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Contents

Federal Register

Vol. 89, No. 139

Friday, July 19, 2024

Agricultural Marketing Service

PROPOSED RULES

Marketing Order:

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, 58636–58644

Agriculture Department

See Agricultural Marketing Service

See Animal and Plant Health Inspection Service

See Foreign Agricultural Service

See Forest Service

See National Agricultural Statistics Service

Animal and Plant Health Inspection Service

NOTICES

Importation of Grapes from Chile Into the United States, 58703–58713

Bureau of Consumer Financial Protection

NOTICES

Supervisory Highlights: Servicing and Collection of Consumer Debt, Issue 34, Summer 2024, 58726–58731

Census Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Current Population Survey, Annual Social and Economic Supplement, 58716–58717

Centers for Disease Control and Prevention

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58734–58737, 58739–58741

Requests for Nominations:

Lead Exposure and Prevention Advisory Committee, 58738

Centers for Medicare & Medicaid Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Medicaid and Children's Health Insurance Program, 58741–58743

Civil Rights Commission

NOTICES

Hearings, Meetings, Proceedings, etc.:

United States Virgin Islands Advisory Committee, 58716

Coast Guard

RULES

Safety Zone:

Illinois River, Mile Marker 87.1 to 87.7, 58626–58628

Special Local Regulation:

Recurring Marine Events, Sector Key West, 58624–58626

Commerce Department

See Census Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

See Patent and Trademark Office

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Concrete Masonry Products Research, Education, and Promotion Evaluation and Compliance and Membership Application Forms, 58717–58718

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement List; Additions and Deletions, 58723–58725

Commodity Futures Trading Commission

NOTICES

Meetings; Sunshine Act, 58725

Energy Department

See Energy Information Administration

Energy Information Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58731–58732

Environmental Protection Agency

RULES

Clean Air Act Operating Permit Program:

California; South Coast Air Quality Management District, 58628–58631

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

Connecticut; Regional Haze State Implementation Plan for the Second Implementation Period, 58663–58685

Clean Air Act Operating Permit Program:

California; South Coast Air Quality Management District, 58690–58692

State Plans for Designated Facilities and Pollutants;

Approvals and Promulgations:

Oklahoma; Control of Emissions From Existing Commercial and Industrial Solid Waste Incineration Units, 58685–58689

NOTICES

Environmental Impact Statements; Availability, etc., 58733

Hearings, Meetings, Proceedings, etc.:

Farm, Ranch, and Rural Communities Advisory Committee and Animal Agriculture and Water Quality Subcommittee, 58732–58733

Federal Aviation Administration

RULES

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

Miscellaneous Amendments, 58621–58623

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Advisory Circular: Reporting of Laser Illumination of Aircraft, 58873

Environmental Assessments; Availability, etc.:

Drone Package Delivery in North Carolina, 58872

Federal Communications Commission**RULES**

Jurisdictional Separations and Referral to the Federal-State
Joint Board, 58631–58632

PROPOSED RULES

Jurisdictional Separations and Referral to the Federal-State
Joint Board, 58692–58698

NOTICES

Hearings, Meetings, Proceedings, etc.:
World Radiocommunication Conference Advisory
Committee, 58733–58734

Federal Highway Administration**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 58873–58875

Federal Motor Carrier Safety Administration**NOTICES**

Exemption Application:
Hours of Service of Drivers; Reiman Corp., 58875–58876

Food and Drug Administration**NOTICES**

Guidance:
Pediatric Inflammatory Bowel Disease: Developing Drugs
for Treatment, 58743–58744

Foreign Agricultural Service**NOTICES**

Request for Information:
50 Million Non-traditional Shelf-Stable Commodities
Pilot Program, 58713–58714

Forest Service**NOTICES**

Caribou National Forest Land Management Plan;
Amendment, 58714–58715

Health and Human Services Department

See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

NOTICES

Hearings, Meetings, Proceedings, etc.:
Presidential Advisory Council on HIV/AIDS, 58745–
58746

Health Resources and Services Administration**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Ryan White HIV/AIDS Program Part F Regional AIDS
Education and Training Center Program Activities,
58744–58745

Homeland Security Department

See Coast Guard
See U.S. Customs and Border Protection

Interior Department

See Land Management Bureau
See National Park Service

Internal Revenue Service**RULES**

Required Minimum Distributions, 58886–58954

PROPOSED RULES

Required Minimum Distributions, 58644–58653

International Trade Administration**NOTICES**

Hearings, Meetings, Proceedings, etc.:
President's Advisory Council on Doing Business in
Africa, 58718

International Trade Commission**NOTICES**

Investigations; Determinations, Modifications, and Rulings,
etc.:
Certain Storage Containers and Toolboxes, Organizers,
Component Boxes, and Coolers, 58764–58765
Citric Acid and Certain Citrate Salts from Belgium,
Colombia, and Thailand, 58764
Meetings; Sunshine Act, 58764

Justice Department**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
2024 Law Enforcement Management and Administrative
Statistics Survey, 58765–58766
Drug Use Statement, 58766–58767
Improving Federal Customer Experience, 58767–58768

Labor Department

See Mine Safety and Health Administration

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Safe + Sound Campaign, 58768–58769
Voluntary Protection Program Information, 58769

Land Management Bureau**NOTICES**

Environmental Impact Statements; Availability, etc.:
Big Game Habitat Conservation for Oil and Gas
Management in Colorado, 58749–58751
Lands for Conveyance:
Alaska Native Claims Selection, 58752–58753

Mine Safety and Health Administration**NOTICES**

Petition:
Modification of Application of Existing Mandatory Safety
Standards, 58769–58772

National Agricultural Statistics Service**NOTICES**

Request for Stakeholder Input:
2027 Census of Agriculture, 58715–58716

National Archives and Records Administration**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 58772–58773

National Highway Traffic Safety Administration**NOTICES**

Minimum Performance Measures for the State Highway
Safety Grant Program, 58880–58882
Petition for Decision of Inconsequential Noncompliance:
Daimler Trucks North America, LLC, 58876–58880

National Institutes of Health**NOTICES**

Hearings, Meetings, Proceedings, etc.:

National Institute of Allergy and Infectious Diseases,
58746–58747National Institute Of Arthritis And Musculoskeletal And
Skin Diseases, 58746National Institute of Diabetes and Digestive and Kidney
Diseases, 58747National Institute of Neurological Disorders and Stroke,
58747**National Oceanic and Atmospheric Administration****RULES**

Fisheries of the Exclusive Economic Zone off Alaska:

Essential Fish Habitat Amendments, 58632–58635

PROPOSED RULES

International Fisheries:

Pacific Tuna Fisheries; Fish Aggregating Device Design
and Reporting Requirements in the Eastern Pacific
Ocean, 58698–58702**NOTICES**

Hearings, Meetings, Proceedings, etc.:

Caribbean Fishery Management Council, 58721–58722

Fisheries of the Gulf of Mexico; Southeast Data,
Assessment, and Review, 58719–58720

Mid-Atlantic Fishery Management Council, 58722

Pacific Fishery Management Council, 58719–58721

National Park Service**NOTICES**

Disposition:

Department of the Interior, Bureau of Reclamation,
Region 10: California-Great Basin, Sacramento, CA,
58763–58764

Inventory Completion:

David A. Fredrickson Archaeological Collections Facility
at Sonoma State University, Rohnert Park, CA,
58761–58762

Indiana University, Bloomington, IN, 58755

Office of the State Archaeologist Bioarchaeology Program,
University of Iowa, Iowa City, IA, 58756–58763

University of California, Davis, Davis, CA, 58753–58754

Weber State University, Ogden, UT, 58755–58756

Repatriation of Cultural Items:

Ralph T. Coe Center for the Arts, Santa Fe, NM, 58754–
58755**National Science Foundation****NOTICES**

Meetings; Sunshine Act, 58773

Nuclear Regulatory Commission**NOTICES**Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Form to Propose a Generic Issue, 58778–58779

Voluntary Reporting of Performance Indicators, 58775–
58776

Level 3 Probabilistic Risk Assessment Project

Documentation (Volume 7), 58805–58806

Meetings; Sunshine Act, 58802–58803

Permits; Applications, Issuances, etc.:

Tennessee Valley Authority; Browns Ferry Nuclear Plant,
Units 1, 2, and 3; Exemption, 58776–58778Tennessee Valley Authority; Sequoyah Nuclear Plant,
Units 1 and 2; Exemption, 58803–58804Tennessee Valley Authority; Watts Bar Nuclear Plant,
Units 1 and 2; Exemption, 58773–58775

Privacy Act; Systems of Records, 58779–58802

Office of Investment Security**PROPOSED RULES**Definition of Military Installation and the List of Military
Installations in Regulations Pertaining to Certain
Transactions by Foreign Persons Involving Real Estate
in the United States, 58653–58660**Patent and Trademark Office****PROPOSED RULES**Withdrawal of Changes to Post Registration Response
Deadlines, 58660–58663**NOTICES**Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Patent Prosecution Highway Program, 58722–58723

Postal Regulatory Commission**NOTICES**

New Postal Products, 58806

Presidential Documents**PROCLAMATIONS**

Special Observances:

National Atomic Veterans Day (Proc. 10784), 58619–
58620**Securities and Exchange Commission****NOTICES**Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 58828–58829

Allocation of Regulatory Responsibilities:

Financial Industry Regulatory Authority, Inc., Nasdaq
PHLX LLC, 58810–58816Financial Industry Regulatory Authority, Inc., The
Nasdaq Stock Market LLC, Nasdaq BX, Inc., 58819–
58828

Joint Industry Plan:

National Market System Plan Governing the Consolidated
Audit Trail Regarding Cost Savings Measures, 58838–
58847

Meetings; Sunshine Act, 58847–58848

Permits; Applications, Issuances, etc.:

MIAX Sapphire, LLC, 58848–58866
Unified Series Trust and Efficient Capital Management,
LLC, 58806–58807

Self-Regulatory Organizations; Proposed Rule Changes:

Nasdaq BX, Inc., 58816–58819

NYSE Arca, Inc., 58828

The Depository Trust Co., 58829–58836

The Nasdaq Stock Market LLC, 58807–58810

The Options Clearing Corp., 58836–58838

Small Business Administration**NOTICES**

Disaster Declaration:

Illinois, 58867

Minnesota; Public Assistance Only, 58867–58868

Texas, 58867

Social Security Administration**NOTICES**

Privacy Act; Matching Program, 58868–58870

State Department**NOTICES**

Culturally Significant Objects Imported for Exhibition:

Ultra-Violet: New Light on Van Gogh's Irises, 58870

Surface Transportation Board**NOTICES**

Acquisition of Control:

Essex Equity Partners MJT, LLC, Lawrence Boyce, and
Terry Stapp; Xplore KY LLC and MJT Nashville LLC,
58870–58871

Discontinuance of Service Exemption:

CG Railway, LLC, New Orleans, LA, 58871–58872

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Motor Carrier Safety Administration

See National Highway Traffic Safety Administration

Treasury Department

See Internal Revenue Service

See Office of Investment Security

U.S. Customs and Border Protection**NOTICES**

Air Declaration Zone Test, 58747–58749

Veterans Affairs Department**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Fiduciary's Account, Court Appointed Fiduciary's
Account, Certificate of Balance on Deposit and
Authorization to Disclose Financial Records, 58882–
58883

Separate Parts In This Issue**Part II**

Treasury Department, Internal Revenue Service, 58886–
58954

Reader Aids

Consult the Reader Aids section at the end of this issue for
phone numbers, online resources, finding aids, and notice
of recently enacted public laws.

To subscribe to the Federal Register Table of Contents
electronic mailing list, go to [https://public.govdelivery.com/
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manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

10784.....58619

7 CFR**Proposed Rules:**

930.....58636

14 CFR

97 (2 documents) 58621,
58622

26 CFR

1.....58886

31.....58886

54.....58886

Proposed Rules:

1.....58644

31 CFR**Proposed Rules:**

802.....58653

33 CFR

100.....58624

165.....58626

37 CFR**Proposed Rules:**

2.....58660

7.....58660

40 CFR

70.....58628

Proposed Rules:

52.....58663

62.....58685

70.....58690

47 CFR

36.....58631

Proposed Rules:

36.....58692

50 CFR

679.....58632

Proposed Rules:

300.....58698

Presidential Documents

Title 3—

Proclamation 10784 of July 15, 2024

The President

National Atomic Veterans Day, 2024

By the President of the United States of America

A Proclamation

Our military service members and veterans live by a code of duty, putting their lives on the line to keep all of us safe. Few exemplify that creed better than Atomic Veterans. These former members of our Armed Forces not only courageously served our country but also participated in the nuclear tests done between 1945 and 1962 or were exposed to radioactive materials. Today, we honor their service, sacrifice, and dedication to our Nation and recommit to fulfilling the great debt of gratitude we owe them.

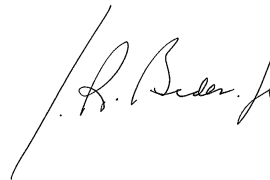
For five decades, the service members who suffered from the impact of nuclear warfare here at home were forced to remain silent. Many had been present for nuclear testing, posted nearby as atomic bombs detonated. They suffered the consequences for their entire lives, including serious health problems and cancers. For some, the mental scars of what they endured never fully went away. Forbidden from telling anyone, they could never fully disclose their past to their doctors, which delayed diagnoses, while their families struggled to get the benefits they were entitled to. Thousands of Atomic Veterans died before telling their stories.

I have often said that our Nation has many obligations, but only one is truly sacred: to prepare those we send into harm's way and care for them and their families when they return. For Atomic Veterans, that began with finally being able to share their stories. The 1996 repeal of the Nuclear Radiation and Secrecy Agreements Act allowed them to tell people what they had experienced so they could receive the benefits they deserved from the Department of Veterans Affairs. But there is still so much more to do. That is why I signed the PACT Act, one of the most significant laws ever to help millions of veterans who were exposed to toxins and other hazards, including radiation and burn pits during their military service. Further, I have signed laws that support individuals who developed cancer and other medical conditions due to their work related to the World War II nuclear program. And in 2022, the Department of Defense began recognizing Atomic Veterans' service and sacrifice through the Atomic Veterans Commemorative Service Medal.

Today, on behalf of a grateful Nation, we honor the service of our Atomic Veterans. May we not only tell the truth of their history but also build a future worthy of their highest hopes for our country—one that is peaceful and stable and where all veterans are cared for.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 16, 2024, as National Atomic Veterans Day. I call upon all Americans to observe this day with appropriate ceremonies and activities that honor our Nation's Atomic Veterans, whose brave service and sacrifice played an important role in the defense of our Nation.

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

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

Rules and Regulations

Federal Register

Vol. 89, No. 139

Friday, July 19, 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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31555; Amdt. No. 4121]

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 July 19, 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 July 19, 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 July 5, 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 8 August 2024

Scottsdale, AZ, SDL, RNAV (RNP) RWY 21, Orig-B
Harlan, KY, I35, Takeoff Minimums and Obstacle DP, Amdt 1

Effective 5 September 2024

Santa Ana, CA, SNA, RNAV (RNP) Z RWY 20R, Amdt 3
Newton, IA, TNU, ILS OR LOC RWY 32, Amdt 4
Port Huron, MI, KPHN, RNAV (GPS) RWY 4, Amdt 1B
Nebraska City, NE, AFK, NDB RWY 15, Amdt 2, CANCELED

Nebraska City, NE, AFK, NDB RWY 33, Amdt 3, CANCELED
Concord, NH, CON, RNAV (GPS) RWY 17, Amdt 1A
Concord, NH, CON, RNAV (GPS) RWY 35, Amdt 1A
Nashua, NH, ASH, ILS OR LOC RWY 14, Amdt 3
Nashua, NH, ASH, RNAV (GPS) RWY 14, Amdt 3
Barnesville, OH, 6G5, VOR/DME RWY 27, Orig-D
Tulsa, OK, TUL, VOR Y OR TACAN Y RWY 26, Amdt 24F
Zelienople, PA, PJC, RNAV (GPS) RWY 17, Amdt 2
Zelienople, PA, PJC, RNAV (GPS) RWY 35, Amdt 2
Zelienople, PA, KPJC, Takeoff Minimums and Obstacle DP, Amdt 4
Clarksville, TN, CKV, RNAV (GPS) RWY 17, Amdt 1D
Austin, TX, AUS, ILS OR LOC RWY 18L, ILS RWY 18L (SA CAT I), ILS RWY 18L (CAT II), ILS RWY 18L (CAT III), Amdt 4B
Austin, TX, AUS, ILS OR LOC RWY 36R, ILS RWY 36R (SA CAT I), ILS RWY 36R (SA CAT II), Amdt 4D
Austin, TX, AUS, RNAV (GPS) Y RWY 18L, Amdt 3B
Austin, TX, AUS, RNAV (GPS) Y RWY 18R, Amdt 3B
Austin, TX, AUS, RNAV (GPS) Y RWY 36L, Amdt 3B
Austin, TX, AUS, RNAV (GPS) Y RWY 36R, Amdt 2C
Brady, TX, BBD, RNAV (GPS) RWY 17, Amdt 2
Llano, TX, AQO, RNAV (GPS) RWY 17, Amdt 1A
Llano, TX, AQO, VOR–A, Amdt 4A, CANCELED

Rescinded: On July 1, 2024 (89 FR 54340), the FAA published an Amendment in Docket No. 31553, Amdt No. 4119, to Part 97 of the Federal Aviation Regulations under section 97.33. The following entry for Somerville, NJ, effective August 8, 2024, is hereby rescinded in its entirety:

Somerville, NJ, SMQ, RNAV (GPS) RWY 12, Orig-D

[FR Doc. 2024–15868 Filed 7–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31556; Amdt. No. 4122]

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 July 19, 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 July 19, 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, 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 July 5, 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	FDC No.	FDC date	Procedure name
8–Aug–24	AR	Texarkana	Texarkana Rgnl-Webb Fld	4/0927	5/10/2024	ILS OR LOC RWY 22, Amdt 17.

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 100****[Docket Number USCG–2023–0690]****RIN 1625–AA08****Special Local Regulations; Recurring Marine Events, Sector Key West, Update****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

SUMMARY: The Coast Guard is revising existing regulations by updating the table for existing events in the Seventh Coast Guard District Captain of the Port (COTP) Key West. This action is necessary to provide for the safety of life on these navigable waters in Key West, FL. Through this rule, the current list of recurring special local regulations is updated with the removal of an event that no longer takes place, the addition of two events, and revisions to existing events. When these special local regulations are enforced, certain restrictions are placed on marine traffic in specified areas.

DATES: This rule is effective July 19, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0690 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Hailye Wilson, Sector Key West, Waterways Management Division, Coast Guard; telephone (305) 292–8768 (ext. 768), email Hailye.M.Wilson@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

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

II. Background Information and Regulatory History

On November 6, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulations; Recurring Marine Events, Sector Key West, Update.¹ There we

stated why we issued the NPRM and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended December 6, 2023, we received 0 comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The purpose of this rule is to ensure that the public is informed of the most up to date recurring special local regulations.

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 immediate action is needed to ensure the rule is in place before the June 2024 events listed Items No. 2 and No. 3 in Table 1 to § 100.701.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published November 6, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule makes the following changes in 33 CFR 100.701 to paragraph (b) in Table 1 to § 100.701:

1. Removing the Yachting Key West Race Week special local regulation (SLR) from Line 1 since this event no longer occurs in the COTP Key West zone.
2. Moving the existing SLR in Line 2 to Line 1.
3. Moving the SLR in Line 3 to Line 2 and changing the date from the “1st Weekend of June” to “One Saturday in June.” There will also be non-substantive changes made to spelling and word usage for this SLR. In addition, a contingency will be added stating, “Depending on the weather on the day of race, the racecourse might proceed counterclockwise to accommodate for current and wind.”
4. Inserting a new SLR in Line 3 for the Annual Swim Around Key West.
5. Inserting a new SLR in Line 4 for the Alligator Reef Lighthouse Swim/ Friends of The Pool, Inc. and;
6. Moving the existing SLR in Line 4 to Line 5, and changing the event sponsor name from “Super Boat International Productions, Inc.” to “Race World Offshore.”

Marine events listed in paragraph (b) in Table 1 to § 100.701 are listed as recurring over a particular time, during each month and each year. Exact dates are intentionally omitted since calendar dates for specific events change from

year to year. Once dates for a marine event are known, the Coast Guard notifies the public it intends to enforce the special local regulation through various means including a notice of enforcement published in the **Federal Register**, Local Notice to Mariners, and Broadcast Notice to Mariners.

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, and duration of the special local regulations. These areas are limited in size and duration, and usually do not affect high vessel traffic areas. Moreover, the Coast Guard would provide advance notice of the regulated areas to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and the rule would allow vessels to seek permission to enter the regulated area.

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

¹ 88 FR 76159.

reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a

category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves revising an existing recurring event to reflect a date and time change for the event. It is categorically excluded from further review under paragraph L61 in Table 3–1 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 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 parts 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. In § 100.701, revise section (b) of Table 1 to § 100.701, to read as follows:

§ 100.701 Special Local Regulations; Marine Events in the Seventh Coast Guard District.

* * * * *

TABLE 1 TO § 100.701

Number/date	Event	Sponsor	Location
*	*	*	*
(b) COTP Zone Key West; Special Local Regulations			
1. Last Friday in April	Conch Republic Navy Parade and Battle.	Conch Republic Navy, LLC	Location: All waters approximately 150 yards offshore from Ocean Key Sunset Pier, Mallory Square and Pier B within the Key West Harbor in Key West, Florida.
2. One Saturday in June	Swim Around Key West	College of the Florida Keys	Location: Beginning at Smathers Beach in Key West, Florida. The regulated area will move, west to the area offshore of Fort Zachary Taylor Historic State Park, north through Key West Harbor, east through Fleming Cut, south on Cow Key Channel and west back to origin. The center of the regulated area will at all times remain approximately 50 yards offshore of the island of Key West Florida; extend 50 yards in front of the lead safety vessel preceding the first race participants; extend 50 yards behind the safety vessel trailing the last race participants; and at all times extend 100 yards on either side of the race participants and safety vessels. Depending on the weather on the day of race, the racecourse might proceed counter-clockwise to accommodate for current and wind.

TABLE 1 TO § 100.701—Continued

Number/date	Event	Sponsor	Location
3. One Saturday in June	Annual Swim Around Key West.	Anna Fugina	Location: Beginning at Higgs Beach in Key West, Florida. The regulated area will move, west to the area offshore of Fort Zachary Taylor Historic State Park, north through Key West Harbor, east through Fleming Cut, south on Cow Key Channel and west, past Smathers Beach and back to origin. The center of the regulated area will at all times remain approximately 50 yards offshore of the island of Key West Florida; extend 50 yards in front of the lead safety vessel preceding the first race participants; extend 50 yards behind the safety vessel trailing the last race participants; and at all times extend 100 yards on either side of the race participants and safety vessels. Depending on the weather on the day of race, the racecourse might proceed counter-clockwise to accommodate for current and wind.
4. One Saturday in September.	Alligator Reef Lighthouse Swim.	Friends of The Pool, Inc	Location(s) (Primary): Beginning at a point Latitude 24°54.82' N, longitude 080°38.03' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to latitude 24°51.07' N, longitude 080°37.14' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to point of origin at latitude 24°54.82' N, longitude 080°38.03' W. Location(s) (Alternate): ¹ Beginning at a point Latitude 24°54.82' N, longitude 080°38.03' W, thence to latitude 24°53.25' N, longitude 080°37.04' W, thence to latitude 24°52.05' N, longitude 080°38.85' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to point of origin at latitude 24°54.82' N, longitude 080°38.03' W.
5. 2nd week (Wednesday through Sunday) in November.	Key West Offshore World Championship.	Race World Offshore	Location: In the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance.
*	*	*	*

Dated: May 15, 2024.

Jason D. Ingram,

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

[FR Doc. 2024–15552 Filed 7–18–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0113]

RIN 1625–AA00

Safety Zone; Illinois River, Mile Marker 87.1 to 87.7

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Illinois River from mile markers 87.1 to 87.7. The safety zone is to protect personnel, vessels, and the marine environment from potential hazards created by extreme shoaling. Entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port, Sector Upper Mississippi River, or a designated representative.

DATES: For the purposes of enforcement, actual notice will be used from July 15, 2024 until July 19, 2024. This rule is effective without actual notice from July 19, 2024 through July 30, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0113 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 on this rule, call or email Lieutenant Commander Richard Cherkauer, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2560, email Richard.G.Cherkauer@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule, as doing so

would be impracticable. This is because we must establish this safety zone immediately to ensure the safety of vessels transiting the areas with extreme shoaling, and therefore lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to hazards created by extreme shoaling.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Upper Mississippi River (COTP) has determined a safety zone is necessary to protect personnel, vessels, and the marine environment from hazards created by extreme shoaling across the Illinois River.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on the waters of the Illinois River from mile markers 87.1 to 87.7. The duration of this safety zone is intended to protect personnel, vessels, and the marine environment from hazards created by extreme shoaling across the Illinois River. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a

designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River. The COTP or a designated representative will inform the public of the enforcement date and times for these safety zones, as well as any emergent safety concerns that may delay the enforcement of the zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, and duration of the temporary safety zones. This action involves a safety zone to protect personnel, vessels, and the marine environment from hazards created by extreme shoaling across the Illinois River from MM 87.1 to 87.7. Moreover, the Coast Guard will publish a Local Notice to Mariners and mariners may seek permission to enter the zone.

B. Impact on Small Entities

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

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

economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone on the Illinois River from MM 87.1 to 87.7. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. A Record of Environmental Consideration supporting this determination will be available in the docket at a later date. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0113 to read as follows:

§ 165.T08–011 Safety Zone; Illinois River, Mile Markers 87.1 to 87.7.

(a) *Location.* The following area is a safety zone: all navigable waters within the Illinois River from Mile Marker 87.1 to 87.7.

(b) *Enforcement period.* This section will be subject to enforcement from July 15, 2024 through July 30, 2024.

(c) *Regulations.* (1) In accordance with the general safety zone regulations in subpart C of this part, entry of persons or vessels into this safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative via VHF–FM channel 16, or through USCG Sector Upper Mississippi River at 314–269–2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or the COTP's designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in size or scope of the safety zone, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB) as appropriate.

Dated: July 15, 2024.

A.R. Bender,

Captain, U.S. Coast Guard, Captain of the Port, Sector Upper Mississippi River.

[FR Doc. 2024–15929 Filed 7–18–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R09–OAR–2022–0916; FRL–10530–02–R9]

Clean Air Act Operating Permit Program; California; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this direct final rule, the Environmental Protection Agency (EPA) is promulgating approval of revisions to the Clean Air Act Operating Permit Program (title V) of the South Coast Air Quality Management District (SCAQMD or “District”) in California. The EPA is taking this final action in accordance with Federal regulations and the Clean Air Act (CAA or “Act”).

DATES: Effective September 17, 2024 without further action, unless adverse comment is received by August 19, 2024. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0916 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Catherine Valladolid, Air Permits Section (Air–3–1), U.S. Environmental Protection Agency, Region IX, (415) 947–4103, valladolid.catherine@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to the EPA.

Table of Contents

I. Why is the EPA using a direct final rule?

II. Background

III. What are the requirements for approval of revisions to title V programs?

IV. What is the State's proposed title V program revision?

V. EPA Evaluation of Title V Program Revision

VI. Final Action

VII. Statutory and Executive Order Reviews

I. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule approving the SCAQMD's proposed title V program revisions without prior proposal because we consider it to be a noncontroversial action and anticipate no adverse comments. However, elsewhere in this issue of the **Federal Register** publication, the EPA is simultaneously publishing a proposal that will also serve as a public notice of the SCAQMD's proposed title V program revisions pursuant to 40 CFR 70.4(i).

II. Background

The CAA Amendments of 1990 include title V, which requires States to develop an operating permits program that meets the Federal criteria codified in 40 CFR part 70. The title V program requires certain sources of air pollution to obtain Federal operating permits from their respective States. These Federal operating permits improve enforcement and compliance by consolidating all applicable Federal requirements into one federally enforceable document. Before a State can issue title V permits, the EPA must approve its program under appendix A of part 70. States may submit revisions to their approved programs for EPA approval.

Title V of the CAA applies to “major stationary sources” as defined in title I, part D of the Act. 40 CFR 70.2 bases the definition of “major stationary source” on the nonattainment classification of the area where the source is located. Table 1 of this document shows the attainment/nonattainment/unclassifiable status for the applicable NAAQS within the District's jurisdictional boundary. As shown in table 1, the SCAQMD's jurisdiction is classified as nonattainment for fine particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (PM₁₀), fine particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (PM_{2.5}), lead (Pb), and ozone.¹ The

¹ The EPA reclassified State lands within the Coachella Valley area from Severe-15 to an Extreme ozone nonattainment area, effective July 10, 2019. This reclassification to Extreme means that a major stationary source is now defined as a source emitting 10 tons or more per year of either oxides

SCAQMD's jurisdiction is composed of several air basins that have different nonattainment classifications. The

District is designated attainment/unclassifiable for nitrogen dioxide

(NO₂), carbon monoxide (CO), and sulfur dioxide (SO₂). 40 CFR 81.305.

TABLE 1—AIR QUALITY ATTAINMENT STATUS

NAAQS pollutant/standard	Designation ^a	Classification	Basin/air quality management area
Annual NO ₂ (1971 Standard)	A/U		Los-Angeles-South Coast Air Basin.
1-Hour NO ₂ (2010 Standard)	A/U		Los Angeles County (part).
1-Hour NO ₂ (2010 Standard)	A/U		Orange County.
1-Hour NO ₂ (2010 Standard)	A/U		Riverside County (part).
1-Hour NO ₂ (2010 Standard)	A/U		San Bernadino County (part).
CO (1971 Standard)	A/U		Los-Angeles-South Coast Air Basin Area.
Pb (2008 Standard)	NA		Los Angeles County-South Coast Air Basin.
1-Hour SO ₂ (2010 Standard)	A/U		South Coast Air Basin.
24-Hour PM ₁₀ (1987 Standard)	NA	Serious	Coachella Valley Planning Area.
24-Hour PM ₁₀ (1987 Standard)	A/U		South Coast Air Basin.
Annual PM _{2.5} (1997 Standard)	NA	Moderate	Los-Angeles-South Coast Air Basin.
24-Hour PM _{2.5} (1997 Standard)	NA	Moderate	Los-Angeles-South Coast Air Basin.
24-Hour PM _{2.5} (2006 Standard)	NA	Serious	Los-Angeles-South Coast Air Basin.
Annual PM _{2.5} (2012 Standard)	NA	Serious	Los-Angeles-South Coast Air Basin.
1-Hour Ozone (1979 Standard) ^b	NA	Extreme	Los-Angeles-South Coast Air Basin.
1-Hour Ozone (1979 Standard) ^b	NA	Severe-17	Southeast Desert Modified Air Quality Management Area.
8-Hour Ozone (1997 Standard) ^c	NA	Extreme	Riverside County (Coachella Valley).
8-Hour Ozone (1997 Standard) ^c	NA	Extreme	Los-Angeles-South Coast Air Basin.
8-Hour Ozone (2008 Standard)	NA	Extreme	Los-Angeles-South Coast Air Basin.
8-Hour Ozone (2008 Standard)	NA	Severe-15	Riverside County (Coachella Valley).
8-Hour Ozone (2015 Standard)	NA	Extreme	Los-Angeles-South Coast Air Basin.
8-Hour Ozone (2015 Standard)	NA	Severe-15	Riverside County (Coachella Valley).

^a NA = Nonattainment; A/U = Attainment or Unclassified.

^b On August 3, 2005, the EPA revoked the 1979 1-hour ozone NAAQS; however, the EPA is retaining the listing of the designated areas for the revoked 1979 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation. 70 FR 44470 (August 3, 2005).

^c On March 6, 2015, the EPA revoked the 1997 8-hour ozone NAAQS; however, the EPA is retaining the listing of the designated areas for the revoked 1997 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation. 80 FR 12264 (March 6, 2015). On July 10, 2019, the Coachella Valley was reclassified to Extreme ozone nonattainment for the 1997 ozone NAAQS. 84 FR 32841 (July 10, 2019).

