regulations.gov. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

Collection of information. Submit comments on the collection of information discussed in section VII.D. of this preamble both to the Coast Guard's online docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget using their website www.reginfo.gov/public/do/PRAMain. Comments sent to OIRA on the collection of information must reach OMB on or before the comment due date listed on their website.

Viewing material proposed for incorporation by reference. Make arrangements to view this material by calling the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Megan Johns Henry, Office of Merchant Mariner Credentialing (CG–MMC–1), Coast Guard; telephone 202–372–1255, email Megan.C.Johns@uscg.mil.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comments can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at www.regulations.gov. To do so, go to www.regulations.gov, type USCG–2022–0649 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using www.regulations.gov, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the

Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the www.regulations.gov Frequently Asked Questions web page. That FAQ page also explains how to subscribe for email alerts that will notify you when comments are posted or if a final rule is published. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal Information. We accept anonymous comments. All comments received will be posted without change to www.regulations.gov and will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

We do not plan to hold a public meeting, but we will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

BLS U.S. Bureau of Labor Statistics
 BTS Bureau of Transportation Statistics
 CFR Code of Federal Regulations
 CG–MMC Coast Guard Office of Merchant Mariner Credentialing
 CSS Code Code of Safe Practices for Cargo Stowage and Securing
 DHS Department of Homeland Security
 DOT Department of Transportation
 GSA U.S. General Services Administration
 HTW Human Element, Training and Watchkeeping
 IBR Incorporated by Reference
 IMO International Maritime Organization
 M&IE Meal and Incidental Expenses
 MISLE Marine Information for Safety and Law Enforcement
 MMC Merchant Mariner Credential
 MSC Maritime Safety Committee
 NAICS North American Industry Classification System
 OMB Office of Management and Budget
 POA Privately Owned Automobile
 PSC Port State Control
 § Section
 SBA Small Business Administration
 SME Subject matter expert
 SOLAS International Convention for the Safety of Life at Sea, 1974, as amended
 STCW Convention International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978
 STCW Code Seafarers' Training, Certification and Watchkeeping Code
 U.S.C. United States Code
 VSL Value of a Statistical Life

III. Executive Summary

A. Purpose

The purpose of this proposed rule is to ensure the safety of passengers on board U.S.-flagged passenger ships by ensuring all shipboard personnel have completed training and are competent to assist passengers in the event of an emergency. As defined in title 46 of the Code of Federal Regulations (CFR), in sections 11.1103 and 12.903,¹ passenger ships are those ships carrying more than 12 passengers on an international voyage.

The growing world-wide popularity of passenger ships as a vacation destination has resulted in the launching of consistently larger foreign-flagged ships and subsequent concerns over passenger safety. Passenger-ship travel requires passengers to be assured of their safety regardless of where the ship originates or where it sails. Typically, passengers are on board these ships for a short time and do not have maritime experience, so they rely on the ship's crew to assist them in emergency situations. It may be impossible for passengers to identify which crewmembers are trained to assist them in an emergency. Shipboard emergency situations could pose risks to life, health, and safety, as well as damage to property and the marine environment.

With this rulemaking, the Coast Guard proposes requiring passenger ship emergency familiarization for all shipboard personnel on U.S.-flagged passenger ships, which may prevent the loss of life at sea, reduce the risk of injury, and increase protection of property and the marine environment. The Coast Guard proposes expanding the applicability of the existing crowd management training requirement to include ratings qualified under Chapters II, III, and VII of the STCW Convention² on passenger ships.

B. Legal Authority

The legal basis of this proposed rule is title 14 of the United States Code (U.S.C.), section 102(3), which grants the Coast Guard broad authority to promulgate and enforce regulations for the promotion of safety of life and property on waters subject to the jurisdiction of the United States. More

specifically, 46 U.S.C. 7101 and 7301 authorizes the Secretary of the Department of Homeland Security (DHS) to prescribe the requirements for the credentialing of officers and ratings respectively. The Secretary has delegated these statutory authorities to the Coast Guard through DHS Delegation No. 00170.1(II)(92)(e), Revision No. 01.4, which generally authorizes the Coast Guard to determine and establish the experience and professional qualifications required for the issuance of credentials.

C. Summary of Major Provisions

This proposed rule would make the following changes, which would apply to all personnel serving on U.S.-flagged passenger ships that carry more than 12 passengers on international voyages:

(1) Incorporates by reference the 2017 Edition of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention), and the Seafarers' Training, Certification and Watchkeeping Code (STCW Code), which include amendments through 2016, in 46 CFR parts 11 and 12. The STCW Convention and the STCW Code prescribe a five-tiered passenger ship training approach which is detailed in Section V, Discussion of Proposed Rule, in this document.

(2) Adds a new requirement for all shipboard personnel to complete passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities during an emergency before being assigned to shipboard duties. The passenger ship emergency familiarization requirement applies to all shipboard personnel, including masters, officers, and ratings qualified under Chapters II, III, and VII of the STCW Convention. This familiarization would not require Coast Guard approval in accordance with 46 CFR part 10, subpart D, and can be conducted on board the ship or at a shore-based location. Mariners or vessel operators should maintain documentation verifying that personnel have completed the passenger ship emergency familiarization.

(3) Expands the applicability of crowd management training to include ratings qualified under Chapters II, III, and VII of the STCW Convention. Crowd management courses currently require Coast Guard approval and will continue to require Coast Guard approval. Approved crowd management courses are readily available to mariners.

D. Costs and Benefits

This proposed rule would affect 1,080 personnel (200 officers, 44 specified ratings,³ and 836 personnel) serving on 50 U.S.-flagged passenger ships. For each passenger ship, we assume two individuals serve in each billet, to account for the rotational nature of shipboard employment. The cost to the regulated industry would be approximately \$375,707, in 2021 dollars, annualized, and \$3,374,817 total, discounted at 2 percent. The proposed rule does not create additional costs for the Federal Government. In addition, this proposed rule would not result in additional costs to obtain a Merchant Mariner Credential (MMC) endorsement, because the training requirements would be verified through presentation of course completion documentation during shipboard inspections, and not via an MMC endorsement.

The expected benefits of this proposed rule would be the improvement of the safety of life at sea through increased mariner competence. It would also ensure that U.S.-flagged passenger ships would not be subject to additional Port State Control (PSC) requirements in foreign ports.

IV. Background

The STCW Convention establishes minimum standards for training, certification, and watchkeeping for seafarers. The STCW Convention includes competence requirements for seafarers to address emergencies on passenger ships. The STCW Convention applies to personnel engaged on seagoing ships operating seaward of the boundary line specified in 46 CFR part 7. Coast Guard regulations in 46 CFR 10.107 define the *boundary line* as "mark[ing] the dividing point between internal and offshore waters for the purposes of several U.S. statutes and, with exceptions, generally follows the trend of the seaward, highwater shorelines. See 46 CFR part 7 for the specified boundary line location.

The International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), sets international standards for vessel safety. SOLAS defines "passenger ship" as any ship carrying more than 12 passengers on an international voyage.⁴ The Coast Guard adopted this definition in 46 CFR

¹ The Coast Guard adopted these definitions from the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, and codified them in the CFR. 78 FR 77796 (Dec. 24, 2013). See additional discussion on SOLAS in section IV, Background, of this document.

² Ratings qualified under Chapters II, III, and VII of the STCW Convention are: Able Seafarer Deck, Able Seafarer Engine, Ratings Forming Part of a Navigational Watch, and Ratings Forming Part of an Engine-room Watch.

³ Specified rating for this proposed rule means various categories of ordinary seaman, able seaman, and qualified members of the engine department, issued on MMCs. For the purpose of estimates, specified ratings are the closest to the ratings qualified under STCW Chapters II, III, and VII.

⁴ SOLAS Chapter I, Part A, Regulation 2(f).

11.1103 and 12.903.⁵ Every ship subject to SOLAS must maintain a muster list to identify the functions and duties of each crewmember in an emergency.⁶ The muster list must also specify the duties assigned to crewmembers in relation to passengers in case of an emergency. The Coast Guard has an established program for the credentialing of personnel serving on U.S. vessels that is governed by domestic statutes in 14 and 46 U.S.C.,⁷ and in 46 CFR parts 11, 12 and 13. Through these domestic statutes and regulations, the Coast Guard implements the provisions of the STCW Convention and the STCW Code. Current regulations in 46 CFR part 11, subpart K—Officers on a Passenger Ship When on an International Voyage, detail the crowd management training requirements for masters, officers, and personnel working onboard U.S.-flagged passenger ships on an international voyage designated on the muster list to assist passengers in emergency situations. Regulations in 46 CFR part 12, subpart I—Crewmembers on a Passenger Ship on an International Voyage, detail the requirements for seafarers working on U.S.-flagged passenger ships on an international voyage who perform duties that involve safety or care for passengers. These personnel must meet the appropriate requirements of STCW Regulation V/2 and section A-V/2 of the STCW Code, including safety training, training in crowd management, crisis management and human behavior, and passenger safety cargo safety and hull integrity training, and must hold documentary evidence showing they meet those requirements through approved or accepted training.

On January 13, 2012, the *Costa Concordia*, an Italian passenger ship operating in the Mediterranean Sea with 3,206 passengers and 1,023 crewmembers on board, struck a reef off the Italian coastline. The incident resulted in the loss of 32 lives (27 passengers and 5 crewmembers), injury to 157 others, and the total loss of the ship. In the ensuing accident report,⁸ the Italian Ministry of Infrastructures and Transports concluded that multiple factors contributed to the injuries and

loss of life. Some of these factors included delayed management of the emergency response and evacuation process, inconsistencies in assignment of duties, communication issues due to the different backgrounds of passengers and crewmembers, and passenger confusion over which personnel employed on passenger ships were trained to assist in an emergency.⁹

The notable loss of the *Costa Concordia* provided the rationale for initiating a review of the passenger ship training provisions in the STCW Convention and the STCW Code. In 2012, the International Maritime Organization (IMO) Maritime Safety Committee (MSC) considered a proposal submitted by the United States to review and potentially amend the STCW required training for mariners working on passenger ships, considering new challenges posed by the increased size of modern cruise ships and the large number of passengers on board. The MSC tasked the Human Element, Training and Watchkeeping (HTW) Subcommittee with addressing these challenges.

Recognizing that significant numbers of U.S. passengers travel on foreign-flagged passenger ships, the United States submitted multiple proposals to the HTW subcommittee for consideration while developing new training requirements for personnel on passenger ships. The U.S. submission to the third session of the HTW subcommittee included a tiered approach to training and familiarization for personnel on passenger ships, including those providing direct service to passengers, and passenger ship emergency familiarization. This proposal was used as the basis of the amendments to the STCW Convention and the STCW Code that were adopted in 2016 and entered into force on July 1, 2018.¹⁰

The amendments to the STCW Convention and Code added passenger ship emergency familiarization requirements for personnel on passenger ships. They also expanded the

applicability of crowd management training to include ratings qualified under Chapters II, III, and VII of the STCW Convention with the current applicability of masters, officers, and personnel designated on the muster list to assist passengers in emergency situations.¹¹ The STCW Convention and the STCW Code require that passenger ship personnel are familiar with safety features, emergency equipment and procedures, basic communication, and crowd control techniques in order to assist passengers, including elderly and disabled individuals, during an emergency.

This proposed rule would codify the STCW Convention and the STCW Code, including amendments through 2016. As a signatory to the STCW Convention, the United States must ensure compliance with its treaty obligations through full implementation of amendments to the STCW Convention and the STCW Code. The STCW Convention is not self-implementing; therefore, the Coast Guard does not have discretion and must issue regulations to implement these requirements. Failure to meet the treaty obligations could cause the United States to lose status on the IMO's "White List," which distinguishes administrations that are in full compliance with the STCW Convention and the STCW Code. Loss of this status could cause U.S. ships to be subject to more rigorous PSC inspections in foreign ports, including possible detainment or denial of entry. Additionally, U.S. mariners could be ineligible to serve on foreign-flagged ships.

On August 5, 2021, the Coast Guard's Office of Merchant Mariner Credentialing (CG-MMC) issued Policy Letter 02-21, "Guidance On Voluntary Compliance With Training Requirements For Personnel Serving On U.S.-Flagged Passenger Ships That Carry More Than 12 Passengers On International Voyages",¹² to advise U.S.-flagged passenger ship operating companies of the amendments to the

⁹ Id at 159.

¹⁰ While the amendments entered into force on July 1, 2018, the STCW Convention is not self-implementing. The United States must issue regulations to meet its treaty obligations. As such, all compliance with the 2016 amendments and 2021 policy letter (CG-MMC Policy Letter 02-21, "Guidance On Voluntary Compliance With Training Requirements For Personnel Serving On U.S.-Flagged Passenger Ships That Carry More Than 12 Passengers On International Voyages") has been voluntary in nature. The Coast Guard does not have information on which operating companies or mariners in the affected population have taken measures to comply with the 2016 amendments because compliance is voluntary and not required to be recorded during an annual inspection.

⁵ 78 FR 77796 (Dec. 24, 2013). This definition of "passenger ship" is limited to subpart K of 46 CFR part 11 and subpart I of 46 CFR part 12.

⁶ SOLAS, Chapter III, Part B, Regulation 37.

⁷ 14 U.S.C. 102(3), 46 U.S.C. 7101, 7306, and 7313.

⁸ The Ministry of Infrastructures and Transports, Marine Casualties Investigative Body, Cruise Ship COSTA CONCORDIA, Marine Casualty on January 13, 2012. This report is available at: https://www.mitma.gob.es/recursos_mfom/2012costaconcordia.pdf (last visited 6/3/2024).

¹¹ IMO Resolution MSC.416(97), Consideration and Adoption of Amendments to Mandatory Instruments, Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended, and the Seafarers' Training, Certification and Watchkeeping (STCW) Code, Annex 1, page 4. A copy of this resolution is available in the docket where indicated under the ADDRESSES portion of this preamble.

¹² The document is available at: <https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/5ps/MMC/MMC-Policy-Letter-02-21-Final-05AUG21.pdf?ver=8GP3iNQS2pWTD6NG3-eDTw%3D%3D#:~:text=This%20policy%20letter%20provides%20guidance,Convention%20and%20the%20STCW%20Code.> (last visited 6/3/2024).

STCW Convention and the STCW Code and encourage voluntary compliance. This policy letter will be cancelled when this proposed rule becomes final and effective.

V. Discussion of Proposed Rule

In the following paragraphs, we provide a section-by-section description of our proposed amendments to 46 CFR parts 11 and 12, in section number order with topical headings.

46 CFR Part 11

Authority Citations

We are deleting reference to 46 U.S.C. 8906, and adding, in its place, 46 U.S.C. chapter 89. Chapter 89 of 46 U.S.C. contains the authorities for requiring various small vessel officer endorsements, including the civil penalties (in 46 U.S.C. 8906) for violating the chapter. We are also updating the reference to DHS Delegation No. 00170.1, Revision No. 01.4, to reflect the most recent revision of this document.

Subpart A—General

Section 11.102—Incorporation by Reference

The Coast Guard proposes to update the centralized incorporation by reference for the 2017 Edition of the STCW Convention and the STCW Code, which includes amendments through 2016. The STCW Convention sets the minimum standards for training, certification and watchkeeping for seafarers. The STCW Code addresses the technical aspects of the STCW Convention, including minimum standards of competence and the appropriate methods for demonstrating competence, which includes training. Currently, regulations in 46 CFR chapter I, subchapter B, reference the STCW Convention and the STCW Code, as amended through 2011. Additional amendments to the STCW Convention and the STCW Code were adopted in 2016 and entered into force on July 1, 2018.¹³ These amendments contain updated seafarer training requirements to address emergencies on passenger ships, prescribing a five-tiered passenger ship training approach.

The five-tiered approach includes passenger ship emergency familiarization, safety training for personnel providing direct service to passengers, passenger ship crowd management, crisis management and human behavior, and passenger safety, cargo safety, and hull integrity

training.¹⁴ Each tier builds on the previous tier of training, and the proposed training requirements are structured as appropriate to the associated position of responsibility on board the ship.

Subpart K—Officers on a Passenger Ship When on an International Voyage

Section 11.1105—General Requirements for Officer Endorsements

The Coast Guard proposes revising the title of this section from “General requirements for officer endorsements” to “General requirements.” The proposed change would align with the purpose of this subpart, in accordance with the STCW Convention and the STCW Code. Other specific changes to § 11.1105 are detailed below.

In summary, we propose combining existing paragraph (a) introductory text and text from paragraph (a)(1) into paragraph (a) introductory text; adding new paragraph (a)(1); redesignating paragraphs (a)(1)(i) as (a)(3), (a)(1)(ii) as (a)(2), (a)(1)(iii) as (a)(4) and (a)(1)(iv) as (a)(5); redesignating paragraph (a)(2) as paragraph (b); and redesignating existing paragraphs (b), (c), and (d) as paragraphs (c), (d) and (e) respectively. These changes would allow paragraphs (a)(1) through (a)(5) to refer to the applicable paragraphs (1 through 5) of section A–V/2 of the STCW Code, as detailed in the following discussion of those paragraphs.

In revised paragraph (a) introductory text, we would change the word “vessel” to “ship” for consistency in terminology in this part and add the text, “before being assigned to shipboard duties” for clarity. The language from existing paragraph (a)(1) in revised paragraph (a) introductory text details the incorporation of the STCW Regulation V/2 and of section A–V/2 of the STCW Code. Revised paragraph (a) introductory text would read, “To serve on a passenger ship on international voyages, before being assigned shipboard duties, masters, deck officers, chief engineers, and engineer officers, must meet the appropriate requirements of regulation V/2 of the STCW Convention and of section A–V/2 of the STCW Code (incorporated by reference, see § 11.102) as follows:”.

New paragraph (a)(1) would specify that all officers and personnel aboard passenger ships must have completed passenger ship emergency

familiarization appropriate to their capacity, duties, and responsibilities. Paragraph (a)(1) would refer to section A–V/2 paragraph 1 of the STCW Code, which requires that passenger ship emergency familiarization be completed before personnel are assigned to shipboard duties.

In accordance with section A–V/2 paragraph 1 of the STCW Code, passenger ship emergency familiarization must include topics to familiarize personnel with the general safety features aboard the ship, the location of essential safety equipment, including life-saving appliances, the importance of personal conduct during the implementation of emergency plans, and restrictions on the use of elevators during emergencies. Passenger ship emergency familiarization, in accordance with section A–V/2 paragraph 1 of the STCW Code, also includes the requirement to communicate with passengers during an emergency, including the ability to communicate in the working language of the ship, including non-verbally communicating safety information, and understanding one of the languages in which emergency announcements may be broadcast on the ship during an emergency or drill.

Passenger ship emergency familiarization proposed in paragraph (a)(1) would not require Coast Guard approval in accordance with 46 CFR part 10, subpart D, and could be conducted on board the ship or in a shore-based location. Operating companies would have to ensure personnel are familiarized with the shipboard layout, their shipboard duties, and emergency procedures. Personnel or vessel operating companies should maintain documentary evidence verifying that personnel have completed the Passenger Ship Emergency Familiarization training. It is the responsibility of the operating companies, who are obligated by Regulation I/14, “Responsibilities of Companies” of the STCW Convention, to ensure that documentation relevant to personnel training is maintained and readily accessible. Port State Control officers or Coast Guard inspectors may ask to see evidence that personnel have completed passenger ship emergency familiarization.

Redesignated paragraph (a)(2), which already requires the completion of safety training for personnel providing direct service to passengers in passenger spaces, would be revised to include the addition of “officers” to personnel providing direct service to passengers in passenger spaces. In addition, we would remove “onboard passenger ships” from

¹⁴ STCW Convention, Regulation V/2 and the STCW Code, Section A–V/2, *Mandatory minimum requirements for the training and qualifications of masters, officers, ratings, and other personnel on passenger ships*.

¹³ See footnote 9.

the explanation of passenger spaces. We would add “passenger ship” to more accurately describe the type of safety training required. Paragraph (a)(2) would refer to section A–V/2 paragraph 2 of the STCW Code, which requires that passenger ship safety training be completed before personnel are assigned to shipboard duties.

In accordance with section A–V/2 paragraph 2 of the STCW Code, passenger ship safety training must include communication. Specifically, it must include:

- The ability to communicate with passengers during an emergency, taking into account the language or languages appropriate to the principal nationalities of passengers carried on the particular route;
- The likelihood that an ability to use elementary English vocabulary for basic instructions can provide a means of communicating with a passenger in need of assistance, whether or not the passenger and crew member share a common language;
- The possible need to communicate during an emergency by some other means, such as by demonstration, hand signals, or calling attention to the location of instructions, muster stations, life-saving devices, or evacuation routes when oral communication is impractical;
- The extent to which complete safety instructions have been provided to passengers in their native language or languages;
- The languages in which emergency announcements may be broadcast during an emergency or drill to convey critical guidance to passengers and to facilitate crew members in assisting passengers; and
- In accordance with section A–V/2 paragraph 2 of the STCW Code, passenger ship safety training must include life-saving appliances, specifically the ability to demonstrate to passengers the use of personal life-saving appliances, and embarkation procedures with special attention to disabled persons and persons needing assistance.

Passenger ship safety training proposed in paragraph (a)(2) would not require Coast Guard approval in accordance with 46 CFR part 10, subpart D, and could be conducted on board the ship or in a shore-based location. Personnel completing passenger ship safety training are obligated to maintain documentary evidence of their training by Regulation V/2, “Mandatory minimum requirements for the training and qualification of masters, officers, ratings and other personnel on

passenger ships,” of the STCW Convention.

The Coast Guard would make non-substantive changes in redesignated paragraph (a)(3), which already requires the completion of crowd management training. In addition, the Coast Guard would make the following substantive changes to clarify which personnel are required to complete the required training:

- The text, “ratings qualified under Chapters II, III, and VII of the STCW Convention ” would be added to masters, officers, and personnel designated on muster lists to assist passengers in emergency situations.
- The text, “approved or accepted” would be added to clarify that masters, officers, ratings qualified under Chapters II, III, and VII of the STCW Convention, and personnel designated on muster lists to assist passengers in emergency situations must complete “approved or accepted” training in passenger ship crowd management. Requiring approved or accepted training aligns with 46 CFR part 10, subpart D, which allows training to be either approved or accepted by the Coast Guard.
- The text would be revised to refer to section A–V/2 paragraph 3 of the STCW Code, which requires crowd management training to be completed in accordance with STCW regulation V/2, paragraph 7, as set out in table A–V/2–1. Personnel completing crowd management training are obligated to maintain documentary evidence of their training by Regulation V/2, “Mandatory minimum requirements for the training and qualification of masters, officers, ratings and other personnel on passenger ships,” of the STCW Convention.

Redesignated paragraph (a)(4) would be revised to make one non-substantive change. Additionally, redesignated paragraph (a)(4), which already includes a requirement for the completion of crisis management and human behavior, would be revised to clarify that training in crisis management and human behavior must be approved “or accepted” training in accordance with 46 CFR part 10, subpart D. Paragraph (a)(4) would also be revised to refer to section A–V/2 paragraph 4 of the STCW Code, which requires training in crisis management and human behavior to be completed in accordance with STCW regulation V/2 paragraph 8, as set out in table A–V/2–2. Personnel completing crisis management and human behavior training are obligated to maintain documentary evidence of their training by Regulation V/2, “Mandatory minimum requirements for the training

and qualification of masters, officers, ratings and other personnel on passenger ships,” of the STCW Convention.

Redesignated paragraph (a)(5) would be revised to make one non-substantive change. Redesignated paragraph (a)(5) would also be revised to clarify that training in passenger safety, cargo safety, and hull integrity must be approved “or accepted” training in accordance with 46 CFR part 10, subpart D. Paragraph (a)(5) would also be revised to refer to section A–V/2 paragraph 5 of the STCW Code, which requires that training must be completed before personnel are assigned to shipboard duties.

In accordance with section A–V/2 paragraph 5 of the STCW Code, passenger safety, cargo safety, and hull integrity training must include loading and embarkation procedures and, specifically, the ability to properly apply the procedures established for the ship regarding loading and discharging vehicles, rail cars and other cargo transport units, including related communications; lowering and hoisting ramps; setting up and stowing retractable vehicle decks; and embarking and disembarking passengers, with special attention to disabled persons and persons needing assistance.

Passenger safety, cargo safety, and hull integrity training must also include:

- Carriage of dangerous goods, including the ability to apply any special safeguards, procedures, and requirements regarding the carriage of dangerous goods on board ro-ro passenger ships;¹⁵
- Securing cargoes, specifically the ability to correctly apply the provisions of the Code of Safe Practices for Cargo Stowage and Securing (CSS Code)¹⁶ to the vehicles, rail cars, and other cargo transport units carried, and to properly use the cargo-securing equipment and materials provided, considering their limitations;
- Stability, trim, and stress calculations, specifically the ability to make proper use of the stability and stress information provided; calculate stability and trim for different conditions of loading, using the stability

¹⁵ A ro-ro, or roll-on/roll-off passenger ship is defined in Chapter II–1, Regulation 2 of SOLAS, as being “a passenger ship with ro-ro cargo spaces or special category spaces.”

¹⁶ The CSS Code provides an international standard for the safe stowage and securing of cargoes to promote the safety of life both at sea, and during loading and discharge. See [https://www.imo.org/en/OurWork/Safety/Pages/CSS-Code.aspx#:~:text=All%20cargoes%20should%20be%20stowed,be%20properly%20qualified%20and%20experienced.\(last%20visited%206/3/2024\).](https://www.imo.org/en/OurWork/Safety/Pages/CSS-Code.aspx#:~:text=All%20cargoes%20should%20be%20stowed,be%20properly%20qualified%20and%20experienced.(last%20visited%206/3/2024).)

calculators or computer programs provided; calculate load factors for decks; and calculate the impact of ballast and fuel transfers on stability, trim, and stress; and

- Opening, closing and securing hull openings, including the ability to properly apply the procedures established for the ship for opening, closing and securing bow, stern and side doors and ramps; correctly operating the associated systems and conducting surveys on proper sealing and ro-ro deck atmosphere, including the ability to use equipment, where carried, to monitor atmosphere in ro-ro spaces and properly apply the procedures established for the ship for ventilation of ro-ro spaces during lading and discharging of vehicles, while on voyage and in emergencies.

Personnel completing passenger safety, cargo safety, and hull integrity training are obligated to maintain documentary evidence of their training by Regulation V/2, “Mandatory minimum requirements for the training and qualification of masters, officers, ratings and other personnel on passenger ships,” of the STCW Convention.

Redesignated paragraph (b) would be revised to state that, “Personnel required to be trained in accordance with paragraph (a) of this section must hold documentary evidence of successful completion of training as proof of meeting these requirements.” These revisions clarify who is required to hold evidence of successful completion of training in accordance with paragraph (a). We are proposing to remove the existing text, “through approved or accepted training,” to clarify that the training required in paragraphs (a)(1) and (a)(2) would not have to be Coast Guard-approved or accepted training, while the training required in paragraphs (a)(3), (a)(4), and (a)(5) must be Coast Guard-approved or accepted training.

Redesignated paragraph (c) would be revised to update terminology used in this subpart and make other non-substantive changes. Paragraph (c) would also be revised to correct references to other revised paragraphs in this subpart for personnel who must provide evidence of having maintained the required standard of competence every 5 years.

Redesignated paragraph (d) would be revised to update the paragraph reference, which was redesignated from paragraph (b) to paragraph (c), and would be revised to replace the word “sea” with “relevant seagoing” to better describe the service needed to maintain the standard of competence.

Redesignated paragraph (e) would be revised to replace the word “vessels” with “ships” to provide consistency of terminology used in this subpart.

46 CFR Part 12

Authority Citations

The Coast Guard proposes to revise the authorities listed for Part 12 by adding 46 U.S.C. 7303 through 7316. We are proposing this change to more clearly cite the statutory authority provided by Congress to promulgate regulations for all classifications of ratings endorsements with respect to standards of competency, training, and sea service. We are also updating the reference to DHS Delegation No. 00170.1, Revision No. 01.4, to reflect the most recent revision of this document.

Subpart A—General

Section 12.103—Incorporation by Reference.

The Coast Guard proposes to redesignate paragraph (b)(1), previously reserved, as paragraph (b)(2). New paragraph (b)(1) would be added to incorporate by reference the 2017 Edition of the STCW Convention, which includes amendments through 2016. Redesignated paragraph (b)(2) would reference the 2017 Edition of the STCW Code, which include all amendments through 2016.¹⁷

Subpart I—Ratings and Personnel on a Passenger Ship When on an International Voyage

The Coast Guard proposes revising the title of this subpart from “Crewmembers on a Passenger Ship on an International Voyage,” to “Ratings and Personnel on a Passenger Ship When on an International Voyage.” The proposed change would align with the purpose of this subpart, in accordance with the STCW Convention and the STCW Code. We propose making an editorial change to § 12.901; for § 12.905, we propose combining existing paragraph (a) introductory text and paragraph (a)(1) into paragraph (a) introductory text; redesignating existing paragraph (a)(2) as paragraph (b); adding new paragraphs (a)(1) through (a)(5); and redesignating existing paragraphs (b), (c), and (d) as paragraphs (c), (d) and (e) respectively. Proposed new paragraphs (a)(1) through (a)(5) would refer to the applicable paragraphs (1 through 5) of section A–V/2 of the STCW Code. The specific changes to § 12.905 are detailed below.

¹⁷ See section V, Discussion of Proposed Rule, 46 CFR part 11, subpart A, in this document for a description of the STCW Convention and the STCW Code.

Section 12.905—General Requirements

In revised paragraph (a) introductory text, we would replace the word “vessel” with “ship” to provide consistency of terminology used in this subpart and revise the text to clarify when and to whom the requirements apply. We would also move language from existing paragraph (a)(1) to paragraph (a) introductory text to detail the incorporation of the STCW Regulation V/2 and of section A–V/2 of the STCW Code. Revised paragraph (a) introductory text would read, “To serve on a passenger ship on an international voyage, before being assigned shipboard duties, personnel must meet the appropriate requirements in STCW Regulation V/2 and Section A–V/2 of the STCW Code (both incorporated by reference, see § 12.103) as follows:”.

Paragraph (a)(1) would be amended to specify that all personnel must have completed passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities. Paragraph (a)(1) would also refer to section A–V/2 paragraph 1 of the STCW Code.¹⁸ Passenger ship emergency familiarization proposed in paragraph (a)(1) would not require Coast Guard approval in accordance with 46 CFR part 10, subpart D, and could be conducted on board the ship or in a shore-based location.

Paragraph (a)(2) would be redesignated as paragraph (b). New paragraph (a)(2) would be added to include the requirement that personnel providing direct service to passengers in passenger spaces must have completed the passenger ship safety training. Paragraph (a)(2) would also refer to section A–V/2 paragraph 2 of the STCW Code.¹⁹ Passenger ship safety training proposed in paragraph (a)(2) would not require Coast Guard approval in accordance with 46 CFR part 10, subpart D, and could be conducted on board the ship or in a shore-based location.

Proposed new paragraph (a)(3) would add the requirement that ratings qualified under Chapters II, III, and VII of the STCW Convention and personnel designated on the muster list to assist passengers in an emergency situation onboard passenger ships must have completed approved or accepted training in passenger ship crowd management. Passenger ship crowd management training must be approved or accepted training in accordance with

¹⁸ See section V, Discussion of Proposed Rule, § 11.1105, in this document for a description of section A–V/2 paragraph 1 of the STCW Code.

¹⁹ See section V, Discussion of Proposed Rule, § 11.1105, in this document for a description of section A–V/2 paragraph 2 of the STCW Code.

46 CFR part 10, subpart D. This paragraph would also refer to section A–V/2 paragraph 3 of the STCW Code.²⁰

Proposed new paragraph (a)(4) would add the requirement that personnel designated on muster lists as having responsibility for the safety of passengers in emergency situations onboard passenger ships must have completed approved or accepted training in crisis management and human behavior. Crisis management and human behavior training must be approved or accepted training in accordance with 46 CFR part 10, subpart D. This paragraph would also refer to section A–V/2 paragraph 4 of the STCW Code.²¹

Proposed new paragraph (a)(5) would add the requirement that personnel assigned immediate responsibility for embarking and disembarking passengers, loading, discharging, or securing cargo, or closing hull openings onboard ro-ro passenger ships must have completed approved or accepted training in passenger safety, cargo safety, and hull integrity. Passenger safety, cargo safety, and hull integrity training must be approved or accepted training in accordance with 46 CFR part 10, subpart D. This paragraph would also refer to section A–V/2 paragraph 5 of the STCW Code.²²

Redesignated paragraph (b) would be revised to require personnel completing the training described in paragraph (a) to hold documentary evidence of meeting these requirements.

Redesignated paragraph (c) would be revised to update terminology used in this subpart and make other non-substantive changes. Paragraph (c) would also be revised to correct references to other revised paragraphs in this subpart for personnel who must provide evidence of having maintained the required standard of competence every 5 years.

Redesignated paragraph (d) would be revised to update the paragraph reference which was redesignated from paragraph (b) to paragraph (c) and would be revised to replace the word “sea” with “relevant seagoing” to better describe the service needed to maintain the standard of competence.

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in the proposed

regulatory text for 46 CFR 11.102 and 12.103. The sections that reference these standards, and the locations and web addresses where these standards are available, are listed in those sections. The material incorporated by reference is summarized in this preamble in Section V, Discussion of Proposed Rule, under the discussions of §§ 11.102 and 11.1105. For information about how to view this material, see the **ADDRESSES** section of this preamble. Copies of the material are available from the sources listed in the proposed regulatory text for §§ 11.102 and 12.103. Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Consistent with 1 CFR part 51 incorporation by reference provisions, this material is reasonably available. Interested persons have access to it through their normal course of business, may purchase it from the IMO identified in 46 CFR 11.102 or 12.103, or may view a copy by means we have identified in those sections.

VII. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

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

Additionally, Executive Order 13609, “Promoting International Cooperation,” promotes the goal of Executive Order 13563. Executive Order 13609 targets international regulatory cooperation to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. As discussed in sections IV. Background, and V. Discussion of Proposed Rule, as a signatory to the STCW Convention, the United States is required to implement amendments to

the STCW Convention and the STCW Code through national regulations.

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 it. A summary of the proposed rule’s impacts is presented below, and a more detailed discussion on the estimated costs and benefits of this proposed rule follows.

The proposed rule would make the following changes, which would apply to all personnel serving on U.S.-flagged passenger ships:

(1) Incorporate by reference the 2017 Edition of the STCW Convention and the STCW Code, to include amendments through 2016 in 46 CFR parts 11 and 12.

(2) Add a new requirement for all personnel to complete passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities during an emergency. Personnel would have to complete the familiarization before being assigned to shipboard duties. The passenger ship emergency familiarization requirement would apply to all personnel, including masters, officers, and ratings qualified under Chapters II, III, and VII of the STCW Convention. This familiarization would not require Coast Guard approval in accordance with 46 CFR part 10, subpart D, and could be conducted on board the ship or at a shore-based location. Mariners or ship operators should maintain documentation verifying that personnel have completed the passenger ship emergency familiarization.