The emissions thresholds, above which a title V operating permit is

required pursuant to 40 CFR 70.3(a), are shown in table 2.

TABLE 2—TITLE V EMISSIONS THRESHOLDS ^a

Nonattainment designation/classification	VOC or NO _x (tpy)	CO (tpy)	PM ₁₀ (tpy)
Marginal	100	100	100
Moderate	100	100	100
Serious	50	50	70
Ozone transport region (other than Severe or Extreme)	50 (VOC only)		
Severe	25		
Extreme	10		

^a 40 CFR 70.2.

The emissions thresholds for PM_{2.5}, SO₂, and Pb are 100 tons per year (tpy) regardless of attainment classification. For hazardous air pollutants (HAPs), the title V threshold is 10 tpy for any individual HAP and 25 tpy for any combination of HAPs.

III. What are the requirements for approval of revisions to title V programs?

Pursuant to 40 CFR 70.4(i), either the EPA or the State may initiate a title V program revision “when the relevant Federal or State statutes or regulations are modified or supplemented.” It is the responsibility of the State to keep the EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures.

Revision of a State program shall be accomplished as follows:

(a) The State submits a modified program description, Attorney General's statement (if necessary for expanded or additional authority), or other documents as the EPA determines to be necessary. 40 CFR 70.4(i)(2)(i).

(b) After the EPA receives a proposed program revision, it will publish a notice of the proposed change in the **Federal Register** and provide for a

public comment period of at least 30 days. 40 CFR 70.4(i)(2)(ii).

(c) The Administrator shall approve or disapprove program revisions based on the requirements of 40 CFR part 70 and the Act. 40 CFR 70.4(i)(2)(iii).

(d) The EPA must publish a notice of approval in the **Federal Register** for any

substantial program revisions. 40 CFR 70.4(i)(2)(iv).

(e) Approval of nonsubstantial revisions may be given by a letter from the Administrator to the Governor or a designee. 40 CFR 70.4(i)(2)(iv).

(f) A program revision shall become effective upon the approval of the Administrator. 40 CFR 70.4(i)(2)(iv).

IV. What is the State's proposed title V program revision?

Table 3 lists the rules submitted as part of the SCAQMD's title V program revisions and the dates they were adopted by the District and submitted to the EPA by the California Air Resources Board (CARB), which is the governor's designee for California rule submittals.²

TABLE 3—SUBMITTED RULES

Rule #	Rule title	Adoption date	Submitted date ^a
3001	Title V Permits—Applicability	12/4/2020	2/25/2021

^a CARB transmitted the submittal to the EPA by a letter dated February 24, 2021.

The SCAQMD revised the title V emissions thresholds in its Rule 3001 for volatile organic compounds (VOC) and oxides of nitrogen (NO_x) from 25 tpy to 10 tpy for the Riverside County portion of the Salton Sea Air Basin³ to align with a recent reclassification for that area from “Severe-15” to “Extreme” for the 1997 8-hour ozone NAAQS.

The District made two additional revisions to Rule 3001: (1) clarifying the geographic areas for the Phase One and Phase Two facilities and (2) including an applicability cutoff date of December 4, 2020, for Phase One title V facilities.

V. EPA Evaluation of Title V Program Revision

As detailed in section IV of this document, the Coachella Valley nonattainment area, which consists of the Riverside County portion of the Salton Sea Air Basin (an area within the jurisdiction of the SCAQMD), is classified as Extreme nonattainment for the 1997 8-hour ozone NAAQS. Table 2 in Rule 3001 was revised to decrease the title V “major source” emissions thresholds pursuant to 40 CFR 70.2, Definitions, for VOC and NO_x from 25 tpy to 10 tpy for the Riverside County portion of the Salton Sea Air Basin. This decrease in the major source emissions thresholds aligns with the reclassification in nonattainment from Severe to Extreme for this area. Thus, we find that revised Rule 3001 references the appropriate potential to emit (PTE) thresholds for the SCAQMD nonattainment areas. By revising these thresholds, the SCAQMD meets the applicability requirements at 40 CFR 70.3, Applicability, to include all major sources within the District's jurisdiction.

Additionally, as indicated in section 2.1 of the Technical Support Document developed for this action, the SCAQMD made two additional revisions to Rule 3001: clarifying the geographic areas for the Phase One and Phase Two facilities and including an applicability cutoff date of December 4, 2020, for Phase One facilities. These revisions are non-substantive and thus do not affect our approvability determination pursuant to 40 CFR part 70 requirements. We therefore find all the proposed revisions to Rule 3001 approvable as a title V program revision.

VI. Final Action

As authorized in 40 CFR 70.4(i), the EPA is fully approving the submitted revisions because we find the proposed changes to Rule 3001 align with 40 CFR part 70 program elements. Rule 3001 refers to the correct VOC and NO_x emission thresholds appropriate for an Extreme ozone nonattainment area. Therefore, the proposed changes are approvable as title V program revisions. We do not anticipate adverse comments, so we are finalizing this action without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments on the proposed revisions by August 19, 2024, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect. The EPA would then address all public comments in a subsequent final rule based on the proposed action. If we do not receive timely adverse comments, this direct final approval will be effective without further notice on September 17, 2024. We do not plan to

open a second comment period on this action, so any parties interested in commenting should do so at this time.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator may approve a State title V program submittal that complies with the provisions of the Act and applicable Federal regulations; 40 CFR 70.4(i). Thus, in reviewing title V program submittals, the EPA's role is to approve State choices, provided they meet the criteria of the CAA and the criteria, standards, and procedures defined in 40 CFR part 70. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

² A detailed explanation of the EPA's evaluation of these proposed revisions as well as a change copy of the revised rule can be found in the

Technical Support Document and docket developed for this action.

³ The area often referred to as the “Coachella Valley” consists of the Riverside County portion of the Salton Sea Air Basin.

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

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

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House

of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 2024. Filing a petition for reconsideration by the Administrator of this direct final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: July 2, 2024.

Martha Guzman Aceves,
Regional Administrator, Region IX.

For the reasons discussed in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Amend appendix A, under “California”, by adding paragraph (dd)(6) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

* * * * *

(dd) * * *

(6) The District adopted revisions on December 4, 2020. The California Air Resources Board submitted revisions to the EPA on February 25, 2021. Approval is effective on September 17, 2024.

[FR Doc. 2024–15106 Filed 7–18–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286, FCC No. 24–71; FRS ID 231218]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Notification of renewed referral.

SUMMARY: In this document, the Commission renews the existing referrals to the Federal-State Joint Board on Separations, including both the 1997 and 2009 comprehensive reform referrals and the 2018 interim reform measures referral. The Commission renews these referrals in light of the substantial changes that have unfolded within the telecommunications market alongside extensive changes in federal and state regulatory frameworks since these referrals were first made. The Commission is committed to working with the Joint Board to develop an efficient, modern ratemaking system for all carriers for the longer term, as well as any interim adjustments that may be necessary while comprehensive reform remains pending.

DATES: July 19, 2024.

FOR FURTHER INFORMATION CONTACT:

Marv Sacks, Pricing Policy Division of the Wireline Communications Bureau, at (202) 418–2017 or via email at marvin.sacks@fcc.gov.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov, or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This action arises from a Commission Order that is part of an accompanying Further Notice of Proposed Rulemaking in FCC 24–71, released July 1, 2024. This renewed referral is not a rule adopted through notice and comment rulemaking under 5 U.S.C. 553(b) and is presently effective. The full text may be obtained from the following internet address: <https://www.fcc.gov/document/fcc-proposes-extending-separations-freeze>. A proposed rule that relates to the accompanying Further Notice of Proposed Rulemaking is published elsewhere in this issue of the **Federal Register**.

I. Synopsis

1. Consistent with Commission precedent, the Commission is not

seeking an additional referral to, or expecting an additional recommended decision from, the Joint Board to extend the separations rules freeze. At the same time, the Commission finds it appropriate to renew the Commission's prior reform referrals to the Joint Board in this Order, which accompanies the Further Notice of Proposed Rulemaking. In previously extending the freeze, the Commission has found such extensions to fall within the scope of the Joint Board's recommended decision granting the first freeze. In the *2001 Separations Freeze Order* (66 FR 33202; June 21, 2001) following the Joint Board recommendation, in adopting the first separations freeze, the Commission recognized that it might need to extend the freeze if comprehensive reform was not completed before the freeze expired. Since then, the Commission has extended the freeze eight times without an additional referral of the freeze to the Joint Board. The Commission nevertheless values the Joint Board's input, and commits to engage in consultations with the Joint Board regarding the Commission's proposed extension and any interim separations reform measures that may be needed during the freeze.

2. In this document, the Commission renews the existing referrals to the Federal-State Joint Board on Separations, including both the 1997 and 2009 comprehensive reform referrals and the 2018 interim reform measures referral. The Commission renews these referrals in light of the substantial changes that have unfolded within the telecommunications market alongside extensive changes in federal and state regulatory frameworks since these referrals were first made.

II. Procedural Matters

3. *Final Regulatory Flexibility Analysis.* Although in previous orders that included comprehensive and interim reform referrals to the Joint Board, the Commission incorporated a Final Regulatory Flexibility Analysis (FRFA), such analysis is not required here because the renewed referral is not a rule adopted through notice and comment rulemaking under 5 U.S.C. 553(b).

4. *Paperwork Reduction Act.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

III. Ordering Clauses

5. Accordingly, *it is ordered*, pursuant to sections 1, 4(i) and (j), 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communication Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 205, 220, 221(c), 254, 303(r), 403, 410, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, that this Order *is adopted*.

6. *It is further ordered* that, pursuant to section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), this Order renews the prior referrals to the Federal-State Joint Board on Separations for preparation of a recommended decision.

7. *It is further ordered*, pursuant to section 220(i) of the Communications Act, 47 U.S.C. 220(i), that notice be given to each state commission of the above rulemaking proceeding, and that the Secretary *shall serve* a copy of this Order on each state commission.

8. *It is further ordered* that the Commission's Office of the Secretary *shall send* a copy of this Order to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison, Office of the Secretary.

[FR Doc. 2024–15563 Filed 7–18–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[RTID 0648–XD632]

Fisheries of the Exclusive Economic Zone off Alaska; Essential Fish Habitat Amendments

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the approval of amendment 127 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), amendment 115 to the FMP for Groundfish of the Gulf of Alaska (GOA), amendment 56 to the FMP for BSAI King and Tanner Crabs, amendment 17 to the FMP for the Salmon Fisheries in the exclusive economic zone (EEZ) off Alaska, and amendment 3 to the FMP

for Fish Resources of the Arctic Management Area (amendments). These amendments revise the FMPs by updating the description and identification of essential fish habitat (EFH) and updating information on adverse effects on EFH from fishing and non-fishing activities based on the best scientific information available. These amendments are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

DATES: The amendments were approved on July 15, 2024.

ADDRESSES: Electronic copies of the amendments, maps of the EFH areas, and the Environmental Assessment (the analysis) prepared for this action may be obtained from <https://www.regulations.gov> under the docket number NOAA–NMFS–2023–0160.

FOR FURTHER INFORMATION CONTACT: Molly Zaleski, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. The North Pacific Fishery Management Council (NPFMC or Council) submitted these amendments to the Secretary for review. The notice of availability (NOA) for the amendments was published in the **Federal Register** on April 23, 2024 (89 FR 30318) with a 60-day comment period that ended on June 24, 2024. NMFS received five comment letters during the public comment period on the NOA. NMFS summarized and responded to these comments under Comments and Responses, below.

This notice of decision announces NMFS's approval of amendment 127 to the FMP for Groundfish of the BSAI (BSAI Groundfish FMP); amendment 115 to the FMP for Groundfish of the GOA (GOA Groundfish FMP); amendment 56 to the FMP for BSAI King and Tanner Crabs (Crab FMP); amendment 17 to the FMP for the Salmon Fisheries in the EEZ Off Alaska (Salmon FMP); and amendment 3 to the FMP for Fish Resources of the Arctic Management Area (Arctic FMP).

The Council prepared the FMPs under the authority of the Magnuson-Stevens

Act. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600, 679, and 680. Section 303(a)(7) of the Magnuson-Stevens Act requires that each FMP describe and identify EFH, minimize to the extent practicable the adverse effects of fishing on EFH, and identify other measures to encourage the conservation and enhancement of EFH. Section 3(10) of the Magnuson-Stevens Act defines EFH as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” Implementing regulations at 50 CFR 600.815 list the EFH contents required in each FMP and direct councils to conduct a complete review of all EFH information at least once every 5 years (referred to here as “the 5-year Review”).

The Council developed the amendments as a result of new scientific information made available through the 5-year Review that began in 2019 (2023 5-year Review) and adopted the amendments in December 2023. The 2023 5-year Review is the Council’s fourth review of EFH in the FMPs. Prior 5-year Reviews were completed in 2005, 2012, and 2018. The Council recommended amendments to the description of, information about, and identification of EFH in the FMPs based on the new information and improved mapping as described in the draft EFH 5-year Summary Report for the 2023 5-year Review. The Council recommended updates to EFH for all FMPs except for the Scallop FMP because no new information is available to update EFH descriptions for scallops.

The amendments make the following changes to the FMPs:

- *BSAI Groundfish FMP, GOA Groundfish FMP, Crab FMP, and Arctic FMP*: update EFH descriptions and maps, including up to EFH Level 3 information on habitat-related vital rates (see 50 CFR 600.815(a)(1)(iii)(A)). Add or revise the EFH text descriptions and add or replace the maps for—
 - 41 species or complexes in the BSAI Groundfish FMP;
 - 46 species or complexes in the GOA Groundfish FMP;
 - all five species in the Crab FMP; and
 - all three species in the Arctic FMP.
- *Salmon FMP*: replace the distribution maps for all five species with the EFH maps.
- *BSAI Groundfish FMP, GOA Groundfish FMP, and Crab FMP*: update information for fishing effects (FE) to reflect updates to the FE model, analysis, and evaluation.
- *BSAI Groundfish FMP, GOA Groundfish FMP, Crab FMP, and Arctic*

FMP: revise the EFH appendices where conservation recommendations for non-fishing activities are described.

- *BSAI Groundfish FMP, GOA Groundfish FMP, and Crab FMP*: revise prey species descriptions for two species of BSAI sharks, BSAI pollock, GOA Pacific cod, and BSAI red king crab.
- *BSAI Groundfish FMP, GOA Groundfish FMP, Crab FMP, and Arctic FMP*: revise EFH appendices with updated research and information needs.

Comments and Responses

During the public comment period for the NOA for the amendments, NMFS received five comment letters from three individuals, one industry group, and one environmental nongovernmental organization with eight unique comments. NMFS’ responses to these comments are presented below.

Comment 1: One commenter expressed general support for this action.

Response: NMFS acknowledges support for this action.

Comment 2: One commenter expressed concerns over salmon bycatch in Federal fisheries and FE to salmon EFH during their marine life history stage.

Response: Comments concerning salmon bycatch are outside the scope of this action. Amendments to the Salmon FMP were corrections to replace the salmon distribution maps with the EFH maps, both originating from the 2017 EFH 5-year Review. NMFS notes that the Council’s 2023 EFH 5-year Review Roadmap did not include updates to the FE analysis for Pacific salmon EFH during their marine life history stage because no new information was available.

Comment 3: There was a general concern of FE on benthic habitat.

Response: The 5-year Review evaluated the impacts of all fishing gears on benthic habitat. None of the stock assessment authors concluded that habitat disturbance within the core EFH area for their species was affecting their stocks in ways that were more than minimal or not temporary. None of the authors recommended any change in management with regards to fishing within EFH at this time.

Comment 4: One commenter expressed concerns over pelagic trawl gear contacting benthic habitats in the Bering Sea.

Response: The FE evaluation is a comprehensive evaluation of all gear types on species’ core EFH areas. The FE model uses bottom contact adjustments when estimating the

impacts of different gear types on benthic habitat. The list of gear types and adjustments is in appendix 2 of the 2022 Evaluation of Fishing Effects on Essential Fish Habitat discussion paper (available on the NPFMC eAgenda for the February 2023 meeting). Pelagic trawl gear was included in the gear types evaluated. The overall conclusion of the FE evaluation was that the impacts to species’ core EFH areas were not more than minimal or temporary. Gear-specific impacts are slated for future analyses.

Comment 5: NMFS did not use the best available science when assessing fishing impacts on EFH: they did not account for uncertainty and error; the model was not independently reviewed; impacts to juvenile and subadult EFH; NMFS did not evaluate fishing effects to habitats for non-FMP species, and NMFS also did not address impacts of pelagic trawl fishing in conservation areas closed to bottom trawling.

Response: The Council’s Scientific and Statistical Committee (SSC) found that the current EFH fishing FE evaluation methodology is appropriate for the 2023 5-year Review when they reviewed the FE evaluations completed by the stock assessment authors in October 2022. An SSC subcommittee provided guidance in 2016 for the stock assessment authors to evaluate FE model results for their species using three thresholds (if the stock was below minimum stock size threshold, if the estimated disturbance within the core EFH area was greater than or equal to 10 percent, and/or if data limitation concerns would better suit a qualitative, rather than quantitative, evaluation). The subcommittee also noted that the 10 percent threshold does not preclude stock assessment authors from completing the evaluation for levels of habitat disturbance less than 10 percent, if other data suggest that impacts may be affecting the population.

Uncertainty and Error: Model updates through this iterative process were summarized in the 2022 Evaluation of Fishing Effects on Essential Fish Habitat discussion paper (available on the NPFMC eAgenda for the February 2023 meeting). A sensitivity analysis was performed by running multiple iterations of the model to allow for estimation of uncertainty (section 2.2). The model code correction was explained clearly (section 2.3) and the model code was made available upon request from Alaska Pacific University (APU).

Independent Review: The model used for FE evaluation was developed by scientists at APU and went through peer review prior to publishing in the

Canadian Journal of Fisheries and Aquatic Sciences (Smeltz *et al.*, 2019, DOI: 10.1139/cjfas-2018-0243).

Juvenile and Subadult Evaluations: The SSC's guidance focuses the EFH FE evaluation on the adult life stages of groundfish and all life stages combined for crabs. The FE model and evaluation process is an ongoing research priority for future EFH reviews.

Exclusion of Non-FMP Species: EFH is designated for FMP species and evaluation of FE to the EFH of FMP species is directed by the EFH Final Rule (50 CFR 600). The Council's EFH Roadmap did not include updates to the FE analysis for Pacific salmon EFH in the Salmon FMP for this iteration of the 5-year Review. Halibut and State-managed commercial species are not targeted FMP species and do not have designated EFH. Corals, sponges, and other biogenic and long-lived habitat features also do not have designated EFH, though they are included as habitat covariates in both the species distribution models developed to map EFH for the 2023 EFH 5-year Review and in the FE model as biological features. An update to the FE model for this review included the incorporation of longer recovery times as supported by more recent peer reviewed literature (section 2.1.6 of the 2022 Evaluation of Fishing Effects on Essential Fish Habitat discussion paper).

Pelagic Trawl Impacts: Application of the FE model provided a comprehensive evaluation of all gear types on species' core EFH areas, and while an evaluation of consequences for specific management areas is beyond the scope of this action, NMFS agrees that the Council should consider whether further action is warranted to address bottom contact by pelagic trawls in areas closed to non-pelagic trawls.

Comment 6: NMFS failed to address EFH component 6 and identify actions to conserve and enhance EFH.

Response: NMFS followed the Council's EFH Roadmap and for the 2023 5-year Review, the Council outlined the plan for addressing EFH component 6 (EFH Conservation and Enhancement Recommendations) with the following directive:

Review and revise the EFH conservation recommendations for non-fishing activities in the non-fishing report under EFH component 4. Review new information from the FE evaluation to understand fishing effects on EFH. The Council may wish to identify additional recommendations to minimize effects from fishing based on the FE evaluation.

NMFS completed the tasks set with updates to the Impacts to Essential Fish Habitat from Non-Fishing Activities in

Alaska report (Limpinsel *et al.*, 2023, DOI: 10.25923/9z4h-n860) and the 2022 Evaluation of Fishing Effects on Essential Fish Habitat discussion paper. The Council and NMFS have several management measures in place, including habitat area closures and Habitat Areas of Particular Concern (HAPCs), which meet the requirements of EFH component 6. Section 1.3 of the 2023 EFH 5-year Review Summary Report describes the Council's EFH Roadmap to the 10 EFH components (available on the NPFMC eAgenda for the February 2023 meeting).

Comment 7: NMFS must analyze a reasonable range of alternatives to meet the stated purpose for this action and cannot rely on an outdated Environmental Impact Statement (EIS). NMFS did not consider any alternatives besides maintaining the status quo and accepting the amendments to EFH descriptions when additional reasonable alternatives that would better protect EFH are available. NMFS must take a hard look at the impacts of its actions. The Environmental Assessment (EA) failed to consider important and potentially significant effects, such as juvenile and subadult EFH, or habitats essential to Gulf of Alaska crab, Pacific halibut, lingcod, salmon, Pacific herring, or forage fish, corals, sponges, and sea whips. Further, NMFS improperly tiered to the 2005 EIS and, rather, should have supplemented the 2005 EIS.

Response: NMFS prepared a complete EIS on EFH and any adverse effects from fishing and non-fishing activities to EFH in 2005. Subsequently, NMFS has produced multiple EAs for each subsequent EFH 5-year Review. Under regulation, agencies should tier their EAs when it would eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review (40 CFR 1501.11(a)). This 5-year Review focused on issues ripe for decision during this review period, such as evaluating new environmental and habitat data, improving the models to map EFH, updating the model to evaluate fishery impacts on EFH, updating the assessment of non-fishing impacts on EFH, and assessing information gaps and research needs. The 2023 EFH 5-year Review Summary Report discussed the approach to each of the 10 EFH components in detail. Providing more accurate EFH information is beneficial to species as EFH is considered in the management of those species. A change in the designation of EFH has no direct impact, as there are no management

measures or regulations associated with the designation of EFH, nor are such conservation measures required. While there were changes in environmental conditions, not every change in conditions requires a supplemental EIS; only those changes that cause significantly different effects from those already studied in the initial EIS require supplementary consideration. The Supreme Court directs that "an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decision-making intractable" (*Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 373 (1989)). On the other hand, if a major Federal action remains to occur, and if new information indicates that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared.

Ultimately, an agency is required "to take a 'hard look' at the new information to assess whether supplementation might be necessary" (*Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 72-73 (2004)). National Environmental Policy Act (NEPA) implementing regulations at 40 CFR 1502.9(d)(4) stipulate that an agency may find that new circumstances or information relevant to environmental concerns are not significant and therefore do not require a supplement to an EIS. In doing this, an agency should apply a "rule of reason." "Application of the 'rule of reason' turns on the value of the new information to the decision making process. If there remains 'major Federal action' to occur, and if the new information is sufficient to show that the remaining action will 'affect the quality of the human environment' in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared" (*Marsh*, 490 U.S. 372-74 (1989)).

Here, as described above, new information and the EFH amendments do not constitute a "significant change" that was not already considered in the previous EIS. Further, a full EIS was not required, since the Council and NMFS thoroughly reviewed and considered all the relevant factors as part of the Magnuson-Stevens Act-mandated periodic review of the EFH provisions of the FMPs and revised or amended the EFH provisions as warranted based on available information. NMFS's consideration of alternatives was appropriate here. The stated goal of a project dictates the range of 'reasonable' alternatives and NEPA requires consideration of those which are

feasible. NEPA does not require an agency to explicitly consider every possible alternative to a proposed action. Alternatives need not be included . . . if they present “unique problems and would not accomplish the [agency’s] goal” (*Communities, Inc. v. Busey*, 956 F.2d 619, 627 (6th Cir. 1992)). NMFS is not “required to explore alternatives that, if adopted, would not have fulfilled the project goals” (*Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 546 (8th Cir. 2003)).

Here, NMFS followed the Council’s EFH Roadmap and for the 2023 5-year

Review and created alternatives to accomplish the Council’s and the agency’s goals in updating the description and identification of EFH, as required by section 305(b) of the Magnuson-Stevens Act. The EA analyzes the effects of each alternative and the effects of past, present, and reasonably foreseeable future actions (RFFA). There are no RFFAs that are identified as likely to have an impact on habitat based on updating the EFH information for FMP species as a result of the 2023 EFH 5-year Review.

Comment 8: One commenter expressed concerns over the impacts of

offshore wind energy development on Endangered Species Act-designated critical habitats.

Response: Comments concerning offshore wind are outside of the scope of this action.

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

Dated: July 15, 2024.

Samuel D. Rauch III,

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

[FR Doc. 2024–15930 Filed 7–18–24; 8:45 am]

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Proposed Rules

Federal Register

Vol. 89, No. 139

Friday, July 19, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–SC–22–0052]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Amendments to the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This rulemaking proposes amendments to Marketing Order No. 930, which regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The proposed amendments would modify the basis for calculating district representation on the Cherry Industry Administrative Board (“Board”), change the starting date for the term of office for Board members, simplify the way a Board member’s sales constituency is determined, clarify how the sales constituency applies to alternate Board members, change the timeframe for submitting nominations, and clarify when districts are subject to volume regulation.

DATES: The referendum will be conducted from August 26, 2024, through September 16, 2024. The representative period for the referendum is July 1, 2023, through June 30, 2024.

ADDRESSES: Interested persons are invited to submit written questions and comments to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market

Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, Fax: (202) 720–8938, or Email: Geronimo.Quinones@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Part 930 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Board locally administers the Order and is comprised of growers and handlers of tart cherries operating within the production area and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rulemaking in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget

(OMB) exempted from Executive Order 12866 review.

This proposed rulemaking has been reviewed under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this proposed rulemaking is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. This rulemaking is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and the supplemental rules of practice at 7 CFR 900.43 authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendments, the potential regulatory

and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed herein are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order. This proposed rulemaking encompasses a number of changes that are primarily administrative and modernizing in nature. These changes would clarify regulatory text or align it with current industry practices. Changes would also simplify the administration of seating the Board. In addition, as discussed in the “Final Regulatory Flexibility Analysis” section below, this proposed rule is not anticipated to impose any new costs on affected entities. The amendments would apply equally to all producers and handlers, regardless of size. The proposed amendments also have no additional impact on the reporting, record-keeping, or compliance costs of small businesses.

The Board unanimously recommended all the proposed amendments to the Order following deliberations at a public meeting held on February 15, 2022, except one dissenting vote on the method for establishing a member’s sales constituency. The Board submitted its formal recommendation to amend the Order through the informal rulemaking process on April 8, 2022. At USDA’s request, the Board conducted an additional meeting on December 15, 2022, to publicly clarify its original intent that the sales constituency provisions of the proposal would apply to both growers and handlers, and that sales constituency would be established at the time of nomination. Specifically, the Board adjusted the language of the initial recommendation for when a member’s sales constituency is established from “nomination and appointment” to just at the time of “nomination.” The Board then unanimously voted to clarify that the established sales constituency applies to both handlers and growers for the duration of the term of office. A separate vote to remove the words “and appointment” from the language had one dissenting individual who believed sales constituency should be calculated at the time of appointment.

A proposed rulemaking soliciting public comments on the proposed amendments was published in the **Federal Register** on December 4, 2023 (88 FR 84075). AMS received one comment from the Wisconsin Department of Agriculture in support of all proposals in the proposed

rulemaking, noting the proposed changes would favorably impact the Wisconsin cherry industry. AMS also received one comment from a Michigan handler who was specifically against Proposal 1 of the proposed rulemaking. The handler believed that this amendment would require that Board seat allocations be calculated by the averaging of the previous five years’ production, which the handler asserted would yield insufficient representation for District 1. The handler felt the appropriate representation for District 1 should be four seats based on the district’s annual tart cherry production from 2019 to 2023. However, Proposal 1 would no longer use a district’s average annual production to determine its representation on the Board, and would instead use the district’s highest annual production volume within a five-year period (e.g., 2019 to 2023). Indeed, under the proposal, District 1 would, in fact, be allocated four seats for the next four years based on the district’s recent maximum production.

Based on all the information available to AMS at this time, including the comments received in response to the proposed rulemaking, no changes will be made to the proposed amendments.

AMS will conduct a producer and handler (processor) referendum to determine support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendments, if they are favored by producers and handlers in the referendum.

The proposed rulemaking would:

- Modify the method for allocating Board seats to a district so that it is based on the district’s maximum volume of production in the most recent five harvests (Proposal 1);
- Change the starting date for the term of office for Board members (Proposal 2);
- Modify the basis for determining a Board member’s sales constituency when a member has multiple affiliations (Proposal 3);
- Clarify how sales constituency applies to alternate Board members (Proposal 4);
- Adjust the timeframe for submitting nominations to USDA (Proposal 5); and
- Clarify when districts are subject to the Order’s volume regulations (Proposal 6).

Proposal 1—Establishment of Membership

Section 930.20 establishes the Board and provides a method for calculating its membership, which is drawn from nine subdivisions (or “districts”) in the production area. Section 930.20(b) states

that district representation on the Board is based on the previous three-year average production in the district and may vary depending on the production levels of the district. If the three-year average production in a district changes so that a different number of seats should be allocated to it, § 930.20(f) states that the Board’s membership must be adjusted accordingly. Currently, the Board is required to calculate the three-year average production in each of the nine districts annually. This updated yearly calculation of the three-year average may result in a change to the number of representative seats in a given district.

This method for determining the Board’s membership has proved to be inefficient and costly. If the Board’s calculation of the three-year average production in a district reduces the number of seats for the district, the members of that district follow the procedures specified in § 930.120 and recommend to the Board who among them should be removed from office. The Board then makes a recommendation to the Secretary for approval of the member and alternate to be removed from the Board. This process is time-intensive and disrupts the continuity of the Board’s operations by removing members and alternates from the Board as frequently as every year. If the new three-year average calculation results in an increase to a district’s representation on the Board, the Board staff would conduct an election in that district to fill the newly established seat. This process costs the Board significant time and financial resources because it requires conducting additional outreach and nominations annually. Consequently, the Board discussed ways to alter § 930.20 to provide a more sustainable method for calculating its membership.

The Board recommended modifying § 930.20(b) so that district representation on the Board is based on each district’s maximum production in the most recent five harvest periods, rather than on the district’s average production over the previous three years. The Board further recommended that the proposed calculation would commence from the first season’s harvest following implementation of this action. In addition, § 930.20(f) would be revised to specify that each district’s maximum production for the most recent five harvests would be determined every five years and as soon as possible after the most recent year’s production is known. Production numbers would be calculated after the Board receives final reports in early September. The five-harvest periods for

calculating maximum volume for each district would continue in perpetuity until otherwise modified through a Board recommendation and rulemaking. The choice of the five-year period is based on balancing the interests of the industry. A five-year period would provide continuity of district representation on the Board, yet it would also allow trends and/or changes impacting tart cherry production to be accommodated periodically.

The Board also recommended amending § 930.20 to insert two new subsections, § 930.20(g) and 930.20(h). Section 930.20(g) would further clarify that in the event a district experiences substantial changes requiring reconsideration of the number of seats in the district, the Secretary, based on the Board's recommendation, could allocate a different number of seats to the district. In deciding whether to make any such recommendation, the Board would consider several factors. These factors would include shifts in the tart cherry acreage and/or the number of bearing trees within districts and within the production area during recent years, the volume of tart cherries produced in the district, the importance of either increased or decreased production in its relation to existing districts, the equitable relationship of Board membership and districts, enhanced economies to producers through more efficient administration of Board reapportionments, and other relevant factors.

Additionally, § 930.20(h) would state that no change in the number of seats allocated to a district could become effective less than 30 days prior to the date on which the term of office begins each year, and no recommendation for a change in allocated seats could be made less than six months prior to such date. Current § 930.20(g), (h), and (i) would be redesignated § 930.20(i), (j), and (k), respectively.

The Board considered alternatives to the proposed five-year period for determining a district's maximum production, including 3-year and 10-year periods. The Board assessed each period and cross-compared historical production data to review the hypothetical impact of these options on district representation levels. The Board determined the five-year period calculation as optimal because it induced the least volatility in the seat allocations to each district. Ultimately, the Board believes this proposal would stabilize its composition and improve the efficiency of its operations.

Proposal 2—Starting Date for Term of Office

Section 930.22 states that the term of office for Board members and alternates is three fiscal years. Section 930.7 defines a fiscal year as the 12-month period beginning on July 1 of any year and ending on June 30 of the following year. These dates have been used as the beginning and end dates for the term of office since the inception of the Order. Proposal 2 would adjust the term of office to start on June 1 and end on May 31 of the third subsequent year. This change would allow for activities such as Board forecasting, planning, and final recommendations for the optimum supply volume to be conducted by the same membership, which industry believes will improve Board operations. The optimum supply volume is referred to by the Board as the Optimum Supply Formula (OSF).

Under the Order's current marketing policy located in § 930.50, the Board is required to meet on or about July 1 of each crop year to establish a preliminary free market tonnage percentage and a preliminary restricted percentage, and to meet again no later than September 15 to make any modifications to the preliminary percentages based on consideration of actual production data, inventories, and other current economic information. Therefore, the final OSF recommendation incorporates the updated market data, and the Board reviews the preliminary estimates calculated by the prior Board membership during its June meeting (which is when the Board typically holds the meeting required to be held on or about July 1). However, the preliminary recommendation from its June meeting can impact industry operations during harvest in July and August.

Therefore, to establish greater continuity of Board operations that is stabilizing for industry, the Board recommended changing § 930.22 so the term of office would be three years, starting on June 1 and ending on May 31 of the third subsequent year, prior to the start of the crop year. This would allow the same Board members to calculate both the preliminary estimate and the final OSF recommendation.

In addition, the Board usually formulates its budget and assessment rates for the upcoming season at its June meeting. With this change, the newly seated Board would also be making these decisions.

Proposal 3—Determination of Member Sales Constituency

This proposal would clarify how the term "sales constituency" is applied to growers and handlers. As defined in § 930.16, a sales constituency is a common marketing organization, brokerage firm, or individual representing a group of handlers and growers. An organization that receives consignments of cherries but does not direct where the consigned cherries are sold is not a sales constituency. The determination of a Board member's (or prospective Board member's) sales constituency is important because, in a district with multiple Board members, only one member may be from a given sales constituency. This limitation is intended "to achieve a fair and balanced representation on the Board" and "to prevent any one sales constituency from gaining control of the Board" (7 CFR 930.20(g)).

The lack of additional guidance in the Order relating to sales constituency determinations has created significant challenges. First, the lack of guidance has led to confusion in the industry about how these determinations should be made. In addition, under the current regulatory criteria, Board members and nominees may be found to have multiple sales constituencies since many growers and handlers conduct business with several entities at the same time. Further, these business transactions may change year-to-year, or even within a year. The complicated and volatile nature of sales constituency determinations under the current rules means that Board members may become ineligible to serve before their terms expire, and this contributes to high turnover rates among members. These issues have also made it increasingly difficult to identify qualified candidates to serve on the Board, exacerbating the economic conditions that have caused the tart cherry industry to shrink over time.

The proposal would address these problems by simplifying sales constituency determinations and by providing that such determinations, once made at the time of a prospective member's nomination, would remain in place until the end of the member's term of office. Specifically, this proposal would amend § 930.23(b) to provide that a grower's sales constituency is determined by the handler that purchases the "majority of pounds" of the grower's cherries at the time of their nomination. A handler's sales constituency would be the entity that directs the sales of its cherries, which is commonly the handler itself. Sales

constituency determinations for growers and handlers would be based on the most recently harvested crop at the time of nomination. This assigned sales constituency would remain in effect throughout the grower's or handler's term of office. Since growers and handlers do business with multiple entities, this clarification would standardize the process for determining sales constituency and ensure that the sales constituency relationship would remain in place throughout a member's three-year term of office. Therefore, the Board recommended this proposal to address industry confusion on how to accurately determine a nominee's sales constituency relationship.

This proposal will help keep the sales constituency static throughout the term of office and stabilize Board membership, thereby reducing turnover interruptions prior to the term of office ending for the member. As explained above, this stability is becoming more important given business attrition and the economic conditions that contribute to the shrinking of the tart cherry industry over time, which has made identifying qualified candidates to serve on the Board increasingly more difficult. In sum, the Board seeks to limit the impact of any single sales constituency and maintain a wide array of perspectives and industry interests while simultaneously incorporating the flexibility to fully seat the Board. This proposal would promote diverse Board representation to reflect industry's business interests while retaining the capacity to seat diverse representation for the entire three-year term of office in each district. This proposal also makes clear that both handlers and growers are subject to sales constituency requirements.

Proposal 4—Alternate Member Sales Constituency

Section 930.28 establishes the criteria to seat an alternate member at a Board meeting during the absence of the member for whom that member serves as an alternate. The current language does not include any provision that incorporates sales constituency with regard to alternate members being seated. This proposal clarifies the interpretation of the regulatory language regarding who may represent a member seat within a district, and the intent of industry on nominating and seating an alternate member. When the Order was initially established, the intent of industry regarding sales constituencies was to permit the seating of alternate members even though they were of the same sales constituency as the member for whom they serve as an alternate. It

was understood that members of the same sales constituency could occupy the member and the corresponding alternate seat for that chair on the Board. The proposed amendment would confirm this original interpretation of the sales constituency limitation and clarify when an alternate may serve in place of a member.

Before 2018, the Board's policy was to allow members and their alternates to be from the same sales constituency, even though this practice was not explicitly codified. However, in 2018 a district court issued an order that disapproved of this practice. In *Burnette Foods Inc. v. U.S. Department of Agriculture*, the United States District Court for the Western District of Michigan held that CherrCo, Inc., a grower cooperative, was a sales constituency. *Burnette Foods, Inc. v. U.S. Department of Agriculture*, No. 1:16-cv-21, 2018 WL 538583, at *4 (W.D. Mich. Jan. 24, 2018). In connection with this holding, the court issued an order stating that "Not more than one Board member (*including an alternate Board member*) may be from, or affiliated with, CherrCo in those districts having more than one seat on the Board." *Burnette Foods*, ECF No. 51 (Mar. 9, 2018) (emphasis added).

USDA's implementation of the district court's order made it difficult to find and seat representatives on the Board who did not have a "constituency conflict" (that is, a shared sales constituency) with other members and alternates on the Board. Under USDA's implementation of the order, sales of cherries by a grower to more than one handler required that all such handler relationships be considered in assessing constituency conflicts. All these grower relationships were compared to all constituencies of other members and alternates serving on the Board from a multi-seat district, including the member holding the seat for which an alternate was standing for nomination and election. With this interpretation, if any conflict existed between a candidate and any other Board representative in the same district, alternates included, the candidate could not be nominated for appointment to the Board.

USDA appealed the district court's decision to the United States Court of Appeals for the Sixth Circuit, which reversed the district court's judgment and remanded the case for entry of judgment in USDA's favor. *Burnette Foods, Inc. v. U.S. Department of Agriculture*, 920 F.3d 461, 464, 470 (6th Cir. 2019). However, because the Sixth Circuit ruled in USDA's favor on a preliminary issue, it did not address the question of whether (or how) the sales

constituency limitation in § 930.20(g) applies to alternate members.

To clarify this issue, the Board recommended adding language to § 930.28 to explicitly state how the sales constituency limitation applies to alternate members. Currently, § 930.20(g) provides that any conflict of sales constituency in a district for Board members is not allowed. The current language in § 930.20(g) does not address how an alternate's sales constituency affects a member's qualification to serve. The proposed amendment to § 930.28 would add the necessary language to clarify the Board's intentions when seating alternate members.

As previously mentioned, attrition and difficult economic conditions are shrinking the tart cherry industry. In 2021 and 2022, three tart cherry handling operations closed. The Board also recently had open alternate seats as a result of the lawsuit surrounding the sales constituency clause. Finding and electing candidates to serve has become increasingly more difficult. The current process of determining sales constituency adds to this difficulty, especially when a member's sales constituency may change yearly, and the existing process significantly limits the availability of qualified candidates. To seat a functioning Board that appropriately represents growers and handlers from their corresponding districts, the Board believes that members of the same sales constituency must be allowed to sit as member and alternate on the Board. This was commonly understood by industry as how the Order was originally intended to operate. This is also how industry interpreted the Order until 2018.

This amendment would clarify the regulations and confirm these original intentions and the interpretation of sales constituency for alternates. The proposal would reclassify the original paragraph comprising § 930.28 as § 930.28(a), and add two new paragraphs §§ 930.28(b) and 930.28(c). Section 930.28(b) would state that alternate members may be from the same sales constituency as the member for whom they serve as an alternate. It would also provide that, if a member and their alternate are absent from a meeting of the Board, another alternate of a different district may act for the member following the requirements of § 930.28(a), provided this does not create a sales constituency conflict with the other members of that district. Section 930.28(c) would allow the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of § 930.28.

Proposal 5—Submission of Nominations

Preparing and completing Board member nomination packages for submission to the Secretary entails several stages of work that require months to complete. The process begins with the issuance of notices of open seats transmitted to industry, followed by the solicitation of nominations in the applicable districts. Grower members and at-large members (*i.e.*, members in districts with only one seat and who may be growers or handlers) are nominated first, then handler members are nominated. Once this is completed, the Board focuses efforts on the nomination of alternate members, a process that adds several more weeks to the timetable.

Currently, the Board is required to announce the expiration of a member's term of office and solicit nominations for the position at least 180 days before the term expires. Board staff must then complete the above-mentioned steps and submit the nomination package to the Secretary or Board at least 120 days before the term expires, in accordance with § 930.23(b)(7). This means the Board may have as few as 60 days (180 days minus 120 days) to prepare and submit a nomination package that adheres to the 120-day deadline. In practice, the Board staff cannot complete the process by the 120-day deadline. Therefore, the Board has recommended reducing the number of days in advance of a term's expiration that nominations must be submitted from 120 to 60 days. By making the submission date 60 days prior to the end of the term of the outgoing Board member, the Board staff would have an additional 60 days to conduct outreach for nominees and complete the nomination process.

This proposal is an administrative change for the Board. Aside from the proposed change, the Board staff would continue to conduct the nomination and election processes in the same manner as they have been conducted since the inception of the Order. This amendment would adjust by 60 days the deadline for submission of nominations to the Secretary. This change would not adversely impact the USDA's requirement to carry out the nomination or election processes.

Proposal 6—Districts Subject to Volume Regulation

This proposal would change language in § 930.52 to address two industry concerns about how this section establishes which districts are subject to the Order's volume regulations. The first

issue involves the number of years that § 930.52(a) considers in determining a district's average production of tart cherries. The second issue involves § 930.52(d)'s exemption from volume regulation based on a district's "processed production," which is an undefined term. These two issues have created volatility and confusion when calculating a district's production for the purpose of determining whether it is subject to the Order's volume regulations.

Section 930.52 establishes which districts in the production area are subject to the Order's volume regulations. Section 930.52(a) states that, as a general rule, the districts in which handlers are subject to the volume regulations are those in which the average annual production of cherries over the prior three years has exceeded six million pounds. Handlers become subject to volume regulation in the crop year that follows any three-year period in which the six-million-pound average production requirement is exceeded in that district.

Currently, the Board uses all tart cherry production for each district in calculating the OSF and for determining whether a district is regulated in any given year. The industry's production information comes from multiple sources. Handlers provide the Board with the amount of fruit that growers deliver to their facilities and from which district produced the fruit. Some growers divert cherries in the field in those years when a restriction is calculated under the OSF. The Board oversees and calculates the volume of cherries diverted from fields by growers. Using all available information, the Board determines the production of tart cherries by district that is used to calculate the OSF for any given year.

Tart cherry production can vary dramatically from year to year, making the production totals extremely volatile over multiple seasons. To make the average calculation for each district less volatile, the Board recommended moving to a five-year average instead of the current three-year average. The additional two years included in the calculation provide a longer window to assess the average production in each district, thereby reducing the weight each season has in determining the average number. The Board further noted that extending the period from three to five years would have a minimal impact on the regulation of the various districts, and allow for more consistent averages when calculating the six-million-pound threshold for determining if a district is subject to regulation. Consequently, the Board

unanimously recommended changing the period for calculating the average pounds for each district from three to five years in § 930.52(a).

The second issue involves § 930.52(d)'s use of the term "processed production." Section 930.52(d) exempts a district from volume regulation in a particular year if it produces less than 50 percent of its "average annual processed production" in the previous five years. At present, industry operates with the understanding that in years with volume restriction, grower diverted cherries are subtracted from the district's production when calculating the five-year average. However, since grower diverted cherries represent an insignificant portion of the district's total production, this has a negligible impact on the five-year average. By eliminating the term "processed" from § 930.52(d), it would be clearer to the industry that "production" means all cherries produced in a district when determining the exempt status. Therefore, in years where there is a restriction, all production, including grower diverted cherries, would be part of the production average. This change would simplify the calculation for the Board and keep the calculation consistent in years with and without volume restriction. A district's production average is most impacted by weather conditions from year to year, and not the volume of grower diverted fruit.

Therefore, eliminating the word "processed" from "processed production" would not meaningfully alter the way the industry or the Board are already operating, but it would simplify the five-year production average and make the calculation consistent from year to year. Elimination of the term would also make it clearer to the industry to include all tart cherries produced in a district when determining the regulation status of districts. The Board unanimously recommended this proposed change that would remove the term "processed" from § 930.52(d). Finally, AMS has identified a typo in § 930.62(a). A correction would be made by changing the reference to § 940.51 with § 930.51. This correction is administrative in nature and would not have an effect on the changes proposed in this rulemaking.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has

prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 400 tart cherry growers in the production area and approximately 40 handlers subject to regulation under the Order. At the time this analysis was performed, the Small Business Administration (SBA) defined small agricultural producers of tart cherries as those having annual receipts equal to or less than \$3,500,000 (Other Noncitrus Fruit Farming, North American Industry Classification System Code 111339). Small agricultural service firms were defined as those having annual receipts equal to or less than \$34,000,000 (Postharvest Crop Activities, North American Industry Classification System Code 115114) (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reported that the 2021–22 value of the tart cherry crop for processed utilization was approximately \$83 million. The tart cherry production was 171.0 million pounds and the season average grower price for processed tart cherries was \$0.485 per pound. Dividing the crop value by the estimated number of producers (400) yields an estimated average annual receipts per producer of \$207,500 (\$83 million divided by 400 producers). This is well below the SBA threshold for small producers.

An estimate of the season average price of \$0.94 per pound received by handlers for processed tart cherries was derived from USDA's purchases of dried tart cherries for feeding programs in the 2021–22 season at an average price of \$4.70 per pound. The dried cherry price was converted to a raw product equivalent price of \$0.94 per pound at an industry recognized ratio of five to one (\$4.70 divided by 5 equals \$0.94). Multiplying this price by 2021 total processed utilization of 171.0 million pounds results in an estimated handler-level tart cherry value of \$160.7 million (\$0.94 per pound multiplied by 171.0 million pounds). Dividing this figure by the number of handlers (40) yields estimated average annual receipts per handler of approximately \$4.0 million (\$160.7 million divided by 40 handlers), which is well below the SBA threshold of \$34 million for small agricultural service firms. Assuming a normal

distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This proposed rulemaking would revise multiple provisions in the Order's subpart regulating handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin:

- *Proposal 1*: modify the method for allocating Board seats to a district so that it is based on the district's maximum volume of production in the most recent five harvests;
- *Proposal 2*: change the starting date for the term of office for Board members;
- *Proposal 3*: modify the basis for determining a Board member's sales constituency when a member has multiple affiliations;
- *Proposal 4*: clarify how sales constituency applies to alternate Board members;
- *Proposal 5*: adjust the timeframe for submitting nominations to USDA; and
- *Proposal 6*: clarify when districts are subject to the Order's volume regulations.

The proposed changes may be considered either modifications of, or clarifications to existing administrative Board processes, and affect only the Board's activity. AMS does not anticipate that any of the proposed changes will increase costs on producers or handlers. The goal of these proposed changes is to help further standardize and stabilize Board membership and improve Board efficiency and decision making throughout the year.

As an alternative to this proposal, the Board considered making no revisions to the Order at this time. However, due to changes in the industry, the Board believes the proposals are justified and necessary to ensure its ability to locally administer the program. AMS concurs with that conclusion.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0177, Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes in those requirements are necessary as a result of this proposed rulemaking. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rulemaking would impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As

with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rulemaking.

The Board's meetings are widely publicized throughout the tart cherries production area. All interested persons are invited to attend the meetings and encouraged to participate in Board deliberations on all issues. Like all Board meetings, the meetings held on February 15 and December 15, 2022, were public, and all entities, both large and small, were encouraged to express their views on the proposed amendments.

A proposed rulemaking concerning this action was published in the **Federal Register** on December 4, 2023 (88 FR 84075). A copy of the rulemaking was sent via email to the Board Manager for dissemination to all Committee members and tart cherry producers and handlers. Finally, the proposed rulemaking was made available by USDA through the internet and the Office of the Federal Register. A 60-day comment period ending February 2, 2024, was provided to allow interested persons to respond to the proposals. Two comments were received. One comment supported all the proposed amendments. The other comment, from a Michigan handler, was specifically against Proposal 1 of the proposed rulemaking. The handler believed that this amendment would require that Board seat allocations be calculated by the averaging of the previous five years' production, which the handler asserted would yield insufficient representation for District 1. However, Proposal 1 would no longer use a district's average annual production to determine its representation on the Board and would instead allocate seats to a district based on its highest annual production volume within a five-year period. For the years (2019 to 2023), District 1 would, in fact, be allocated four seats. Based on all the information available to AMS at this time, including the comments received in response to the proposed rulemaking, no changes will be made to the amendments as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

AMS has determined that the findings and conclusions, and general findings and determinations included in the proposed rulemaking set forth in the December 4, 2023, issue of the **Federal Register** (88 FR 84075) are appropriate and necessary and are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered that this entire proposed rulemaking be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400–407) to determine whether the annexed Order amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin is approved or favored by growers and handlers (processors), as defined under the terms of the Order, who during the representative period were engaged in the production or processing of tart cherries in the production area.

The representative period for the conduct of such referendum is hereby determined to be July 1, 2023, through June 30, 2024.

The agents designated by the Secretary to conduct the referendum are Christian Nissen, Jennie Varela, and Steven Kauffman, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: Christian.Nissen@usda.gov, Jennie.Varela@usda.gov, and Steven.Kauffman@usda.gov, respectively.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin ¹

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 930; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 930 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 930 as hereby proposed to be amended regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 930, as hereby proposed to be amended, is limited in application to the smallest regional production area, which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 930, as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries produced or packed in the production area; and

5. All handling of tart cherries grown or handled in the production area, as defined in Marketing Order 930, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of tart cherries in the States of Michigan, New York, Pennsylvania,

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Oregon, Utah, Washington, and Wisconsin shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the Order contained in the proposed rulemaking issued by the Administrator and published in the **Federal Register** (88 FR 84075) on December 4, 2023, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 930

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 930 as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 930.20 by:

- a. Revising the introductory text of paragraph (b) and paragraph (f);
- b. Redesignating paragraphs (g), (h), and (i), as paragraphs (i), (j), and (k); and
- c. Adding new paragraphs (g) and (h).

The revisions and the additions read as follows:

§ 930.20 Establishment and membership.

* * * * *

(b) District representation on the Board shall be based upon the maximum volume of production in the most recent five harvests in the district and shall be established as follows:

* * * * *

(f) If the maximum production for the most recent five harvests in a district changes so that a different number of seats should be allocated to the district, then the Board will be reestablished by the Secretary and such seats will be filled according to the applicable provisions of this part. Each district's maximum production for the five most recent harvests shall be determined every five years and as soon as possible after the most recent year's production is known.

(g) In the event of substantial changes within a district that require reconsideration of the number of seats allocated to the district, the Board may recommend, and pursuant thereto, the

Secretary may approve, allocation of a different number of seats to the district. In making any such recommendation, the Board shall consider:

(1) Shifts in tart cherry acreage and/or the number of bearing trees within districts and within the production area during recent years;

(2) The volume of tart cherries produced in the district;

(3) The importance of either increased or decreased production in its relation to existing districts;

(4) The equitable relationship of Board membership and districts;

(5) Economies to result for producers in promoting efficient administration of the Board due to reapportionments;

(6) Other relevant factors.

(h) No change in the allocated number of seats for district(s) may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendation for a change in allocated seats may be made less than six months prior to such date.

* * * * *

■ 3. Revise § 930.22 to read as follows:

§ 930.22 Term of office.

The term of office of each member and alternate member of the Board shall be for three years beginning on June 1 of the year when appointed and ending on May 31 three years later: Provided that, of the nine initial members and alternates from the combination of Districts 1, 2 and 3, one-third of such initial members and alternates shall serve only one year, one-third of such members and alternates shall serve only two years, and one-third of such members and alternates shall serve three years; and one-half of the initial members and alternates from Districts 4 and 7 shall serve only one year, and one-half of such initial members and alternates shall serve two years (determination of which of the initial members and their alternates shall serve for one, two, or three years shall be by lot). Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified until their respective successors are selected, have qualified, and are appointed. The consecutive terms of office of grower, handler and public members and alternate members shall be limited to two 3-year terms, excluding any initial term lasting less than three years. The term of office of a member and alternate member for the same seat shall be the same. The term of office specified in this section will become effective for all members, including members whose terms are not expiring, upon the first nomination

cycle following the effectiveness of the final rule establishing this new term of office.

The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

■ 4. Amend § 930.23 by revising paragraphs (b)(2), (3), (4), (7) and (c)(3)(ii) to read as follows:

§ 930.23 Nomination and election.

* * * * *

(b) * * *

(2) In order for the name of a handler nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which contains the signature of one or more handler(s), other than the nominee, from the nominee's district who is or are eligible to vote in the election and that handle(s) a combined total of no less than five percent (5%) of the previous three-year average production handled in the district. Provided, that this requirement shall not apply if its application would result in a sales constituency conflict as provided in § 930.20(i). The requirement that the petition form be signed by a handler other than the nominee shall not apply in any district where fewer than two handlers are eligible to vote.

(3) Only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the submission of nominees in more than one district during any nomination cycle. If a grower produces cherries in more than one district, that grower may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A grower may not participate in the nomination process in one district and the election process in a second district in the same election cycle. A grower's sales constituency is determined by the common marketing organization or brokerage firm or individual representing a group of handlers and growers that purchased the majority of pounds of the grower's fruit in a given year. For the duration of a grower's term on the Board, the sales constituency affiliation for said grower will be the affiliation at the time of their nomination and will be based on the most recently harvested crop at that time.

(4) Only handlers, including duly authorized officers or employees of

handlers, who are eligible to serve as handler members of the Board shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any nomination cycle. If a handler handles cherries in more than one district, that handler may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A handler may not participate in the nominations process in one district and the elections process in a second district in the same election cycle. If a person is a grower and a grower-handler only because some or all of his or her cherries were custom packed, but he or she does not own or lease and operate a processing facility, such person may vote only as a grower. For the duration of a handler's term on the Board, the sales constituency affiliation for said handler will be the affiliation at the time of nomination.

* * * * *

(7) After the appointment of the initial Board, the Secretary or the Board shall announce at least 180 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in this section. Nominations for such position should be submitted to the Secretary or the Board not less than 60 days prior to the expiration of such term.

(c) * * *

(3) * * *

(ii) To be seated as a handler representative in any district, the successful candidate must receive the support of handler(s) that handled a combined total of no less than five percent (5%) of the previous three-year average production handled in the district; Provided, that this paragraph shall not apply if its application would result in a sales constituency conflict as provided in § 930.20(i).

* * * * *

■ 5. Revise § 930.28 to read as follows:

§ 930.28 Alternate members.

(a) An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member may designate, in writing and prior to the

meeting, another alternate to act in his or her place: *Provided*, that such alternate represents the same group (grower or handler) as the member and is not from the same sales constituency as another acting member or acting alternate member in that district. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

(b) Alternate members may be from the same sales constituency as the member for whom they serve as an alternate. In the event a member and his or her alternate are absent from a meeting of the Board, another alternate may act for the member following the requirements of § 930.28(a), provided this does not create a sales constituency conflict with the other members of that district.

(c) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

■ 6. Amend § 930.52 by revising paragraphs (a) and (d) to read as follows:

§ 930.52 Establishment of districts subject to volume regulations.

(a) The districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior 5 years has exceeded 6 million pounds. Handlers shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any 5-year period in which the 6-million-pound average production requirement is exceeded in that district.

* * * * *

(d) Any district producing a crop which is less than 50 percent of the average annual production in that district in the previous 5 years would be exempt from any volume regulation if, in that year, a restricted percentage is established.

* * * * *

§ 930.62 [Amended]

■ 7. Amend § 930.62 by removing in introductory text of paragraph (a) the text “§ 940.51” and adding in its place the text “§ 930.51”.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–15629 Filed 7–18–24; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103529–23]

RIN 1545–BQ66

Required Minimum Distributions+

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document sets forth proposed regulations that would provide guidance relating to required minimum distributions from qualified plans; section 403(b) annuity contracts, custodial accounts, and retirement income accounts; individual retirement accounts and annuities; and eligible deferred compensation plans under section 457. These proposed regulations would affect administrators of, and participants in, those plans; owners of individual retirement accounts and annuities; employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts; and beneficiaries of those plans, contracts, accounts, and annuities. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by September 17, 2024. A public hearing on this proposed regulation has been scheduled for September 25, 2024, at 10:00 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by September 17, 2024. If no outlines are received by September 17, 2024, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–103529–23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on www.regulations.gov. Send paper submissions to: CC:PA:01:PR (REG–103529–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, call Brandon M. Ford or Jessica S. Weinberger at (202) 317–6700; concerning submission of comments, the hearing, and the access code to attend the hearing by telephone, call Vivian Hayes at (202) 317–6901 (not toll-free numbers) or email publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 401(a)(9) of the Internal Revenue Code of 1986 (Code). Section 401(a)(9) sets forth required minimum distribution rules for plans qualified under section 401(a). These rules are incorporated by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and individual retirement annuities (collectively, IRAs); section 403(b)(10) for annuity contracts, custodial accounts, and retirement income accounts described in section 403(b) (section 403(b) plans); and section 457(d)(2) for eligible deferred compensation plans. The determination of the required minimum distribution is also relevant for purposes of the related excise tax under section 4974 and the definition of eligible rollover distribution in section 402(c).

The Rules and Regulations section of this issue of the **Federal Register** includes final regulations that amend the Income Tax Regulations and Excise Tax Regulations (26 CFR parts 1 and 54) relating to sections 401(a)(9), 402(c), 403(b), 408, 457, and 4974 (T.D. 10001). The background section in the preamble to those final regulations (2024 final regulations) describes those provisions.

Explanation of Provisions

A. Overview

These proposed regulations would address various provisions that were reserved in the 2024 final regulations. These proposed regulations address sections 107, 202, 204, 302, 325, and 327 of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459 (2022), and certain other issues.

B. Determination of Applicable Age for Employees Born in 1959

The 2024 final regulations include rules for determining an employee's applicable age, as defined in section 401(a)(9)(C)(v), which is a component of the determination of the employee's

required beginning date. Under those rules, which reflect the amendment to section 401(a)(9)(C) made by section 107 of the SECURE 2.0 Act, an employee's applicable age varies based on the employee's date of birth. However, as noted in the preamble to the 2024 final regulations, employees who were born in 1959 are described in section 401(a)(9)(C)(v)(I) of the Code (which provides that the applicable age for those employees is age 73) as well as section 401(a)(9)(C)(v)(II) (which provides that the applicable age for those employees is age 75).

The 2024 final regulations reserve § 1.401(a)(9)–2(b)(2)(v) for the determination of the applicable age for employees born in 1959, and these proposed regulations would fill in the reserved paragraph. Under the proposed regulations, the applicable age for an employee who was born in 1959 would be age 73.

C. Purchase of Annuity Contract With Portion of Employee's Individual Account—Rules of Operation for Aggregation Option

The 2024 final regulations include guidance issued pursuant to section 204 of the SECURE 2.0 Act (relating to the application of section 401(a)(9) of the Code in a situation in which an employee's interest in a defined contribution plan is partially annuitized by using a portion of the employee's individual account to purchase an annuity contract). Specifically, § 1.401(a)(9)–5(a)(5)(iv) provides that, in lieu of satisfying section 401(a)(9) separately with respect to an annuity contract purchased with a portion of the employee's account and the remaining account balance, a plan may permit an employee to elect to satisfy section 401(a)(9) for the annuity contract and that account balance in the aggregate by adding the fair market value of the contract to the remaining account balance and treating payments under the annuity contract as distributions from the employee's individual account. However, the 2024 final regulations reserve § 1.401(a)(9)–5(a)(5)(v) for rules of operation with respect to this aggregation option, and these proposed regulations would fill in the reserved paragraph.

Under proposed § 1.401(a)(9)–5(a)(5)(v), the fair market value of the annuity contract would be determined as of December 31 of the calendar year preceding the distribution calendar year. In addition, beginning with the determination used for the 2026 distribution calendar year, the determination would have to be made

using the applicable method set forth in § 1.408A–4, Q&A–14(b)(2).¹

D. Distributions From Designated Roth Accounts

Section 325 of the SECURE 2.0 Act added a new paragraph (5) to section 402A(d) of the Code, which provides that the provisions of section 401(a)(9)(A) (requiring that minimum distributions be paid during an employee's lifetime) and the incidental death benefit requirements of section 401(a) do not apply to any designated Roth account. The 2024 final regulations include limited guidance relating to the application of that new paragraph.

Specifically, in the case of an employee for whom only a portion of the employee's account under a defined contribution plan is held in a designated Roth account described in section 402A(b)(2), § 1.401(a)(9)–5(b)(3) of the 2024 final regulations provides that, for distribution calendar years up to and including the calendar year that includes the employee's date of death, amounts held in that designated Roth account are not taken into account for purposes of determining the account balance that is used to calculate the required minimum distribution. However, the 2024 final regulations reserve § 1.401(a)(9)–5(g)(2)(iii) for rules regarding how distributions from a designated Roth account are treated for purposes of section 401(a)(9), and these proposed regulations fill in the reserved paragraph.

Under proposed § 1.401(a)(9)–5(g)(2)(iii), a distribution from a designated Roth account made in a calendar year for which the employee is required to take a minimum distribution under the plan would not count towards satisfying that requirement. Consistent with this rule, the proposed regulations would provide that such a distribution is not treated as a required minimum distribution for purposes of § 1.402(c)–2(f). Thus, the distribution could be rolled over to a Roth IRA if it otherwise meets the requirements to be an eligible rollover distribution.

E. Corrective Distributions Giving Rise to Reduction or Waiver of the Section 4974 Excise Tax

The 2024 final regulations include guidance relating to the application of section 4974(e) (as added to the Code by section 302(b) of the SECURE 2.0 Act). Specifically, § 54.4974–1(a)(2) provides that, in the case of a taxpayer who doesn't receive the full required

minimum distribution under any qualified retirement plan (as defined in section 4974(c) of the Code) or any eligible deferred compensation plan (as defined in section 457(b)) for a calendar year, the excise tax under section 4974 is reduced from 25 percent of the shortfall to 10 percent if, by the last day of the correction window, the taxpayer: (1) receives a corrective distribution from the applicable plan in the amount of the shortfall; and (2) submits a return reflecting that reduced tax.

In addition, the 2024 final regulations provide for an automatic waiver of the section 4974 excise tax associated with a failure by a beneficiary of an individual to take a required minimum distribution in the calendar year in which the individual died if that individual had not already satisfied the minimum distribution requirement for that year provided that the failure is corrected within a specified period (generally by the end of the following calendar year). Specifically, § 54.4974–1(g)(3)(iii) provides for an automatic waiver of the excise tax under section 4974 if, by the tax filing deadline (including extensions thereof) for the taxable year of the beneficiary that begins with or within the calendar year of the individual's death (or, if later, the last day of the calendar year following that calendar year), the beneficiary takes a corrective distribution in the amount needed to satisfy the minimum distribution requirement for the calendar year of the death of the individual.