(3) Expand the applicability of the crowd management training requirement by adding ratings qualified under Chapters II, III, and VII of the STCW Convention to the current applicability of officers and personnel designated on the muster list to assist passengers in emergency situations. Currently, only masters, officers, and personnel designated on the muster list to assist passengers on board passenger ships in emergency situations must complete crowd management training.

The Coast Guard considers the benefits and costs of the proposed rulemaking against the baseline, which is our best assessment of maritime affairs absent this proposed action. The Coast Guard does not have data on whether the U.S.-passenger-ship industry is currently in compliance with the training requirements in this proposal. Pursuant to 46 CFR 1.01–10(f)(1), which authorizes the Coast Guard to supervise the administration of the manning of U.S. ships, PSC officers

²⁰ See section V, Discussion of Proposed Rule, § 11.1105, in this document for a description of section A–V/2 paragraph 3 of the STCW Code.

²¹ See section V, Discussion of Proposed Rule, § 11.1105, in this document for a description of section A–V/2 paragraph 4 of the STCW Code.

²² See section V, Discussion of Proposed Rule, § 11.1105, in this document for a description of section A–V/2 paragraph 5 of the STCW Code.

and Coast Guard inspectors are currently verifying that mariners hold the appropriate credentials and have met the training required by the STCW Convention and the STCW Code, but are not tracking compliance with the requirements outlined in this proposed rule, since compliance is currently voluntary.

While the Coast Guard believes it is possible that personnel may have already completed the required passenger ship trainings before the effective date of this proposed rule, due to a lack of data, we cannot assume compliance. Thus, for the purposes of this regulatory analysis, we assume

personnel are not in compliance with the proposed training requirements, and we measure initial compliance costs in the first year of implementation. As a result, the Coast Guard estimates that the operating companies of U.S.-flagged passenger ships would incur undiscounted average annual costs of approximately \$352,560, in 2021 dollars, from the passenger ship emergency familiarization requirements, and ratings qualified under Chapters II, III, and VII of the STCW Convention would incur undiscounted average annual costs of \$21,185, in 2021 dollars, to comply with the crowd management training requirement. Taken together,

the proposed rule would result in annualized costs to industry of approximately \$375,707, and total costs of \$3,374,817, in 2021 dollars, when discounted at 2 percent over a 10-year period of analysis. The Coast Guard believes the proposed rule would improve safety of life at sea by ensuring passenger ship personnel are equipped to assist passengers in an emergency and would also maintain the ability of passenger ships and mariners to operate in international markets. Table 1 provides a summary of the proposed rule's applicability, affected population, potential costs, and benefits.

TABLE 1—SUMMARY OF THE PROPOSED RULE'S IMPACTS

Category	Summary
Applicability	The proposed rule would apply to personnel serving on U.S.-flagged passenger ships that carry more than 12 passengers on international voyages.
Affected Population	The proposed rule creates costs for 37 operating companies employing 1,080 mariners and other personnel and for 44 specified ratings serving on 50 U.S.-flagged passenger ships.
Cost Impacts	Operating companies would incur undiscounted average annual costs of approximately \$352,560 in 2021 dollars, from the passenger ship emergency familiarization requirements. Personnel with ratings qualified under Chapters II, III, and VII of the STCW Convention would incur undiscounted average annual costs of approximately \$21,185, in 2021 dollars, in tuition, travel expenses, opportunity cost, and per diem to comply with the crowd management training requirements. Taken together, the proposed rule results in annualized costs to industry of approximately \$375,707 and total costs of approximately \$3,374,817 in 2021 dollars, when discounted at 2 percent over a 10-year period of analysis.
Unquantified Benefits	This proposed rule creates no new costs for Government. The proposed rule aligns U.S. regulations with international standards and ensures the U.S. retains its status on the IMO's "White List" which ensures that U.S.-flagged passenger ships avoid potential detainment or denial of entry in foreign ports and U.S. This ensures U.S.-flagged vessels and mariners retain the ability to operate in international markets. The proposed rule promotes international harmonization and reciprocity of maritime regulations between the U.S. and countries where the affected ships in this proposed rule may operate. This reciprocity promotes the safety of U.S. passengers who disproportionately cruise on foreign-flagged ships. The proposed rule promotes the safety of life at sea in the case of an emergency which may prevent the loss of life, reduce the risk of injury, and increase protection of property in the marine environment.

Description of Regulatory Changes

This proposed rule would result in multiple changes that have costs. First, the proposed rule would add passenger ship emergency familiarization requirements for officers, ratings, and personnel on passenger ships making international voyages. This training includes topics to familiarize personnel with the general safety features aboard the ship, the location of essential safety equipment, including life-saving appliances, the importance of personal

conduct during the implementation of emergency plans, and restrictions on the use of elevators during emergencies. Passenger ship emergency familiarization also includes the requirement to communicate with passengers during an emergency, including the ability to communicate in the working language of the ship, including non-verbally communicating safety information, and understanding one of the languages in which emergency announcements may be broadcast on the ship during an

emergency or drill. Second, the proposed rule would expand the applicability of crowd management training by requiring ratings qualified under Chapters II, III, and VII of the STCW Convention to complete this training. Currently, only officers and personnel designated on the muster list to assist passengers in emergency situations are required to complete this training. Table 2 lists and describes the changes we propose to make to 46 CFR parts 11 and 12, with their associated impacts.

TABLE 2—PROPOSED CHANGES TO 46 CFR PARTS 11 AND 12

Section	Description of Change	Impact
Proposed Revisions to 46 CFR Part 11		
Part 11	Revises the authorities listed for part 11 by removing extraneous references related to Executive Order 10173 and updates the reference to DHS Delegation No. 00170.1, Revision No. 01.4, to reflect the most recent revision of this document.	This editorial change would not impose any costs or cost savings.
11.102(a)	Edits paragraph (a) to remove CG-MMC and National Archives and Records Administration (NARA) phone numbers, as well as update the NARA website URL.	This editorial change would not impose any costs or cost savings.
11.102(b)	Edits paragraph (b) introductory text to add IMO phone number, email, and website.	This editorial change would not impose any costs or cost savings.

TABLE 2—PROPOSED CHANGES TO 46 CFR PARTS 11 AND 12—Continued

Section	Description of Change	Impact
11.102(b)(1), 11.102(b)(2) ...	Amends paragraphs (b)(1) and (b)(2) to update the incorporation by reference of the STCW Convention, 2017 Edition, and specifies the paragraphs in 46 CFR part 11 affected by these amendments.	This editorial change would not impose any costs or cost savings.
11.305, 11.307, 11.309, 11.311, 11.313, 11.315, 11.317, 11.319, 11.321, 11.325, 11.327, 11.331, 11.333.	Amends footnote 2 in Table 1 of each impacted section to add reference to the appropriate section of the STCW Code.	This editorial change would not impose any costs or cost savings.
11.329	Renumbers footnotes associated with Table 1 for greater consistency with other sections, and amends footnote 2 in Table 1 of this section to add reference to the appropriate section of the STCW Code.	This editorial change would not impose any costs or cost savings.
11.1105	Removes the term “for officer endorsements” from the title to reflect that the Coast Guard does not issue endorsements in accordance with any of the requirements in this subpart.	This editorial change would not impose any costs or cost savings.
11.1105(a)	Merges paragraph (a)(1) into paragraph (a) introductory text. Replaces the word “vessel” with “ship” for consistency with the terminology used in this subpart, adds the text “before being assigned shipboard duties” and deletes the text “of this part” for clarity.	This editorial change would not impose any costs or cost savings.
11.1105(a)(1)	Amends paragraph (a)(1) to add a new requirement for officers and personnel to complete a passenger ship emergency familiarization. Paragraph (a)(1)(i) is revised and redesignated as new paragraph (a)(3) to retain the requirement for crowd management training.	This change would create new costs and benefits. Operating companies would incur initial-year costs of \$390,941 (in undiscounted 2021 dollars) to comply with passenger ship emergency familiarization requirements. Affects 200 officers, 44 specified ratings, and 836 personnel serving on 50 U.S.-flagged passenger ships, with numbers declining in subsequent years due to ships exiting the industry. Benefits include enhanced passenger safety at sea in the case of an emergency which may prevent the loss of life, reduce the risk of injury, and increase protection of property in the marine environment. It also increases international harmonization of maritime regulation and allows the U.S. to maintain its status on the IMO’s “White List”.
11.1105(a)(2)	Continues renumbering of paragraphs in section 11.1105 for consistency with paragraph numbering in the STCW Code, and further clarifies that officers and personnel are required to comply with the STCW Code’s training requirements.	This editorial change would not impose any costs or cost savings.
11.1105(a)(3)	Paragraph (a)(1)(i) is redesignated as paragraph (a)(3) to retain the requirement for crowd management training. Revisions include adding that training may be accepted, and adding “ratings qualified under Chapters II, III, and VII of the STCW Convention” as affected mariners to harmonize with changes in 46 CFR Part 12.	This editorial change would not impose any costs or cost savings since it is a revision of an existing requirement. The new costs associated with expanding crowd management training requirement to ratings qualified under Chapters II, III, and VII of the STCW Convention will be reflected in the changes to 46 CFR Part 12.
11.1105(a)(4), 11.1105(a)(5)	Paragraph (a)(1)(iii) is redesignated as paragraph (a)(4) and paragraph (a)(1)(iv) is redesignated as paragraph (a)(5) to continue renumbering of paragraphs in section 11.1105 for consistency with the format of the five-tiered approach to training in the STCW Code and corresponding paragraph numbering to improve readability for readers familiar with the STCW Code.	This editorial change would not impose any costs or cost savings.
11.1105(b), 11.1105(c), 11.1105(d), 11.1105(e).	Paragraph (a)(2) is redesignated as paragraph (b), redesignates paragraph (b) as paragraph (c), redesignates paragraph (c) as paragraph (d), and redesignates paragraph (d) as paragraph (e). All are revised to reference the appropriate paragraph detailing training or evidence of training. Paragraph (d) deletes “sea” and adds “relevant seagoing” for consistency. Paragraph (e) changes “vessels” to “ships” and adds “Convention” after “STCW” for greater consistency with the terminology used in this subpart.	This editorial change would not impose any costs or cost savings.

TABLE 2—PROPOSED CHANGES TO 46 CFR PARTS 11 AND 12—Continued

Section	Description of Change	Impact
Proposed Revisions to 46 CFR Part 12		
Part 12	Revises the authorities listed for part 12 by adding additional sections from 46 U.S.C. 7303–7316 to more clearly cite the statutory authority provided by Congress, and updates the reference to DHS Delegation No. 00170.1, Revision No. 01.4, to reflect the most recent revision of this document.	This editorial change would not impose any costs or cost savings.
12.103(a)	Edits paragraph (a) to remove CG–MMC and NARA phone numbers, as well as update the NARA website URL and email.	This editorial change would not impose any costs or cost savings.
12.103(b)	Edits paragraph (b) introductory text to add IMO phone number, email, and website.	This editorial change would not impose any costs or cost savings.
12.103(b)(1)	Redesignates paragraph (b)(1) as paragraph (b)(2) and adds a new paragraph (b)(1) to incorporate by reference the STCW Convention, 2017 Edition.	This editorial change would not impose any costs or cost savings.
12.103(b)(2)	Amends redesignated paragraph (b)(2) to update the incorporation by reference of the STCW Code, 2017 Edition, and updates the sections and paragraphs in 46 CFR Part 12 affected by these amendments.	This editorial change would not impose any costs or cost savings.
12.603	Amends footnotes 2 and 3 in Table 1 to § 12.3603(d) to add reference to the appropriate sections of the STCW Code.	This editorial change would not impose any costs or cost savings.
12.605, 12.609, 12.611	Amends footnote 2 in Table 1 to § 12.3605(c), § 12.3609(c), and § 12.3611(c) to add reference to the appropriate sections of the STCW Code.	This editorial change would not impose any costs or cost savings.
12.901	Revises the title of subpart I to better reflect the purpose of the subpart in accordance with the STCW Code. Changes the text “part” to “subpart” for consistency.	This editorial change would not impose any costs or cost savings.
12.905(a)	Moves text from paragraph (a)(1) into paragraph (a) introductory text. Replaces the word “vessel” with “ship” for consistency with terminology used in this subpart and revises the text to specify when and to whom the requirements apply.	This editorial change would not impose any costs or cost savings.
12.905(a)(1)	Amends paragraph (a)(1) to add a requirement for all personnel to complete passenger ship emergency familiarization.	This change would create new costs and benefits. 37 operating companies would incur initial-year costs of \$390,941 (in undiscounted 2021 dollars) to achieve compliance with passenger ship emergency familiarization requirements. Affects 200 officers, 44 ratings, and 836 personnel serving on 50 U.S.-flagged passenger ships, with numbers declining in subsequent years due to ships exiting the industry. Benefits include enhanced passenger safety at sea in the case of an emergency which may prevent the loss of life, reduce the risk of injury, and increase protection of property in the marine environment. It also increases international harmonization of maritime regulation and allows the U.S. to maintain its status on the IMO’s “White List”.
12.905(a)(2)	Redesignates paragraph (a)(2) as paragraph (b). Adds new paragraph (a)(2) to specify that personnel providing direct service to passengers in passenger spaces must complete passenger ship safety training specified in section A–V/2 paragraph 2 of the STCW Code. This was an existing requirement but is now being specified for greater clarity and consistency with the five-tiered approach to training in the STCW Code.	This editorial change would not impose any costs or cost savings.

TABLE 2—PROPOSED CHANGES TO 46 CFR PARTS 11 AND 12—Continued

Section	Description of Change	Impact
12.905(a)(3)	Adds new paragraph (a)(3) to require ratings qualified under Chapters II, III, and VII of the STCW Convention and personnel designated on the muster list to assist passengers in emergency situations to complete crowd management training.	This change would create new costs and benefits. Ratings qualified under Chapters II, III, and VII of the STCW Convention would incur average annual costs of \$21,185 (in undiscounted 2021 dollars). More specifically, we estimate ratings will incur \$65,185 (in undiscounted 2021 dollars) in the first year to comply with crowd management training requirements and then incur an average of \$16,296 (in undiscounted 2021 dollars) in annually recurring costs to train new ratings due to turnovers. Affects 44 specified ratings serving on 50 U.S.-flagged passenger ships in the first year of implementation, with decreasing numbers every year after. See table 3 for details on turnovers. Benefits include enhanced passenger safety at sea in the case of an emergency which may prevent the loss of life, reduce the risk of injury, and increase protection of property in the marine environment. It also increases international harmonization of maritime regulation and allows the U.S. to maintain its status on the IMO's "White List". In addition, this ensures U.S. mariners meet international standards and maintain their ability to serve on foreign-flagged ships.
12.905(a)(4)	Adds new paragraph (a)(4) to specify that personnel designated on the muster list as having responsibility for the safety of passengers in emergency situations must complete training in crisis management and human behavior. This was an existing requirement but is now being specified for greater clarity and consistency with the five-tiered approach to training in the STCW Code.	This editorial change would not impose any costs or cost savings.
12.905(a)(5)	Adds new paragraph (a)(5) to specify that personnel assigned immediate responsibility for embarking and disembarking passengers, loading, discharging, or securing cargo, or closing hull openings onboard ro-ro passenger ships must complete training in passenger safety, cargo safety, and hull integrity. This was an existing requirement but is now being specified for greater clarity and consistency with the five-tiered approach to training in the STCW Code.	This editorial change would not impose any costs or cost savings.
12.905(b)	Redesignates paragraph (a)(2) as paragraph (b) and revises text of paragraph (b) to clarify that personnel must retain documentary evidence of training completion. This was an existing requirement but is now being specified for greater clarity and consistency with the STCW Code.	This editorial change would not impose any costs or cost savings.
12.905(c), 12.905(d), 12.905(e).	Redesignates paragraph (b) as paragraph (c), redesignates paragraph (c) as paragraph (d), redesignates paragraph (d) to paragraph (e), and revises text to reference the correct paragraphs outlining training requirements and evidence of training. Paragraph (d) is updated to remove "sea" and add "relevant sea-going" for consistency.	This editorial change would not impose any costs or cost savings.

Affected Population

This proposed rule would have two affected populations that would incur costs: (1) operating companies with U.S.-flagged passenger ships; and (2) ratings qualified under Chapters II, III, and VII of the STCW Convention serving on the same ships.

The Coast Guard analyzed data from the Marine Information for Safety and Law Enforcement (MISLE) database to determine the number of U.S.-flagged passenger ships that carry more than 12 passengers on international voyages and

to determine the number of unique owners and operators.²³ We determined that there are 50 U.S.-flagged passenger ships owned by 37 operating companies that would incur the costs of providing passenger ship emergency familiarization to the officers, ratings, and personnel aboard their ships. Unlike most STCW Convention and

²³ The Coast Guard used MISLE to provide data on all active (inspected by definition) U.S.-flagged passenger vessels that carry over 12 passengers on international voyages as defined by their SOLAS certification and route type.

STCW Code training requirements, it would be incumbent upon the owners and operators of these passenger ships to provide this training, since it is ship-specific and is given on board prior to assuming duties.

To determine the number of officers, ratings, and personnel impacted by the proposed passenger ship emergency familiarization requirements, as well as the number of ratings qualified under Chapters II, III, and VII of the STCW Convention who would be subject to the proposed crowd management training

requirements, the Coast Guard used additional data from the MISLE database.²⁴ The Coast Guard reviewed the certificate of inspection for all 50 U.S.-flagged passenger ships in the affected ship population and reviewed the manning requirements for each

ship.²⁵ Accordingly, we determined that 1,080 personnel [(100 officers + 22 specified ratings + 418 additional personnel) × 2 mariners per ship] would be subject to the proposed training requirements.²⁶ Specifically, the passenger ship emergency

familiarization requirement would affect 1,080 personnel (200 officers + 44 specified ratings + 836 personnel), and the expanded applicability of crowd management training requirements would affect the 44 ratings. See table 3.