The 2024 final regulations reserve § 1.401(a)(9)–5(g)(2)(iv) for the treatment of corrective distributions that give rise to a reduction or waiver of the section 4974 excise tax, and these proposed regulations would fill in that reserved paragraph. Under proposed § 1.401(a)(9)–5(g)(2)(iv), a corrective distribution described in section 4974(e) or § 54.4974–1(g)(3)(iii) would not be taken into account for purposes of determining whether § 1.401(a)(9)–5 is satisfied for the calendar year in which the corrective distribution is made. Thus, under the proposed regulations, if a missed required minimum distribution is corrected by a distribution made in a subsequent calendar year, the required minimum distribution for that subsequent year must be made in addition to the corrective distribution. Furthermore, under § 1.402(c)–2(f)(1) of the 2024 final regulations, the corrective distribution is treated as a required minimum distribution and thus is not eligible for rollover.

These proposed regulations would make a conforming change to § 1.408–

¹ Section 1.408A–4, Q&A–14(b)(2) sets forth rules for determining the fair market value of a traditional IRA that is an individual retirement annuity if that IRA is converted to a Roth IRA.

8(g)(2) under which these corrective distributions would not be taken into account for purposes of determining whether § 1.408–8 of the 2024 final regulations is satisfied for the calendar year in which the corrective distribution is made. In addition, because § 1.408–8(b)(3) of the 2024 final regulations provides that the determination of whether a distribution from an IRA is a required minimum distribution (and thus not eligible for rollover pursuant to section 408(d)(3)(E)) is made in the same manner as provided in § 1.402(c)–2(f) and (j), the treatment under § 1.402(c)–2(f)(1) of the corrective distribution as a required minimum distribution (and thus not eligible for rollover) would also apply for purposes of section 408(d)(3)(E).

F. Spousal Election Under Section 327 of the SECURE 2.0 Act

The 2024 final regulations permit a defined contribution plan to provide that, if an employee participating in the plan dies before the required beginning date, then an eligible designated beneficiary of the employee (including the employee's surviving spouse) may elect to receive the beneficiary's interest under the plan under the 10-year rule or as annual payments over a period not extending beyond the beneficiary's life expectancy.² Section 401(a)(9)(B)(iv)(I) through (III) of the Code, as amended by section 327(a) of the SECURE 2.0 Act, provides that, if the designated beneficiary of an employee who dies before the employee's required beginning date is the employee's surviving spouse, then the spouse may elect to: (1) be treated as if the surviving spouse were the employee for purposes of the regulations referred to in section 401(a)(9)(B)(iii)(II) of the Code (providing for annual payments over the beneficiary's life or life expectancy), (2) delay commencement of required minimum distributions until the year the employee would have attained the applicable age (as defined in section 401(a)(9)(C)(v)), and (3) be treated as the employee in the event the surviving spouse dies before distributions to the spouse begin.³

Under the 2024 final regulations, if: (1) the employee dies before the employee's required beginning date; (2) the employee's surviving spouse is the sole beneficiary of the employee; and (3)

that spouse is subject to the life expectancy rule, then the treatment described in section 401(a)(9)(B)(iv)(II) and (III) will apply automatically (that is, a separate election is not required). See § 1.401(a)(9)–3(d) and (e) of the 2024 final regulations.

Section 327(b) of the SECURE 2.0 Act instructs the Secretary to modify the regulations applicable to defined contribution plans under section 401(a)(9) of the Code so that an election under section 401(a)(9)(B)(iv) by the surviving spouse will extend the distribution period in the case of an employee's death after the required beginning date. In accordance with this instruction, § 1.401(a)(9)–5(g)(3)(i) of the 2024 final regulations provides that a defined contribution plan may permit a surviving spouse who is the sole beneficiary of the employee to elect to be treated as the employee for purposes of determining the required minimum distribution for a calendar year. The 2024 final regulations reserve § 1.401(a)(9)–5(g)(3)(ii) for rules relating to this election, and these proposed regulations would fill in that reserved paragraph.

Proposed § 1.401(a)(9)–5(g)(3)(ii) provides a series of rules that would apply with respect to the spousal election described in § 1.401(a)(9)–5(g)(3)(i) of the 2024 final regulations. Under the proposed regulations, if the employee dies before the required beginning date and the sole beneficiary of the employee is the surviving spouse who is subject to the life expectancy rule, then the spouse would automatically be treated as making the election described in section 401(a)(9)(B)(iv). As a result, the proposed regulations provide that section 401(a)(9)(B)(iv)(I) (under which the spouse is treated as the employee for purposes of section 401(a)(9)(B)(iii)(II)) would apply automatically in this case (in addition to the automatic application of sections 401(a)(9)(B)(iv)(II) and (III)). If the employee dies on or after the required beginning date, then the corresponding election under section 327(b) of the SECURE 2.0 Act does not apply automatically. However, these proposed regulations would provide that this corresponding election may be the default election under the terms of a plan (so that the surviving spouse need not take any action to have this election apply).

If the election under § 1.401(a)(9)–5(g)(3)(i) is in effect for a surviving spouse, then, regardless of whether the employee died before, on, or after the required beginning date, the proposed regulations provide that the applicable denominator used for determining the

required minimum distribution for each distribution calendar year up to and including the calendar year that includes the surviving spouse's date of death would be determined using the Uniform Lifetime Table (rather than the Single Life Table) for the surviving spouse's age as of the surviving spouse's birthday in the distribution calendar year.⁴ In accordance with § 1.401(a)(9)–5(d)(1)(i) of the 2024 final regulations, the required minimum distribution for the calendar year of the surviving spouse's death must be made to a beneficiary of the surviving spouse to the extent it has not already been distributed to the surviving spouse.

These proposed regulations provide that, if the election described in § 1.401(a)(9)–5(g)(3)(i) is in effect for the surviving spouse and the spouse dies on or after the date on which distributions are considered to have begun to the spouse under the rules of § 1.401(a)(9)–3(e)(3) of the 2024 final regulations (that is, the end of the calendar year in which the employee would have reached the applicable age), then annual distributions to the spouse's beneficiary would have to continue. Those distributions would be determined using the spouse's remaining life expectancy for the spouse's age as of the spouse's birthday in the calendar year of the spouse's death from the Single Life Table, reduced by one for each subsequent calendar year. In addition, the proposed regulations add a conforming sentence to § 1.401(a)(9)–4(e)(8), providing that the spouse's beneficiary would not be an eligible designated beneficiary in this situation. As a result, a final distribution of the employee's interest would have to be made by the end of the calendar year that includes the tenth anniversary of the spouse's death.

Under the proposed regulations, the spousal election described in § 1.401(a)(9)–5(g)(3)(i) would be available only if the first year for which annual required minimum distributions to the surviving spouse must be made is 2024 or later. For example, if an employee who died in 2017 and before the employee's required beginning date would have reached the applicable age in 2024 or later, then the first year for which an annual required minimum distribution is due would be 2024 or

² If the employee is a participant in a defined benefit plan, the election is between receiving the beneficiary's interest under a 5-year rule or as annuity payments over the beneficiary's lifetime.

³ Section 401(a)(9)(B)(iv)(II) and (III) correspond to section 401(a)(9)(B)(iv)(I) and (II) before the changes made by section 327(a) of the SECURE 2.0 Act.

⁴ However, if the employee dies on or after the employee's required beginning date and the employee's remaining life expectancy is greater than the applicable denominator determined under the Uniform Lifetime Table for the surviving spouse's age (which would occur only if the surviving spouse was more than ten years older than the employee), then that greater life expectancy is used as the applicable denominator.

later, and the spousal election could apply. However, if the employee would have reached the applicable age in 2022, then the first year for which an annual required minimum distribution is due to the spouse was 2022, and the spousal election would not be available. Similarly, if the employee died in 2021 and after the employee's required beginning date, then the spouse must begin receiving annual required minimum distributions (based on the spouse's remaining life expectancy) in 2022, and the spousal election would not be available.

Although an election under section 401(a)(9)(B)(iv) of the Code results in the spouse being treated as the employee for purposes of the regulations referred to in section 401(a)(9)(B)(iii)(II) (that is, § 1.401(a)(9)-5), that treatment does not extend to other purposes.⁵ For example, the spouse would not be subject to the 10 percent additional tax under section 72(t)(2)(A)(ii) even if the spouse takes a distribution before attaining age 59½. Similarly, the date by which the surviving spouse must commence distributions is determined by reference to the employee's attainment of the applicable age (rather than by reference to the spouse's attainment of the applicable age⁶). In addition, for purposes of determining the account balance under a plan while the surviving spouse is taking distributions, § 1.401(a)(9)-5(b)(3) of the 2024 final regulations (which excludes amounts held in a designated Roth account from the employee's account balance during the employee's lifetime) does not apply. Thus, all amounts held in a designated Roth account and any other account under the plan are included for purposes of determining the required minimum distribution due under the plan for the calendar year.

These proposed regulations also provide an updated Uniform Lifetime Table that provides the applicable denominator for individuals ages 10

through 120+. This table was originally published in Notice 2022-6, 2022-5 IRB 460, relating to the determination of whether a series of payments is considered a series of substantially equal periodic payments.

Section 1.402(c)-2(j)(4) of the 2024 final regulations sets forth a special rule under which a portion of a distribution to certain surviving spouses (that is, the portion of the distribution that represents a catch-up of missed hypothetical required minimum distributions) is treated as a required minimum distribution that is not eligible for rollover. Section 1.402(c)-2(j)(4)(iii), which provides rules for the calculation of the hypothetical required minimum distributions, includes the assumption that the election in § 1.401(a)(9)-5(g)(3)(i) was in effect for the spouse. The 2024 final regulations reserve § 1.402(c)-2(j)(4)(vii) for an example of the calculation of the hypothetical required minimum distributions, and proposed § 1.402(c)-2(j)(4)(vii) would fill in the reserved paragraph with an example of the calculation of the hypothetical required minimum distributions over multiple years, which reflects the use of the Uniform Lifetime Table.

The proposed regulations do not include any changes to the defined benefit rules of § 1.401(a)(9)-6 to reflect the amendment to section 401(a)(9)(B)(iv) made by section 327 of the SECURE 2.0 Act. Comments are requested on whether there are circumstances under which that provision would affect the required minimum distribution rules applicable to defined benefit plans.

G. Divorce After Purchase of Qualifying Longevity Annuity Contract

Section 202(a)(3) of the SECURE 2.0 Act instructs the Secretary of the Treasury (or that person's delegate) to amend § 1.401(a)(9)-6 to provide that, in the case of a qualifying longevity annuity contract (QLAC) which was purchased with joint and survivor annuity benefits for an individual and the individual's spouse, a divorce occurring after the original purchase and before the date that the annuity payments commence under the contract will not affect the permissibility of the joint and survivor benefits if certain conditions related to an associated qualified domestic relations order (QDRO) described in section 414(p) of the Code are met. Section 202(a)(3) of the SECURE 2.0 Act also provides that if the arrangement is not subject to section 414(p) of the Code or section 206(d) of the Employee Retirement

Income Security Act of 1974,⁷ a divorce or separation instrument may be substituted for a QDRO. The 2024 final regulations reserve § 1.401(a)(9)-6(q)(3)(vii)(B) for rules related to this divorce or separation instrument alternative, and these proposed regulations would fill in the reserved paragraph.

Under proposed § 1.401(a)(9)-6(q)(3)(vii)(B), the divorce or separation instrument alternative would be available only if the plan is not subject to both section 414(p) of the Code and section 206(d) of ERISA (for example, a governmental plan described in section 414(d) of the Code). In accordance with section 202(b) of the SECURE 2.0 Act, these proposed regulations would provide that, for purposes of this alternative, a divorce or separation instrument is: (1) a decree of divorce or separate maintenance or a written instrument incident to such a decree; (2) a written separation agreement; or (3) any other decree requiring an individual to make payments for the support or maintenance of the individual's former spouse.

H. Outright Distribution to Trust Beneficiary

The 2024 final regulations provide rules for the separate application of section 401(a)(9) of the Code with respect to multiple beneficiaries of a see-through trust (within the meaning of § 1.401(a)(9)-4(f)(1)). Specifically, § 1.401(a)(9)-8(a) of the 2024 final regulations permits separate application of section 401(a)(9) with respect to each of the beneficiaries' separate interests if the terms of a see-through trust meet certain requirements. One of those requirements is that the trust must provide that it is to be divided immediately upon the death of the employee, with the separate interests to be held in separate see-through trusts.

Proposed § 1.401(a)(9)-8(a)(1)(iii)(B) sets forth an exception to that requirement in the case of an outright distribution to a trust beneficiary, as described in proposed § 1.401(a)(9)-8(a)(1)(iii)(D). Under the proposed regulations, the rules under § 1.401(a)(9)-8(a)(1)(iii)(C) of the 2024 final regulations (prohibiting discretion in the allocation of post-death distributions attributable to the employee's interest in the plan) would be extended to apply when that outright distribution exception is used.

Under proposed § 1.401(a)(9)-8(a)(1)(iii)(D), the separate interests of

⁵ However, if the spouse dies before distributions have begun, then in accordance with section 401(a)(9)(B)(iv)(III), the spouse is treated as the employee for purposes of determining the beneficiary designated under the plan. In addition, if the spouse executes a spousal rollover to the spouse's own IRA in accordance with section 402(c)(9) after having made the election described in section 401(a)(9)(B)(iv), then the spouse will not be treated as a beneficiary with respect to any amounts in that IRA.

⁶ The election under section 401(a)(9)(B)(iv) does not affect the ability of the employee's surviving spouse to make a rollover to the spouse's own IRA or to treat an IRA as the surviving spouse's own IRA. In either of these cases, the date by which distributions from that IRA must commence would be determined by reference to the surviving spouse's attainment of the applicable age.

⁷ The Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829, as amended, is referred to in this preamble as "ERISA."

the beneficiaries held in a see-through trust would not fail to be eligible for the exception in proposed § 1.401(a)(9)–8(a)(1)(iii)(B) merely because, upon termination of that trust, a beneficiary's separate interest in the trust is to be held directly by that beneficiary rather than being held by a separate see-through trust. Thus, for example, if a trust which is a named beneficiary provides that each of three children have equal interests in the portion of the trust attributable to the employee's interest in the plan, and the trust provides that it is to be immediately divided upon the death of the employee, then section 401(a)(9) is permitted to be applied separately with respect to the separate interests of the three children, even if the separate interest of one of the children is held by a sub-trust while the separate interests of the other children are held directly by those children.

Applicability Dates

The amendments to §§ 1.401(a)(9)–4, 1.401(a)(9)–5, 1.401(a)(9)–6, 1.401(a)(9)–8, 1.401(a)(9)–9, and 1.408–8 are proposed to apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. The amendments to § 1.402(c)–2 are proposed to apply for distributions on or after January 1, 2025. Thus, these amendments would have the same applicability dates as the corresponding provisions in the 2024 final regulations.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

These proposed regulations include third-party disclosures and

recordkeeping requirements, in sections 1.401(a)(9)–5(a)(5)(iv) and 1.401(a)(9)–5(g)(3)(ii), that are required to determine the required minimum distribution for a calendar year for certain defined contribution plan participants and beneficiaries. These collections of information would generally be used by the IRS for tax compliance purposes and plan administrators to facilitate compliance with the required minimum distribution requirements under section 401(a)(9) of the Code. The likely respondents to these collections are employees participating in retirement plans and their beneficiaries.

The 2024 final regulations include guidance relating to the application of section 401(a)(9) in a situation in which an employee's interest in a defined contribution plan is partially annuitized by using a portion of the employee's account to purchase an annuity contract. Specifically, section 1.401(a)(9)–5(a)(5)(iv) of the final regulations provides that, in lieu of satisfying section 401(a)(9) separately with respect to an annuity contract purchased with a portion of an employee's defined contribution plan account and the remaining account balance, a plan may permit an employee to elect to satisfy section 401(a)(9) for the annuity contract and the remaining account balance in the aggregate by adding the fair market value of the contract to the remaining account balance and treating payments under the annuity contract as distributions from the individual account. Section 1.401(a)(9)–5(a)(5)(v) of the proposed regulations provides rules of operation with respect to this aggregation option—specifically, the method and date for valuation of the annuity contract. Under these rules of operation, annuity contract issuers are expected to provide the annuity valuations as a third-party disclosure. In addition, the amount of payments made under the annuity contract and the underlying value of the annuity contract is expected to be reported to the employer as a third-party disclosure. The associated burden is as follows:

Estimated number of respondents: 19,620.

Estimated average annual burden per respondent: 0.5 hours (30 minutes).

Estimated frequency of responses: Once.

Estimated total annual reporting burden: 9,810 hours.

Section 1.401(a)(9)–5(g)(3)(i) of the 2024 final regulations⁸ provides that a

plan may permit a surviving spouse who is the sole beneficiary of an employee to elect to be treated as the employee for purposes of determining the required minimum distribution from a defined contribution plan for a calendar year. Section 1.401(a)(9)–5(g)(3)(ii) of these proposed regulations supplements that provision by providing a series of rules that would apply with respect to the spousal election described in the preceding sentence. Under these proposed regulations, if the employee dies before the employee's required beginning date and the sole beneficiary of the employee is the surviving spouse who is subject to the life expectancy rule, then the spouse would automatically be treated as making the election. If the employee dies on or after the required beginning date, then the election would not apply automatically. However, the proposed regulations provide that the election may be the default under the terms of a plan (so that the surviving spouse need not take any action to have the election apply). This election is expected to be made as a third-party disclosure between the surviving spouse and the plan administrator, who will keep records of the election. The associated burden is as follows:

Estimated number of respondents: 156,960.

Estimated average annual burden per respondent: 0.17 hours (10 minutes).

Estimated frequency of responses: Once.

Estimated total annual reporting burden: 26,683 hours.

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to www.reginfo.gov/public/do/PRAMain, with copies to the Internal Revenue Service. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” and using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at pra.comments@irs.gov (indicate REG–103529–23 on the Subject line). Comments on the collection of information should be received by September 17, 2024. Comments are specifically requested

⁸ These proposed regulations are being published simultaneously with the 2024 final regulations, and address various provisions that were reserved in

those regulations. The collection requirements in the 2024 final regulations are approved under OMB control number 1545–1573.

concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information; how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect individuals and businesses, some of which may be small entities. The rule affects administrators of, and participants in, certain plans; owners of individual retirement accounts and annuities; employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts; and beneficiaries of those plans, contracts, accounts, and annuities. These proposed regulations do not impose new compliance burdens and are not expected to result in economically meaningful changes in behavior relative to the existing regulations. It is expected that most plans will provide the spousal election under § 1.401(a)(9)–5(g)(3) as a default election under the plan and that surviving spouses will rarely opt out of the default (because of the tax benefit of the default election). Therefore, the economic impact of the rule is not expected to be significant.

Notwithstanding this certification that the proposed regulations would not have a significant economic impact on a substantial number of small entities, the Treasury Department and the IRS invite comments on the impacts these proposed regulations may have on small entities. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. The proposed regulations do not propose any rule that would include any Federal mandate that may result in expenditures by State, local, or tribal governments, or by the private sector, in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The proposed regulations do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulation. All comments will be made available at www.regulations.gov. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for September 25, 2024, beginning at 10:00 a.m. ET in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts.

Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit an outline of the topics to be addressed and the time to be devoted to each topic by September 17, 2024. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by September 17, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG–103529–23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–103529–23.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–103529–23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–103529–23.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG–103529–23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–103529–23. Requests to attend the public hearing must be received by 5:00 p.m. ET on September 23, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–103529–23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for

REG-103529-23. Requests to attend the public hearing must be received by 5:00 p.m. ET on September 23, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by September 20, 2024.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Drafting Information

The principal authors of these proposed regulations are Jessica S. Weinberger and Brandon M. Ford, of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

* * * * *

■ **Par. 2.** Section 1.401(a)(9)–2, as revised in a final rule published elsewhere in this issue of the **Federal Register**, effective September 17, 2024, is amended by adding paragraph (b)(2)(v) to read as follows:

§ 1.401(a)(9)–2 Distributions commencing during an employee's lifetime.

* * * * *

(b) * * *

(2) * * *

(v) *Employees born in 1959.* In the case of an employee born in 1959, the applicable age is age 73.

* * * * *

■ **Par. 3.** Section 1.401(a)(9)–4, as revised in a final rule published elsewhere in this issue of the **Federal Register**, effective September 17, 2024, is amended by adding a sentence to the end of paragraph (e)(8) to read as follows:

§ 1.401(a)(9)–4 Determination of the designated beneficiary.

* * * * *

(e) * * *

(8) * * * However, if the surviving spouse dies after benefits are considered to have commenced under § 1.401(a)(9)–3(e)(3), then the beneficiary of the spouse is not an eligible designated beneficiary.

* * * * *

■ **Par. 4.** Section 1.401(a)(9)–5, as revised in a final rule published elsewhere in this issue of the **Federal Register**, effective September 17, 2024, is amended by:

- a. Revising paragraph (a)(5)(iv)(A);
- b. Revising paragraph (a)(5)(v); and
- c. Adding paragraphs (g)(2)(iii) and (iv), and (g)(3)(ii).

The revision and additions read as follows:

§ 1.401(a)(9)–5 Required minimum distributions from defined contribution plans.

(a) * * *

(5) * * *

(iv) * * *

(A) Adding the fair market value of the contract (determined in accordance with paragraph (a)(5)(v) of this section) to the remaining account balance determined under paragraph (b) of this section; and

* * * * *

(v) *Rules of operation for aggregation option.* For purposes of applying the optional aggregation rule described in paragraph (a)(5)(iv) of this section, the fair market value of the annuity contract is determined as of December 31 of the calendar year preceding the distribution calendar year. Beginning with the determination used for the 2026 distribution calendar year, the applicable method set forth in § 1.408A–4, Q&A–14(b)(2) must be used for this purpose.

* * * * *

(g) * * *

(2) * * *

(iii) *Distributions from designated Roth accounts.* For distribution calendar years up to and including the calendar year that includes the employee's date of death, distributions from a designated

Roth account (as described in section 402A(b)(2)) are not taken into account for purposes of determining whether this section is satisfied.

(iv) *Corrective distributions that give rise to reduction or waiver of section 4974 excise tax.* A corrective distribution described in section 4974(e) or § 54.4974–1(g)(3)(iii) is not taken into account for purposes of determining whether this section is satisfied for the calendar year in which the distribution is made. Thus, for the year in which the corrective distribution is made, the required minimum distribution for that year must be made in addition to the corrective distribution.

(3) * * *

(ii) *Rules relating to election—(A) Employee dies before required beginning date.* If the employee dies before the employee's required beginning date, § 1.401(a)(9)–3(c)(4) applies to the designated beneficiary (under which life expectancy payments will be made to the employee's designated beneficiary), and the designated beneficiary is the employee's surviving spouse who is eligible to make the election described in paragraph (g)(3)(i) of this section, then the spouse is treated as having made that election.

(B) *Employee dies on or after required beginning date.* If the employee dies on or after the employee's required beginning date, the spouse is not automatically treated as having made the election described in paragraph (g)(3)(i) of this section. However, that election may be a default election under the terms of the plan.

(C) *Use of Uniform Lifetime Table.* If the election described in paragraph (g)(3)(i) of this section applies with respect to a surviving spouse, then the applicable denominator for each distribution calendar year beginning with the calendar year following the year of the employee's death and up to and including the calendar year that includes the surviving spouse's date of death is determined using the Uniform Lifetime Table in § 1.401(a)(9)–9(c) for the surviving spouse's age as of the surviving spouse's birthday in the distribution calendar year. However, if the employee died on or after the required beginning date, then the applicable denominator for a distribution calendar year is the greater of the applicable denominator determined under the preceding sentence and the employee's remaining life expectancy.

(D) *Distribution after spouse's death.* If the election described in paragraph (g)(3)(i) of this section applies with respect to an employee who dies on or after the required beginning date (or

whose surviving spouse dies after distributions are considered to have begun to the spouse as determined under § 1.401(a)(9)–3(e)(3)), then—

(1) For calendar years following the calendar year that includes the surviving spouse's date of death, the applicable denominator used for determining the required minimum distribution for each distribution calendar year is determined under the rules of paragraph (d)(3)(iv) of this section, and

(2) A final distribution of the employee's entire interest must be made by the end of the calendar year that includes the tenth anniversary of the surviving spouse's death.

(E) *Applicability dates for spousal election.* The spousal election described in paragraph (g)(3)(i) of this section applies only if the first year for which annual required minimum distributions to the surviving spouse must be made is 2024 or later. Thus, the election described in paragraph (g)(3)(ii)(A) of this section (relating to employees who die before the required beginning date) applies only if the calendar year in which life expectancy payments must begin under § 1.401(a)(9)–3(d) is 2024 or later. Similarly, the election described in paragraph (g)(3)(ii)(B) of this section (relating to an employee who dies on or after the required beginning date) applies only if the first year for which the surviving spouse must take annual required minimum distributions under paragraph (d) of this section is 2024 or later (that is, if the employee died in 2023 or later).

■ **Par. 5.** Section 1.401(a)(9)–6, as revised in a final rule published elsewhere in this issue of the **Federal Register**, effective September 17, 2024, is amended by adding paragraph (q)(3)(vii)(B) to read as follows:

§ 1.401(a)(9)–6 Required minimum distributions for defined benefit plans and annuity contracts.

* * * * *

(q) * * *

(3) * * *

(vii) * * *

(B) *QDRO not required for certain plans.* If the rules of section 414(p) and section 206(d)(3) of ERISA do not apply to a plan (for example, a governmental plan described in section 414(d) of the Code), then a divorce or separation instrument that satisfies the requirements of paragraph (q)(3)(vii)(C) of this section may be used in lieu of a qualified domestic relations order. For this purpose, a divorce or separation instrument is—

(1) A decree of divorce or separate maintenance or a written instrument incident to such a decree;

(2) A written separation agreement; or

(3) A decree (not described in paragraph (q)(3)(vii)(B)(1) of this section) requiring an individual to make payments for the support or maintenance of the individual's former spouse.

* * * * *

■ **Par. 6.** Section 1.401(a)(9)–8, as revised in a final rule published elsewhere in this issue of the **Federal Register**, effective September 17, 2024, is amended by:

■ a. Revising the second sentence of paragraph (a)(1)(iii)(B);

■ b. Revising the first sentence of paragraph (a)(1)(iii)(C); and

■ c. Adding paragraph (a)(1)(iii)(D).

The revisions and addition read as follows:

§ 1.401(a)(9)–8 Special rules.

(a) * * *

(1) * * *

(iii) * * *

(B) * * * Except as provided in paragraph (a)(1)(iii)(D) of this section, the preceding sentence applies only if the separate interests are held by separate see-through trusts (in which case the rules of §§ 1.401(a)(9)–4(f) and 1.401(a)(9)–5 will apply separately to each separate trust).

(C) * * * For purposes of paragraph (a)(1)(iii)(B) of this section, a trust is immediately divided upon the death of the employee only if, as of the date of death, the trust is terminated and there is no discretion as to the extent to which the separate trusts (or the beneficiaries described in paragraph (a)(1)(iii)(D) of this section) will be entitled to receive post-death distributions attributable to the employee's interest in the plan.

* * *

(D) *Outright distribution to trust beneficiary.* The separate interests of the beneficiaries in a see-through trust will not fail to be eligible for the exception under paragraph (a)(1)(iii)(B) of this section merely because, upon termination of the trust, a beneficiary's separate interest in the trust is to be held directly by that beneficiary rather than being held by a separate see-through trust.

* * * * *

■ **Par. 7.** In § 1.401(a)(9)–9, revise and republish the table set forth in paragraph (c) to read as follows:

§ 1.401(a)(9)–9 Life expectancy and Uniform Lifetime tables.

* * * * *

(c) * * *

TABLE 2 TO PARAGRAPH (C)

Age of employee	Applicable denominator
10	88.2
11	87.2
12	86.2
13	85.2
14	84.2
15	83.2
16	82.2
17	81.2
18	80.2
19	79.2
20	78.2
21	77.2
22	76.2
23	75.2
24	74.2
25	73.3
26	72.3
27	71.3
28	70.3
29	69.3
30	68.3
31	67.3
32	66.3
33	65.3
34	64.3
35	63.3
36	62.3
37	61.3
38	60.3
39	59.4
40	58.4
41	57.4
42	56.4
43	55.4
44	54.4
45	53.4
46	52.4
47	51.5
48	50.5
49	49.5
50	48.5
51	47.5
52	46.5
53	45.6
54	44.6
55	43.6
56	42.6
57	41.6
58	40.7
59	39.7
60	38.7
61	37.7
62	36.8
63	35.8
64	34.9
65	33.9
66	33.0
67	32.0
68	31.1
69	30.1
70	29.2
71	28.3
72	27.4
73	26.5
74	25.5
75	24.6
76	23.7
77	22.9
78	22.0
79	21.1
80	20.2

TABLE 2 TO PARAGRAPH (c)—
Continued

Age of employee	Applicable denominator
81	19.4
82	18.5
83	17.7
84	16.8
85	16.0
86	15.2
87	14.4
88	13.7
89	12.9
90	12.2
91	11.5
92	10.8
93	10.1
94	9.5
95	8.9
96	8.4
97	7.8
98	7.3
99	6.8
100	6.4
101	6.0
102	5.6
103	5.2
104	4.9
105	4.6
106	4.3
107	4.1
108	3.9
109	3.7
110	3.5
111	3.4
112	3.3
113	3.1
114	3.0
115	2.9
116	2.8
117	2.7
118	2.5
119	2.3
120 + ...	2.0

* * * * *

■ **Par. 8.** Section 1.402(c)–2, as revised in a final rule published elsewhere in this issue of the **Federal Register**, effective September 17, 2024, is amended by:

■ **a.** In the first sentence of paragraph (f)(1), removing “paragraphs (f)(2) and (3)” and adding in its place “paragraphs (f)(2) through (4)”;

■ **b.** Redesignating paragraph (f)(3) as (f)(4) and adding new paragraph (f)(3); and

■ **c.** Adding paragraph (j)(4)(vii).

The addition and revision read as follows:

§ 1.402(c)–2 Eligible rollover distributions.

* * * * *

(f) * * *

(3) *Distributions from designated Roth accounts.* If a distribution is not taken into account for purposes of section 401(a)(9) under the rule in § 1.401(a)(9)–5(g)(2)(iii), then it is not treated as a distribution that is a required minimum

distribution for purposes of this paragraph (f).

* * * * *

(j) * * *

(4) * * *

(vii) *Example.* (A) *Facts.* Employee A is a participant in Plan X, sponsored by Employer M. A, who was born in 1957, died in 2024 (the calendar year A would have reached age 67 and accordingly before A’s required beginning date), having named A’s surviving spouse, B, who was born in 1958, as the sole beneficiary. The applicable age for both A and B is 73. In accordance with the terms of Plan X, B is subject to the 10-year rule. B takes a \$1,000 distribution in 2031 (the calendar year in which B reaches age 73). B takes no further distributions until taking a distribution of A’s remaining interest in Plan X in 2033 (the ninth calendar year following the year of A’s death, when B is age 75 and A would have reached age 76). The account balance as of December 31, 2032, was \$100,000, and the distribution of the remaining interest to B equals \$103,000. B would like to roll over the distribution to B’s own IRA to the extent the distribution does not constitute a required minimum distribution.

(B) *Catch-up of required minimum distributions required.* Because the distribution is made in a calendar year after B attained the applicable age and B intends to roll over the distribution to B’s own IRA, this paragraph (j)(4) applies to determine the portion of the distribution that is treated as a required minimum distribution. The first applicable year (determined in accordance with paragraph (j)(4)(iv) of this section) is 2031 (the calendar year in which B reached age 73 and the seventh year after the year of A’s death). Pursuant to paragraph (j)(4)(ii) of this section, the portion of the \$103,000 distributed in 2033 that is not an eligible rollover distribution because it is treated as a required minimum distribution under section 401(a)(9), is the excess, if any, of the sum of the hypothetical required minimum distributions, determined in accordance with paragraph (j)(4)(iii) of this section for each calendar year beginning with the first applicable year and ending in the year of distribution over the sum of the actual distributions made in each calendar year beginning with the first applicable year and ending in the year before the year of the distribution.

(C) *Calculation of hypothetical required minimum distribution.* Pursuant to paragraph (j)(4)(iii) of this section, the hypothetical required minimum distribution for 2031 (the year

in which B reaches age 73) is \$3,773.58 (\$100,000.00/26.5). For 2032 (the year in which B reaches age 74), the adjusted account balance is calculated by reducing the \$100,000.00 account balance by the excess of the hypothetical required minimum distribution for the first applicable year over the actual distributions made to the surviving spouse in that calendar year, which is \$2,773.58 (\$3,773.58 – \$1,000.00). In this case, for the second determination year, the adjusted account balance is \$97,226.42 (\$100,000.00 – \$2,773.58) and the hypothetical required minimum distribution for 2032 is \$3,812.80 (\$97,226.42/25.5). For 2033 (the year in which B reaches age 75), the adjusted account balance is calculated by reducing the \$100,000.00 account balance by the excess of the sum of the hypothetical required minimum distributions for determination years preceding 2033 of \$7,586.38 (\$3,773.58 + \$3,812.80) over the actual distributions made to the surviving spouse during those calendar years (\$1,000.00), which is \$6,586.38 (\$7,586.38 – \$1,000.00). Thus, the adjusted account balance for 2033 is \$93,413.62 (\$100,000.00 – \$6,586.38) and the hypothetical required minimum distribution for 2033 is \$3,797.30 (\$93,413.62/24.6). The portion of the \$103,000 distribution of the employee’s remaining interest that is treated as a required minimum distribution, and thus not an eligible rollover distribution, is the excess of the sum of the hypothetical required minimum distributions for each determination year in the catch-up period, which is \$11,383.68 (\$3,773.58 + \$3,812.80 + \$3,797.30), over the actual distributions made during the calendar years preceding 2033 (\$1,000.00), which is \$10,383.68 (\$11,383.68 – \$1,000.00). Accordingly, the portion of the \$103,000 distribution that is treated as a required minimum distribution is \$10,383.68.

(D) *Calculation of eligible rollover distribution.* Pursuant to paragraph (j)(4)(vi) of this section, the plan administrator may assume that, for purposes of section 402(f)(2)(A), a portion of the \$103,000 distribution equal to \$10,383.68 is not an eligible rollover distribution. However, B could choose to roll over the entire \$103,000 distribution to an IRA, provided the IRA is established as a beneficiary IRA, and not as B’s own IRA. In that case, in accordance with § 1.408–8(d)(2)(i), the IRA would be subject to the 10-year rule that applied to the spouse under the plan (so that a distribution of the

employee's entire interest would be required by 2034).

* * * * *

■ **Par. 9.** Section 1.408–8, as revised in a final rule published elsewhere in this issue of the **Federal Register**, effective September 17, 2024, is amended as follows:

■ a. Redesignate paragraph (g)(2)(vii) as paragraph (g)(2)(viii); and

■ b. Add new paragraph (g)(2)(vii).

The addition reads as follows:

§ 1.408–8 Distribution requirements for individual retirement plans.

* * * * *

(g) * * *

(2) * * *

(vii) Corrective distributions that give rise to a reduction or waiver of the section 4974 excise tax, as described in § 1.401(a)(9)–5(g)(2)(iv).

* * * * *

Douglas W. O'Donnell,

Deputy Commissioner.

[FR Doc. 2024–14543 Filed 7–18–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 802

[Docket ID TREAS–DO–2024–0010]

RIN 1505–AC88

Definition of Military Installation and the List of Military Installations in Regulations Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations that implement the provisions relating to real estate transactions in section 721 of the Defense Production Act of 1950, as amended. Specifically, the proposed rule would amend the regulations by adding, moving, and removing certain military installations on the appendix at parts 1 and 2, and making corresponding revisions to the definition of the term “military installation.” The proposed rule would also make technical amendments to update the name or location information for certain military installations already listed on the appendix.

DATES: Written comments must be received by August 19, 2024.

ADDRESSES: Written comments may be submitted through one of two methods:

• **Electronic Submission:** Comments may be submitted electronically through the Federal government eRulemaking portal at <https://www.regulations.gov>.

Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury Department to make the comments available to the public.

• **Mail:** Send to U.S. Department of the Treasury, Attention: Meena R. Sharma, Director, Office of Investment Security Policy and International Relations, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The Department of the Treasury encourages comments to be submitted via <https://www.regulations.gov>. Please submit comments only and include your name and company name (if any) and cite “Amendments to the Definition of Military Installation and the List of Military Installations in Regulations Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States” in all correspondence. All comments submitted, including attachments and other supporting material, in response to this proposed rule will be made public, including any personally identifiable or confidential business information that is included in a comment. Therefore, commenters should submit only information that they wish to make publicly available. Commenters who wish to remain anonymous should not include identifying information in their comments.

FOR FURTHER INFORMATION CONTACT:

Meena R. Sharma, Director, Office of Investment Security Policy and International Relations, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: CFIUS.Regulations@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The regulations at part 802 to title 31 of the Code of Federal Regulations (part 802) implement the provisions in section 721 of the Defense Production Act of 1950, as amended (Section 721) and establish the process and procedures of the Committee on Foreign Investment in the United States (CFIUS or the Committee) with respect to reviewing transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States.

Section 721 authorizes the president or his designee (*i.e.*, CFIUS) to review certain real estate transactions by foreign persons where the real estate at issue is located in the United States and (a) is located within, or will function as part of, an air or maritime port; or (b) is in close proximity to a United States military installation or another facility or property of the United States Government that is sensitive for reasons relating to national security; could reasonably provide the foreign person the ability to collect intelligence on activities being conducted at such an installation, facility, or property; or could otherwise expose national security activities at such an installation, facility, or property to the risk of foreign surveillance.

The current regulations at part 802 identify a subset of military installations around which certain real estate transactions are covered under CFIUS's jurisdiction. The specific military installations are listed in appendix A by name and location (or township/range), and section 802.227 sets forth the category descriptions of the military installations identified in appendix A. The locations listed in appendix A are intended to aid in the identification of the relevant installations only and do not represent specific boundaries of the installations for purposes of determining whether a transaction is a covered real estate transaction.

The preamble to the final rule establishing part 802 (*see* 85 FR 3158) noted that the military installations listed in the appendix were identified by the U.S. Department of Defense (Department of Defense) based upon an evaluation of national security considerations, and that the Department of Defense will continue on an ongoing basis to assess its military installations and the geographic scope established under the rules to ensure appropriate application in light of national security considerations. In 2023, as a result of the assessment of military installations by the Department of Defense at that time, amendments made to the regulations added eight military installations to appendix A and updated the names of five military installations (*see* 88 FR 57348, published August 23, 2023). Since then, the Department of Defense has completed a comprehensive assessment of its military installations through coordination across all military services, considering factors such as the operations, assets, missions, and training at each installation and appropriateness for coverage under Section 721. While the Department of Defense continuously evaluates its military installations to ensure

appropriate application of Section 721 in light of national security considerations, the recent completion of this comprehensive assessment prompted the changes described in this proposed rule—namely, the addition of 40 military installations to part 1 of appendix A around which CFIUS's real estate jurisdiction generally extends one mile from the installation's boundary; the addition of 19 military installations to part 2 of appendix A around which CFIUS's real estate jurisdiction generally extends 100 miles from the installation's boundary; the movement of eight military installations from part 1 to part 2 of appendix A; the removal of one installation from part 1 and two installations from part 2; and corresponding revisions to the definition of the term "military installation." Additionally, the names of 14 installations already in appendix A would be technically amended to reflect official installation name changes by the Department of Defense and the location of seven installations would be updated to more directly identify the installations' approximate location.

II. Discussion of the Rule

A. Amendments to the Military Installations Listed in Appendix A

The appendix to the regulations at part 802 identifies certain bases, ranges, and other installations that, for the purposes of the regulation, meet the definition of "military installation" at section 802.227 and, to assist in the identification of such installations, the related location (or township/range) information. The appendix is important in determining whether a transaction is a covered real estate transaction because of a nearby military installation. As relevant to this proposed rule, the installations identified in the appendix at part 1 meet one of the category descriptions in section 802.227 (b) to (o). Installations at part 2 meet one of the category descriptions in section 802.227 (h), (k), or (m).

This proposed rule would revise appendix A to include the 59 military installations listed below as well as to remove eight military installations from part 1 of appendix A and add them to part 2 (as noted below).

Part 1

- Anniston Army Depot, located in Anniston, Alabama
- Barter Island Regional Radar Site, located in Barter Island, Alaska
- Blue Grass Army Depot, located in Richmond, Kentucky
- Camp Blaz, located in Dededo, Guam
- Camp Navajo, located in Bellemont, Arizona

- Camp Roberts, located in San Miguel, California
- Cold Bay Regional Radar Site, located in Cold Bay, Alaska
- Detroit Arsenal, located in Warren, Michigan
- Hawthorne Army Depot, located in Hawthorne, Nevada
- Indian Mountain Regional Radar Site, located in Indian Mountain, Alaska
- Iowa Army Ammunition Plant, located in Middletown, Iowa
- Joint Base Myer-Henderson Hall, located in Arlington, Virginia
- Joint Systems Manufacturing Center—Lima, located in Lima, Ohio
- Kenai Regional Radar Site, located in Kenai, Alaska
- Kotzebue Regional Radar Site, located in Kotzebue, Alaska
- Lake City Army Ammunition Plant, located in Independence, Missouri
- Letterkenny Army Depot, located in Chambersburg, Pennsylvania
- Lisburne Regional Radar Site, located in Cape Lisburne, Alaska
- Marine Corps Logistics Base Albany, located in Albany, Georgia
- Marine Corps Logistics Base Barstow, located in Barstow, California
- Marine Corps Support Facility Blount Island, located in Jacksonville, Florida
- McAlester Army Ammunition Plant, located in McAlester, Oklahoma
- Military Ocean Terminal Concord, located in Concord, California
- Military Ocean Terminal Sunny Point, located in Brunswick County, North Carolina
- Naval Air Station Corpus Christi, located in Corpus Christi, Texas
- Naval Logistics Support Activity Ketchikan, located in Ketchikan, Alaska
- Naval Logistics Support Activity LaMoure, located in LaMoure, North Dakota
- Naval Logistics Support Annex Orlando, located in Okahumpka, Florida
- Naval Logistics Support Facility Aguada, located in Aguada, Puerto Rico
- Naval Logistics Support Facility Cutler, located in Cutler, Maine
- Naval Suffolk Facility, located in Suffolk, Virginia
- Pine Bluff Arsenal, located in White Hall, Arkansas
- Pueblo Chemical Depot, located in Pueblo, Colorado
- Red River Army Depot, located in Texarkana, Texas
- Romanzof Regional Radar Site, located in Cape Romanzof, Alaska
- Scott Air Force Base, located in St. Clair County, Illinois
- Scranton Army Ammunition Plant, located in Scranton, Pennsylvania

- Sparrevohn Regional Radar Site, located in Sparrevohn, Alaska
- Tatalina Regional Radar Site, located in Tatalina, Alaska
- Tooele Army Depot, located in Tooele, Utah

Part 2

- Altus Air Force Base, located in Altus, Oklahoma
- Arnold Air Force Base, located in Coffee County and Franklin County, Tennessee (moved from part 1 to part 2)
- Barksdale Air Force Base, located in Bossier City, Louisiana
- Camp Dodge, located in Johnston, Iowa
- Camp Grayling, located in Grayling, Michigan
- Camp Williams, located in Bluffdale, Utah
- Cannon Air Force Base, located in Clovis, New Mexico
- Chocolate Mountain Aerial Gunnery Range, located in Niland, California
- Columbus Air Force Base, located in Columbus, Mississippi
- Dover Air Force Base, located in Delmarva, Delaware
- Fort Novosel, located in Dale County, Alabama
- Goodfellow Air Force Base, located in San Angelo, Texas
- Joint Base Cape Cod, located in Sandwich, Massachusetts
- Joint Base Charleston, located in North Charleston, South Carolina
- Joint Base San Antonio, located in San Antonio, Texas (moved from part 1 to part 2)
- Little Rock Air Force Base, located in Little Rock, Arkansas
- Malmstrom Air Force Base, located in Great Falls, Montana (moved from part 1 to part 2)
- Maxwell-Gunter Air Force Base, located in Montgomery, Alabama
- Moody Air Force Base, located in Valdosta, Georgia (moved from part 1 to part 2)
- Muscatatuck Urban Training Center, located in Butlerville, Indiana
- Redstone Arsenal, located in Huntsville, Alabama (moved from part 1 to part 2)
- Schriever Air Force Base, located in Colorado Springs, Colorado (moved from part 1 to part 2)
- Tinker Air Force Base, located in Midwest City, Oklahoma (moved from part 1 to part 2)
- Townsend Bombing Range, located in McIntosh County, Georgia
- Vance Air Force Base, located in Enid, Oklahoma
- Whiteman Air Force Base, located in Knob Noster, Missouri
- Wright-Patterson Air Force Base, located in Dayton, Ohio (moved from part 1 to part 2)

Additionally, three sites currently included in appendix A would be removed. Cape Cod Air Force Station would be removed from part 1 because it is located within Joint Base Cape Cod, which would be added to the appendix at part 2 as detailed above. Iowa National Guard Joint Force Headquarters would be removed from part 2 because it is located within Camp Dodge, which would be added to the appendix at part 2 as detailed above. Finally, Lackland Air Force Base would be removed from part 2 because it is located within Joint Base San Antonio, which would be moved from part 1 to part 2 of appendix A as detailed above.

B. Technical Amendments To Update Identification of Certain Military Installations

This proposed rule would make technical amendments to update the names of 14 military installations based on recommendations of the Department of Defense Naming Commission, the establishment of the U.S. Space Force (Space Force), and other changes to reflect the official names of the installations at present.

More specifically, these changes include technical corrections to the names of five military installations as a result of the recommendation of the Department of Defense Naming Commission available at <https://www.defense.gov/News/News-Stories/Article/Article/3260434/dod-begins-implementing-naming-commission-recommendations/> as well as name changes to more accurately reflect the installations' official name.

Additionally, on December 20, 2019, Congress established the Space Force as an armed force within the Department of the Air Force. Nine of the military installation names below are a result of the names having been officially changed by the Department of Defense and reflect efforts to align installations with space-focused operations under the appropriate military branch. These name changes are detailed below.

- Army Research Office (formerly Army Research Lab—Raleigh Durham)
- Biometric Technology Center Defense Forensics and Biometrics Agency (formerly Biometric Technology Center Biometrics Identity Management Activity)
- Buckley Space Force Base (formerly Buckley Air Force Base)
- Cape Canaveral Space Force Station (formerly Cape Canaveral Air Force Station)
- Cavalier Space Force Station (formerly Cavalier Air Force Station)

- Cheyenne Mountain Space Force Station (formerly Cheyenne Mountain Air Force Station)
- Clear Space Force Station (formerly Clear Air Force Station)
- Combat Capabilities Development Command Soldier Center (formerly U.S. Army Natick Soldier Systems Center)
- Eareckson Air Station (formerly Eareckson Air Force Station)
- Fort Eisenhower (formerly Fort Gordon)
- Patrick Space Force Base (formerly Patrick Air Force Base)
- Peterson Space Force Base (formerly Peterson Air Force Base)
- Schriever Space Force Base (formerly Schriever Air Force Base)
- Vandenberg Space Force Base (formerly Vandenberg Air Force Base)

The locations of seven installations on the appendix at parts 1 and 2 would be updated to assist the public in identifying the installations by reference to their specific location. While these seven installations have not relocated, the updates to the location information are for the purposes of providing further clarity in identifying relevant sites. Some of the location updates pertain to installations also discussed above due to name changes.

- Army Research Office, located in Durham, NC (formerly Army Research Lab—Raleigh Durham, located in Raleigh Durham, NC)
- Camp Mackall, located in Southern Pines, NC (formerly Camp Mackall, located in Pinebluff, NC)
- Fort Campbell, located in Hopkinsville, KY and Clarksville, TN (formerly Fort Campbell, located in Hopkinsville, KY)
- Fort Johnson, located in Vernon Parrish, LA (formerly Fort Johnson, located in Leesville, LA)
- Fort Knox, located in Elizabethtown, KY (formerly Fort Knox, located in Fort Knox, KY)
- Fort Leavenworth, located in Leavenworth County, KS (formerly Fort Leavenworth, located in Leavenworth, KS)
- Hardwood Range, located in Necedah, WI (formerly Hardwood Range, located in Necehuenemedah, WI)

C. Amendments to the Definition of “Military Installation”

This proposed rule would also make several amendments to the definition of the term “military installation” at section 802.227 of the regulations. As defined in the current regulations, the term “military installation” means any site that meets certain category descriptions, and as identified in

appendix A to part 802. The definition of “military installation” would be amended with respect to paragraphs (e), (f), (g), (l), (m), and (n) of section 802.227.

Consistent with name changes discussed in section B above, paragraphs (e) and (f) of section 802.227 would be amended to add Space Force bases, stations, and major annexes thereof. Paragraphs (g), (l), (m), and (n) of section 802.227 would be amended to expand the list of applicable installations that meet these category descriptions. With respect to paragraph (g) of section 802.227, Army major depots, arsenals, and military terminals, including those that are not collocated with an Army installation included in the appendix, would be added as covered installations under this category description. For paragraph (l), the proposed rule would remove the exclusion for Marine Corps installations, logistics battalions, and support facilities from this category description. Paragraph (m) of section 802.227 would be amended to remove the set of states and reference to military ranges owned by the Navy or Air Force. Certain real estate transactions near military ranges owned by each of the Armed Forces could reasonably provide a foreign person the ability to collect intelligence or perform surveillance or could otherwise expose national security activities at such installations. This proposed change broadens the category to any military range as appropriate and is consistent with the definition of military range as defined in 10 U.S.C. 101(f)(1), which defines a range as “a designated land or water area that is set aside, managed, and used for range activities of the Department of Defense.” Finally, paragraph (n) would be amended by removing the reference to the Submarine Force Atlantic and Submarine Force Pacific squadrons and supporting commands and adding major support activities and annexes. This would broaden the category to include any relevant Naval base and air station and major support activities and annexes thereof, as identified by the Department of Defense.

III. Rulemaking Requirements

Executive Order 12866

This rule is not subject to the general requirements of Executive Order 12866, as amended, which covers review of regulations by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), because it relates to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In

addition, this rule is not subject to review under section 6(b) of Executive Order 12866 pursuant to section 1(d) of the June 9, 2023, Memorandum of Agreement between the Treasury Department and OMB, which states that CFIUS regulations are not subject to OMB’s standard centralized review process under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis, unless the agency certifies that the rule will not, once implemented, have a significant economic impact on a substantial number of small entities. The RFA applies whenever an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553), or any other law. As set forth below, because regulations issued pursuant to the Defense Production Act of 1950, as amended (DPA), such as these regulations, are not subject to the APA, or other law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

This proposed rule makes amendments to the regulations implementing section 721 of the DPA. Section 709(a) of the DPA provides that the regulations issued under it are not subject to the rulemaking requirements of the APA. Section 709(b)(1) instead provides that any regulation issued under the DPA be published in the **Federal Register** and opportunity for public comment be provided for not less than 30 days. Section 709(b)(3) of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Consistent with the plain text of the DPA, legislative history confirms that Congress intended that regulations under the DPA be exempt

from the notice and comment provisions of the APA and instead provided that the agency include a statement that interested parties were consulted in the formulation of the final regulation. See H.R. Conf. Rep. No. 102–1028, at 42 (1992) and H.R. Rep. No. 102–208 pt. 1, at 28 (1991). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanisms for publication and public participation are sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with expanded authority to suspend or prohibit certain real estate transactions involving foreign persons if such a transaction would threaten to impair the national security of the United States, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these reasons, the RFA does not apply to these regulations. Regardless of whether the provisions of the RFA apply to this rulemaking, for reasons noted in the preamble to the final rule establishing part 802 (see 85 FR 3158), the Treasury Department determined that the implementation of the provisions of Section 721 relating to real estate transactions would most likely not affect a substantial number of small entities. The amendments in this rule do not change that analysis or determination. Notwithstanding this certification, the Treasury Department invites comments on the potential impacts of this rule on small entities.

List of Subjects in 31 CFR Part 802

Foreign investments in the United States, Federal buildings and facilities, Government property, Investigations, Investment companies, Investments, Land sales, National defense, Public lands, Real property acquisition, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Treasury Department proposes to amend part 802 to title 31 of the Code of Federal Regulations to read as follows:

PART 802—REGULATIONS PERTAINING TO CERTAIN TRANSACTIONS BY FOREIGN PERSONS INVOLVING REAL ESTATE IN THE UNITED STATES

- 1. The authority citation for part 802 continues to read as follows:

 Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.
- 2. Amend § 802.227 by:
 ■ a. In paragraph (e), adding “, and Space Force bases and major annexes thereof” after “Air Force bases and major annexes thereof”; and
 ■ b. Revising paragraphs (f), (g), (l), (m), and (n).

The revisions read as follows:

§ 802.227 Military installation.

* * * * *

(f) Air Force bases, Air Force stations, Space Force bases, Space Force stations, and major annexes thereof, containing satellite, telemetry, tracking, or commanding systems;

(g) Army bases, ammunition plants, centers of excellence, major depots and arsenals, military terminals, and research laboratories and major annexes thereof;

* * * * *

(l) Marine Corps bases and air stations and major annexes thereof, excluding detachments and recruit depots;

(m) Military ranges as defined in 10 U.S.C. 101 (f)(1), or joint forces training centers;

(n) Naval bases and air stations including major support activities and annexes;

* * * * *

- 3. Revise parts 1 and 2 of appendix A to part 802 to read as follows:

APPENDIX A TO PART 802—LIST OF MILITARY INSTALLATIONS AND OTHER U.S. GOVERNMENT SITES

Site name	Location
Part 1	
Adelphi Laboratory Center	Adelphi, MD.
Air Force Maui Optical and Supercomputing Site	Maui, HI.
Air Force Office of Scientific Research	Arlington, VA.
Andersen Air Force Base	Yigo, Guam.
Anniston Army Depot	Anniston, AL.
Army Futures Command	Austin, TX.
Army Research Lab—Orlando Simulations and Training Technology Center	Orlando, FL.
Army Research Office	Durham, NC.
Barter Island Regional Radar Site	Barter Island, AK.
Beale Air Force Base	Yuba City, CA.

APPENDIX A TO PART 802—LIST OF MILITARY INSTALLATIONS AND OTHER U.S. GOVERNMENT SITES—Continued

Site name	Location
Biometric Technology Center (Defense Forensics and Biometrics Agency)	Clarksburg, WV.
Blue Grass Army Depot	Richmond, KY.
Buckley Space Force Base	Aurora, CO.
Camp Blaz	Dededo, Guam.
Camp Mackall	Southern Pines, NC.
Camp Navajo	Bellemont, AZ.
Camp Roberts	San Miguel, CA.
Cape Newenham Long Range Radar Site	Cape Newenham, AK.
Cavalier Space Force Station	Cavalier, ND.
Cheyenne Mountain Space Force Station	Colorado Springs, CO.
Clear Space Force Station	Anderson, AK.
Cold Bay Regional Radar Site	Cold Bay, AK.
Combat Capabilities Development Command Soldier Center	Natick, MA.
Creech Air Force Base	Indian Springs, NV.
Davis-Monthan Air Force Base	Tucson, AZ.
Defense Advanced Research Projects Agency	Arlington, VA.
Detroit Arsenal	Warren, MI.
Eareckson Air Station	Shemya, AK.
Eielson Air Force Base	Fairbanks, AK.
Ellington Field Joint Reserve Base	Houston, TX.
Fairchild Air Force Base	Spokane, WA.
Fort Belvoir	Fairfax County, VA.
Fort Bliss	El Paso, TX.
Fort Campbell	Hopkinsville, KY and Clarksville, TN.
Fort Carson	Colorado Springs, CO.
Fort Cavazos	Killeen, TX.
Fort Detrick	Frederick, MD.
Fort Drum	Watertown, NY.
Fort Eisenhower	Augusta, GA.
Fort Gregg-Adams	Petersburg, VA.
Fort Knox	Elizabethtown, KY.
Fort Leavenworth	Leavenworth County, KS.
Fort Leonard Wood	Pulaski County, MO.
Fort Meade	Anne Arundel County, MD.
Fort Moore	Columbus, GA.
Fort Riley	Junction City, KS.
Fort Shafter	Honolulu, HI.
Fort Sill	Lawton, OK.
Fort Stewart	Hinesville, GA.
Fort Yukon Long Range Radar Site	Fort Yukon, AK.
Francis E. Warren Air Force Base	Cheyenne, WY.
Guam Tracking Station	Inarajan, Guam.
Hanscom Air Force Base	Lexington, MA.
Hawthorne Army Depot	Hawthorne, NV.
Holloman Air Force Base	Alamogordo, NM.
Holston Army Ammunition Plant	Kingsport, TN.
Indian Mountain Regional Radar Site	Indian Mountain, AK.
Iowa Army Ammunition Plant	Middletown, IA.
Joint Base Anacostia-Bolling	Washington, DC.
Joint Base Andrews	Camp Springs, MD.
Joint Base Elmendorf-Richardson	Anchorage, AK.
Joint Base Langley-Eustis	Hampton, VA and Newport News, VA.
Joint Base Lewis-McChord	Tacoma, WA.
Joint Base McGuire-Dix-Lakehurst	Lakehurst, NJ.
Joint Base Myer-Henderson Hall	Arlington, VA.
Joint Base Pearl Harbor-Hickam	Honolulu, HI.
Joint Expeditionary Base Little Creek-Fort Story	Virginia Beach, VA.
Joint Systems Manufacturing Center—Lima	Lima, OH.
Kaena Point Satellite Tracking Station	Waianae, HI.
Kenai Regional Radar Site	Kenai, AK.
King Salmon Air Force Station	King Salmon, AK.
Kirtland Air Force Base	Albuquerque, NM.
Kodiak Tracking Station	Kodiak Island, AK.
Kotzebue Regional Radar Site	Kotzebue, AK.
Lake City Army Ammunition Plant	Independence, MO.
Letterkenny Army Depot	Chambersburg, PA.
Lisburne Regional Radar Site	Cape Lisburne, AK.
Los Angeles Air Force Base	El Segundo, CA.
MacDill Air Force Base	Tampa, FL.
Marine Corps Air Ground Combat Center Twentynine Palms	Twentynine Palms, CA.
Marine Corps Air Station Beaufort	Beaufort, SC.
Marine Corps Air Station Cherry Point	Cherry Point, NC.

APPENDIX A TO PART 802—LIST OF MILITARY INSTALLATIONS AND OTHER U.S. GOVERNMENT SITES—Continued

Site name	Location
Marine Corps Air Station Miramar	San Diego, CA.
Marine Corps Air Station New River	Jacksonville, NC.
Marine Corps Air Station Yuma	Yuma, AZ.
Marine Corps Base Camp Lejeune	Jacksonville, NC.
Marine Corps Base Camp Pendleton	Oceanside, CA.
Marine Corps Base Hawaii	Kaneohe Bay, HI.
Marine Corps Base Hawaii, Camp H.M. Smith	Halawa, HI.
Marine Corps Base Quantico	Quantico, VA.
Marine Corps Logistics Base Albany	Albany, GA.
Marine Corps Logistics Base Barstow	Barstow, CA.
Marine Corps Support Facility Blount Island	Jacksonville, FL.
Mark Center	Alexandria, VA.
McAlester Army Ammunition Plant	McAlester, OK.
Military Ocean Terminal Concord	Concord, CA.
Military Ocean Terminal Sunny Point	Brunswick County, NC.
Minot Air Force Base	Minot, ND.
Naval Air Station Corpus Christi	Corpus Christi, TX.
Naval Air Station Joint Reserve Base New Orleans	Belle Chasse, LA.
Naval Air Station Oceana	Virginia Beach, VA.
Naval Air Station Oceana Dam Neck Annex	Virginia Beach, VA.
Naval Air Station Whidbey Island	Oak Harbor, WA.
Naval Base Guam	Apra Harbor, Guam.
Naval Base Kitsap Bangor	Silverdale, WA.
Naval Base Point Loma	San Diego, CA.
Naval Base San Diego	San Diego, CA.
Naval Base Ventura County—Port Hueneme Operating Facility	Port Hueneme, CA.
Naval Logistics Support Activity Ketchikan	Ketchikan, AK.
Naval Logistics Support Activity LaMoure	LaMoure, ND.
Naval Logistics Support Annex Orlando	Okahumpka, FL.
Naval Logistics Support Facility Aguada	Aguada, Puerto Rico.
Naval Logistics Support Facility Cutler	Cutler, ME.
Naval Research Laboratory	Washington, DC.
Naval Research Laboratory—Blossom Point	Welcome, MD.
Naval Research Laboratory—Stennis Space Center	Hancock County, MS.
Naval Research Laboratory—Tilghman	Tilghman, MD.
Naval Station Newport	Newport, RI.
Naval Station Norfolk	Norfolk, VA.
Naval Submarine Base Kings Bay	Kings Bay, GA.
Naval Submarine Base New London	Groton, CT.
Naval Suffolk Facility	Suffolk, VA.
Naval Support Activity Crane	Crane, IN.
Naval Support Activity Orlando	Orlando, FL.
Naval Support Activity Panama City	Panama City, FL.
Naval Support Activity Philadelphia	Philadelphia, PA.
Naval Support Facility Carderock	Bethesda, MD.
Naval Support Facility Dahlgren	Dahlgren, VA.
Naval Support Facility Indian Head	Indian Head, MD.
Naval Surface Warfare Center Carderock Division—Acoustic Research Detachment	Bayview, ID.
Naval Weapons Station Seal Beach Detachment Norco	Norco, CA.
New Boston Air Station	New Boston, NH.
Offutt Air Force Base	Bellevue, NE.
Oliktok Long Range Radar Site	Oliktok, AK.
Orchard Combat Training Center	Boise, ID.
Peason Ridge Training Area	Leesville, LA.
Pentagon	Arlington, VA.
Peterson Space Force Base	Colorado Springs, CO.
Picatinny Arsenal	Morris County, NJ.
Pine Bluff Arsenal	White Hall, AR.
Piñon Canyon Maneuver Site	Tyrone, CO.
Pohakuloa Training Area	Hilo, HI.
Point Barrow Long Range Radar Site	Point Barrow, AK.
Portsmouth Naval Shipyard	Kittery, ME.
Pueblo Chemical Depot	Pueblo, CO.
Radford Army Ammunition Plant	Radford, VA.
Red River Army Depot	Texarkana, TX.
Rock Island Arsenal	Rock Island, IL.
Romanzof Regional Radar Site	Romanzof, AK.
Rome Research Laboratory	Rome, NY.
Scott Air Force Base	St. Clair County, IL.
Scranton Army Ammunition Plant	Scranton, PA.
Seymour Johnson Air Force Base	Goldsboro, NC.
Shaw Air Force Base	Sumter, SC.

APPENDIX A TO PART 802—LIST OF MILITARY INSTALLATIONS AND OTHER U.S. GOVERNMENT SITES—Continued

Site name	Location
Southeast Alaska Acoustic Measurement Facility	Ketchikan, AK.
Sparrevohn Regional Radar Site	Sparrevohn, AK.
Tatalina Regional Radar Site	Tatalina, AK.
Tin City Long Range Radar Site	Tin City, AK.
Tooele Army Depot	Tooele, UT.
Travis Air Force Base	Fairfield, CA.
Tyndall Air Force Base	Bay County, FL.
Watervliet Arsenal	Watervliet, NY.