TABLE 3—COUNTS OF MARINERS IN THE AFFECTED POPULATION

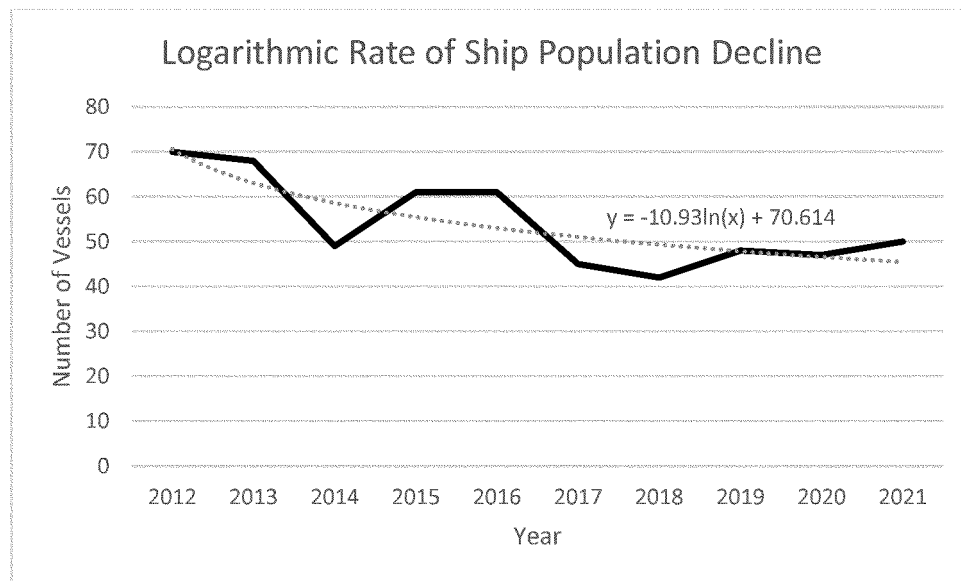
	Number of officers	Number of specified ratings	Number of additional personnel	Total mariners
Crew 1	100	22	418	540
Crew 2	100	22	418	540
Total	200	44	836	1,080

Additionally, we utilized historical ship population data from 2012 to 2021 to estimate growth rates within the industry, and subsequent changes to the ship and mariner population into the future. After examining the changes in ship population over time, the Coast Guard determined that the population of U.S.-flagged passenger ships is facing a gradual decline despite apparent growth in the foreign-flagged fleet. While linear growth rates are typically preferred, we

determined that a linear decline that would eventually reach zero is an unrealistic picture of the changing dynamics of the ship population. Instead, a logarithmic decline that gradually levels off according to the formula for the trend line $y = -10.93\ln(x) + 70.614$ more accurately portrays the industry because logarithmic functions are best used to project slow rates of decline, and trend towards a number without reaching

zero. This rate of decline is reflected in Figure 1. However, for the purposes of this analysis, we estimate that the U.S.-flagged ship population will decrease by one ship each year, which is the closest whole number to the average annual change in population over the next 10 years of analysis. Therefore, we estimate that the continuous decrease in the affected mariner population is equivalent to the manning requirements of a ship exiting service each year.

Figure 1: Logarithmic Rate of Ship Population Decline



Next, we reviewed the manning requirements for the 50 U.S.-flagged passenger ships to derive the average manning requirement and thereby estimate the decrease in mariners and

personnel each year. The affected population of 50 U.S.-flagged passenger ships is comprised of 3 categories of ships: 3 passenger vessels of 100 or more gross tons (46 CFR Subchapter H),

9 small passenger vessels of less than 100 gross tons carrying more than 150 passengers or with overnight accommodations for more than 49 passengers (46 CFR Subchapter K), and

²⁴ MISLE was accessed on September 9, 2021.

²⁵ According to 46 U.S.C. Subtitle II, Part F: Manning of Vessels, manning requirements refer to requirements generally for the number of

individuals required, qualifications and conditions of employment, and duties; for masters and other licenses and registered individuals; for pilots; for unlicensed personnel; for small vessels; for tank vessels; and for pilotage on the Great Lakes.

²⁶ For each passenger ship, we assume two individuals to serve in each billet, to account for the rotational nature of shipboard employment.

38 small passenger vessels of less than 100 gross tons (46 CFR Subchapter T). The average crew size for each of the

categories of vessels and the entire population is displayed in Table 4.

TABLE 4—AVERAGE COUNTS OF MARINERS BY CATEGORY OF PASSENGER VESSEL IN THE AFFECTED POPULATION

Vessel category	Average officers	Average ratings	Average additional personnel
Passenger Vessels of 100 or More Gross Tons	8	7	40
Passenger Vessels Carrying More Than 150 Passengers or With Overnight Accommodations for More Than 49 Passengers	3	0	20
Passenger Vessels of Less Than 100 Gross Tons	1	0	3
Total (Across Entire Population) ²⁷	2	1	8

Based on this data, the Coast Guard estimates that the average ship in the population carries 11 mariners (2 officers, 1 specified rating, and 8 personnel) and operates with 2 crews that would be subject to the proposed requirements. The Coast Guard assumes that, as ships subject to the proposed requirements exit the fleet, mariners will have less opportunity to serve aboard these ships and leave the affected population. Because we do not know which category of vessel may exit the affected population in a given year, we elect to use the overall population average rather than the specific estimates for the subcategories of ships to account for mariner exit in the affected population. We believe that, since the majority of the affected population is made up of smaller ships (38 of the 50 affected ships), this overall average which tends toward a smaller ship is most representative. Therefore, we estimate that each exiting ship would result in 22 fewer personnel subject to the proposed training requirements (4 officers, 2 specified ratings, and 16 personnel across 2 crews). The Coast Guard requests comments on the accuracy of our assumptions related to ship and mariner exit.

Mariner Turnover

In any given year, there will be turnover in the mariner population and some credentialed mariners will choose to exit the industry. The turnover rate is the number of mariners who leave the industry and will need to be replaced by mariners with an MMC. Because the Coast Guard does not issue passenger ship endorsements, we cannot estimate the turnover rate from existing data. Instead, the Coast Guard uses the turnover rate derived for the “Persons in Charge of Fuel Transfers” final rule (PIC

rule), published on May 27, 2020 (85 FR 31677) as an approximation for the turnover rate for this rule.²⁸ In that rule, the Coast Guard estimated that, in any given year, 32.55 percent of the population that was eligible to renew a specific MMC endorsement would not do so. The PIC rule utilized data from the National Maritime Center (NMC) for individuals obtaining MMCs with issue dates from April 2009 to March 2020 and expiration dates from August 2009 to March 2025. In the data from NMC, every MMC issued and every mariner has a unique identifying number such that sorting by mariner reference number shows all the MMCs for that mariner. We then cleaned the data and applied a formula that marks each MMC as either renewed, not renewed, or ineligible to renew. We marked any MMC with an expiration date after July 18, 2019 (when the data was downloaded) as ineligible to renew. Otherwise, we assumed an MMC is renewed if the issue date is within 2,190 days of the previous MMC’s issue date. The period of 2,190 days is equivalent to 6 years (6 years × 365 days in a standard calendar year), which represents the validity period of 5 years plus a year-long grace period wherein a mariner cannot use the expiring MMC but could renew that MMC without having to retake the required formal training from the beginning. If there was no new MMC issued by March 2015, we assumed that the mariner left the marine industry or otherwise no longer requires an MMC (turned over) in 2015. We then tabulated how many MMCs in each calendar year were eligible to renew, how many of those eligible were renewed, and how many of those eligible were not renewed to produce a turnover percentage as discussed. The PIC rule utilized a 3-year average of turnover rates to arrive at the calculated

turnover rate. This rate assumes that any mariner lost to turnover in a given year is replaced by a mariner with an original MMC, in order to maintain a stable population of mariners able to serve the total population of vessels. We believe this turnover rate is a good approximation for the turnover rate in our population, because the MMC endorsement in the PIC rule has similar requirements for qualification, including similar prerequisites such as Basic and Advanced Firefighting training. The Coast Guard requests comments on the accuracy of our assumption that the estimated PIC turnover rate is similar to the passenger ship turnover rate. Therefore, in a similar manner, for this proposed rule, we assume that any mariner lost to annual turnover would be replaced by a mariner with the same credentials at this rate. This methodology ensures a stable population of mariners able to serve the total population of active ships. Because we propose, in part 12.905(d), that the standard of competence in crowd management can be maintained through evidence of 1 year of sea service within the last 5 years, employing this turnover rate allows us to capture the number of new ratings entering service who would require crowd management training. This turnover rate is applied only to ratings, because this group of mariners can be replaced by those who have a newly issued original MMC, as noted above, and will be required to complete this training. Together, in subsequent years, we expect to see decreasing numbers of mariners seeking to meet the proposed requirements of this rule. Table 5 outlines the number of officers, ratings, and personnel we estimate would be required to complete passenger ship emergency familiarization and crowd management training over the next 10 years of analysis.

²⁷ These totals are calculated from the full affected population of vessels. For example, 200 officers divided by 50 ships leads to an average of 2 officers per ship.

²⁸ <https://www.federalregister.gov/documents/2020/05/27/2020-11366/person-in-charge-of-fuel-transfers> (last visited 3/15/2024).

TABLE 5—MARINERS NEEDING PASSENGER SHIP EMERGENCY FAMILIARIZATION AND CROWD MANAGEMENT TRAININGS DUE TO TURNOVER AND SHIP POPULATION DECLINE

Year	Officers in population ²⁹	Ratings in population ³⁰	Personnel in population ³¹	Number of personnel needing passenger ship emergency familiarization each year	Number of ratings seeking crowd management training due to turnovers ³²
	(a)	(b)	(c)	(d) = (a + b + c)	(e) = (b) × 32.55%
1	200	44	836	1,080	44
2	196	42	820	1,058	14
3	192	40	804	1,036	13
4	188	38	788	1,014	12
5	184	36	772	992	12
6	180	34	756	970	11
7	176	32	740	948	10
8	172	30	724	926	10
9	168	28	708	904	9
10	164	26	692	882	8

Columns (a), (b), and (c) describe the decrease in overall mariner population each year due to ships being retired from service, estimated at approximately one ship per year. Column (d) provides a running total of personnel who will be required to take passenger ship emergency familiarization each year before assuming shipboard duties. Finally, column (e) describes the total number of ratings who would seek crowd management training due to turnover within the mariner population. Since we assume that mariners are currently not in compliance with the Section A–V/2 of the STCW Code, the total is the full population of ratings in year 1, with only new ratings completing training due to turnover in subsequent years.

Costs

The Coast Guard has considered the additional costs of the proposed rulemaking against the baseline. Specifically, we have considered whether there are compliance costs to operating companies and personnel aboard the ships, as well as enforcement

costs to the Federal government associated with the proposed rulemaking.

First, the proposed rule would add passenger ship emergency familiarization requirements for officers, ratings, and personnel on passenger ships making international voyages. These costs would be incurred by operating companies in the ship population. Second, the proposed rule would expand the applicability of crowd management training by requiring ratings qualified under Chapters II, III, and VII of the STCW Convention to complete this training. Currently, only officers and personnel designated on the muster list to assist passengers in emergency situations are required to complete this training. The Coast Guard believes that there may be existing ratings qualified under Chapters II, III, and VII of the STCW Convention with duties on the muster list, which already requires them to complete crowd management training. However, for the purposes of our analysis, due to a lack of data, we assume that all qualified ratings in the affected population would need to complete crowd management for the first time as a result of this proposed rule. The Coast Guard requests comment on the validity of this assumption.

While these changes to training requirements would create new costs for operating companies and ratings qualified under Chapters II, III, and VII of the STCW Convention, the Coast Guard does not anticipate that this rulemaking would create added enforcement costs to the Federal government. We estimate that Coast Guard inspectors currently need 5–10 minutes to verify training documents

during a PSC inspection, and that this proposal would not add to the time and resources expended under the current requirements.

Passenger Ship Emergency Familiarization and Crowd Management Trainings

The proposed rule would require officers, ratings, and personnel to complete the passenger ship emergency familiarization and expand the applicability of crowd management training to include ratings qualified under Chapters II, III, and VII of the STCW Convention. Discussions with subject matter experts (SMEs) from CG–MMC and personnel at local Coast Guard inspections offices reveal that we are currently unable to determine whether the U.S. passenger ship industry is in compliance with the training requirements of the STCW Convention because compliance is voluntary and not required to be recorded during an inspection. Therefore, for the purposes of this analysis, we assume that everyone in the affected population would need to comply with the proposed passenger ship emergency familiarization and crowd management training requirements. We request public comment as to the actual percentage of the affected population that is in compliance with the 2016 training requirements.

The following section estimates the initial first-year compliance costs and the future recurring compliance costs associated with the proposed rulemaking.

²⁹ Officers in population values are equal to the previous row value minus 4 (2 officers each across 2 crews) as a result of 1 vessel exiting the industry each year.

³⁰ Ratings in population values are equal to the previous row value minus 2 (1 ratings each across 2 crews) as a result of 1 vessel exiting the industry each year.

³¹ Personnel in population values are equal to the previous row value minus 16 (8 personnel each across 2 crews) as a result of 1 vessel exiting the industry each year.

³² Rounded to the nearest whole number. The first row in this column is an exception and should not be calculated with the provided (e) = (b) × 32.55% formula because all ratings would need to seek crowd management training in the first year of analysis.

Cost of Passenger Ship Emergency Familiarization

Passenger ship emergency familiarization is conducted on board when personnel report for duty and would include topics to familiarize personnel with the general safety features aboard the ship, the location of essential safety equipment, including life-saving appliances, the importance of personal conduct during the implementation of emergency plans, and restrictions on the use of elevators during emergencies. Passenger ship emergency familiarization also includes the requirement to communicate with passengers during an emergency, including the ability to communicate in the working language of the ship, including non-verbally communicating safety information, and understanding one of the languages in which emergency announcements may be broadcast on the ship during an emergency or drill. Because this training is ship-specific and given before personnel are assigned to shipboard duties, we assume that operating companies incur the costs of these required trainings. Costs are based on the opportunity cost of time of personnel required to complete the training.

The Coast Guard assumes that a mariner serving at management level aboard the ship gives the familiarization training to crewmembers. According to 46 CFR 10.107, management level refers to the level of responsibility associated with (1) serving as master, chief mate, chief engineer officer or second engineer officer onboard a seagoing ship; and (2) ensuring that all functions within the designated area of responsibility are properly performed. We believe mariners at this level to be most qualified to provide this training, given that this training is meant to be specific to the ship on which the mariners serve. The Coast Guard requests comment on this assumption and whether another individual would be more likely to provide this training.

Based on input from SMEs and Coast Guard inspectors from local offices with oversight in the operating areas of the ships, the Coast Guard estimates that this training requires 4 hours per individual. In addition, we assume that it requires half this time, or 2 hours, for a management level officer to prepare to deliver the training. We make this assumption as they are responsible for shipboard management and familiar with the areas required to be included in the passenger ship emergency familiarization training. Given the relatively small size of the average ship

in the affected population and the ship-specific knowledge of the management level officers on board, we assume that 2 hours would be sufficient development and preparation time for both initial and subsequent training offerings. The Coast Guard requests comment on the accuracy of our assumptions related to the time to prepare for and deliver passenger ship emergency familiarization training.

To compute the opportunity cost of time of the affected population to complete passenger ship emergency familiarization training, we use the U.S. Bureau of Labor Statistics' (BLS) Occupational Employment Statistics occupational series, "53–5021 Captains, Mates, and Pilots of Water Vessels," under North American Industry Classification System (NAICS) 483100—Deep Sea, Coastal, and Great Lakes Water Transportation to estimate the hourly mean wage rate for officers, which is \$46.02 in 2021 dollars.³³ Similarly, we use BLS occupational series, "53–5011 Sailors and Marine Oilers," to estimate the mean wage rate for ratings, which is \$28.07 in 2021 dollars.³⁴ Finally, we use "53–6061 Passenger Attendants" to estimate the mean wage rate for personnel, which is \$24.26 in 2021 dollars.³⁵

Next, we apply a load factor to these wage rates to determine the total compensation of officers, ratings, and personnel more accurately. We calculate a load factor of 1.48 (1.4756 rounded up) from the BLS's Employer Costs of Employee Compensation December 2021 release.³⁶ We then multiply the hourly wage rates by this load factor. Therefore, we find the loaded hourly wage rate of an officer is \$68.11 ($\$46.02 \times 1.48$), the loaded hourly wage rate of a rating is \$41.54 ($\$28.07 \times 1.48$), and the loaded hourly wage rate of personnel is \$35.90 ($\$24.26 \times 1.48$).

Because all personnel must receive this training each time they report for duty, we assume that the training would be delivered to the entire population of personnel each year. In addition, we

assume that this new training will be delivered at a quarterly frequency on average, in line with other trainings required for mariners serving on Subchapter T and K vessels according to CFR 46 185.420 and 122.420, respectively. This means that, in the first year, 200 officers, 44 specified ratings, and 836 personnel across 2 crews (assuming each crew serves 6 months on average) would need to take this training twice, for a total of 8 training hours per mariner. Additionally, 1 management level officer would need to prepare to deliver the training and document completion of the training for personnel aboard their ship twice for each crew, meaning 100 officers (1 officer delivering the training twice for each crew across 50 ships) would need to spend 4 hours preparing to deliver the training in the first year, 0.166 hours (10 minutes) of which would be used to document training completion. The Coast Guard requests comment on the accuracy of our assumptions surrounding the frequency of this training.