Part 2

Aberdeen Proving Ground	Aberdeen, MD.
Air Force Plant 42	Palmdale, CA.
Altus Air Force Base	Altus, OK.
Arnold Air Force Base	Coffee County and Franklin County, TN.
Barksdale Air Force Base	Bossier City, LA.
Camp Dodge	Johnston, IA.
Camp Grayling	Grayling, MI.
Camp Shelby	Hattiesburg, MS.
Camp Williams	Bluffdale, UT.
Cannon Air Force Base	Clovis, NM.
Cape Canaveral Space Force Station	Cape Canaveral, FL.
Chocolate Mountain Aerial Gunnery Range	Niland, CA.
Columbus Air Force Base	Columbus, MS.
Dare County Range	Manns Harbor, NC.
Dover Air Force Base	Delmarva, DE.
Dyess Air Force Base	Abilene, TX.
Edwards Air Force Base	Edwards, CA.
Eglin Air Force Base	Valparaiso, FL.
Ellsworth Air Force Base	Box Elder, SD.
Fallon Range Complex	Fallon, NV.
Fort Greely	Delta Junction, AK.
Fort Huachuca	Sierra Vista, AZ.
Fort Irwin	San Bernardino County, CA.
Fort Johnson	Vernon Parish, LA.
Fort Liberty	Fayetteville, NC.
Fort Novosel	Dale County, AL.
Fort Wainwright	Fairbanks, AK.
Goodfellow Air Force Base	San Angelo, TX.
Grand Forks Air Force Base	Grand Forks, ND.
Hardwood Range	Necedah, WI.
Hill Air Force Base	Ogden, UT.
Joint Base Cape Cod	Sandwich, MA.
Joint Base Charleston	North Charleston, SC.
Joint Base San Antonio	San Antonio, TX.
Laughlin Air Force Base	Del Rio, TX.
Little Rock Air Force Base	Little Rock, AR.
Luke Air Force Base	Glendale, AZ.
Malmstrom Air Force Base	Great Falls, MT.
Maxwell-Gunter Air Force Base	Montgomery, AL.
Moody Air Force Base	Valdosta, GA.
Mountain Home Air Force Base	Mountain Home, ID.
Muscatatuck Urban Training Center	Butler, IN.
Naval Air Station Meridian	Meridian, MS.
Naval Air Station Patuxent River	Lexington Park, MD.
Naval Air Weapons Station China Lake	Ridgecrest, CA.
Naval Base Kitsap—Keyport	Keyport, WA.
Naval Base Ventura County—Point Mugu Operating Facility	Point Mugu, CA.
Naval Weapons Systems Training Facility Boardman	Boardman, OR.
Nellis Air Force Base	Las Vegas, NV.
Nevada Test and Training Range	Tonopah, NV.
Pacific Missile Range Facility	Kekaha, HI.
Patrick Space Force Base	Cocoa Beach, FL.
Redstone Arsenal	Huntsville, AL.
Schriever Space Force Base	Colorado Springs, CO.
Tinker Air Force Base	Midwest City, OK.
Townsend Bombing Range	McIntosh County, GA.
Tropic Regions Test Center	Wahiawa, HI.
Utah Test and Training Range	Barro, UT.
Vance Air Force Base	Enid, OK.
Vandenberg Space Force Base	Lompoc, CA.

APPENDIX A TO PART 802—LIST OF MILITARY INSTALLATIONS AND OTHER U.S. GOVERNMENT SITES—Continued

Site name	Location
West Desert Test Center	Dugway, UT.
White Sands Missile Range	White Sands Missile Range, NM.
Whiteman Air Force Base	Knob Noster, MO.
Wright-Patterson Air Force Base	Dayton, OH.
Yuma Proving Ground	Yuma, AZ.

* * * * *

Paul M. Rosen,
Assistant Secretary for Investment Security.
[FR Doc. 2024–15221 Filed 7–18–24; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO–T–2024–0016]

RIN 0651–AD81

Withdrawal of Changes to Post
Registration Response Deadlines

AGENCY: United States Patent and
Trademark Office, U.S. Department of
Commerce.
ACTION: Notice of proposed rulemaking.

SUMMARY: On November 17, 2021, the United States Patent and Trademark Office (USPTO) published in the **Federal Register** a final rule amending its regulations to implement provisions of the Trademark Modernization Act of 2020 (TMA) concerning new response periods and extensions in the examination of post-registration filings. After publication of that rule, the USPTO delayed the effective date of a portion of the rule including through another final rule published on September 12, 2023. This proposed rule would withdraw these provisions that are currently delayed.

DATES: The USPTO solicits comments from the public on this proposed rule. Written comments must be received on or before August 19, 2024, to ensure consideration.

ADDRESSES: Written comments on the proposed withdrawal of changes to the post registration response deadlines must be submitted through the Federal eRulemaking Portal at <https://www.regulations.gov>. To submit comments via the portal, commenters should go to <https://www.regulations.gov/docket/PTO-T-2024-0016> or enter docket number PTO–T–2024–0016 on the <https://www.regulations.gov> homepage and

select the “Search” button. The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this document and select the “Comment” button, complete the required fields, and enter or attach their comments. Attachments to electronic comments will be accepted in Adobe portable document format (PDF) or Microsoft Word format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of comments is not possible, please contact the USPTO using the contact information below in the **FOR FURTHER INFORMATION CONTACT** section of this document for special instructions.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, at 571–272–8946 or TMFRNotices@uspto.gov.

SUPPLEMENTARY INFORMATION: On November 17, 2021, the USPTO published in the **Federal Register** a final rule amending the Rules of Practice in Trademark Cases to implement provisions of the TMA. See *Changes To Implement Provisions of the Trademark Modernization Act of 2020* (86 FR 64300). That final rule was published under Regulatory Identification Number (RIN) 0651–AD55. One of the provisions implemented in that final rule was an amendment to section 12(b) of the Trademark Act, 15 U.S.C. 1062(b), that allowed the USPTO to set response periods by regulation for a time period between 60 days and six months, with the option for extensions to a full six-month period, with the goal of shortening the overall time it takes to obtain a registration. The USPTO set a period of three months to respond to pre-registration office actions, instead of the current six-month period, and provided the option to request a single three-month extension of the deadline, subject to the payment of a fee. Although post-registration actions are

not subject to the response provisions in section 12 of the Act, for convenience and predictability, the USPTO applied the same three-month response period and single three-month extension to office actions issued in connection with post-registration maintenance and renewal filings. The final rule stated that these changes would go into effect on December 1, 2022.

On October 13, 2022, the USPTO published in the **Federal Register** a final rule under the same RIN delaying the effective date for the three-month response period and extensions in the examination of post-registration filings from December 1, 2022, until October 7, 2023. See *Changes To Implement Provisions of the Trademark Modernization Act of 2020; Delay of Effective Date and Correction* (87 FR 62032).

On September 12, 2023, the USPTO published in the **Federal Register** a final rule further delaying the provisions that address post-registration responses and extensions until the spring or early summer of 2024. See *Changes To Implement Provisions of the Trademark Modernization Act of 2020; Delay of Effective Date* (88 FR 62463). That final rule was published under RIN 0651–AD71.

In both cases, implementation of the changes to the response deadlines for post-registration office actions was postponed to allow the USPTO additional time to update its IT systems for changes and to provide the public an opportunity to more fully comprehend the nature of, and prepare to comply with, the new provisions before they became effective.

In this NPRM, the USPTO is proposing to withdraw implementation of the post-registration provisions that are currently delayed. After further consideration in light of data collected by the USPTO and current USPTO post-registration practice, the USPTO believes that it is not necessary to implement the provisions. The actual deadline to respond to an office action can be later than the current six-month response period if the statutory deadline has not passed and the USPTO waits until the end of the grace period to cancel a registration where the owner

failed to timely respond or provided an unacceptable response. Therefore, there would be no appreciable reduction in the time it takes to gain approval to maintain a registration were the USPTO to implement the shortened response period. However, there would be an appreciable increase in the potential burden to stakeholders of adding new deadlines to track what in many cases may not be the applicable deadline.

When considering implementation of the delayed rule, the USPTO evaluated data from 2019 through 2022, which showed that two thirds of owners file their responses within three months of issuance of an office action. The data also shows that most filers will not be subject to the three-month response period. Specifically, nearly half of the owners who file maintenance documents in the one-year statutory period for filing, and about three quarters of those who file in the grace period, will not be subject to the three-month response period if pendency targets for the USPTO to review the maintenance documents are met. That is, owners will have more than three months to reply to an office action because the end of the one-year period for filing, or the grace period, will be later than the three-month response period. About one third of those filers will have more than six months to file a response. The same data shows that two thirds of owners file their responses within three months of issuance of an office action. More importantly, any registration where the owner failed to timely respond or provided an unacceptable response to a post-registration office action is not canceled until the end of the grace period. The USPTO would only see the impact of a shortened response period for those filing towards the end of the grace period, which based on the data collected by the USPTO is not a large number of filings.

Since implementation of the Trademark Law Treaty Implementation Act, Public Law 105–330, 112 Stat. 3064 (15 U.S.C. 1051), in 1999, the response period for post-registration office actions has been the later of six months or the end of the one-year period for filing the relevant maintenance document. If the maintenance document is filed in the six-month grace period, the response period is six months. If no response is received within that time, the registration will be canceled, unless time remains in the six-month grace period under Trademark Act (Act) section 8(a)(3), 15 U.S.C. 1058(a)(3).

Under the delayed provisions, the response period becomes the later of: (1) three months, or (2) the end of the one-

year period, if filed in the one-year period for filing a maintenance document, or (3) the later of three months or the end of the grace period if filed in the grace period. The three-month period may be extended by three months for a total of six months. If the shortened post-registration response periods are implemented, trademark owners will have to keep track of both the three-month office-action response period and the end of the statutory period in which they file, which may create an additional burden on them. They will have to decide whether filing an extension of time to respond to an outstanding office action is necessary or makes sense. This may result in the unintentional cancellation of their registration if they do not calculate the deadline correctly. Therefore, any potential benefits from the shortened response periods are minimal given the small number of filings for which the three-month response period would be effective and compared to the potential burden of creating new deadlines to track that in many cases may not be the applicable deadline.

The USPTO proposes to withdraw the amendments to 37 CFR 2.163, 2.165, 2.176, 2.184, 2.186, 7.6, 7.39, and 7.40 (amendatory instructions 29, 30, 31, 33, 34, 37, 38, and 39, respectively), which published at 86 FR 64300 on November 17, 2021, were delayed at 87 FR 62032 on October 13, 2022, and further delayed at 88 FR 62463 on September 12, 2023; and to withdraw the amendment to 37 CFR 2.6 (amendatory instruction 2), which published at 87 FR 62032 on October 13, 2022, and was indefinitely delayed at 88 FR 62463 on September 12, 2023.

Rulemaking Requirements

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

because they do not “foreclose effective opportunity to make one’s case on the merits”).

Nevertheless, the USPTO is publishing this proposed rule for comment to seek the benefit of the public’s views on the office’s proposed regulatory changes.

B. Regulatory Flexibility Act: For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this proposed rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

This rulemaking would withdraw the post-registration response periods provisions published in the November 17, 2021, final rule implementing the Trademark Modernization Act. See *Changes To Implement Provisions of the Trademark Modernization Act of 2020* (86 FR 64300). These regulations had a delayed effective date of December 1, 2022. That effective date was subsequently further delayed, and ultimately delayed indefinitely, and thus the post-registration response periods provisions have never come into effect, and the USPTO has never implemented them.

The USPTO does not collect or maintain statistics on small versus large-entity registrants, and this information would be required in order to determine the number of small entities that would be affected by the proposed rule. However, the USPTO expects that there will be no impact to all entities, including small entities, affected by this rulemaking.

In this rulemaking, the USPTO is proposing to withdraw implementation of the post-registration provisions that are currently delayed. After further consideration in light of data collected by the USPTO and current USPTO post-registration practice, the USPTO believes that it is not necessary to implement the provisions. The actual deadline to respond to an office action can be later than the current six-month response period if the statutory deadline has not passed and the USPTO waits until the end of the grace period to cancel a registration where the owner failed to timely respond or provided an unacceptable response. Therefore, there would be no appreciable reduction in the time it takes to gain approval to maintain a registration were the USPTO to implement the shortened response period. However, there would be an appreciable increase in the potential burden to stakeholders of adding new

deadlines to track what in many cases may not be the applicable deadline.

When considering implementation of the delayed rule, the USPTO evaluated data from 2019 through 2022, which showed that two thirds of owners file their responses within three months of issuance of an office action. The data also shows that most filers will not be subject to the three-month response period. Specifically, nearly half of the owners who file maintenance documents in the one-year statutory period for filing, and about three quarters of those who file in the grace period, will not be subject to the three-month response period if pendency targets for the USPTO to review the maintenance documents are met. That is, owners will have more than three months to reply to an office action because the end of the one-year period for filing, or the grace period, will be later than the three-month response period. About one third of those filers will have more than six months to file a response. The same data shows that two thirds of owners file their responses within three months of issuance of an office action. More importantly, any registration where the owner failed to timely respond or provided an unacceptable response to a post-registration office action is not canceled until the end of the grace period. The USPTO would only see the impact of a shortened response period for those filing towards the end of the grace period, which based on the data collected by the USPTO is not a large number of filings. Because the post-registration response periods were never implemented, the withdrawal of these regulations would have no impact on owners.

For the foregoing reasons, the changes in this proposed rule will not have a significant economic impact on a substantial number of small entities.

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

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, and as discussed above, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5)

identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing an NPRM, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

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

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

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

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

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

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

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of

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

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

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

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

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this proposed rule has been reviewed and previously approved by OMB under

OMB Control Numbers 0651–0050 (Response to Office Action and Voluntary Amendment Forms) and 0651–0055 (Post Registration (Trademark Processing)).

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

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Katherine K. Vidal,

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

[FR Doc. 2024–15472 Filed 7–18–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2023–0186; FRL–12105–01–R1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the regional haze state implementation plan (SIP) revision submitted by Connecticut on January 5, 2022, as satisfying applicable requirements under the Clean Air Act (CAA) and EPA's Regional Haze Rule for the program's second implementation period. Connecticut's SIP submission addresses the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The SIP submission also addresses other applicable requirements for the second implementation period of the regional

haze program. The EPA is taking this action pursuant to the CAA.

DATES: Written comments must be received on or before August 19, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2023–0186 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA will publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, U.S. Environmental Protection Agency, Region 1, Air Quality Branch, 5 Post Office Square, Suite 100, (Mail code 5–MI), Boston, MA 02109–3912, telephone number: (617) 918–1628, email address: rackauskas.eric@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What action is the EPA proposing?
- II. Background and Requirements for Regional Haze Plans
 - A. Regional Haze Background
 - B. Roles of Agencies in Addressing Regional Haze
- III. Requirements for Regional Haze Plans for the Second Implementation Period
 - A. Identification of Class I Areas
 - B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress
 - C. Long-Term Strategy for Regional Haze
 - D. Reasonable Progress Goals
 - E. Monitoring Strategy and Other State Implementation Plan Requirements
 - F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

- G. Requirements for State and Federal Land Manager Coordination
- IV. The EPA's Evaluation of Connecticut's Regional Haze Submission for the Second Implementation Period
 - A. Background on Connecticut's First Implementation Period SIP Submission
 - B. Connecticut's Second Implementation Period SIP Submission and the EPA's Evaluation
 - C. Identification of Class I Areas
 - D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress
 - E. Long-Term Strategy for Regional Haze
 - a. Connecticut's Response to the Six MANEVU Asks
 - b. The EPA's Evaluation of Connecticut's Response to the Six MANEVU Asks and Compliance With § 51.308(f)(2)(i)
 - c. Additional Long-Term Strategy Requirements
 - F. Reasonable Progress Goals
 - G. Monitoring Strategy and Other Implementation Plan Requirements
 - H. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals
 - I. Requirements for State and Federal Land Manager Coordination
 - J. Other Required Commitments
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

I. What action is the EPA proposing?

On January 5, 2022, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a revision to its SIP to address regional haze for the second implementation period. CT DEEP made this SIP submission to satisfy the requirements of the CAA's regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308. The EPA is proposing to find that the Connecticut regional haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements and thus proposes to approve Connecticut's submission into its SIP.

II. Background and Requirements for Regional Haze Plans

A. Regional Haze Background

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.¹ CAA section 169A. The CAA establishes as a national goal

¹ Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA section 162(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

the “prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.” CAA section 169A(a)(1). The CAA further directs the EPA to promulgate regulations to assure reasonable progress toward meeting this national goal. CAA section 169A(a)(4). On December 2, 1980, the EPA promulgated regulations to address visibility impairment in mandatory Class I Federal areas (hereinafter referred to as “Class I areas”) that is “reasonably attributable” to a single source or small group of sources. (45 FR 80084, December 2, 1980). These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase of the EPA’s efforts to address visibility impairment. In 1990, Congress added section 169B to the CAA to further address visibility impairment, specifically, impairment from regional haze. CAA section 169B. The EPA promulgated the Regional Haze Rule (RHR), codified at 40 CFR 51.308,² on July 1, 1999. (64 FR 35714, July 1, 1999). These regional haze regulations are a central component of the EPA’s comprehensive visibility protection program for Class I areas.

Regional haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse particulate matter (PM) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide (SO₂), nitrogen oxides (NO_x), and, in some cases, volatile organic compounds (VOC) and ammonia (NH₃)). Fine particle precursors react in the atmosphere to form fine particulate matter (PM_{2.5}), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.³

² In addition to the generally applicable regional haze provisions at 40 CFR 51.308, the EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are applicable only for specific jurisdictions’ regional haze plans submitted no later than December 17, 2007, and thus are not relevant here.

³ There are several ways to measure the amount of visibility impairment, i.e., haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I areas are located and states “the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility” in a Class I area to periodically submit SIP revisions to address such impairment. CAA section 169A(b)(2);⁴ see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative regional haze SIP revisions); (64 FR at 35768, July 1, 1999). Under the CAA, each SIP submission must contain “a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal.” CAA section 169A(b)(2)(B); the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the best available retrofit technology (BART). CAA section 169A(b)(2)(A); 40 CFR 51.308(d), (e). States’ first regional haze SIPs were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing updated long-term strategies originally due July 31, 2018, and every ten years thereafter. (64 FR at 35768, July 1, 1999). The EPA established in the 1999 RHR that all states either have Class I areas within their borders or “contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area”; therefore, all states must submit regional haze SIPs.⁵ *Id.* at 35721.

Much of the focus in the first implementation period of the regional haze program, which ran from 2007

of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b_{ext}) is a metric used to for expressing visibility and is measured in inverse megameters (Mm⁻¹). The EPA’s Guidance on Regional Haze State Implementation Plans for the Second Implementation Period (“2019 Guidance”) offers the flexibility for the use of light extinction in certain cases. Light extinction can be simpler to use in calculations than deciviews, since it is not a logarithmic function. See, e.g., 2019 Guidance at 16, <https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period>. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019). The formula for the deciview is $10 \ln(b_{ext})/10 \text{ Mm}^{-1} - 1$. 40 CFR 51.301.

⁴ The RHR expresses the statutory requirement for states to submit plans addressing out-of-state class I areas by providing that states must address visibility impairment “in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State.” 40 CFR 51.308(d), (f).

⁵ In addition to each of the fifty states, the EPA also concluded that the Virgin Islands and District of Columbia must also submit regional haze SIPs because they either contain a Class I area or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. See 40 CFR 51.300(b), (d)(3).

through 2018, was on satisfying states’ BART obligations. First implementation period SIPs were additionally required to contain long-term strategies for making reasonable progress toward the national visibility goal, of which BART is one component. The core required elements for the first implementation period SIPs (other than BART) are laid out in 40 CFR 51.308(d). Those provisions required that states containing Class I areas establish reasonable progress goals (RPGs) that are measured in deciviews and reflect the anticipated visibility conditions at the end of the implementation period including from implementation of states’ long-term strategies. The first planning period RPGs were required to provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. In establishing the RPGs for any Class I area in a state, the state was required to consider four statutory factors: the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. CAA section 169A(g)(1); 40 CFR 51.308(d)(1).

States were also required to calculate baseline (using the five-year period of 2000–2004) and natural visibility conditions (i.e., visibility conditions without anthropogenic visibility impairment) for each Class I area, and to calculate the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is known as the uniform rate of progress (URP) and is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I area.⁶ 40 CFR 51.308(d)(1)(i)(B), (d)(2).

⁶ EPA established the URP framework in the 1999 RHR to provide “an equitable analytical approach” to assessing the rate of visibility improvement at Class I areas across the country. The start point for the URP analysis is 2004 and the endpoint was calculated based on the amount of visibility improvement that was anticipated to result from implementation of existing CAA programs over the period from the mid-1990s to approximately 2005. Assuming this rate of progress would continue into the future, EPA determined that natural visibility conditions would be reached in 60 years, or 2064 (60 years from the baseline starting point of 2004). However, EPA did not establish 2064 as the year by which the national goal *must* be reached. 64 FR at 35731–32. That is, the URP and the 2064 date are not enforceable targets, but are rather tools that “allow for analytical comparisons between the rate of progress that would be achieved by the state’s

The 1999 RHR also provided that States' long-term strategies must include the "enforceable emissions limitations, compliance, schedules, and other measures as necessary to achieve the reasonable progress goals." 40 CFR 51.308(d)(3). In establishing their long-term strategies, states are required to consult with other states that also contribute to visibility impairment in a given Class I area and include all measures necessary to obtain their shares of the emission reductions needed to meet the RPGs. 40 CFR 51.308(d)(3)(i), (ii). Section 51.308(d) also contains seven additional factors states must consider in formulating their long-term strategies, 40 CFR 51.308(d)(3)(v), as well as provisions governing monitoring and other implementation plan requirements. 40 CFR 51.308(d)(4). Finally, the 1999 RHR required states to submit periodic progress reports—SIP revisions due every five years that contain information on states' implementation of their regional haze plans and an assessment of whether anything additional is needed to make reasonable progress, see 40 CFR 51.308(g), (h)—and to consult with the Federal Land Manager(s)⁷ (FLMs) responsible for each Class I area according to the requirements in CAA section 169A(d) and 40 CFR 51.308(i).

On January 10, 2017, the EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The 2017 rulemaking made several changes to the requirements for regional haze SIPs to clarify States' obligations and streamline certain regional haze requirements. The revisions to the regional haze program for the second and subsequent implementation periods focused on the requirement that States' SIPs contain long-term strategies for making reasonable progress towards the national visibility goal. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f). Among other changes, the 2017 RHR Revisions adjusted the deadline for States to submit their second implementation period SIPs from July 31, 2018, to July 31, 2021, clarified the order of analysis and the relationship between RPGs and the

long-term strategy, and focused on making visibility improvements on the days with the most *anthropogenic* visibility impairment, as opposed to the days with the most visibility impairment overall. The EPA also revised requirements of the visibility protection program related to periodic progress reports and FLM consultation. The specific requirements applicable to second implementation period regional haze SIP submissions are addressed in detail below.

The EPA provided guidance to the states for their second implementation period SIP submissions in the preamble to the 2017 RHR Revisions as well as in subsequent, stand-alone guidance documents. In August 2019, the EPA issued "Guidance on Regional Haze State Implementation Plans for the Second Implementation Period" ("2019 Guidance").⁸ On July 8, 2021, the EPA issued a memorandum containing "Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period" ("2021 Clarifications Memo").⁹ Additionally, the EPA further clarified the recommended procedures for processing ambient visibility data and optionally adjusting the URP to account for international anthropogenic and prescribed fire impacts in two technical guidance documents: the December 2018 "Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program" ("2018 Visibility Tracking Guidance"),¹⁰ and the June 2020 "Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program" and associated

Technical Addendum ("2020 Data Completeness Memo").¹¹

As previously explained in the 2021 Clarifications Memo, EPA intends the second implementation period of the regional haze program to secure meaningful reductions in visibility impairing pollutants that build on the significant progress states have achieved to date. The Agency also recognizes that analyses regarding reasonable progress are state-specific and that, based on states' and sources' individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from state-to-state. While there exist many opportunities for states to leverage both ongoing and upcoming emission reductions under other CAA programs, the Agency expects states to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements. See generally 2021 Clarifications Memo. This is consistent with Congress's determination that a visibility protection program is needed in addition to the CAA's National Ambient Air Quality Standards and Prevention of Significant Deterioration programs, as further emission reductions may be necessary to adequately protect visibility in Class I areas throughout the country.¹²

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I areas can be transported over long distances, successful implementation of the regional haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I areas and the emissions that impact visibility in those areas. In order to address regional haze, states need to develop strategies in coordination with one another, considering the effect of emissions from

⁸ Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. <https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period>. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

⁹ Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. <https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf>. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

¹⁰ Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. <https://www.epa.gov/visibility/technical-guidance-tracking-visibility-progress-second-implementation-period-regional>. The EPA Office of Air Quality Planning and Standards, Research Triangle Park. (December 20, 2018).

¹¹ Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. <https://www.epa.gov/visibility/memo-and-technical-addendum-ambient-data-usage-and-completeness-regional-haze-program>. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (June 3, 2020).

¹² See, e.g., H.R. Rep No. 95–294 at 205 ("In determining how to best remedy the growing visibility problem in these areas of great scenic importance, the committee realizes that as a matter of equity, the national ambient air quality standards cannot be revised to adequately protect visibility in all areas of the country."), ("the mandatory class I increments of [the PSD program] do not adequately protect visibility in class I areas").

chosen set of control measures and the URP." (82 FR 3078, 3084, January 10, 2017).

⁷ The EPA's regulations define "Federal Land Manager" as "the Secretary of the department with authority over the Federal Class I area (or the Secretary designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission." 40 CFR 51.301.

one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),¹³ which include representation from state and tribal governments, the EPA, and FLMs, were developed in the lead-up to the first implementation period to address regional haze. RPOs evaluate technical information to better understand how emissions from State and Tribal land impact Class I areas across the country, pursue the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to regional haze, and help states meet the consultation requirements of the RHR.

The Mid-Atlantic/Northeast Visibility Union (MANEVU), one of the five RPOs described above, is a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Mid-Atlantic and Northeast corridor of the United States. Member states and tribal governments (listed alphabetically) include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, St. Regis Mohawk Tribe, and Vermont. The Federal partner members of MANEVU are EPA, U.S. National Parks Service (NPS), U.S. Fish and Wildlife Service (FWS), and U.S. Forest Service (USFS).

III. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and EPA's regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021. Each state's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA section 169A(b)(2)(B). To this end, § 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of the requirements in § 51.308(f)(1) through (f)(3) generally mirroring the

order of the steps in the reasonable progress analysis¹⁴ and (f)(4) through (f)(6) containing additional, related requirements. Broadly speaking, a state first must identify the Class I areas within the state and determine the Class I areas outside the state in which visibility may be affected by emissions from the state. These are the Class I areas that must be addressed in the state's long-term strategy. See 40 CFR 51.308(f), (f)(2). For each Class I area within its borders, a state must then calculate the baseline, current, and natural visibility conditions for that area, as well as the visibility improvement made to date and the URP. See 40 CFR 51.308(f)(1). Each state having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility-impairing pollutants that the state has selected to assess for controls for the second implementation period. See 40 CFR 51.308(f)(2). Additionally, as further explained below, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five "additional factors"¹⁵ that states must consider in developing their long-term strategies. A state evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the state's long-term strategy. After a state has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.*, in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I area is located, but also for sources in other states that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made

¹⁴ EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 51.308(d), "tracked the actual planning sequence." (82 FR 3091, January 10, 2017).

¹⁵ The five "additional factors" for consideration in § 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2)–(3).

In addition to satisfying the requirements at 40 CFR 51.308(f) related to reasonable progress, the regional haze SIP revisions for the second implementation period must address the requirements in § 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.308(i).

A state must submit its regional haze SIP and subsequent SIP revisions to the EPA according to the requirements applicable to all SIP revisions under the CAA and EPA's regulations. See CAA section 169(b)(2); CAA section 110(a). Upon EPA approval, a SIP is enforceable by the Agency and the public under the CAA. If EPA finds that a state fails to make a required SIP revision, or if the EPA finds that a state's SIP is incomplete or if disapproves the SIP, the Agency must promulgate a federal implementation plan (FIP) that satisfies the applicable requirements. CAA section 110(c)(1).

A. Identification of Class I Areas

The first step in developing a regional haze SIP is for a state to determine which Class I areas, in addition to those within its borders, "may be affected" by emissions from within the state. In the 1999 RHR, the EPA determined that all states contribute to visibility impairment in at least one Class I area, 64 FR at 35720–22, and explained that the statute and regulations lay out an "extremely low triggering threshold" for determining "whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State." *Id.* at 35721.

A state must determine which Class I areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the state. While the RHR does not require this evaluation to be conducted in any particular manner, EPA's 2019 Guidance provides recommendations for how such an assessment might be accomplished, including by, where appropriate, using the determinations previously made for the first implementation period. 2019 Guidance at 8–9. In addition, the determination of which Class I areas may be affected by a state's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to "document the

¹³ RPOs are sometimes also referred to as "multi-jurisdictional organizations," or MJOs. For the purposes of this document, the terms RPO and MJO are synonymous.

technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects.”

B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in § 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this subsection apply only to states having Class I areas within their borders; the required calculations must be made for each such Class I area. EPA’s 2018 Visibility Tracking Guidance¹⁶ provides recommendations to assist states in satisfying their obligations under § 51.308(f)(1)—specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. See 82 FR at 3103–05.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20% clearest (the 20% of monitored days in a calendar year with the lowest values of the deciview index) and 20% most impaired days (the 20% of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment).¹⁷ 40 CFR 51.301. A state must calculate visibility conditions for both the 20% clearest and 20% most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility

conditions). 40 CFR 51.308(f)(1)(i), (iii). States must also calculate natural visibility conditions for the clearest and most impaired days,¹⁸ by estimating the conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data, states must then calculate, for each Class I area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve in order to reach natural visibility conditions.

Using the data for the set of most impaired days only, states must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement per year, measured in deciviews, that would need to be achieved during each implementation period in order to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I area’s rate of visibility improvement.¹⁹ Additionally, in the 2017 RHR Revisions, the EPA provided states the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments, which must be approved by the EPA, are intended to avoid any perception that states should compensate for impacts from international anthropogenic sources and to give states the flexibility to determine that limiting the use of wildland-prescribed fire is not necessary for reasonable progress. 82 FR 3107 footnote 116.

EPA’s 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements,

¹⁸ The RHR at 40 CFR 51.308(f)(1)(ii) contains an error related to the requirement for calculating two sets of natural conditions values. The rule says “most impaired days or the clearest days” where it should say “most impaired days and clearest days.” This is an error that was intended to be corrected in the 2017 RHR Revisions but did not get corrected in the final rule language. This is supported by the preamble text at 82 FR 3098: “In the final version of 40 CFR 51.308(f)(1)(ii), an occurrence of “or” has been corrected to “and” to indicate that natural visibility conditions for both the most impaired days and the clearest days must be based on available monitoring information.”

¹⁹ Being on or below the URP is not a “safe harbor”; i.e., achieving the URP does not mean that a Class I area is making “reasonable progress” and does not relieve a state from using the four statutory factors to determine what level of control is needed to achieve such progress. See, e.g., 82 FR at 3093.

including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in § 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

C. Long-Term Strategy for Regional Haze

The core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a state’s borders and each Class I area that may be affected by emissions from the state. The long-term strategy “must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).” 40 CFR 51.308(f)(2). The amount of progress that is “reasonable progress” is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a “four-factor” analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement in order to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by “enforceable emissions limitations, compliance schedules, and other measures” (i.e., any additional compliance tools) in a state’s long-term strategy in its SIP. 40 CFR 51.308(f)(2).

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires states to consider “major and minor stationary sources or groups of sources, mobile sources, and area sources” of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed. As EPA previously explained, consistent with the first implementation period, EPA generally expects that each

¹⁶ The 2018 Visibility Tracking Guidance references and relies on parts of the 2003 Tracking Guidance: “Guidance for Tracking Progress Under the Regional Haze Rule,” which can be found at <https://www3.epa.gov/ttnamti1/files/ambient/visible/tracking.pdf>.

¹⁷ This document also refers to the 20% clearest and 20% most anthropogenically impaired days as the “clearest” and “most impaired” or “most anthropogenically impaired” days, respectively.

state will analyze at least SO₂ and NO_x in selecting sources and determining control measures. See 2019 Guidance at 12, 2021 Clarifications Memo at 4. A state that chooses not to consider at least these two pollutants should demonstrate why such consideration would be unreasonable. 2021 Clarifications Memo at 4.

While states have the option to analyze *all* sources, the 2019 Guidance explains that “an analysis of control measures is not required for every source in each implementation period,” and that “[s]electing a set of sources for analysis of control measures in each implementation period is . . . consistent with the Regional Haze Rule, which sets up an iterative planning process and anticipates that a state may not need to analyze control measures for all its sources in a given SIP revision.” 2019 Guidance at 9. However, given that source selection is the basis of all subsequent control determinations, a reasonable source selection process “should be designed and conducted to ensure that source selection results in a set of pollutants and sources the evaluation of which has the potential to meaningfully reduce their contributions to visibility impairment.” 2021 Clarifications Memo at 3.

EPA explained in the 2021 Clarifications Memo that each state has an obligation to submit a long-term strategy that addresses the regional haze visibility impairment that results from emissions from within that state. Thus, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the state’s total contribution to visibility impairment in Class I areas. A state should not decline to select its largest in-state sources on the basis that there are even larger out-of-state contributors. 2021 Clarifications Memo at 4.²⁰

Thus, while states have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a state’s SIP submission include “a description of the criteria it used to determine which sources or groups of sources it evaluated.” The technical basis for source selection, which may include

methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a state has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.²¹ This is accomplished by considering the four factors—“the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.” CAA section 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.*, control options) for sources; “use of the terms ‘compliance’ and ‘subject to such requirements’ in CAA section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply in order to satisfy the CAA’s reasonable progress mandate.” 82 FR at 3091. Thus, for each source it has selected for four-factor analysis,²² a state must consider a “meaningful set” of technically feasible control options for reducing emissions of visibility impairing pollutants. *Id.* at 3088. The 2019 Guidance provides that “[a] state must reasonably pick and justify the measures that it will consider,

recognizing that there is no statutory or regulatory requirement to consider all technically feasible measures or any particular measures. A range of technically feasible measures available to reduce emissions would be one way to justify a reasonable set.” 2019 Guidance at 29.

EPA’s 2021 Clarifications Memo provides further guidance on what constitutes a reasonable set of control options for consideration: “A reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions.” 2021 Clarifications Memo at 7. In addition to add-on controls and other retrofits (*i.e.*, new emission reduction measures for sources), EPA explained that states should generally analyze efficiency improvements for sources’ existing measures as control options in their four-factor analyses, as in many cases such improvements are reasonable given that they typically involve only additional operation and maintenance costs. Additionally, the 2021 Clarifications Memo provides that states that have assumed a higher emission rate than a source has achieved or could potentially achieve using its existing measures should also consider lower emission rates as potential control options. That is, a state should consider a source’s recent actual and projected emission rates to determine if it could reasonably attain lower emission rates with its existing measures. If so, the state should analyze the lower emission rate as a control option for reducing emissions. 2021 Clarifications Memo at 7. The EPA’s recommendations to analyze potential efficiency improvements and achievable lower emission rates apply to both sources that have been selected for four-factor analysis and those that have forgone a four-factor analysis on the basis of existing “effective controls.” See 2021 Clarifications Memo at 5, 10.

After identifying a reasonable set of potential control options for the sources it has selected, a state then collects information on the four factors with regard to each option identified. The EPA has also explained that, in addition to the four statutory factors, states have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors.²³ The 2019 Guidance provides recommendations for the types of information that can be used to

²¹ The CAA provides that, “[i]n determining reasonable progress there shall be taken into consideration” the four statutory factors. CAA section 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.*, from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second planning period.

²² “Each source” or “particular source” is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have “the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.” 82 FR at 3088. However, not all approaches to grouping sources for four-factor analysis are necessarily reasonable; the reasonableness of grouping sources in any particular instance will depend on the circumstances and the manner in which grouping is conducted. If it is feasible to establish and enforce different requirements for sources or subgroups of sources, and if relevant factors can be quantified for those sources or subgroups, then states should make a separate reasonable progress determination for each source or subgroup. 2021 Clarifications Memo at 7–8.

²⁰ Similarly, in responding to comments on the 2017 RHR Revisions EPA explained that “[a] state should not fail to address its many relatively low-impact sources merely because it only has such sources and another state has even more low-impact sources and/or some high impact sources.” Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) at 87–88.

²³ See, *e.g.*, Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016), Docket Number EPA–HQ–OAR–2015–0531, U.S. Environmental Protection Agency at 186; 2019 Guidance at 36–37.

characterize the four factors (with or without visibility), as well as ways in which states might reasonably consider and balance that information to determine which of the potential control options is necessary to make reasonable progress. See 2019 Guidance at 30–36. The 2021 Clarifications Memo contains further guidance on how states can reasonably consider modeled visibility impacts or benefits in the context of a four-factor analysis. 2021 Clarifications Memo at 12–13, 14–15. Specifically, EPA explained that while visibility can reasonably be used when comparing and choosing between multiple reasonable control options, it should not be used to summarily reject controls that are reasonable given the four statutory factors. 2021 Clarifications Memo at 13. Ultimately, while states have discretion to reasonably weigh the factors and to determine what level of control is needed, § 51.308(f)(2)(i) provides that a state “must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.”

As explained above, § 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to § 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state’s long-term strategy and in its SIP.²⁴ If the outcome of a four-factor analysis is a new, additional emission reduction measure for a source, that new measure is necessary to make reasonable progress towards remedying existing anthropogenic visibility impairment and must be included in the SIP. If the outcome of a four-factor analysis is that no new measures are reasonable for a source, continued implementation of the source’s existing measures is generally necessary to prevent future emission increases and thus to make reasonable progress towards the second part of the national visibility goal: preventing future anthropogenic visibility impairment. See CAA section

169A(a)(1). That is, when the result of a four-factor analysis is that no new measures are necessary to make reasonable progress, the source’s existing measures are generally necessary to make reasonable progress and must be included in the SIP. However, there may be circumstances in which a state can demonstrate that a source’s existing measures are *not* necessary to make reasonable progress. Specifically, if a state can demonstrate that a source will continue to implement its existing measures and will not increase its emission rate, it may not be necessary to have those measures in the long-term strategy in order to prevent future emission increases and future visibility impairment. EPA’s 2021 Clarifications Memo provides further explanation and guidance on how states may demonstrate that a source’s existing measures are not necessary to make reasonable progress. See 2021 Clarifications Memo at 8–10. If the state can make such a demonstration, it need not include a source’s existing measures in the long-term strategy or its SIP.

As with source selection, the characterization of information on each of the factors is also subject to the documentation requirement in § 51.308(f)(2)(iii). The reasonable progress analysis, including source selection, information gathering, characterization of the four statutory factors (and potentially visibility), balancing of the four factors, and selection of the emission reduction measures that represent reasonable progress, is a technically complex exercise, but also a flexible one that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, § 51.308(f)(2)(iii) plays an important function in requiring a state to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the state relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the state relied to determine the measures necessary to make reasonable progress. This documentation requirement can be met through the provision of and reliance on technical analyses developed through a regional planning process, so long as that process and its output has been approved by all state participants. In addition to the explicit

regulatory requirement to document the technical basis of their reasonable progress determinations, states are also subject to the general principle that those determinations must be reasonably moored to the statute.²⁵ That is, a state’s decisions about the emission reduction measures that are necessary to make reasonable progress must be consistent with the statutory goal of remedying existing and preventing future visibility impairment.

The four statutory factors (and potentially visibility) are used to determine what emission reduction measures for selected sources must be included in a state’s long-term strategy for making reasonable progress. Additionally, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five “additional factors”²⁶ that states must consider in developing their long-term strategies: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. The 2019 Guidance provides that a state may satisfy this requirement by considering these additional factors in the process of selecting sources for four-factor analysis, when performing that analysis, or both, and that not every one of the additional factors needs to be considered at the same stage of the process. See 2019 Guidance at 21. EPA provided further guidance on the five additional factors in the 2021 Clarifications Memo, explaining that a state should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely

²⁵ See *Arizona ex rel. Darwin v. U.S. EPA*, 815 F.3d 519, 531 (9th Cir. 2016); *Nebraska v. U.S. EPA*, 812 F.3d 662, 668 (8th Cir. 2016); *North Dakota v. EPA*, 730 F.3d 750, 761 (8th Cir. 2013); *Oklahoma v. EPA*, 723 F.3d 1201, 1206, 1208–10 (10th Cir. 2013); cf. also *Alaska Dep’t of Env’tl. Conservation v. EPA*, 540 U.S. 461, 485, 490 (2004); *Nat’l Parks Conservation Ass’n v. EPA*, 803 F.3d 151, 165 (3d Cir. 2015).

²⁶ The five “additional factors” for consideration in § 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

²⁴ States may choose to, but are not required to, include measures in their long-term strategies beyond just the emission reduction measures that are necessary for reasonable progress. See 2021 Clarifications Memo at 16. For example, states with smoke management programs may choose to submit their smoke management plans to EPA for inclusion in their SIPs but are not required to do so. See, e.g., 82 FR at 3108–09 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to adopt such practices or programs into their SIPs, although they may elect to do so).

because visibility is otherwise projected to improve at Class I areas. Additionally, states generally should not rely on these additional factors to summarily assert that the state has already made sufficient progress and, therefore, no sources need to be selected or no new controls are needed regardless of the outcome of four-factor analyses. 2021 Clarifications Memo at 13.

Because the air pollution that causes regional haze crosses state boundaries, § 51.308(f)(2)(ii) requires a state to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. Consultation allows for each state that impacts visibility in an area to share whatever technical information, analyses, and control determinations may be necessary to develop coordinated emission management strategies. This coordination may be managed through inter- and intra-RPO consultation and the development of regional emissions strategies; additional consultations between states outside of RPO processes may also occur. If a state, pursuant to consultation, agrees that certain measures (e.g., a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a state has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that state must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). The EPA will consider the technical information and explanations presented by the submitting state and the state with which it disagrees when considering whether to approve the state's SIP. See *id.*; 2019 Guidance at 53. Under all circumstances, a state must document in its SIP submission all substantive consultations with other contributing states. 40 CFR 51.308(f)(2)(ii)(C).

D. Reasonable Progress Goals

Reasonable progress goals “measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-

factor analysis.” 82 FR at 3091. Their primary purpose is to assist the public and the EPA in assessing the reasonableness of states’ long-term strategies for making reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(3)(iii)–(iv). States in which Class I areas are located must establish two RPGs, both in *deciviews*—one representing visibility conditions on the clearest days and one representing visibility on the most anthropogenically impaired days—for each area within their borders. 40 CFR 51.308(f)(3)(i). The two RPGs are intended to reflect the projected impacts, on the two sets of days, of the emission reduction measures the state with the Class I area, as well as all other contributing states, have included in their long-term strategies for the second implementation period.²⁷ The RPGs also account for the projected impacts of implementing other CAA requirements, including non-SIP based requirements. Because RPGs are the modeled result of the measures in states’ long-term strategies (as well as other measures required under the CAA), they cannot be determined before states have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress. See 2021 Clarifications Memo at 6.

For the second implementation period, the RPGs are set for 2028. Reasonable progress goals are not enforceable targets, 40 CFR 51.308(f)(3)(iii); rather, they “provide a way for the states to check the projected outcome of the [long-term strategy] against the goals for visibility improvement.” 2019 Guidance at 46. While states are not legally obligated to achieve the visibility conditions described in their RPGs, § 51.308(f)(3)(i) requires that “[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.” Thus, states are required to have emission reduction measures in their long-term

²⁷ RPGs are intended to reflect the projected impacts of the measures all contributing states include in their long-term strategies. However, due to the timing of analyses and of control determinations by other states, other on-going emissions changes, a particular state's RPGs may not reflect all control measures and emissions reductions that are expected to occur by the end of the implementation period. The 2019 Guidance provides recommendations for addressing the timing of RPG calculations when states are developing their long-term strategies on disparate schedules, as well as for adjusting RPGs using a post-modeling approach. 2019 Guidance at 47–48.

strategies that are projected to achieve visibility conditions on the most impaired days that are better than the baseline period and show no degradation on the clearest days compared to the clearest days from the baseline period. The baseline period for the purpose of this comparison is the baseline visibility condition—the annual average visibility condition for the period 2000–2004. See 40 CFR 51.308(f)(1)(i), 82 FR at 3097–98.

So that RPGs may also serve as a metric for assessing the amount of progress a state is making towards the national visibility goal, the RHR requires states with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.*, if visibility conditions are improving more slowly than the rate described by the URP), each state that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each state contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide “a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.” The 2019 Guidance provides suggestions about how such a “robust demonstration” might be conducted. See 2019 Guidance at 50–51.

The 2017 RHR, 2019 Guidance, and 2021 Clarifications Memo also explain that projecting an RPG that is on or below the URP based on only on-the-books and/or on-the-way control measures (*i.e.*, control measures already required or anticipated before the four-factor analysis is conducted) is not a “safe harbor” from the CAA’s and RHR’s requirement that all states must conduct a four-factor analysis to determine what emission reduction measures constitute reasonable progress. The URP is a planning metric used to gauge the amount of progress made thus far and the amount left before reaching natural

visibility conditions. However, the URP is not based on consideration of the four statutory factors and therefore cannot answer the question of whether the amount of progress being made in any particular implementation period is “reasonable progress.” See 82 FR at 3093, 3099–3100; 2019 Guidance at 22; 2021 Clarifications Memo at 15–16.

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this subsection apply either to states with Class I areas within their borders, states with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. A state with Class I areas within its borders must submit with its SIP revision a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all Class I areas within the state. SIP revisions for such states must also provide for the establishment of any additional monitoring sites or equipment needed to assess visibility conditions in Class I areas, as well as reporting of all visibility monitoring data to the EPA at least annually. Compliance with the monitoring strategy requirement may be met through a state’s participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40 CFR 51.308(f)(6), (f)(6)(i), (f)(6)(iv). The IMPROVE monitoring data is used to determine the 20% most anthropogenically impaired and 20% clearest sets of days every year at each Class I area and tracks visibility impairment over time.

All states’ SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the state to regional haze visibility impairment in affected Class I areas. 40 CFR 51.308(f)(6)(ii), (iii). Section 51.308(f)(6)(v) further requires that all states’ SIPs provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area; the inventory must include emissions for the most recent year for which data are available and estimates of future projected emissions. States must also include commitments to update their

inventories periodically. The inventories themselves do not need to be included as elements in the SIP and are not subject to EPA review as part of the Agency’s evaluation of a SIP revision.²⁸ All states’ SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility. 40 CFR 51.308(f)(6)(vi). Per the 2019 Guidance, a state may note in its regional haze SIP that its compliance with the Air Emissions Reporting Rule (AERR) in 40 CFR part 51, subpart A satisfies the requirement to provide for an emissions inventory for the most recent year for which data are available. To satisfy the requirement to provide estimates of future projected emissions, a state may explain in its SIP how projected emissions were developed for use in establishing RPGs for its own and nearby Class I areas.²⁹

Separate from the requirements related to monitoring for regional haze purposes under 40 CFR 51.308(f)(6), the RHR also contains a requirement at § 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called “reasonably attributable visibility impairment.”³⁰ Under this provision, if the EPA or the FLM of an affected Class I area has advised a state that additional monitoring is needed to assess reasonably attributable visibility impairment, the state must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment.

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a state’s regional haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and the EPA about a state’s implementation of its existing long-term strategy and whether such

implementation is in fact resulting in the expected visibility improvement. See 81 FR 26942, 26950 (May 4, 2016), (82 FR at 3119, January 10, 2017). To this end, every state’s SIP revision for the second implementation period is required to describe the status of implementation of all measures included in the state’s long-term strategy, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

A core component of the progress report requirements is an assessment of changes in visibility conditions on the clearest and most impaired days. For second implementation period progress reports, § 51.308(g)(3) requires states with Class I areas within their borders to first determine current visibility conditions for each area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i)(B), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions in order to assess progress made to date. See 40 CFR 51.308(g)(3)(ii)(B). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(3)(iii)(B), (f)(5). Since different states submitted their first implementation period progress reports at different times, the starting point for this assessment will vary state by state.

Similarly, states must provide analyses tracking the change in emissions of pollutants contributing to visibility impairment from all sources and activities within the state over the period since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(4), (f)(5). Changes in emissions should be identified by the type of source or activity. Section 51.308(g)(5) also addresses changes in emissions since the period addressed by the previous progress report and requires states’ SIP revisions to include an assessment of any significant changes in anthropogenic emissions within or outside the state. This assessment must include an explanation of whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the state projected based on its long-term strategy for the first implementation period.

²⁸ See “Step 8: Additional requirements for regional haze SIPs” in 2019 Regional Haze Guidance at 55.

²⁹ *Id.*

³⁰ EPA’s visibility protection regulations define “reasonably attributable visibility impairment” as “visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.” 40 CFR 51.301.

G. Requirements for State and Federal Land Manager Coordination

CAA section 169A(d) requires that before a state holds a public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the state must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that states "provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy." 40 CFR 51.308(i)(2). Consultation that occurs 120 days prior to any public hearing or public comment opportunity will be deemed "early enough," but the RHR provides that in any event the opportunity for consultation must be provided at least 60 days before a public hearing or comment opportunity. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and their recommendations on the development and implementation of strategies to address such impairment. 40 CFR 51.308(i)(2). In order for the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the state addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

IV. The EPA's Evaluation of Connecticut's Regional Haze Submission for the Second Implementation Period

A. Background on Connecticut's First Implementation Period SIP Submission

CT DEEP submitted its regional haze SIP for the first implementation period to the EPA on November 18, 2009, and supplemented it on February 24, 2012, and March 12, 2012. The EPA approved

Connecticut's first implementation period regional haze SIP submission on July 10, 2014 (79 FR 39322). EPA's approval included, but was not limited to, the portions of the plan that address the reasonable progress requirements, Connecticut's maintenance of nitrogen oxide emissions controls, as well as Connecticut's low sulfur fuel program. The requirements for regional haze SIPs for the first implementation period are contained in 40 CFR 51.308(d) and (e). 40 CFR 51.308(b). Pursuant to 40 CFR 51.308(g), Connecticut was also responsible for submitting a five-year progress report as a SIP revision for the first implementation period, which it did on June 30, 2015. The EPA approved the progress report into the Connecticut SIP on November 26, 2019 (84 FR 65007).

B. Connecticut's Second Implementation Period SIP Submission and the EPA's Evaluation

In accordance with CAA sections 169A and the RHR at 40 CFR 51.308(f), on January 5, 2022, Connecticut submitted a revision to the Connecticut SIP to address its regional haze obligations for the second implementation period, which runs through 2028. Connecticut made a draft Regional Haze SIP submission available for public comment on December 3, 2020. Connecticut has included the public comments and its responses to those comments in the submission.

The following sections describe Connecticut's SIP submission, including analyses conducted by MANEVU and Connecticut's determinations based on those analyses, Connecticut's assessment of progress made since the first implementation period in reducing emissions of visibility impairing pollutants, and the visibility improvement progress at nearby Class I areas. This document also contains EPA's evaluation of Connecticut's submission against the requirements of the CAA and RHR for the second implementation period of the regional haze program.

C. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each state in which any Class I area is located or "the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility" in a Class I area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each state's plan "must address regional haze in each mandatory Class I Federal area located

within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State," and (f)(2), which requires each state's plan to include a long-term strategy that addresses regional haze in such Class I areas. Connecticut has no mandatory Class I Federal area within its borders.

For the second implementation period, MANEVU performed technical analyses³¹ to help assess source and state-level contributions to visibility impairment and the need for interstate consultation. MANEVU used the results of these analyses to determine which states' emissions "have a high likelihood of affecting visibility in MANEVU's Class I areas."³² Similar to metrics used in the first implementation period,³³ MANEVU used a greater than 2 percent of sulfate plus nitrate emissions contribution criteria to determine whether emissions from individual jurisdictions within the region affected visibility in any Class I areas. The MANEVU analyses for the second implementation period used a combination of data analysis techniques, including emissions data, distance from Class I areas, wind trajectories, and CALPUFF dispersion modeling. Although many of the analyses focused only on SO₂ emissions and resultant particulate sulfate contributions to visibility impairment, some also incorporated NO_x emissions to estimate particulate nitrate contributions.

One MANEVU analysis used for contribution assessment was CALPUFF air dispersion modeling. The CALPUFF model was used to estimate sulfate and nitrate formation and transport in MANEVU and nearby regions originating from large electric generating unit (EGU) point sources and other large industrial and institutional sources in the eastern and central United States. Information from an initial round of CALPUFF modeling was collated for the 444 EGUs that were determined to warrant further scrutiny based on their emissions of SO₂ and NO_x. The list of EGUs was based on an enhanced "Q/d" analysis³⁴ that considered recent SO₂

³¹ The contribution assessment methodologies for MANEVU Class I areas are summarized in CT RH SIP appendix "Selection of States for MANEVU Regional Haze Consultation (2018)," MANEVU TSC, September 5, 2017.

³² *Id.*

³³ See docket EPA-R01-OAR-2023-0186 for MANEVU supporting materials.

³⁴ "Q/d" is emissions (Q) in tons per year, typically of one or a combination of visibility-impairing pollutants, divided by distance to a class I area (d) in kilometers. The resulting ratio is commonly used as a metric to assess a source's

emissions in the eastern United States and an analysis that adjusted previous 2002 MANEVU CALPUFF modeling by applying a ratio of 2011 to 2002 SO₂ emissions. This list of sources was then enhanced by including the top five SO₂ and NO_x emission sources for 2011 for each state included in the modeling domain. A total of 311 EGU stacks (as opposed to individual units) were included in the CALPUFF modeling analysis. Initial information was also collected on the 50 industrial and institutional sources that, according to 2011 Q/d analysis, contributed the most to visibility impact in each Class I area. The ultimate CALPUFF modeling run included a total of 311 EGU stacks and 82 industrial facilities. The summary report for the CALPUFF modeling included the top 10 most impacting EGUs and the top 5 most impacting industrial/institutional sources for each Class I area and compiled those results into a ranked list of the most impacting EGUs and industrial sources at MANEVU Class I areas.³⁵ Overall, MANEVU found that emission sources located close to Class I areas typically show higher visibility impacts than similarly sized facilities further away. However, visibility degradation appears to be dominated by the more distant emission sources due to their larger emissions. Connecticut had three EGUs identified in the CALPUFF modeling as having a magnitude of emissions located close enough to a Class I area that they could have the potential for visibility impacts: Middletown Unit 4, Bridgeport Harbor Station Unit 3, and New Haven Harbor Unit 1.³⁶

As explained above, the EPA concluded in the 1999 RHR that “all [s]tates contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area,” 64 FR at 35721, and this determination was not changed in the 2017 RHR. Critically, the statute and regulation both require that the cause-or-contribute assessment consider all emissions of visibility-impairing pollutants from a state, as opposed to emissions of a particular pollutant or emissions from a certain set of sources. Consistent with these requirements, the 2019 Guidance makes it clear that “all types of anthropogenic sources are to be included in the determination” of whether a state’s emissions are reasonably anticipated to result in any

visibility impairment. 2019 Guidance at 8.

The screening analyses on which MANEVU relied are useful for certain purposes. MANEVU used information from its technical analysis to rank the largest contributing states to sulfate and nitrate impairment in the seven MANEVU Class I areas and three additional, nearby Class I areas.³⁷ The rankings were used to determine upwind states that MANEVU deemed important to include in state-to-state consultation based on an identified visibility impact screening threshold. Additionally, large individual source impacts were used to target MANEVU control analysis “Asks”³⁸ of states and sources both within and upwind of MANEVU.³⁹ The EPA finds the nature of the analyses generally appropriate to support decisions on states with which to consult. However, we have cautioned that source selection methodologies that target the largest regional contributors to visibility impairment across multiple states may not be reasonable for a particular state if it results in few or no sources being selected for subsequent analysis. 2021 Clarifications Memo at 3.

With regard to the analysis and determinations regarding Connecticut’s contribution to visibility impairment at out-of-state Class I areas, the MANEVU technical work focuses on the magnitude of visibility impacts from certain Connecticut emissions on nearby Class I areas. The MANEVU contribution screening results estimate Connecticut’s highest percent mass-weighted sulfate and nitrate contribution to be 1.4% at Moosehorn Wilderness and Roosevelt Campobello International Park, with Acadia National Park and the Lye Brook Wilderness the next closest Class I areas impacted by Connecticut emissions at 1.3% and 1.2%, respectively.⁴⁰ However, the MANEVU analyses did not account for all emissions and all components of

visibility impairment (*e.g.*, primary PM emissions, and impairment from fine PM, elemental carbon, and organic carbon). In addition, Q/d analyses with a relatively simplistic accounting for wind trajectories and CALPUFF applied to a very limited set of EGUs and major industrial sources of SO₂ and NO_x are not scientifically rigorous tools capable of evaluating contribution to visibility impairment from all emissions in a state. The EPA acknowledges that the contribution to visibility impairment from Connecticut’s emissions at nearby out-of-state Class I areas is smaller than that from numerous other states. While some MANEVU states noted that the contributions from several states outside the MANEVU region are significantly larger than its own, we again clarify that each state is obligated under the CAA and RHR to address regional haze visibility impairment resulting from emissions from within the state, irrespective of whether another state’s contribution is greater. See 2021 Clarifications Memo at 3. Additionally, we note that the 2 percent or greater sulfate-plus-nitrate threshold used to determine whether Connecticut emissions contribute to visibility impairment at a particular Class I area may be higher than what EPA believes is an “extremely low triggering threshold” intended by the statute and regulations. In sum, based on the information provided, it is clear that emissions from Connecticut have relatively small contributions to Class I areas. However, due to the low triggering threshold implied by the Rule and the lack of rigorous modeling analyses, we do not necessarily agree with the level of the State’s 2% contribution threshold.

In any event, pursuant to the regulatory requirements, Connecticut took part in the emission control strategy consultation process as a member of MANEVU. As part of that process, MANEVU developed a set of emissions reduction measures identified as being necessary to make reasonable progress in the seven MANEVU Class I areas. This strategy consists of six Asks for states within MANEVU and five Asks for states outside the region that were found to impact visibility at Class I areas within MANEVU.⁴¹ Connecticut’s submission discusses each of the Asks and explains why or why not each is applicable and how it has complied with the relevant components of the emissions control strategy the MANEVU states laid out. Connecticut worked with MANEVU to determine potential reasonable

potential visibility impacts on a particular class I area.

³⁵ See “2016 MANEVU Source Contribution Modeling Report—CALPUFF Modeling of Large Electrical Generating Units and Industrial Sources.” MANEVU TSC. April 4, 2017.

³⁶ Connecticut Regional Haze SIP Revision at 45.

³⁷ The Class I areas analyzed were Acadia National Park in Maine, Brigantine Wilderness in New Jersey, Great Gulf Wilderness and Presidential Range—Dry River Wilderness in New Hampshire, Lye Brook Wilderness in Vermont, Moosehorn Wilderness in Maine, Roosevelt Campobello International Park in New Brunswick, Shenandoah National Park in Virginia, James River Face Wilderness in Virginia, and Dolly Sods/Otter Creek Wildernesses in West Virginia.

³⁸ As explained more fully in section IV.E.a., MANEVU refers to each of the components of its overall strategy as an “Ask” of its member states.

³⁹ The MANEVU consultation report explains that “[t]he objective of this technical work was to identify states and sources from which MANEVU will pursue further analysis. This screening was intended to identify which states to invite to consultation, not a definitive list of which states are contributing.”

⁴⁰ See table 4–1 of the CT RH SIP.

⁴¹ See section 5.1 of the CT RH SIP.

measures that could be implemented by 2028, considering the cost of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts, and the remaining useful life of any potentially affected sources.⁴² As discussed in further detail below, the EPA is proposing to find that Connecticut has submitted a regional haze plan that meets the requirements of 40 CFR 51.308(f)(2) related to the development of a long-term strategy. Thus, we propose to find that Connecticut has satisfied the applicable requirements for making reasonable progress towards natural visibility conditions in Class I areas that may be affected by emissions from the state.

D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

Section 51.308(f)(1) requires states to determine the following for “each mandatory Class I Federal area located within the State”: baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for states to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. 40 CFR 51.308(f)(1)(vi)(B).

Connecticut has no Class I areas. MANEUV Class I areas, as well as other nearby Class I areas that MANEUV examined, are listed below. MANEUV used certain areas (as noted below) to represent nearby Class I areas where monitors do not exist.⁴³

The MANEUV Class I Areas are Lye Brook Wilderness Area (Vermont), Great Gulf Wilderness Area (New Hampshire) (used to represent Presidential Range—Dry River Wilderness Area), Presidential Range—Dry River Wilderness Area (New Hampshire), Acadia National Park (Maine), Moosehorn Wildlife Refuge (Maine) (used to represent Roosevelt Campobello International Park), Roosevelt Campobello International

Park (New Brunswick, Canada), Brigantine Wildlife Refuge (New Jersey). Nearby Class I Areas consist of Dolly Sods Wilderness Area (West Virginia) (used to represent Otter Creek Wilderness Area), Otter Creek Wilderness Area (West Virginia), Shenandoah National Park (Virginia), and James River Face Wilderness Area (Virginia).

E. Long-Term Strategy for Regional Haze

a. Connecticut’s Response to the Six MANEUV Asks

Each state having a Class I area within its borders or emissions that may affect visibility in a Class I area must develop a long-term strategy for making reasonable progress towards the national visibility goal. CAA section 169A(b)(2)(B). As explained in the Background section of this document, reasonable progress is achieved when all states contributing to visibility impairment in a Class I area are implementing the measures determined—through application of the four statutory factors to sources of visibility impairing pollutants—to be necessary to make reasonable progress. 40 CFR 51.308(f)(2)(i). Each state’s long-term strategy must include the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2). All new (*i.e.*, additional) measures that are the outcome of four-factor analyses are necessary to make reasonable progress and must be in the long-term strategy. If the outcome of a four-factor analysis and other measures necessary to make reasonable progress is that no new measures are reasonable for a source, that source’s existing measures are necessary to make reasonable progress, unless the state can demonstrate that the source will continue to implement those measures and will not increase its emission rate. Existing measures that are necessary to make reasonable progress must also be in the long-term strategy. In developing its long-term strategies, a state must also consider the five additional factors in § 51.308(f)(2)(iv). As part of its reasonable progress determinations, the state must describe the criteria used to determine which sources or group of sources were evaluated (*i.e.*, subjected to four-factor analysis) for the second implementation period and how the four factors were taken into consideration in selecting the emission reduction measures for inclusion in the long-term strategy. 40 CFR 51.308(f)(2)(i).

The following section summarizes how Connecticut’s SIP submission addressed the requirements of § 51.308(f)(2)(i); specifically, it describes MANEUV’s development of the six Asks and how Connecticut addressed each. The regulations Connecticut identifies as a result of its responses to the six Asks comprise Connecticut’s long-term strategy for the second planning period to address regional haze visibility impairment for each mandatory Class I Federal area that may be affected by emissions from Connecticut. When developing the Asks with the other MANEUV states and applying them to sources in Connecticut, the State considered the four statutory factors and the additional regulatory factors and identified emissions control measures necessary to make reasonable progress towards the goal of preventing of any future, and remedying any existing, anthropogenic visibility impairment in Class I areas that may be affected by emissions from Connecticut. Connecticut’s SIP submission describes how it plans to meet the long-term strategy requirements defined by the State and MANEUV via its responses to the “Asks.” The EPA’s evaluation of Connecticut’s long-term strategy is contained in section IV.E.b.