Therefore, in the first year of implementation, we estimate that operating companies would incur costs of \$390,941 in undiscounted 2021 dollars, rounded. This is the sum of 200 officers taking the training twice for a total of 8 hours at a loaded wage rate of \$68.11 ($200 \times 8 \times \$68.11 = \$108,976$), 44 specified ratings taking the training twice for a total of 8 hours at a loaded wage rate of \$41.54 ($44 \times 8 \times \$41.54 = \$14,622.08$), 836 personnel taking the training twice for a total of 8 hours at a loaded wage rate of \$35.90 ($836 \times 8 \times \$35.90 = \$240,099.20$), and 100 officers preparing to deliver and document completion of the training twice for a total of 4 hours at a loaded wage rate of \$68.11 ($100 \times 4 \times \$68.11 = \$27,244$).

Costs to the population of operating companies would decrease over time as ships exit the industry at an estimated rate of one per year. The Coast Guard estimates that the average ship in the population carries 11 mariners (2 officers, 1 specified rating, and 8 personnel) and operates with 2 crews that would be subject to the proposed requirements. The Coast Guard assumes that, as ships subject to the proposed requirements exit the fleet, mariners serving on those ships would also exit the affected population and would no longer be subject to the proposed training requirements. Therefore, we estimate that each exiting ship would result in 22 fewer personnel subject to the proposed training requirements (4 officers, 2 specified ratings, and 16 personnel), and this is reflected in the calculations. Over the 10 years of

³³ <https://www.bls.gov/oes/2021/may/oes535021.htm> (last visited 6/3/2024).

³⁴ <https://www.bls.gov/oes/2021/may/oes535011.htm> (last visited 6/3/2024).

³⁵ <https://www.bls.gov/oes/2021/may/oes536061.htm> (last visited 6/3/2024).

³⁶ We obtained a total compensation estimate of \$33.57 and the wages and salaries estimate of \$22.75 for private industry workers for the transportation and material moving occupational group from Table 4 of the Employer Costs for Employee Compensation—December 2021 release at https://www.bls.gov/news.release/archives/ecec_03182022.pdf (last visited 6/3/2024). This allowed us to determine a load factor of 1.475 ($\$33.47 / \$22.75$) that we could apply to the mean hourly wage rate to obtain an estimate for total compensation for an officer and rating.

analysis, we estimate that operating companies would incur average annual costs of \$352,560 and total costs of

\$3,525,602, in undiscounted 2021 dollars. Table 6 describes the cost impacts of the passenger ship

emergency familiarization requirements over the next 10 years of analysis.

TABLE 6—UNDISCOUNTED COSTS OF THE PASSENGER SHIP EMERGENCY FAMILIARIZATION REQUIREMENT OVER 10 YEARS OF ANALYSIS

Year	Officers giving training	Officers taking training	Ratings taking training	Personnel taking training	Officer loaded wage	Rating loaded wage	Personnel loaded wage	Hours to take training	Hours to prepare and document training	Total cost
	(a)	(b)	(c) ³⁷	(d)	(e)	(f)	(g)	(h)	(i)	(j) = [(a × e × i) + (b × e × h) + (c × f × h) + (d × g × h)]
1	100	200	44	836	\$68.11	\$41.54	\$35.90	8	4	\$390,941
2	98	196	42	820	68.11	41.54	35.90	8	4	382,412
3	96	192	40	804	68.11	41.54	35.90	8	4	373,883
4	94	188	38	788	68.11	41.54	35.90	8	4	365,354
5	92	184	36	772	68.11	41.54	35.90	8	4	356,825
6	90	180	34	756	68.11	41.54	35.90	8	4	348,296
7	88	176	32	740	68.11	41.54	35.90	8	4	339,767
8	86	172	30	724	68.11	41.54	35.90	8	4	331,237
9	84	168	28	708	68.11	41.54	35.90	8	4	322,708
10	82	164	26	692	68.11	41.54	35.90	8	4	314,179
Average										352,560
10-Year Total										3,525,602

Note: Totals may not sum due to rounding.

Cost of the Crowd Management Trainings

The crowd management training requirement would apply to the 44 specified ratings across 2 crews in the affected mariner population for the first year of implementation. In subsequent years, only a fraction of the mariner population would need to seek crowd management training, due to a declining ship population and employee turnover.³⁸ The cost of attending a crowd management course includes tuition, travel expenses, opportunity cost of time, and meal and incidental expenses (M&IE), which would be

incurred by the affected ratings qualified under Chapters II, III, and VII of the STCW Convention.

(a) Tuition and Opportunity Cost of Attendance

There are currently approximately 25 Coast Guard-approved training providers offering crowd management training. Because crowd management is an existing training requirement, we do not assume any new costs to training providers to develop crowd management courses and obtain Coast Guard approval of these courses. The websites of seven training centers

provide detailed information on the length and tuition for the course. According to this data, the duration of a crowd management course ranges from 4 to 8 hours to complete, for an average of 5.17 hours. As a result, we estimate that ratings would take 1 day, on average, to complete the course. Tuition ranges from \$90 to \$400, for an average cost of \$219. Table 7 provides an overview of the available crowd management courses with associated costs and hours, while table 8 describes the estimated undiscounted cost for an individual rating to take crowd management training.

TABLE 7—COAST GUARD APPROVED TRAINING CENTERS CURRENTLY OFFERING CROWD MANAGEMENT TRAINING COSTS

Training center	Website ³⁹	Cost	Hours ⁴⁰
Alaska Vocational Technical Center	https://avtec.edu/maritime/courses/crowd-management-alavtc-142/	\$90.00	4.0
Captain School USVI	http://www.captainschoolusvi.com/	250.00	N/A
Chesapeake Marine Training Institute	https://www.chesapeakemarineinst.com/cmti-course/crowd-management/	200.00	4.0
Maritime Professional Training	https://www.mptusa.com/course-details/crowd-management-course-155	199.00	8.0
Maritime Institute	https://maritimeinstitute.com/course/crowd-management/	400	7.0
Quality Maritime Training, LLC	http://qualitymaritimetraining.com/courses/all-courses/crowd-management/	195.00	4.0
Resolve Maritime Academy	https://resolveacademy.com/course/crowd-management/	199.00	4.0
Average .....	.....	219	5.17

³⁷ The 32.55 percent turnover rate for ratings discussed in the mariner turnover section is not reflected here because the emergency familiarization training will be given each year when reporting for duty. Except for those mariners leaving the population due to ships exiting the market, we assume that the number of ratings will

be constant each year in order to fully meet the manning requirements of the ships remaining in the affected population.

³⁸ See table 4 for more specifics on the numbers of ratings who would seek crowd management training over the next 10 years of analysis.

³⁹ All websites accessed March 15, 2023.

⁴⁰ Not all training providers indicated the length of course time on their websites. Those not providing the length of their offered crowd management course are indicated with an N/A in the Hours column.

TABLE 8—OPPORTUNITY COST OF TIME FOR RATINGS TO COMPLETE A CROWD MANAGEMENT COURSE

Loaded wage rate	Hours	Total Opportunity cost of crowd management course
(a)	(b)	(c) = (a) × (b)
\$41.54	8	\$332

Note: Totals may not sum due to rounding.

(b) Travel Distribution

To estimate the cost of travel and the opportunity cost of travel time, we assume varying modes of travel for mariners getting to and from approved training based on the distribution of travel modes, derived in table 16 of CG–MMC Policy Letter 01–21: Guidelines for Qualifying for STCW Endorsements for Basic and Advanced IGF Code Operations cost analysis.⁴¹ We reflect the same percentages in this NPRM as in the policy letter by assuming that 20 percent would drive to the training center and return the same day, 46 percent would drive and stay 2 nights, and 34 percent would fly and stay 2 nights.⁴² The percentages used in CG–MMC Policy Letter 01–21 derived from the distance required to travel to the nearest training provider for each mariner based on the ZIP Code associated with their credential and the ZIP Codes associated with the training provider locations. The policy letter utilized a random sample of 100 mariners with STCW endorsements involving the International Code of Safety for Ships Using Gases or Other Low Flashpoint Fuels (IGF Code) travelling to training centers offering relevant IGF Code training courses. In that analysis, we determined that 20 mariners would commute to the nearest training provider (or live less than 85.4 miles from a training provider), 46 would drive to the nearest training provider and lodge overnight (or live between 85.4 miles and 583.5 miles from a training provider), and 34 would fly to the nearest training provider and lodge overnight (or live greater than 583.5 miles from a training provider).

Because there is no specific endorsement for the population of mariners affected by this proposed rule (mariners serving on small passenger ships making international voyages), it

is not possible to accurately replicate this methodology in this analysis. Due to this lack of data, we have determined to use the percentages as they appear in CG–MMC Policy Letter 01–21. We acknowledge that this creates uncertainty surrounding our cost estimates related to travel for this specific population of mariners. The Coast Guard requests public comment on our decision to use these predetermined rates of travel for this cost analysis.

We use the same methodology from CG–MMC Policy Letter 01–21 to estimate the thresholds and opportunity costs for travel among the affected population. Using updated data, the Coast Guard estimates that mariners who live or reside less than 93.9 miles from a training provider would commute to the closest site without lodging or utilizing overnight accommodations. We base this assumption on a report titled, “Commuting in America (2): The National Report on Commuting Patterns and Trends,” from the American Association of State Highway and Transportation Officials, which posits that Americans, on average, are willing to spend up to a maximum of 90 minutes commuting to work each way.⁴³ This report, which used data from the American Community Survey, illustrates that approximately 97.5 percent of American commuters spent 90 minutes (1.5 hours) or less commuting to work.⁴⁴ To convert 90 minutes into a distance, we calculate an average driving speed using data from the Department of Transportation (DOT’s) National Highway Traffic Safety Administration’s report, “National Traffic Speeds Survey III: 2015.”⁴⁵

⁴³ The American Association of State Highway and Transportation Officials conducted the report in 2013 and used Census Bureau data in the report. Please see Figure 11–13 on page 16 to obtain the travel distribution time to work in minutes. Readers can access the report at <https://transportation.org/traveltrends/commuting-in-america/brief-13-11-commuting-departure-time-and-trip-time/>. Last accessed March 12, 2024.

⁴⁴ The American Community Survey is an ongoing survey by the U.S. Census Bureau. It regularly gathers information pertaining to demographics and housing characteristics of U.S. households. More information on this survey can be found at: <https://www.census.gov/programs-surveys/acs/about.html> (last visited 6/3/2024).

For information on “mega-commuting” refer to footnote 29 or this brochure from the ACS: <https://www.census.gov/content/dam/Census/library/working-papers/2013/demo/SEHSD-WP2013-03.pdf> (last visited 6/3/2024).

⁴⁵ In order to convert this to distance, we take the mean total of table 12’s Speed by Road Type and Time of Day estimates from 2015 to get at average road speed of 62.6 miles per hour. This information can be found in table 12 using the “Download Document” link for Publication No. DOT HS 812 485 (March 2018) at this website: <https://>

From this report, we take the mean speed from the three road classes across the five time periods provided. We obtain an average speed of 62.6 mph. We then multiply the average speed of these three road classes by 1.5 hours (90 minutes) to obtain our commuting distance threshold of 93.9 miles (62.6 mph × 1.5 hours).

The next threshold we estimated is the distance at which a mariner would choose to drive to the training provider and lodge for the duration of the training before returning to their place of residence. To determine this distance, we establish a range by calculating the minimum and maximum distances for this threshold. The minimum distance at which mariners would drive and lodge during training must be equal to the threshold established by those mariners commuting: 93.9 miles (188 miles round trip).

The National Household Travel Survey estimates that 94.3 percent of Americans travel by personal vehicle when making round trips of less than 500 miles.⁴⁶ We use this distance of 500 miles as the lower bound of our maximum distance threshold. To estimate the upper bound of our maximum distance threshold, we reference data from the Office of Airline Information report, “Average Length of Haul, Domestic Freight and Passenger Modes (Miles),” which calculated the average domestic passenger flight length of 944 miles (1,888 miles round trip) in 2021.⁴⁷ We use this average domestic passenger flight statistic because it reflects a distance at which the average American prefers flying over other modes of transportation when traveling from one location to another.

Additionally, to validate the value of an 1,888 miles round trip, we reference the National Household Travel Survey

rosap.ntl.bts.gov/view/dot/35961 (last visited 6/3/2024).

⁴⁶ The BTS conducted the National Household Travel Survey in 2001, and it was last updated in May of 2017. Please see table 4, “Percent of Long-Distance Trips by Mode and Roundtrip Distance” to obtain the travel distance distribution of trips by miles and travel mode. Readers can access the table at: https://www.bts.gov/archive/publications/highlights_of_the_2001_national_household_travel_survey/table_04. The table was accessed on September 13, 2022.

⁴⁷ The Office of Airline Information at the BTS collects air freight and domestic passenger summary data. This office divides revenue passenger miles by revenue passenger enplanements to calculate the average length of passenger trips. To find the average length of a domestic flight, please see table 1–38, “Average Length of Haul, Domestic Freight and Passenger Modes (Miles)” and refer to cell AM:13. Readers can access the table at: <https://www.bts.gov/content/average-length-haul-domestic-freight-and-passenger-modes-miles>. The table was accessed on March 12, 2024.

⁴¹ <https://www.regulations.gov/document/USCG-2020-0181-0002>. Similar methodology was also used in the Towing Vessel Firefighting Training Appendix A, published on October 3, 2023, (88 FR 67966), available at: <https://www.regulations.gov/document/USCG-2020-0492-0013>.

⁴² Id.

data. A round-trip distance of 1,888 miles is close to the 2,000 plus miles round-trip distance category used by the National Household Travel Survey. For trips of over 2,000 miles round trip, 22.2 percent of Americans would travel by car and 74.8 percent would travel by

flying. We then average our lower and upper bounds for the maximum distance threshold to obtain an average maximum distance of 1,194 miles $[(500 \text{ miles} + 1,888 \text{ miles}) \div 2]$, or 597 miles one-way.

Therefore, the Coast Guard determines that, beyond 583.4 miles

between a mariner's place of residence and the training provider they attended, mariners would choose to fly and lodge instead of drive and lodge. Table 9 displays the distance thresholds for all three choices of transportation.

TABLE 9—MODES OF TRAVEL AND TRAVEL DISTANCE THRESHOLDS

Travel choice	Travel distance (one-way) threshold for a mariner to reach their nearest training provider denoted by x
Commute	$x < 93.9$ miles.
Drive and Lodge	$93.9 \text{ miles} \leq x \leq 597$ miles.
Fly and Lodge	$x > 597$ miles.

(c) Opportunity Cost of Travel Time for Mariners

After determining the travel mode thresholds, the Coast Guard then determined the costs associated with each mode of travel. A mariner incurs an opportunity cost during the time they spend traveling to the closest training provider. To calculate these costs, we utilized the commuting distances and times calculated in CG–MMC Policy Letter 01–21. The policy letter calculated that the average commuter faces a 61.2-mile round trip, and those driving and lodging face approximately a 498.8-mile round trip.⁴⁸

Next, we calculated the wages associated with the opportunity cost of travel. To calculate these costs, we took

the mean hourly loaded wage rate for a rating taking a crowd management course, \$41.54, and multiplied it by the time required to travel to and from the closest training provider. For mariners commuting, it would take an average round-trip time of approximately 0.98 hours to commute to a training provider [the average round-trip distance divided by the average mean road class speed (61.2 miles round trip $\div$ 62.6 mph)]. Similarly, we performed this calculation for those mariners driving and lodging to get an average round-trip time of about 7.97 hours (498.8 $\div$ 62.6 mph). However, mariners driving and lodging would be traveling only half the round-trip distance, or 3.99 hours, twice (on the day of arrival and the day of departure). Lastly, the Coast Guard

estimated that it would take mariners the equivalent of an entire workday (8 hours) to fly to a training provider and fly back to their place of residence. This estimate encompasses the time necessary to travel to and from the airport, to go through security, wait for boarding, time on the tarmac, time in-flight, and the time to go through baggage claim upon arrival.

For each travel mode, we multiplied the mean hourly loaded wage rate by the average commuting time, and the days traveling and the distribution of travel mode to arrive at the weighted opportunity cost of travel for a mariner. Table 10 displays the opportunity cost of time for each mode of transportation for an individual mariner.

TABLE 10—WEIGHTED AVERAGE OF OPPORTUNITY COST OF TIME USED BY MODE OF TRANSPORTATION PER MARINER

Mode of travel	Commuting time per day (hours)	Days traveling	Loaded hourly wage for a deck officer	Percent of mariners who travel	Total opportunity cost (sum of columns)
	(a)	(b)	(c)	(d)	= (a) $\times$ (b) $\times$ (c) $\times$ (d)
Flying to Training Provider	8	2	\$41.54	34.00	\$226
Driving to Training Provider and Lodging	3.99	2	41.54	46.00	152
Commuting to Training Provider	0.97	1	41.54	20.00	8
Average Total Opportunity Cost of Travel for a Mariner for Crowd Management Training					387

Note: Totals may not sum due to rounding.

(d) Fuel Costs

If a mariner chooses to commute or chooses to drive and lodge for the duration of the training, they would incur the costs associated with the use of their own personal vehicle to travel to and from the training provider. The U.S. General Services Administration (GSA) sets the mileage reimbursement

rate for federal employees who use their privately owned vehicle (POV) for official government travel and to present this information in a single standard mileage rate. The GSA also conducts reviews of travel costs on an annual basis to determine the mileage reimbursement rate by factoring in the costs of the following: the price of

gasoline and oil, depreciation of the original vehicle cost, the costs of maintenance and insurance, and state and Federal taxes. The GSA approximates the POV mileage reimbursement rate to be \$0.56 per mile

⁴⁸ The calculations for average trip distances were obtained from page 31 of the CG–MMC Policy Letter 01–21: Guidelines for Qualifying for STCW

Endorsements for Basic and Advanced IGF Code Operations cost analysis. See [https://](https://www.regulations.gov/document/USCG-2020-0181-0002)

www.regulations.gov/document/USCG-2020-0181-0002 (last visited 6/3/2024).

in 2021.⁴⁹ To calculate the fuel costs for mariners commuting and not lodging, we multiplied this reimbursement rate by the number of days a mariner commutes by the average round-trip distance calculated for commuting, 61.2 miles. We used this same method when calculating the costs for mariners driving and lodging, with the difference being that they spend the equivalent of 1 day when completing their round-trip distance of 498.8 miles. Therefore, a mariner would incur a fuel cost of about \$34.27 ($\$0.56 \times 61.2 \text{ miles} \times 1 \text{ day}$) when commuting and \$279.33 ($\$0.56 \times$

498.8 miles $\times$ 1 day) when driving to and lodging near a training provider.

A mariner traveling by air would need to pay for round-trip airfare and transport fare to and from the airport. Using data from the Bureau of Transportation Statistics (BTS), we estimate the average unadjusted round-trip airfare to be \$307 in 2021.⁵⁰ To calculate the cost of transport, we refer to the costs of round-trip airport transfer in the 2006 interim rule, Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Licenses and Certificates of

Registry, published January 13, 2006 (71 FR 2154), or \$50. We inflate this value using the 2021 4th Quarter and the 2006 4th Quarter Gross Domestic Product (GDP) implicit price deflator values of 112.848 and 84.770, respectively.⁵¹ After dividing the values, we obtain a factor of approximately 1.331. We multiply this value by \$50 to obtain a transfer cost of approximately \$66.55, in 2021 dollars. Table 11 presents the average fuel and transfer costs associated with ratings completing a crowd management course.

TABLE 11—WEIGHTED AVERAGE FUEL AND TRANSFER COSTS FOR A RATING TAKING CROWD MANAGEMENT COURSE

Mode of travel	Fuel cost/ ticket cost (a)	Transport fare to and from airport (b)	Percent of mariners who travel (c)	Average cost to mariner = [(a) + (b)] $\times$ (c)
Flying and lodging	\$307.00	\$66.55	34	\$127
Driving and lodging	279.33	0	46	128
Commuting	34.27	0	20	7
Weighted Average Fuel Cost for a Mariner taking Crowd Management Training				262

Note: Totals may not sum due to rounding.

(e) Meal and Incidental Expense (M&IE) Rates and Lodging Costs

Mariners incur M&IE during training and travel days, and mariners not commuting incur lodging expenses during training days. To estimate these costs, we utilize the GSA 2021 general travel per diem rates of \$55 for a full day and \$41.25 for first and last day,

calculated at 75 percent of the full day rate.⁵² We also utilize the general lodging rates provided by GSA for 2021 and a calculated average lodging tax rate for 2021 from the *2021 HVS Lodging Tax Report—USA*,⁵³ to arrive at average lodging costs of \$102.09 per night.⁵⁴

We assume that those who choose to drive or fly would spend 2 nights (arrival and training day) in a hotel,

which costs \$102.09 per night, for a total of \$204.18. Accordingly, personnel who commute to a training center would incur \$41.25, while personnel who drive or fly would spend about \$137.50 ((2 days $\times$ \$41.25) + (1 day $\times$ \$55)) on meals and incidentals. Table 12 presents the weighted average cost breakdown by mode of transportation.

TABLE 12—WEIGHTED AVERAGE MARINERS INCUR M&IE AND LODGING COSTS (UNDISCOUNTED) FOR RATINGS TAKING CROWD MANAGEMENT COURSE

Mode of travel	Lodging costs (a)	M&IE (b)	Percent of mariners who travel (c)	Total cost = [(a) + (b)] $\times$ (c)
Flying and lodging	\$204.18	\$137.50	34.00	\$116.17
Driving and lodging	204.18	137.50	46.00	157.17
Commuting	0.00	41.25	20.00	8.25
Weighted Average M&IE and Lodging Costs				282

⁴⁹ The GSA mileage rate data is available at <https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/private-owned-vehicle-pov-rates/pov-mileage-rates-archived>. We used the rate per mile rate of \$0.56 for January 1, 2021.

⁵⁰ To view the annual average price of a round-trip airfare for 2021 in unadjusted dollars, visit the link at: <https://www.bts.dot.gov/newsroom/2021-annual-average-domestic-air-fares-remain-stable#:~:text=The%202021%20annual%20average%20domestic,collecting%20such%20records%20in%201995> (last visited 6/3/2024).

⁵¹ U.S. Bureau of Economic Analysis, Gross Domestic Product: Implicit Price Deflator [GDPDEF], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/GDPDEF>, March 6, 2024.

⁵² GSA per diem rates can be found here: <https://www.gsa.gov/about-us/newsroom/news-releases/fy2021-per-diem-rates-for-federal-travelers-released-08142020> (last visited 6/3/2024). See <https://www.gsa.gov/travel/plan-and-book/per-diem-rates/faqs#15>, reference FAQ #15, for information on calculating first and last travel day M&IE per diem.

⁵³ <https://www.hvs.com/article/9160-2021-hvs-lodging-tax-report-usa> (last visited 6/3/2024).

⁵⁴ The lodging cost includes lodging tax. According to the GSA, the standard lodging rate for 2021 was \$96. See <https://www.gsa.gov/about-us/newsroom/news-releases/fy2021-per-diem-rates-for-federal-travelers-released-08142020>. The average lodging tax rate was 6.34%, which can be found here: <https://www.hvs.com/article/9160-2021-hvs-lodging-tax-report-usa>. These websites were accessed on September 13, 2022. Thus, lodging cost per night is estimated to be \$102.09 [(\$96 per night $\times$ 6.34% = \$6.09 tax) + \$96].

(f) Documentation Costs

It is the responsibility of the operating companies who are obligated by STCW Convention Regulation I/14, “Responsibilities of Companies,” to ensure that documentation relevant to personnel training is maintained and readily accessible. According to the information collection request, Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995, 1997 and 2010 Amendments to the International Convention (OMB Control Number 1625–0079), it currently takes a technical specialist

0.083 hours (5 minutes) to record that personnel serving on passenger vessels are trained as required by Regulation V/2 of the STCW Convention. Given that this proposed rule expands the applicability of the crowd management training to ratings qualified under Chapters II, III, and VII of the STCW Convention, and that other STCW Convention and STCW Code trainings are already required to be recorded, we assume this documentation would not create additional costs. The Coast Guard requests comment on the validity of this assumption.

(g) Total Cost to Mariners Taking Crowd Management Training

We estimate the total undiscounted annual costs for mariners required to take a crowd management course by adding the totals costs in tables 7, 8, 9, and 10 and then multiplying by the affected population in table 5. We estimate the total undiscounted 10-year cost to be \$211,850, and the undiscounted average cost to be \$21,185 in 2021 dollars. Table 13 describes the total undiscounted costs for mariners taking a crowd management course over the next 10 years of analysis.

TABLE 13—TOTAL UNDISCOUNTED COSTS FOR MARINERS TAKING A CROWD MANAGEMENT COURSE

Year	Mariners required to take training course	Total opportunity cost of travel	Total fuel costs	Average M&E & lodging costs	Opportunity cost of time of taking course	Tuition costs	Total costs
	(a)	(b)	(c)	(d)	(e)	(f)	= [a × (b + c + d + e + f)]
1	44	\$387	\$262	\$282	\$332	\$219	\$65,185
2	14	387	262	282	332	219	20,741
3	13	387	262	282	332	219	19,259
4	12	387	262	282	332	219	17,778
5	12	387	262	282	332	219	17,778
6	11	387	262	282	332	219	16,296
7	10	387	262	282	332	219	14,815
8	10	387	262	282	332	219	14,815
9	9	387	262	282	332	219	13,333
10	8	387	262	282	332	219	11,852
Average							21,185
Average (Years 2–10)							16,296
10-Year Total							211,850

Note: Totals may not sum due to rounding.

Likewise, table 14 describes the total cost to industry (operating companies and ratings qualified under Chapters II, III, and VII of the STCW Convention) of the proposed rulemaking. Operating companies would incur the costs of the

proposed passenger ship emergency familiarization, while the ratings who would be required to take the crowd management course under the proposed expanded applicability would incur those related costs. The Coast Guard

estimates that the annualized total cost to industry over the next 10 years of analysis would be \$375,707, in 2021 dollars, when discounted at 2 percent.

TABLE 14—TOTAL COST TO INDUSTRY OF THE PROPOSED RULEMAKING OVER A 10-YEAR PERIOD OF ANALYSIS
[2021 dollars]

Year	Passenger ship emergency familiarization costs	Crowd management training costs for ratings qualified under STCW chapters II, III, and VII	Total cost	Discounted (2%)
1	\$390,941	\$65,185	\$456,126	\$447,182
2	382,412	20,741	403,153	387,498
3	373,883	19,259	393,142	370,467
4	365,354	17,778	383,132	353,954
5	356,825	17,778	374,602	339,289
6	348,296	16,296	364,592	323,747
7	339,767	14,815	354,581	308,684
8	331,237	14,815	346,052	295,352
9	322,708	13,333	336,042	281,185
10	314,179	11,852	326,031	267,459
Total			3,737,452	3,374,817
Annualized				\$375,707

Note: Totals may not sum due to rounding.

Standards Incorporated by Reference (IBR)-Related Changes

Proposed IBR-related changes refer to the sections in 46 CFR parts 11 and 12 that would be revised to incorporate the 2017 Edition of the STCW Convention and the STCW Code. See Section V, Discussion of Proposed Rule, in this preamble. In themselves, the IBR-related changes do not impose any cost on the regulated industry. Table 2 describes each IBR-related change in the proposed rule and provides explanations for the no-cost determinations.

Costs to Government

Coast Guard inspectors are currently requesting mariner credentials and training records related to the STCW Convention and the STCW Code, but they are not tracking compliance with the requirements outlined in this proposed rule since compliance is currently voluntary. We estimate that verifying the training documents currently would require 5–10 minutes per vessel. We do not anticipate this rulemaking to add to the time and resources currently necessary to verify training certificates as part of an inspection. Accordingly, the proposed rulemaking has no new costs to the Government.

Benefits

The Coast Guard anticipates that the proposed rule would improve the safety of life at sea in the case of an emergency by ensuring that ship personnel are familiar with safety features, emergency equipment and procedures, basic communication, and crowd management techniques. This is important so that the ship's personnel would be able to assist passengers, including elderly and disabled individuals, during an emergency. The consequences of the loss of a ship from the affected population are potentially catastrophic.

While there are no examples of major accidents in the affected population of U.S.-flagged ships, the *Costa Concordia* disaster in the foreign fleet provides some insight into the how costly improper emergency management can be. On January 13, 2012, the *Costa Concordia*, an Italian passenger ship operating in the Mediterranean Sea with 3,206 passengers and 1,023 crewmembers on board, struck a reef off the Italian coastline. The incident resulted in the loss of 32 lives (27 passengers and 5 crewmembers), injury to 157 others, and the total loss of the ship. In the ensuing accident report,⁵⁵ the Italian Ministry of Infrastructures

and Transports concluded that multiple factors contributed to the injuries and loss of life. Some of these factors included delayed management of the emergency response and evacuation process, inconsistencies in assignment of duties, communication issues due to the different backgrounds of passengers and crewmembers, and passenger confusion over which personnel employed on passenger vessels were trained to assist in an emergency.⁵⁶ While other factors certainly contributed to the loss of life and injury in this maritime disaster, it is evident that clearly communicated emergency procedures and experience with crowd management could have aided both crew and passengers in responding to the emergency occurring onboard their ship. Both U.S.-flagged ships and ships in the foreign-flagged fleet (where U.S. passengers disproportionately travel) can expose passengers and crew to greater risk of loss of life and injury.

While we have not conducted a risk analysis on the U.S.-flagged ship population related to the training provisions in this proposed rule due to a lack of data, we can estimate the costs associated with loss of life and ship in the population. We utilized data from the National Vessel Documentation Center to estimate \$809,500 as the median price of a U.S.-flagged passenger ship.⁵⁷ In addition, we reviewed the manning requirements for all 50 ships in the ship population to derive the average manning requirement and maximum number of passengers. Based on this data, we estimate that the average ship in the population can carry 11 mariners (2 officers, 1 specified rating, and 8 personnel) and 120 total passengers at one time. In order to estimate the benefit of preventing a fatality, we utilize the Value of a Statistical Life (VSL) estimate of \$11.8 million for analyses, using a base year of 2021.⁵⁸ The VSL is defined as the additional cost that individuals would be willing to bear for improvements in safety (that is, reductions in risks) that, in the aggregate, reduce the expected number of fatalities by one. This conventional terminology has often provoked misunderstanding on the part

of both the public and decisionmakers. What is involved is not the valuation of life, as such, but the valuation of reductions in risks. For example, a VSL of \$11.8 million does not mean that a specific human life is worth \$11.8 million but is, instead, meant to measure the willingness to pay for reductions in only small risks of premature death (say, \$118 for a risk of 1 in 100,000). This approach to valuation of mortality risks is endorsed by OMB Circular A–4, which provides guidance to Federal agencies on the development of regulatory analysis.⁵⁹

In the event of a total loss of ship and life due to lack of emergency training and procedure, we estimate losses totaling \$809,500 from loss of ships and \$1.5 billion from loss of life,⁶⁰ per ship lost.

Beyond the costs associated with a catastrophic loss, it should be noted that the United States is required to implement amendments to the STCW Convention and the STCW Code through national regulations. Failure to meet our treaty obligation to fully implement the STCW Convention could cause the United States to lose its status on the IMO White List. The White List distinguishes administrations that are in full compliance with the STCW Convention and the STCW Code. Loss of this status could cause U.S. ships to be subject to more rigorous PSC inspections in foreign ports, including possible detainment or denial of entry, resulting in potential revenue losses. Additionally, U.S. mariners could be ineligible to serve on foreign-flagged passenger ships. Hence, by aligning national regulations with the STCW Convention and the STCW Code, the proposed rule would ensure that owners and operators of U.S.-flagged ships, as well as U.S. mariners, are able to operate in international markets.

Further, there is an additional benefit in the promotion of international harmonization and reciprocity of maritime regulation. This proposed rule advances Executive Order 13609, “Promoting International Cooperation,” which targets international regulatory cooperation to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. By promoting harmonization of international maritime safety regulations, the United States ensures that our ships comply with international standards and meet the regulations of foreign countries while

⁵⁶ Ibid at 159.

⁵⁷ The median price is utilized here due to significant outliers on the upper bound of vessel valuations. The mean price is weighted upward by the inclusion of 4 large ships with valuations of \$500,000,000, which is atypical for the relatively small size ships in the population.

⁵⁸ For more information on the VSL, see the DOT guidance located at <https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis> (last visited 3/12/2024).

⁵⁹ <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>.

⁶⁰ Loss of life is calculated as \$1,545,800,000 [(\$11.8 million × 131 people (11 crew members and 120 passengers))], rounded.

⁵⁵ See footnote 8.

our ships are in their waters, while also promoting higher baseline safety standards for foreign-flagged ships that often carry U.S. passengers.

Alternatives Considered

As a party to the STCW Convention, the United States is obligated to implement all amendments into domestic law. The United States proposed and supported these amendments, recognizing the enhanced safety measure as desirable.

This proposed rule would codify the STCW Convention and the STCW Code, including amendments through 2016. As a signatory to the STCW Convention, the United States must ensure compliance with its treaty obligations through full implementation of amendments to the STCW Convention and the STCW Code. The STCW Convention is not self-implementing; therefore, the Coast Guard does not have discretion and must issue regulations to implement these requirements. Failure to meet the treaty obligations could cause the United States to lose status on the IMO's "White List," which distinguishes administrations that are in full compliance with the STCW Convention and the STCW Code. Because the Coast Guard must implement the training requirements outlined in the 2016 amendments and does not propose to implement any discretionary requirements as a part of this proposed rule, we have not examined any alternatives to the proposed rule.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, we have considered the impact of this proposed rule on small entities. 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.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities addresses the following as required under section 603(b) of the RFA:

(1) A description of the reasons why action by the agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other

compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.

1. A description of the reasons why action by the agency is being considered.

The growth of foreign flagged passenger ships as a vacation destination has resulted in the launching of consistently larger ships and subsequent concerns over passenger safety. Passenger ship travel requires passengers to feel assured of their safety, regardless of where the ship originates or hails. Typically, passengers are only on board these ships for a short time, and seldom have maritime experience, so they rely on the ship's crew to assist them in emergency situations. In emergency situations, it may be impossible for passengers to identify which crewmembers are trained to assist them in an emergency. Such situations pose risks to life, health, and safety, as well as damage to property and the marine environment.

The IMO has worked to address these risks, leading to amendments in 2016 to the STCW Convention and the STCW Code to ensure that passenger ship personnel are familiar with the safety features, emergency equipment and procedures, basic communication, and crowd management techniques in order to assist passengers, including elderly and disabled individuals, during an emergency.

The United States is a signatory to the STCW Convention and must ensure compliance with its treaty obligations through full implementation of the STCW Convention and the STCW Code. The STCW Convention is not self-implementing. The Coast Guard must issue regulations to implement these requirements. The Coast Guard issued CG–MMC Policy Letter 02–21 to advise owners and operators of U.S. passenger ship operating companies of the requirements of the STCW Convention and the STCW Code. However, if the Coast Guard does not issue regulations to implement these requirements, they are not enforceable, and there is a risk that U.S. ships could be denied entry to or detained in foreign ports, that U.S.

mariners could be ineligible to serve on foreign-flagged ships, and that operating companies, personnel, and, we believe, the passengers would be at higher risk for loss of ship, serious injury, or loss of life as the result of an emergency for which mariners and personnel were unprepared.

2. A succinct statement of the objective of, and legal basis for, the proposed rule.

The legal basis of this proposed rule is title 14 U.S.C. 102(3), which grants the Coast Guard broad authority to promulgate and enforce regulations for the promotion of safety of life and property on waters subject to the jurisdiction of the United States. More specifically, 46 U.S.C. 7101 authorizes the Secretary of DHS to prescribe the requirements for credentialing, and 46 U.S.C. 7306 and 7313 authorize the prescription of requirements for ratings. The Secretary of DHS has delegated these statutory authorities to the Coast Guard through DHS Delegation No. 00170.1(II)(92)(e), Revision No. 01.4, which generally authorizes the Coast Guard to determine and establish the experience and professional qualifications required for the issuance of credentials.

3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

As described in section VII A, Regulatory Planning and Review, in this document, there would be two affected populations of the proposed rule: (1) operating companies that would incur the costs of the proposed required passenger ship emergency familiarization, and (2) ratings qualified under Chapters II, III, and VII of the STCW Convention who would need to complete a crowd management course. Ratings qualified under Chapters II, III, and VII of the STCW Convention are individuals and not entities; as such, the second affected population does not contain any small entities. We focus the attention of this analysis on the operating companies of U.S.-flagged passenger ships.

Of the 50 ships in the affected ship population, there are 37 operating companies. Of these 37 operating companies:

- 2 are governmental jurisdictions with populations over 50,000, neither of which is classified as a small entity;
- 1 is a non-profit organization, and is classified as a small entity;
- 34 are private companies, of which 2 are not classified as small businesses, 20 are classified as small businesses, and 13 could not be classified because information could not be found on those

13 businesses. For the purpose of this analysis, we classify those 13 businesses, where information could not be found, as small entities.

We researched the number of employees and revenue of these companies using proprietary and public

business databases. Then we measured company size data using the SBA business size standards to assess how many companies in this industry may be small entities. The SBA provides business size standards for all sectors of the North American Industry

Classification System (NAICS).⁶¹ Our analysis of the available company information revealed 10 primary NAICS codes. Table 15 displays the NAICS codes of the small businesses found in our sample.

TABLE 15—NAICS CODES OF IDENTIFIED SMALL BUSINESSES

Title	NAICS code	Count of small businesses	SBA size standard type	SBA size threshold
Scenic and Sightseeing Transportation, Water	48721005	6	Revenue	\$14,000,000
Inland Water Passenger Transportation	48321201	4	Employee	550
All Other Amusement and Recreation Industries	71399021	3	Revenue	\$9,000,000
Tour Operators	56152007	2	Revenue	\$25,000,000
Site Preparation Contractors	23891061	1	Revenue	\$19,000,000
New Single-family Housing Construction (Except For-Sale Builders)	23611505	1	Revenue	\$45,000,000
Hotels (except Casino Hotels) and Motels	721110	1	Revenue	\$40,000,000
Boat Dealers	44122215	1	Revenue	\$40,000,000
All Other Transit and Ground Passenger Transportation	48599906	1	Revenue	\$19,000,000

Revenue Impacts of the Proposed Rule. To determine the impacts of the proposed rule on small operating companies, we used information on revenue or employee size as available on business directory websites.

As discussed in the “Cost to Industry” section of the regulatory analysis, we estimate that there is a population of 50 ships that would be subject to this rule in the first year of implementation, with an estimated population decline of 1 ship per year in subsequent years. There are 37 unique owners and operators of the affected ships employing 1,080 officers, ratings, and personnel subject to the proposed passenger ship emergency familiarization requirements, 33 of which are considered small entities. The Coast Guard was able to find revenue data on 20 of those 33 small entities, allowing us to analyze estimated impacts.

We estimate that 4 hours is the time needed for officers, ratings, and personnel to complete the proposed passenger ship emergency familiarization. In addition, a management level officer would need approximately 2 hours to prepare to deliver the passenger ship emergency familiarization aboard each ship for each crew. We assume there are 2 crews per vessel to account for the rotational

nature of shipboard employment, and that each crew (serving an average of 6 months on board each ship) will take the training twice per year in line with other quarterly training requirements as outlined in 46 CFR 185.420 and § 122.420. Thus, we multiply the estimated training and training preparation hours by 2 to capture the quarterly frequency of training per year. The loaded hourly wage rate of officers, ratings, and personnel are \$68.11, \$41.54, and \$35.90 respectively.

Because all officers, ratings, and additional personnel are required to participate in emergency familiarization training, the Coast Guard needed to determine the number of officers, ratings, and personnel impacted by the proposed passenger ship emergency familiarization requirements. To determine this, we reviewed the certificate of inspection for all 27 U.S.-flagged passenger ships in the affected ship population owned by entities with available revenue data and reviewed the manning requirements for each ship. We then added the total officers, ratings, and additional personnel for each ship owned by each entity and multiplied by 2 to account for both crews on each ship. After determining the total affected personnel for each entity, we then calculate undiscounted first-year

costs (in 2021 dollars) for each impacted small entity in the affected population with known revenue data[(number of officers delivering training × 4 preparation hours × \$68.11 hourly wage) + (number of officers × 8 training hours × \$68.11 hourly wage) + (number of specified ratings × 8 training hours × \$41.54 hourly wage) + (number of additional personnel × 8 training hours × \$35.90 hourly wage)]. We then divide the calculated first-year cost by the small entity’s revenue to find the level of impact on the affected small entity. For example, for owner or operator “A” in column 1, we estimate undiscounted first-year costs of \$13,490.40 [(8 officers × \$68.11 officer wage × 8 training hours) + (0 ratings × \$41.54 rating wage × 8 training hours) + (28 additional personnel × \$35.90 personnel wage × 8 training hours) + (4 officers delivering training × \$68.11 officer wage × 4 training preparation hours)]. We then find the estimated level of impact on owner or operator “A” of 0.76 percent by dividing the calculated first-year cost by its revenue obtained from public business databases (\$13,490.40 ÷ \$891,000 = 1.56%). See Table 16 for the calculations of first-year costs and impacts on small entities in the affected population.

⁶¹ https://www.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards_

Effective%20March%2017%2C%202023%20%282%29.pdf (last visited 6/3/2024).

TABLE 16—ESTIMATED FIRST-YEAR IMPACT OF THE EMERGENCY FAMILIARIZATION TRAINING FOR AFFECTED SMALL ENTITIES WITH KNOWN REVENUE DATA

Owner or operator ^{a2}	Number of ships	Officers	Ratings	Additional personnel	Officers delivering training (2 per ship)	Officer wage	Rating wage	Additional personnel wage	Training hours	Training preparation hours	Total cost	Owner or operator revenue	Percent impact
A	2	8	0	28	4	\$68.11	\$41.54	\$35.90	8	4	\$13,490.40	\$891,000.00	1.51
B	3	8	0	14	6	68.11	41.54	35.90	8	4	10,014.48	2,184,000.00	0.46
C	1	2	0	10	2	68.11	41.54	35.90	8	4	4,506.64	1,313,000.00	0.34
D	1	2	0	10	2	68.11	41.54	35.90	8	4	4,506.64	8,000,000.00	0.06
E	3	6	0	12	6	68.11	41.54	35.90	8	4	8,350.32	15,400,000.00	0.05
F	1	4	0	4	2	68.11	41.54	35.90	8	4	3,873.20	534,000.00	0.73
G	1	4	0	4	2	68.11	41.54	35.90	8	4	3,873.20	31,124,000.00	0.01
H	1	4	0	8	2	68.11	41.54	35.90	8	4	5,022.00	744,000.00	0.68
I	1	4	0	8	2	68.11	41.54	35.90	8	4	5,022.00	298,000.00	1.69
J	3	6	0	8	6	68.11	41.54	35.90	8	4	7,201.52	2,184,000.00	0.33
K	1	2	0	8	2	68.11	41.54	35.90	8	4	3,932.24	19,481,000.00	0.02
L	1	2	0	4	2	68.11	41.54	35.90	8	4	2,783.44	1,649,000.00	0.17
M	1	4	0	12	2	68.11	41.54	35.90	8	4	6,170.80	149,000.00	4.14
N	1	4	0	10	2	68.11	41.54	35.90	8	4	5,596.40	149,000.00	3.76
O	1	4	0	10	2	68.11	41.54	35.90	8	4	5,596.40	337,000.00	1.66
P	1	4	0	12	2	68.11	41.54	35.90	8	4	6,170.80	149,000.00	4.14
Q	1	4	0	12	2	68.11	41.54	35.90	8	4	6,170.80	236,343,000.00	0.00
R	1	4	0	10	2	68.11	41.54	35.90	8	4	5,596.40	649,000.00	0.86
S	1	2	0	2	2	68.11	41.54	35.90	8	4	2,209.04	2,400,000.00	0.09
T	1	4	0	6	2	68.11	41.54	35.90	8	4	4,447.60	149,000.00	2.98

For this proposed rule, the Coast Guard considers an impact of greater than 1 percent (.01) of a small entity’s annual revenue to be a significant impact. Table 17 shows the distribution of revenue impacts on the small entities affected by this proposed rule. In

addition to the less than 1 percent threshold, which indicates no significant impact, we also include the 1-to-3 percent threshold indicating significant impact, and a greater than 3 percent threshold showing even greater impacts on affected small entities. The

Coast Guard estimates that 7 small entities, or 35 percent of the population with known revenue, would incur significant impacts, with 3 of those small entities incurring impacts greater than 3 percent of their annual revenue.

TABLE 17—DISTRIBUTION OF REVENUE IMPACTS

Percent of revenue impact	Small entities with known revenue	Portion of small entities with known revenue (%)
<1	13	65
1–3	4	20
>3	3	15

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

This proposed rule would call for a revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. This proposed rule would revise the current information collection, Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995, 1997 and 2010 Amendments to the International Convention, OMB Control Number: 1625–0079.

Under the existing OMB Control Number 1625–0079, the Coast Guard collects information from owners and operators of U.S.-flagged passenger ships, and ratings and officers serving on these ships, as well as from training centers. The proposed rule would add additional collection of information requirements to this existing collection of information in order to implement the STCW Convention and the STCW Code. These additional collection of information requirements would: (1) require the operating companies of U.S.-flagged passenger ships that carry 12 passengers or more on international voyages to provide documentary evidence that all personnel serving on these ships have completed a passenger ship emergency familiarization, and (2) require documentary evidence that required personnel have completed crowd management training for ratings serving on U.S.-flagged passenger ships that carry 12 passengers or more on international voyages.

The additional collection of information in the proposed rule would

ensure that mariners have completed training necessary to comply with the STCW Convention and the STCW Code and adequately assist passengers in the event of an emergency. The additional collection of information is also needed to demonstrate to the IMO that the United States, as a signatory to the STCW Convention, has met the obligation to implement requirements through national regulations.

The additional collection of information in this proposed rule would affect an estimated 33 small entities. These entities are owners and operators of ships carrying 12 or more passengers on international voyages who employ officers, ratings, and personnel required to complete passenger ship emergency familiarization.

According to the current collection of information, a management level officer spends about 5 minutes to document evidence of personnel training on behalf of operating companies. Accordingly, we estimate that the passenger ship emergency familiarization requirement of the proposed rule would increase the burden hour of the existing collection of information by 8.3 hours (50 ships × 0.166 hours per response × 2 crews = 16.6 hours).

In addition to the recordkeeping requirements of the proposed rule, there are also new training requirements. First, the proposed rule would expand the applicability of crowd management training by requiring ratings qualified under Chapters II, III, and VII of the STCW Convention to complete this training. Currently, only officers and personnel designated on the muster list to assist passengers in emergency situations are required to complete this training.

Second, the proposed rule creates a new requirement for all personnel to

complete passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities during an emergency. Personnel would have to complete the familiarization before being assigned to shipboard duties. The passenger ship emergency familiarization requirement would apply to all personnel, including masters, officers, and ratings qualified under Chapters II, III, and VII of the STCW Convention. This familiarization would not require Coast Guard approval in accordance with 46 CFR part 10, subpart D, and could be conducted on board the ship or at a shore-based location. Mariners or ship operators should maintain documentation verifying that personnel have completed the passenger ship emergency familiarization. This training includes topics to familiarize personnel with the general safety features aboard the ship, the location of essential safety equipment, including life-saving appliances, the importance of personal conduct during the implementation of emergency plans, and restrictions on the use of elevators during emergencies. Passenger ship emergency familiarization also includes the requirement to communicate with passengers during an emergency, including the ability to communicate in the working language of the ship, including non-verbally communicating safety information, and understanding one of the languages in which emergency announcements may be broadcast on the ship during an emergency or drill.

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

⁶² Small entity names have been removed to protect personal identifiable information.

There are no relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

6. *A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes, and which minimize any significant economic impact of the rule on small entities.*

As a party to the STCW Convention, the United States is obligated to implement all amendments into domestic law. The United States proposed and supported these amendments, recognizing the enhanced safety measure as desirable.

This proposed rule would codify the 2017 edition of the STCW Convention and the STCW Code. As a signatory to the STCW Convention, the United States must ensure compliance with its treaty obligations through full implementation of amendments to the STCW Convention and the STCW Code. The STCW Convention is not self-implementing; therefore, the Coast Guard does not have discretion and must issue regulations to implement these requirements. Failure to meet the treaty obligations could cause the United States to lose status on the IMO's "White List," which distinguishes administrations that are in full compliance with the STCW Convention and the STCW Code. Because the Coast Guard must implement the training requirements outlined in the 2016 amendments and does not propose to implement any discretionary requirements as a part of this proposed rule, we have not examined any alternatives to the proposed rule.

7. Conclusion.

We are interested in the potential impacts from this proposed rule on small entities and we request public comment on these potential impacts. If you think that this proposed rule will have a significant economic impact on you, your business, or your organization, please submit a comment to the docket at the address under **ADDRESSES** in the interim rule. In your comment, explain why, how, and to what degree you think this proposed rule will have an economic impact on you.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

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).

D. Collection of Information

This proposed rule would call for a revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995, 1997 and 2010 Amendments to the International Convention.

OMB Control Number: 1625–0079.

Summary of the Collection of Information: The STCW Convention establishes minimum standards of training, certification and watchkeeping for seafarers. The United States is a signatory to the STCW convention, which defines standards of competence necessary to ensure safety of life at sea and the marine environment and addresses the responsibilities of signatories to ensure seafarers meet standards of competence. The information collection requirements are necessary to implement the STCW Convention.

Under the existing information collection, OMB Control Number 1625–0079, the Coast Guard collects information from owners and operators of U.S.-flagged passenger ships, and

ratings and officers serving on these ships, as well as training centers. The proposed rule would add additional requirements to the existing collection of information in order to implement the passenger ship training requirements of the STCW Convention. These additional collection of information requirements would: (1) require the owners and operators of U.S.-flagged passenger ships that carry 12 passengers or more on international voyages to provide documentary evidence that officers, ratings, and personnel serving on these ships have completed passenger ship emergency familiarization, (2) require owners and operators of U.S.-flagged passenger ships that carry 12 passengers or more on international voyages to provide documentary evidence that ratings qualified under Chapters II, III, and VII of the STCW Convention have completed crowd management training, and (3) require training providers to document course completion or disenrollment for crowd management training.⁶³

Need for Information: The additional collection of information in the proposed rule would ensure that: (1) passenger ship personnel are trained to adequately assist passengers in the case of an emergency, (2) mariners have proof of completion of training necessary for compliance with the STCW Convention, and (3) the United States can verify and demonstrate that it has in place national regulations which implement the STCW Convention and the STCW Code, as is required of a signatory to the convention.

Proposed Use of Information: The Coast Guard would use the additional collection of information in the proposed rule to help to ensure compliance with international requirements and to maintain acceptable quality in activities associated with training and assessment of merchant mariners.

Description of the Respondents: The respondents are owners and operators of U.S.-flagged passenger ships that carry 12 passengers or more on international voyages and training providers offering crowd management courses.

Number of Respondents: The additional collection of information in this proposed rule would affect an estimated 37 passenger ship operating

⁶³ As of March 24, 2014, each school with an approved course must keep records for at least 5 years after the end of each student's completion or disenrollment from a course or program (46 CFR 10.403). Training providers are not expected to keep additional records under this collection of information, only to continue to keep the records already required.

companies that carry 12 or more passengers on international voyages. These companies would have to document completion of passenger ship emergency familiarization for all personnel serving aboard their ships and retain documentation of a crowd management course for the ratings qualified under Chapters II, III, and VII of the STCW Convention serving aboard their ships.

Frequency of Response: Operating companies of U.S.-flagged passenger ships that carry 12 or more passengers on international voyages would be required to submit the additional information when it is requested during a PSC inspection. The required passenger ship emergency familiarization and crowd management training records would be recorded at completion, to be available upon request.

Burden of Response: According to the current collection of information, a management level officer spends about 0.083 hours (5 minutes) to document evidence of mariners' training on behalf of a ship owner or operator for each of the two crews. Given this training is delivered twice for each crew, we estimate that a management level officer will spend 0.166 hours (10 minutes) to document evidence of this training each year. Accordingly, we estimate that the proposed passenger ship emergency familiarization would increase the burden hour of the existing collection of information by approximately 17 hours annually (50 ships $\times$ 0.166 hours per response $\times$ 2 crews = 16.6 hours).

Also, according to the existing collection of information, a technical specialist spends about 0.083 hours (5 minutes) to document training records for personnel serving aboard passenger ships. Given that this proposed rule expands the applicability of the crowd management training to ratings qualified under Chapters II, III, and VII of the STCW Convention as a subset of the overall mariner population, and operating companies already record STCW training completion for this population, this creates a negligible increase in the amount of time required to document training records.

The existing collection of information for training providers shows that an administrative specialist spends about 1 hour to document course completion, including a student's performance. However, because this action is taken once annually for each approved course, this would not increase the estimated burden for training providers, although this rule may minimally increase the number of students taking a crowd management course.

Estimate of Total Annual Burden: The total estimated burden hours for this proposed rule is approximately 17 hours for operating companies of U.S.-flagged passenger ships that carry 12 or more passengers providing documentary evidence of having completed passenger ship emergency familiarization.

As required by 44 U.S.C. 3507(d), we will submit a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine, among other things—

- How useful the information is;
- Whether the information can help us better perform our functions;
- How we can improve the quality, usefulness, and clarity of the information;
- Whether the information is readily available elsewhere;
- How accurate our estimate is of the burden of collection;
- How valid our methods are for determining the burden of collection; and
- How we can minimize the burden of collection.

If you submit comments on the collection of information, submit them to both the OMB and to the docket where indicated under **ADDRESSES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all the categories covered in 46 U.S.C. 7101, 7306, 7313 and 8101 addressing personnel qualifications, and manning of ships, and any other category in which

Congress intended the Coast Guard to be the sole source of a ship's obligations, are within the field foreclosed from regulation by the States. *See, e.g., United States v. Locke*, 529 U.S. 89 (2000) (finding that the states are foreclosed from regulating tanker ships) *see also Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157 (1978) (state regulation is preempted where "the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it [or where] the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." (Citations omitted). Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a ship's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this proposed rule would have implications for federalism under Executive Order 13132, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates

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 million (adjusted for inflation) or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standard

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. This proposed rule would be categorically excluded under paragraphs L54 and L56 of Appendix A, table 1 of DHS Instruction Manual 023–01, Rev. 1.⁶⁴ Paragraph L54 pertains to regulations that are editorial or procedural and paragraph L56 pertains to regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel.

This proposed rule involves implementation of the STCW Convention and the STCW Code particularly concerning requirements for personnel serving on passenger ships on international voyages. In particular, the STCW Convention and the STCW Code requires passenger ship emergency familiarization and crowd management training to promote the safety of life at sea in the case of an emergency. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects*46 CFR Part 11*

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 11 and 12 as follows:

⁶⁴ https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf (last visited 6/29/2023).

PART 11—REQUIREMENTS FOR OFFICER ENDORSEMENTS

■ 1. The authority citation for part 11 is revised to read as follows:

Authority: 14 U.S.C. 503; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 89; 46 U.S.C. 7502, 7505, 7701, and 70105; E.O. 10173; DHS Delegation No. 00170.1, Revision No. 01.4. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

■ 2. Revise § 11.102 to read as follows:

§ 11.102 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Coast Guard, Office of Merchant Mariner Credentialing (CG–MMC) and at the National Archives and Records Administration (NARA). Contact the Coast Guard, CG–MMC at U.S. Coast Guard, Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509, 202–372–2357, MMCPolicy@uscg.mil. For information on the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations. The material may be obtained from the sources in the following paragraphs of this section.

(b) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, England, +44 (0)20 7735 7611, sales@imo.org, <https://imo.org>.
(1) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, 2017 Edition (the STCW Convention or the STCW), IBR approved for §§ 11.201(h); 11.426(c); 11.427(f); 11.428(c); 11.429(d); 11.493(e); 11.495(e); 11.497(c); 11.553(d); 11.555(e); 11.1001(a); 11.1003(a); 11.1009(c); and 11.1105(a).

(2) The Seafarers' Training, Certification and Watchkeeping Code, 2017 Edition (the STCW Code), IBR approved for §§ 11.201(h); 11.301(a) and (f); 11.302(a), (c), and (d); 11.303(a) through (d); 11.305(a), (c), and (e); 11.307(a), (c), and (e); 11.309(a), (d), and (e); 11.311(a), (c), and (d); 11.313(a), (c), and (d); 11.315(a), (c), and (d); 11.317(a), (c), and (d); 11.319(a), (c), and (d); 11.321(a), (c), and (d); 11.325(a), (c), and (d); 11.327(a), (c), and (d); 11.329(a), (d), and (e); 11.331(a), (d), and (e); 11.333(a), (c), and (d); 11.335(a) through (c); 11.604; 11.901(c); 11.1001(a); 11.1003(a); and 11.1105(a).

(3) The International Convention for the Safety of Life at Sea, 1974 (SOLAS),

incorporation by reference approved for § 11.601.

§ 11.305 [Amended]

- 3. Amend § 11.305 as follows:
- a. In paragraph (a)(2), remove the text “of this part”; and
- b. In paragraph (e), footnote 2 to Table 1 to § 11.305(e), after the text “not previously satisfied,” add the text “in accordance with section A–II/2 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.307 [Amended]

- 4. Amend § 11.307 as follows:
- a. In paragraph (a)(2), remove the text “of this part”; and
- b. In paragraph (e), footnote 2 to Table 1 to § 11.307(e), after the text “not previously satisfied,” add the text “in accordance with section A–II/2 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.309 [Amended]

- 5. Amend § 11.309 as follows:
- a. In paragraph (a)(1)(ii), remove the text “of this part”; and
- b. In paragraph (e), footnote 2 to Table 1 to § 11.309(e), after the text “not previously satisfied,” add the text “in accordance with section A–II/1 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.311 [Amended]

- 6. Amend § 11.311 as follows:
- a. In paragraph (a)(2), remove the text “of this part”; and
- b. In paragraph (d), footnote 2 to Table 1 to § 11.311(d), after the text “not previously satisfied,” add the text “in accordance with section A–II/2 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.313 [Amended]

- 7. Amend § 11.313 as follows:
- a. In paragraph (a)(2), remove the text “of this part”; and
- b. In paragraph (d), footnote 2 to Table 1 to § 11.313(d), after the text “not previously satisfied,” add the text “in accordance with section A–II/2 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.315 [Amended]

- 8. Amend § 11.315 as follows:
- a. In paragraph (a)(2), remove the text “of this part”; and
- b. In paragraph (d), footnote 2 to Table 1 to § 11.315(d), after the text “not previously satisfied,” add the text “in accordance with section A–II/2 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.317 [Amended]

- 9. Amend § 11.317 as follows:
- a. In paragraph (a)(2), remove the text “of this part”; and
- b. In paragraph (d), footnote 2 to Table 1 to § 11.317(d), after the text “not previously satisfied,” add the text “in accordance with section A–II/3 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.319 [Amended]

- 10. Amend § 11.319 as follows:
- a. In paragraph (a)(1)(ii), remove the text “of this part”; and
- b. In paragraph (d), footnote 2 to Table 1 to § 11.319(d), after the text “not previously satisfied,” add the text “in accordance with section A–II/1 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.321 [Amended]

- 11. Amend § 11.321 as follows:

- a. In paragraph (a)(2), remove the text “of this part”; and
- b. In paragraph (d), footnote 2 to Table 1 to § 11.321(d), after the text “not previously satisfied,” add the text “in accordance with section A–II/3 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.325 [Amended]

- 12. Amend § 11.325 as follows:
- a. In paragraph (a)(2), remove the text “of this part”; and
- b. In paragraph (d), footnote 2 to Table 1 to § 11.325(d), after the text “not previously satisfied,” add the text “in accordance with section A–III/2 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.327 [Amended]

- 13. Amend § 11.327 as follows:
- a. In paragraph (a)(2), remove the text “of this part”; and
- b. In paragraph (d), footnote 2 to Table 1 to § 11.327(d), after the text “not previously satisfied,” add the text “in accordance with section A–III/2 of the STCW Code (incorporated by reference, see § 11.102).”

■ 14. Amend § 11.329 as follows:

- a. In paragraph (a)(1)(ii), remove the text “of this part”; and
- b. In paragraph (e), in table 1 to § 11.329, revise the footnotes.

The revisions read as follows:

§ 11.329 Requirements to qualify for an STCW endorsement as Officer in Charge of an Engineering Watch (OICEW) in a manned engine room or designated duty engineer in a periodically unmanned engine room on vessels powered by main propulsion machinery of 750 kW/1,000 HP propulsion power or more (operational level).

* * * * *

(e) * * *

TABLE 1 TO § 11.329(e)—STCW ENDORSEMENT AS OICEW IN A MANNED ENGINE ROOM OR DESIGNATED DUTY ENGINEER IN A PERIODICALLY UNMANNED ENGINE ROOM ON VESSELS POWERED BY MAIN PROPULSION MACHINERY OF 750 kW/1,000 HP PROPULSION POWER OR MORE

[Operational level]

Entry path from national endorsements	Sea service ¹	Competence— STCW Table A–III/1 ²	Training required by this section ³
* * *	* *	* *	* *
Designated duty engineer, 3,000 kW/4,000 HP ⁴ .	12 months	Yes	Yes
Designated duty engineer, 750 kW/1,000 HP ⁴	24 months	Yes	Yes

¹ This column provides the minimum additional service required of the seafarer in order to meet the requirements of this section.

² Complete any items in paragraph (a)(3) of this section not previously satisfied in accordance with section A–III/1 of the STCW Code (incorporated by reference, see § 11.102).

³ Complete any items in paragraph (a)(4) of this section not previously satisfied.

⁴ STCW certificate should be limited to vessels less than 500 GRT.

§ 11.331 [Amended]

- 15. Amend § 11.331 as follows:

- a. In paragraph (a)(2), remove the text “of this part”; and

- b. In paragraph (e), footnote 2 to Table 1 to § 11.331(e), after the text “not

previously satisfied,” add the text in accordance with section A–III/3 of the STCW Code (incorporated by reference, see § 11.102).”

§ 11.333 [Amended]

■ 16. Amend § 11.333 as follows:

- a. In paragraph (a)(2), remove the text “of this part”; and
- b. In paragraph (d), footnote 2 to Table 1 to § 11.333(d), after the text “not previously satisfied,” add the text “in accordance with section A–III/3 of the STCW Code (incorporated by reference, see § 11.102).”

Subpart K—Officers and Personnel on a Passenger Ship When on an International Voyage

■ 17. Revise § 11.1105 to read as follows:

§ 11.1105 General requirements.

(a) To serve on a passenger ship on international voyages, before being assigned shipboard duties, masters, deck officers, chief engineers, and engineer officers must meet the appropriate requirements of the STCW Regulation V/2 and of section A–V/2 of the STCW Code (incorporated by reference, see § 11.102) as follows:

(1) Officers and personnel must have completed passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities as specified in section A–V/2 paragraph 1 of the STCW Code.

(2) Officers and personnel providing direct service to passengers in passenger spaces must have completed passenger ship safety training specified in section A–V/2 paragraph 2 of the STCW Code.

(3) Masters, officers, ratings qualified under Chapters II, III, and VII of the STCW Convention, and personnel designated on muster lists to assist passengers in emergency situations must have completed approved or accepted training in passenger ship crowd management specified in section A–V/2 paragraph 3 of the STCW Code.

(4) Masters, chief engineer officers, chief mates, second engineer officers, and any person designated on muster lists as having responsibility for the safety of passengers in emergency situations onboard passenger ships must have completed approved or accepted training in crisis management and human behavior as specified in section A–V/2 paragraph 4 of the STCW Code.

(5) Masters, chief engineer officers, chief mates, second engineer officers, and every person assigned immediate responsibility for embarking and disembarking passengers, loading, discharging, or securing cargo, or closing hull openings onboard ro-ro

passenger ships must have completed approved or accepted training in passenger safety, cargo safety, and hull integrity as specified in section A–V/2 paragraph 5 of the STCW Code.

(b) Personnel required to be trained in accordance with paragraph (a) of this section must hold documentary evidence of successful completion of training as proof of meeting these requirements.

(c) Personnel required to be trained in accordance with paragraphs (a)(3), (a)(4), or (a)(5) of this section must provide, at intervals not exceeding 5 years, evidence of maintaining the standard of competence.

(d) The Coast Guard will accept onboard training and experience, through evidence of 1 year of relevant seagoing service within the last 5 years, as meeting the requirements of paragraph (c) of this section.

(e) Personnel serving onboard small passenger ships engaged in domestic, near-coastal voyages, as defined in § 10.107 of this subchapter, are not subject to any obligation for the purpose of this STCW requirement.

PART 12—REQUIREMENTS FOR RATING ENDORSEMENTS

■ 18. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7303–7316, 7503, 7505, 7701, and 70105; DHS Delegation No. 00170.1, Revision No. 01.4.

■ 19. Revise § 12.103 to read as follows:

§ 12.103 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Coast Guard, Office of Merchant Mariner Credentialing (CG–MMC) and at the National Archives and Records Administration (NARA). Contact Coast Guard, CG–MMC at U.S. Coast Guard, Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509, 202–372–2357, MMCPolicy@uscg.mil. For information on the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations. The material may be obtained from the sources in the following paragraphs of this section.

(b) *International Maritime Organization (IMO)*, 4 Albert Embankment, London SE1 7SR, England; + 44(0)20 7735 7611; sales@imo.org; www.imo.org.

(1) The International Convention on Standards of Training, Certification and

Watchkeeping for Seafarers, 1978, 2017 Edition (the STCW Convention or the STCW), IBR approved for §§ 12.811(a) and 12.905(a).

(2) The Seafarers’ Training, Certification and Watchkeeping Code, 2017 Edition (the STCW Code); IBR approved for §§ 12.601(b); 12.602(a), (c), and (d); 12.603(a), (c), and (d); 12.605(a) through (c); 12.607(a) and (c); 12.609(a) through (c); 12.611(a) through (c); 12.613(a) and (b); 12.615(a) and (b); 12.617(a) and (b); 12.619(a); 12.621(a); 12.623(b); 12.811(a); and 12.905(a).

§ 12.603 [Amended]

■ 20. Amend § 12.603 as follows:

- a. In paragraph (a)(4), remove the text “of this part”;
- b. In paragraph (d), footnote 2 to Table 1 to § 12.603(d), after the text “not previously satisfied,” add the text “in accordance with section A–II/4 of the STCW Code (incorporated by reference, see § 12.103).”;
- c. In paragraph (d), footnote 3 to Table 1 to § 12.603(d), after the text “not previously satisfied,” add the text “in accordance with section A–II/5 of the STCW Code (incorporated by reference, see § 12.103).”

§ 12.605 [Amended]

■ 21. Amend § 12.605 as follows:

- a. In paragraph (a)(3), remove the text “of this part”;
- b. In paragraph (c), footnote 2 to Table 1 to § 12.605(c), after the text “not previously satisfied,” add the text “in accordance with Table A–II/4 of the STCW Code (incorporated by reference, see § 12.103).”

§ 12.607 [Amended]

■ 22. In § 12.607(a)(4), remove the text “of this part”.

§ 12.609 [Amended]

■ 23. Amend § 12.609 as follows:

- a. In paragraph (a)(3), remove the text “of this part”;
- b. In paragraph (c), footnote 2 to Table 1 to § 12.609(c), after the text “not previously satisfied,” add the text “in accordance with Table A–III/4 of the STCW Code (incorporated by reference, see § 12.103).”

§ 12.611 [Amended]

■ 24. Amend § 12.611 as follows:

- a. In paragraph (a)(2)(iii), remove the text “of this part”;
- b. In paragraph (c), footnote 2 to Table 1 to § 12.611(c), after the text “not previously satisfied,” add the text “in accordance with Table A–III/7 of the STCW Code (incorporated by reference, see § 12.103).”

■ 25. Revise the subpart heading to subpart I to read as follows:

Subpart I—Ratings and Personnel on a Passenger Ship When on an International Voyage**§ 12.901 [Amended]**

■ 26. In § 12.901, remove the word “part” and add, in its place, the word “subpart”.

■ 27. Revise § 12.905 to read as follows:

§ 12.905 General requirements.

(a) To serve on a passenger ship on an international voyage, before being assigned shipboard duties, personnel must meet the appropriate requirements in STCW Regulation V/2 and section A–V/2 of the STCW Code (both incorporated by reference, see § 12.103) as follows:

(1) All personnel must have completed passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities as specified in section A–V/2 paragraph 1 of the STCW Code.

(2) Personnel providing direct service to passengers in passenger spaces must have completed the passenger ship safety training specified in section A–V/2 paragraph 2 of the STCW Code.

(3) Ratings qualified under Chapters II, III, and VII of the STCW Convention and personnel designated on the muster list to assist passengers in emergency situations must have completed approved or accepted training in passenger ship crowd management specified in section A–V/2 paragraph 3 of the STCW Code.

(4) Personnel designated on muster lists as having responsibility for the safety of passengers in emergency situations onboard passenger ships must have completed approved or accepted training in crisis management and human behavior as specified in section A–V/2 paragraph 4 of the STCW Code.

(5) Personnel assigned immediate responsibility for embarking and disembarking passengers, loading, discharging, or securing cargo, or closing hull openings onboard ro-ro passenger ships must have completed approved or accepted training in passenger safety, cargo safety, and hull integrity as specified in section A–V/2 paragraph 5 of the STCW Code.

(b) Personnel required to be trained in accordance with paragraph (a) of this

section must hold documentary evidence of successful completion of training as proof of meeting these requirements.

(c) Personnel required to be trained in accordance with paragraph (a)(3), (a)(4), or (a)(5) of this section must provide, at intervals not exceeding 5 years, evidence of maintaining the standard of competence.

(d) The Coast Guard will accept onboard training and experience, through evidence of 1 year of relevant seagoing service within the last 5 years, as meeting the requirements of paragraph (c) of this section.

(e) Personnel serving onboard small passenger vessels engaged in domestic, near-coastal voyages, as defined in § 15.105(g)(1) of this subchapter, are not subject to any obligation for the purpose of this STCW requirement.

Dated: June 13, 2024.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

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