States may rely on technical information developed by the RPOs of which they are members to select sources for four-factor analysis and to conduct that analysis, as well as to satisfy the documentation requirements under § 51.308(f). Where an RPO has performed source selection and/or four-factor analyses (or considered the five additional factors in § 51.308(f)(2)(iv)) for its member states, those states may rely on the RPO’s analyses for the purpose of satisfying the requirements of § 51.308(f)(2)(i) so long as the states have a reasonable basis to do so and all state participants in the RPO process have approved the technical analyses. 40 CFR 51.308(f)(2)(iii). States may also satisfy the requirement of § 51.308(f)(2)(ii) to engage in interstate consultation with other states that have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area under the auspices of intra- and inter-RPO engagement.

Connecticut is a member of the MANEUV RPO and participated in the RPO’s regional approach to developing a strategy for making reasonable progress towards the national visibility goal in the MANEUV Class I areas. MANEUV’s strategy includes a combination of: (1) measures for certain source sectors and groups of sectors that the RPO determined were reasonable for

⁴² See 42 U.S.C. 7491(g)(1); 40 CFR 51.308(f)(2)(i).

⁴³ Mid-Atlantic/Northeast U.S. Visibility Data, 2004–2017 (2nd RH SIP Metrics). MANEUV (prepared by Maine Department of Environmental Protection). December 18, 2018 revision. p.2–1 (appendix 22).

states to pursue, and (2) a request for member states to conduct four-factor analyses for individual sources that it identified as contributing to visibility impairment. MANEVU refers to each of the components of its overall strategy as an “Ask” of its member states. On August 25, 2017, the Executive Director of MANEVU, on behalf of the MANEVU states and tribal nations, signed a statement that identifies six emission reduction measures that comprise the Asks for the second implementation period.⁴⁴ The Asks were “designed to identify reasonable emission reduction strategies that must be addressed by the states and tribal nations of MANEVU through their regional haze SIP updates.”⁴⁵ The statement explains that “[i]f any State cannot agree with or complete a Class I State’s Asks, the State must describe the actions taken to resolve the disagreement in the Regional Haze SIP.”⁴⁶

MANEVU’s recommendations as to the appropriate control measures were based on technical analyses documented in the RPO’s reports and included as appendices to, or referenced in, Connecticut’s regional haze SIP submission. One of the initial steps of MANEVU’s technical analysis was to determine which visibility-impairing pollutants should be the focus of its efforts for the second implementation period. In the first implementation period, MANEVU determined that sulfates were the most significant visibility impairing pollutant at the region’s Class I areas. To determine the impact of certain pollutants on visibility at Class I areas for the purpose of second implementation period planning, MANEVU conducted an analysis comparing the pollutant contribution on the clearest and most impaired days in the baseline period (2000–2004) to the most recent period (2012–2016)⁴⁷ at MANEVU and nearby Class I areas. MANEVU found that while SO₂ emissions were decreasing and visibility was improving, sulfates still made up the most significant contribution to visibility impairment at MANEVU and nearby Class I areas. According to the analysis, NO_x emissions have begun to play a more significant role in visibility impacts in recent years as SO₂ emissions have decreased. The technical analyses used by Connecticut are

included in its submission and are as follows:⁴⁸

- 2016 Updates to the Assessment of Reasonable Progress for Regional Haze in MANEVU Class I Areas;
- Impact of Wintertime SCR/SNCR Optimization on Visibility Impairing Nitrate Precursor Emissions. November 2017;
- High Electric Demand Days and Visibility Impairment in MANEVU. December 2017;
- Benefits of Combined Heat and Power Systems for Reducing Pollutant Emissions in MANEVU States. March 2016;
- 2016 MANEVU Source Contribution Modeling Report—CALPUFF Modeling of Large Electrical Generating Units and Industrial Sources. April 4, 2017;
- Contribution Assessment Preliminary Inventory Analysis. October 10, 2016;
- Four-Factor Data Collection Memo. March 2017;
- Status of the Top 167 Stacks from the 2008 MANEVU Ask. July 2016;
- Mid-Atlantic/Northeast U.S. Visibility Data, 2004–2019 (2nd RH SIP Metrics);
- Selection of States for MANEVU Regional Haze Consultation 2018;
- Ozone Transport Commission/ MANEVU 2011 Based Modeling Platform Support Document October (2018 Update).

MANEVU gathered information on each of the four statutory factors for six source sectors it determined, based on an examination of annual emission inventories, “had emissions [of SO₂ and/or NO_x] that were reasonable[y] anticipated to contribute to visibility degradation in MANEVU:” electric generating units (EGUs), industrial/commercial/institutional boilers (ICI boilers), cement kilns, heating oil, residential wood combustion, and outdoor wood combustion.⁴⁹ MANEVU also collected data on individual sources within the EGU, ICI boiler, and cement kiln sectors.⁵⁰ Information for the six sectors included explanations of technically feasible control options for SO₂ or NO_x, illustrative cost-effectiveness estimates for a range of model units and control options, sector-wide cost considerations, potential time frames for compliance with control options, potential energy and non-air-quality environmental impacts of

certain control options, and how the remaining useful lives of sources might be considered in a control analysis.⁵¹ Source-specific data included SO₂ emissions⁵² and existing controls⁵³ for certain existing EGUs, ICI boilers, and cement kilns. MANEVU considered this information on the four factors as well as the analyses developed by the RPO’s Technical Support Committee when it determined specific emission reduction measures that were found to be reasonable for certain sources within two of the sectors it had examined—EGUs and ICI boilers.⁵⁴ The Asks were based on this analysis and looked to either optimize the use of existing controls, have states conduct further analysis on EGU or ICI boilers with considerable visibility impacts, implement low sulfur fuel standards, or lock-in lower emission rates.

MANEVU Ask 1 is “Electric Generating Units (EGUs) with a nameplate capacity larger than or equal to 25 MW with already installed NO_x and/or SO₂ controls—ensure the most effective use of control technologies on a year-round basis to consistently minimize emissions of haze precursors or obtain equivalent alternative emission reductions.” MANEVU observed that EGUs often only run NO_x emissions controls to comply with ozone season trading programs and consequently, NO_x sources may be uncontrolled during the winter and non-peak summer days. MANEVU found that: (1) running existing installed controls [selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR)] is one of the most cost-effective ways to control NO_x emissions from EGUs; and (2) that running existing controls year-round could substantially reduce the NO_x emissions in many of the states upwind of Class I areas in MANEVU that lead to visibility impairment during the winter from nitrates.⁵⁵ MANEVU included this as an emission management strategy because large EGUs had already been identified as dominant contributors to visibility impairment and the low cost of running already installed controls made it reasonable.

Connecticut identified 33 EGU units that meet the criteria of 25 MW or larger

⁵¹ *Id.*

⁵² See “Four Factor Data Collection Memo.”

⁵³ See “Status of the Top 167 Stacks from the 2008 MANEVU Ask. July 2016.”

⁵⁴ See “Four Factor Data Collection Memo”; 2016 Updates to the Assessment of Reasonable Progress for Regional Haze in MANEVU Class I Areas.”

⁵⁵ See “Impact of Wintertime SCR/SNCR Optimization on Visibility Impairing Nitrate Precursor Emissions.”

⁴⁴ See “MANEVU Regional Haze Consultation Report and Consultation Documentation—Final.”

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ The period of 2012–2016 was the most recent period for which data were available at the time of analysis.

⁴⁸ These documents can be found in the docket for this rulemaking.

⁴⁹ See “MANEVU Four Factor Data Collection Memo,” at 1, March 30, 2017.

⁵⁰ See “2016 Updates to the Assessment of Reasonable Progress for Regional Haze in MANEVU Class I Areas,” Jan. 31, 2016.

with installed controls.⁵⁶ Connecticut explained that all of these units identified are turbines with Selective Catalytic Reduction (SCR) to control nitrogen oxides with the exception of Middletown Unit 3, which is a boiler controlled by Selective Non-Catalytic Reduction (SNCR) to reduce emissions of nitrogen oxides. Connecticut further explained that these sources are subject to requirements to maintain and operate the control equipment to minimize emissions and are made enforceable through record keeping and reporting requirements contained in Regulations of Connecticut State Agencies (RCSA) section 22a-174-7 and the indicated new source review permits. These units are all Title V sources, and the requirements and enforceability are reviewed at least once every five years and are federally enforceable as well. Connecticut also noted that there are no electric generating units of 25 MW or more with control devices to treat emissions of sulfur oxides and that Connecticut generally addresses sulfur emissions “on the front end” via sulfur-in-fuel restrictions.⁵⁷ Connecticut concluded that it has therefore met the requirements of Ask 1.

MANEVU Ask 2 consists of a request that states “Emission sources modeled by MANEVU that have the potential for 3.0 Mm^{-1} or greater visibility impacts at any MANEVU Class I area, as identified by MANEVU contribution analyses . . . perform a four-factor analysis for reasonable installation or upgrade to emission controls.” Based on an examination of visibility impact modeling results, MANEVU concluded that a 3.0 Mm^{-1} cutoff captured an appropriately-sized group of sources contributing the largest percentage of visibility impairing pollutants to Class I areas in the MANEVU states.⁵⁸ For units identified for the Ask 2 analysis, MANEVU requested that states determine reasonable controls through the consideration of the four factors on a state-by-state and unit-by-unit basis. MANEVU’s analysis for Ask 2 did not identify any units in Connecticut with a potential impact of at least 3.0 Mm^{-1} .⁵⁹ Connecticut notes that the highest estimated impact from any Connecticut source to any Class I area is just over 1.0 Mm^{-1} . Furthermore, this particular source—Bridgeport Harbor

Station Unit 3—shuttered in 2021.⁶⁰ Based on the lack of identified sources at or above the 3.0 Mm^{-1} threshold, Connecticut concluded that it met Ask 2.

MANEVU Ask 3 is: “Each MANEVU State that has not yet fully adopted an ultra-low sulfur fuel oil standard as requested by MANEVU in 2007—pursue this standard as expeditiously as possible and before 2028, depending on supply availability, where the standards are as follows: a. distillate oil to 0.0015% sulfur by weight (15 ppm); b. #4 residual oil within a range of 0.25 to 0.5% sulfur by weight; and c. #6 residual oil within a range of 0.3 to 0.5% sulfur by weight.” Connecticut explained that the State has an ultra-low sulfur fuel program, with the most recent sulfur content limitations effective as of July 1, 2018. Connecticut’s ultra-low sulfur fuel program consists of Connecticut General Statutes (CGS) section 16a-21a and RCSA sections 22a-174-19a and 22a-174-19b. CGS 16a-21a and RCSA 22a-174-19a limit the sulfur content of home heating oil to 15ppm and the sulfur content of off-road diesel to 3000 ppm (0.3% S). RCSA 22a-174-19b further limits sulfur content of fuel oil sold in Connecticut for use in stationary sources to 15 ppm for distillate and 3000 ppm (0.3% S) for aviation and residual fuels. EPA approved the latest revisions of these rules into Connecticut’s SIP on May 25, 2016 (81 FR 33134). Based on the above, Connecticut concluded that the State’s low sulfur fuel program meets Ask 3.

MANEVU Ask 4 requests states to update permits to “lock in” lower emissions rates for NO_x , SO_2 , and PM at emissions sources larger than 250 million British Thermal Units (MMBtu) per hour heat input that have switched operations to lower emitting fuels. Connecticut explained that EGUs and large sources in the State are subject to Title V permitting requirements under RCSA section 22a-174-33, and that the permits for these sources are reviewed every five years and specify allowable operating scenarios, including the type of fuels fired. Connecticut further explained that Title V permit conditions for these sources related to lower emitting fuels stem from Connecticut’s sulfur-in-fuel regulations (RCSA sections 22a-174-19a and -19b), New Source Review (NSR) permits, and trading orders that restrict oil firing in favor of natural gas. A change in fuel

type not allowed by permit would trigger requirements for a new or modified permit under RCSA section 22a-174-3a and -33. Connecticut concluded that it therefore met the requirements of Ask 4.

Ask 5 requests that MANEVU states “control NO_x emissions for peaking combustion turbines that have the potential to operate on high electric demand days” by either: (1) Meeting NO_x emissions standards specified in the Ask for turbines that run on natural gas and fuel oil, (2) performing a four-factor analysis for reasonable installation of or upgrade to emission controls, or (3) obtaining equivalent emission reductions on high electric demand days.⁶¹ The Ask requests states to strive for NO_x emission standards of no greater than 25 ppm for natural gas and 42 ppm for fuel oil, or at a minimum, NO_x emissions standards of no greater than 42 ppm for natural gas and 96 ppm for fuel oil.

Connecticut identified two state regulations EPA previously approved into Connecticut’s SIP that limit NO_x emissions from electric generating units and other stationary sources. RCSA section 22a-174-22e (86 FR 37053) prescribes averaging times and emission limits for units at major sources of NO_x . RCSA section 22a-174-22f (82 FR 35454) applies to generators at non-major facilities during the summer season, and section 22a-174-22f(e)(4) requires that any affected unit that exceeds the allowable daily thresholds is to be subject to the same limits that apply to sources in RCSA section 22a-174-22e. The requirements of RCSA section 22a-174-22e were phased-in over two implementation periods. The first phase became effective June 1, 2018, and the second phase became effective June 1, 2023. Under Phase 2, daily NO_x limits for combined cycle turbines are set at 25 ppm for natural gas and 42 ppm for fuel oil, RCSA section 22a-174-22e(d)(5)(C), and daily NO_x limits for simple cycle turbines are set at 40 ppm for natural gas and 50 ppm for fuel oil, *id.* section 22a-174-22e(d)(4)(C). Connecticut noted that these already adopted rules to control nitrogen oxide emissions from peaking turbines are at least as stringent as the limits in Ask 5.⁶² Therefore, Connecticut concluded that it fully addressed Ask 5.

The last Ask for states within MANEVU (Ask 6) requests states to report in their regional haze SIPs about programs that decrease energy demand

⁵⁶ See table 5-1 of the Connecticut submittal.

⁵⁷ See, for example, the discussion of Ask 3 below.

⁵⁸ Units with smaller contributions of visibility-impairing pollutants were captured by other Asks.

⁵⁹ See MANEVU Intra-Regional Ask Final August 25, 2017.

⁶⁰ CT DEEP revoked the operating permit for Bridgeport Harbor Station Unit 3 on October 28, 2021. See “Combined NSR & Registration Revocation Letter” in the docket for this rulemaking.

⁶¹ See “MANEVU Regional Haze Consultation Report and Consultation Documentation—Final.”

⁶² See table 5-2 of the CT RH SIP.

and increase the use of combined heat and power (CHP) and other distributed generation technologies such as fuel cells, wind and solar. Connecticut asserted that the state continues to support programs to increase energy efficiency, CHP, and other clean energy technologies. The submittal provides as an example Energize ConnecticutSM, which it describes as an initiative of the Connecticut Energy Efficiency Fund, the Connecticut Green Bank, the State, and local utilities dedicated to saving energy and building a clean energy future for everyone in the state. The initiative has funding support from a charge on customer energy bills. Connecticut reports that energy savings efforts through 2018 have resulted in emissions avoidance of the equivalent of one 130 MW power plant. Connecticut also identified off-shore wind programs, State Executive Order No. 3 (which commits the CT DEEP, in consultation with the Connecticut Public Utilities Regulatory Authority to analyze and recommend strategies for achieving a carbon emissions free goal for the electricity-generating sector by 2040), and the state's membership in the Regional Greenhouse Gas Initiative (RGGI) as programs that provide air quality benefits. Connecticut therefore concluded that it satisfies Ask 6.

In summary, Connecticut identified the following SIP-approved programs as necessary for reasonable progress and therefore included in the State's long term strategy: RCSA 22a-174-19a, Control of sulfur dioxide emissions from power plants and other large stationary sources of air pollution; RCSA 22a-174-19b, Fuel sulfur content limitations for stationary sources; RCSA 22a-174-22e, Control of nitrogen oxides emissions from fuel-burning equipment at major stationary sources of nitrogen oxides; RCSA 22a-174-22f, High daily NO_x emitting units at non-major sources of NO_x; and RCSA 22a-174-38, Municipal Waste Combustors.⁶³

b. The EPA's Evaluation of Connecticut's Response to the Six MANEVU Asks and Compliance With § 51.308(f)(2)(i)

The EPA is proposing to find that Connecticut has satisfied the requirements of § 51.308(f)(2)(i) related to evaluating sources and determining the emission reduction measures that are necessary to make reasonable progress by considering the four statutory factors. We are proposing to find that Connecticut has satisfied the four-factor analysis requirement through

its analysis and actions to address MANEVU Ask 3.

As explained above, Connecticut relied on MANEVU's technical analyses and framework (*i.e.*, the Asks) to select sources and develop its long-term strategy. MANEVU conducted an inventory analysis to identify the source sectors that produced the greatest amount of SO₂ and NO_x emissions in 2011; inventory data were also projected to 2018. Based on this analysis, MANEVU identified the top-emitting sectors for each of the two pollutants, which for SO₂ include coal-fired EGUs, industrial boilers, oil-fired EGUs, and oil-fired area sources including residential, commercial, and industrial sources. Major-emitting sources of NO_x include on-road vehicles, non-road vehicles, and EGUs.⁶⁴ The RPO's documentation explains that "[EGUs] emitting SO₂ and NO_x and industrial point sources emitting SO₂ were found to be sectors with high emissions that warranted further scrutiny. Mobile sources were not considered in this analysis because any ask concerning mobile sources would be made to EPA and not during the intra-RPO and inter-RPO consultation process among the states and tribes."⁶⁵ EPA proposes to find that Connecticut reasonably evaluated the two pollutants—SO₂ and NO_x—that currently drive visibility impairment within the MANEVU region and that it adequately explained and supported its decision to focus on these two pollutants through its reliance on the MANEVU technical analyses cited in its submission.

Section 51.308(f)(2)(i) requires states to evaluate and determine the emission reduction measures that are necessary to make reasonable progress by applying the four statutory factors to sources in a control analysis. As explained previously, the MANEVU Asks are a mix of measures for sectors and groups of sources identified as reasonable for states to address in their regional haze plans. Several of the Asks include analyses of emissions controls, and Connecticut identifies numerous existing controls that are in the SIP and are included in the long-term strategy. While MANEVU formulated the Asks to be "reasonable emission reduction strategies" to control emissions of

visibility impairing pollutants,⁶⁶ Ask 3 (adoption of ultra-low sulfur fuel oil) engages with the requirement that states determine the emission reduction measures that are necessary to make reasonable progress through consideration of the four factors. As laid out in further detail below, the EPA is proposing to find that MANEVU's four-factor analysis conducted to support the emission reduction measures in Ask 3, satisfies the requirement of § 51.308(f)(2)(i). The emission reduction measures that are necessary to make reasonable progress must be included in the long-term strategy, *i.e.*, in Connecticut's SIP. 40 CFR 51.308(f)(2).

Connecticut asserted that it satisfies Ask 1 because the state permits for the EGUs covered by this Ask include year-round emission limits and require that controls be run at all times the units are in operation and emitting air pollutants. Furthermore, the requirements to maintain and operate the control equipment to minimize emissions are made enforceable through record keeping and reporting requirements contained in previously SIP-approved RCSA section 22a-174-7 (79 FR 41427) and New Source Review permits. As each of these units are at Title V sources, the requirements are federally enforceable, and Connecticut renews the permits every five years. EPA thus agrees that Connecticut satisfied Ask 1.

Ask 2 addresses the sources MANEVU determined have the potential for larger than, or equal to, 3.0 Mm⁻¹ visibility impact at any MANEVU Class I area; the Ask requests MANEVU states to conduct four-factor analyses for the specified sources within their borders. This Ask explicitly engages with the statutory and regulatory requirement to determine reasonable progress based on the four factors; MANEVU considered it "reasonable to have the greatest contributors to visibility impairment conduct a four-factor analysis that would determine whether emission control measures should be pursued and what would be reasonable for each source."⁶⁷

As an initial matter, EPA does not generally agree that 3.0 Mm⁻¹ visibility impact is a reasonable threshold for source selection. The RHR recognizes that, due to the nature of regional haze visibility impairment, numerous and sometimes relatively small sources may need to be selected and evaluated for control measures in order to make reasonable progress. See 2021 Clarifications Memo at 4. As explained

⁶⁴ See "Contributions to Regional Haze in the Northeast and Mid-Atlantic United States: Mid-Atlantic/Northeast Visibility Union (MANEVU) Contribution Assessment. NESCAUM. August 2006."

⁶⁵ See "Mid-Atlantic/Northeast U.S. Visibility Data, 2004–2019 (2nd RH SIP Metrics). MANEVU (prepared by Maine Department of Environmental Protection). January 21, 2021, revision."

⁶⁶ *Id.*

⁶⁷ See "MANEVU Regional Haze Consultation Report and Consultation Documentation—Final."

⁶³ See CT RH Submittal at 75, 78.

in the 2021 Clarifications Memo, while states have discretion to choose any source selection threshold that is reasonable, “[a] state that relies on a visibility (or proxy for visibility impact) threshold to select sources for four-factor analysis should set the threshold at a level that captures a meaningful portion of the state’s total contribution to visibility impairment to Class I areas.” 2021 Memo at 3. In this case, the 3.0 Mm^{-1} threshold did not identify any sources in Connecticut (and identified only 22 across the entire MANEVU region), indicating that it may be unreasonably high. We also note, however, that the 3.0 Mm^{-1} threshold used in this Ask is only one part of the MANEVU source identification process and that being below this threshold did not necessarily exclude a source from additional review in connection with another Ask.

The EPA agrees that Connecticut reasonably determined it has satisfied Ask 2. As explained above, while we do not generally agree that a 3.0 Mm^{-1} threshold for selecting sources for four-factor analysis results in a set of sources the evaluation of which has the potential to meaningfully reduce the state’s contribution to visibility impairment, the MANEVU analysis did not identify any sources in Connecticut with an impact at or above 3.0 Mm^{-1} . EPA notes that the MANEVU analysis also did not identify any sources in Connecticut above 2.0 Mm^{-1} and only once source above 1 Mm^{-1} : Bridgeport Harbor Station Unit 3 (at 1.22 Mm^{-1}),⁶⁸ which permanently retired on May 31, 2021. The State of Connecticut has revoked the permit for this unit⁶⁹ and has committed funding to assist in demolishing the facility and redeveloping the site.⁷⁰

Ask 3, which addresses the sulfur content of heating oil used in MANEVU states, is based on a four-factor analysis for the heating oil sulfur reduction regulations contained in that Ask;⁷¹ specifically, for the control strategy of reducing the sulfur content of distillate oil to 15 ppm. The analysis started with an assessment of the costs of retrofitting refineries to produce 15 ppm heating oil in sufficient quantities to support implementation of the standard, as well

as the impacts of requiring a reduction in sulfur content on consumer prices. The analysis noted that, as a result of previous EPA rulemakings to reduce the sulfur content of on-road and non-road-fuels to 15 ppm, technologies are currently available to achieve sulfur reductions and many refiners are already meeting this standard, meaning that the capital investments for further reductions in the sulfur content of heating oil are expected to be relatively low compared to costs incurred in the past. The analysis also examined, by way of example, the impacts of New York’s existing 15 ppm sulfur requirements on heating oil prices and concluded that the cost associated with reducing sulfur was relatively small in terms of the absolute price of heating oil compared to the magnitude of volatility in crude oil prices. It also noted that the slight price premium is compensated by cost savings due to the benefits of lower-sulfur fuels in terms of equipment life and maintenance and fuel stability. Consideration of the time necessary for compliance with a 15 ppm sulfur standard was accomplished through a discussion of the amount of time refiners had needed to comply with the EPA’s on-road and non-road fuel 15 ppm requirement, and the implications existing refinery capacity and distribution infrastructure may have for compliance times with a 15 ppm heating oil standard. The analysis concluded that with phased-in timing for states that have not yet adopted a 15 ppm heating oil standard there “appears to be sufficient time to allow refiners to add any additional heating oil capacity that may be required.”⁷² The analysis further noted the beneficial energy and non-air quality environmental impacts of a 15 ppm sulfur heating oil requirement and that reducing sulfur content may also have a salutary impact on the remaining useful life of residential furnaces and boilers.⁷³

The EPA agrees that Connecticut reasonably relied on MANEVU’s four-factor analysis for a low-sulfur fuel oil regulation, which engaged with each of the statutory factors and explained how the information supported a conclusion that a 15 ppm sulfur fuel oil standard for fuel oils is reasonable. As noted above, RCSA 22a–174–19a limits the sulfur content of home heating oil to 15 ppm and the sulfur content of off-road diesel to 3000 ppm (0.3%S). RCSA 22a–174–19b further limits sulfur content of fuel oil sold in Connecticut for use in stationary sources to 15 ppm for distillate and 3000 ppm (0.3%S) for

aviation and residual fuels. EPA approved the latest revisions of these rules into Connecticut’s SIP on May 25, 2016,⁷⁴ and Connecticut includes both in its long-term strategy for the second planning period.⁷⁵ Connecticut’s SIP-approved ultra-low sulfur fuel oil rule is consistent with Ask 3’s sulfur content standards for the three types of fuel oils (distillate oil, #4 residual oil, #6 residual oil). EPA therefore agrees that Connecticut satisfied Ask 3.

Connecticut concluded that no additional updates were needed to meet Ask 4, which requests that MANEVU states pursue updating permits, enforceable agreements, and/or rules to lock-in lower emission rates for SO_2 , NO_x and PM at EGUs and other sources larger than 250 MMBtu per hour that have switched operations to lower emitting fuels. As noted above, Connecticut has asserted that EGUs and large sources are already subject to Title V permitting requirements under RCSA section 22a–174–33 and that permits for these sources are renewed every five years and specify allowable operating scenarios, which includes type of fuels fired. Any change in fuel type that is not allowed by permit would trigger requirements for a new or modified permit under RCSA sections 22a–174–3a and –33, which are in the SIP. While requirements for lower emitting fuels contained in state fuel sulfur regulations at RCSA sections 22a–174–19a may be a means to achieve SO_2 reductions at sources covered by this Ask that have switched to a lower emitting fuel oil, it is not clear from the discussion in Connecticut’s submittal what actions the State has “pursued” under this Ask to “lock-in lower emission rates” of SO_2 , NO_x and PM at other sources covered by the Ask (*i.e.*, sources that have switched to other lower emitting fuel types). The submittal does not provide specific examples of sources previously authorized to burn more than one fuel type that have been “locked-in” to the lower-emitting fuel under this Ask. Satisfaction of Ask 4 is not necessarily a required element of a Regional Haze SIP, however. In addition, as Connecticut notes, any sources that wish to make a future switch to higher emitting fuels not currently authorized by permit are required to revise their permits to reflect the change, and state rules favor lower-emitting fuels and make any permit revision subject to additional analyses, including NSR.

Ask 5 addresses NO_x emissions from peaking combustion turbines that have

⁶⁸ See 2016 MANEVU CALPUFF Modeling of Large Electrical Generating Units and Industrial Sources.

⁶⁹ See “Combined NSR & Registration Revocation Letter” in the docket for this rulemaking.

⁷⁰ See <https://www.ctpost.com/news/article/ct-bridgeport-pseg-power-plant-demolition-18388093.php> (also in docket for this rulemaking).

⁷¹ See 2016 Updates to the Assessment of Reasonable Progress For Regional Haze In MANEVU Class I Areas.

⁷² *Id.* at 8–7.

⁷³ *Id.* at 8–8.

⁷⁴ 81 FR 33134.

⁷⁵ See CT RH SIP Submittal at 75.

the potential to operate on high electric demand days. The Ask requests states to “strive” for NO_x emission standards of no greater than 25 ppm for natural gas and 42 ppm for fuel oil but at a minimum, meet NO_x emissions standards of no greater than 42 ppm for natural gas and 96 ppm for fuel oil.

As discussed above, Connecticut identified two recently approved regulations in the SIP that address NO_x emissions from electric generating units and other stationary sources. RCSA section 22a–174–22e prescribes averaging times and emission limits for units at major sources of NO_x. As of June 1, 2023, the state regulations set limits of 25 ppm for natural gas and 42 ppm for fuel oil at combined cycle turbines and 40 ppm for natural gas and 50 ppm for fuel oil at simple cycle turbines. The combined cycle limits match the “strive for” limits in the Ask. And while the simple cycle limits do not, they are more stringent than the “minimum” limits in the Ask.⁷⁶ In addition, RCSA section 22a–174–22f applies to combustion turbines at facilities that are not major sources of NO_x and provides that combustion turbines that meet the generating criterion of the Ask (*i.e.*, capable of generating 15 MW or more) are also subject to the limits in RCSA section 22a–174–22e. *See* RCSA section 22a–174–22f(a)(1), (e)(4). Connecticut includes both regulations in its long-term strategy for the second planning period,⁷⁷ and both are in the SIP. EPA agrees that Connecticut reasonably demonstrated that it meets Ask 5.

Finally, regarding Ask 6, Connecticut pointed to various state regulations, State Executive Orders, participation in offshore wind projects, and membership in RGGI as policy efforts to increase energy efficiency and reduce reliance on fossil fuels for energy. Additionally, as discussed in the previous section, Connecticut reported energy savings efforts through 2018 have resulted in avoidance of the equivalent of one 130 MW power plant. The EPA agrees that Connecticut has satisfied Ask 6’s request to consider and report in its SIP measures or programs related to energy efficiency, cogeneration, and other clean distributed generation technologies.

In sum, the EPA is proposing to find—based on Connecticut’s participation in the MANEVU planning process, how it has addressed the Asks, and the EPA’s assessment of Connecticut’s emissions and point sources—that Connecticut has complied with the requirements of

§ 51.308(f)(2)(i). Specifically, Connecticut’s application of MANEVU Ask 3 engages with the requirement that states evaluate and determine the emission reduction measures necessary to make reasonable progress by considering the four statutory factors.

The EPA is proposing to find the state’s approach meets the statutory and regulatory requirements for several reasons. Connecticut reasonably evaluated and explained its decision to focus on SO₂ and NO_x to address visibility impairment within the MANEVU region. Connecticut adequately supported that decision through reasonable reliance on the MANEVU technical analyses cited in its submission. In addition, as the EPA discusses in more detail in section IV.I. below, Connecticut adequately responded to comments to consider sources identified by the FLMs through the consultation process. The Agency notes that MANE–VU concluded that sulfates from SO₂ emissions were still the primary driver of visibility impairment in the second implementation period and that MANEVU conducted a four-factor analysis to support Ask 3, which requests that states pursue ultra-low sulfur fuel oil standards to address SO₂ emissions. Connecticut’s SIP-approved sulfur in fuel rule sets stringent limits for sulfur content and SO₂ emissions for fuels. Additionally, Connecticut’s SIP submittal identifies a long-term strategy that includes five state regulations previously approved into its SIP. The provisions at RCSA 22a–174–19a control SO₂ emissions by limiting the sulfur content of home heating oil to 15 ppm and the sulfur content of off-road diesel to 3000 ppm (0.3%S). RCSA 22a–174–19b further controls SO₂ emissions by limiting sulfur content of fuel oil sold in Connecticut for use in stationary sources to 15 ppm for distillate and 3000 ppm (0.3%S) for aviation and residual fuels. EPA approved the latest revisions of these rules into Connecticut’s SIP on May 25, 2016.⁷⁸ Connecticut’s regulations at RCSA 22a–174–22e and RCSA 22a–174–22f prescribe averaging times and set emission limits for sources of NO_x at 25 ppm for natural gas and 42 ppm for fuel oil at combined cycle turbines and at 40 ppm for natural gas and 50 ppm for fuel oil at simple cycle turbines. EPA most recently approved these regulations into Connecticut’s SIP on July 14, 2021, and July 31, 2017, respectively.⁷⁹ Further, RCSA 22a–174–38, most recently approved into Connecticut’s SIP on July

31, 2017,⁸⁰ regulates NO_x emissions from municipal waste combustors.

The EPA also notes the relatively low impact Connecticut’s emissions have on the visibility impairment in nearby Class 1 areas. While, as discussed earlier, we do not necessarily agree with the level of the State’s chosen 2% contribution threshold, it appears that emissions from Connecticut have relatively small contributions to Class I areas.⁸¹ Further, Connecticut is in the Ozone Transport Region and is currently designated nonattainment statewide for both the 2008 and 2015 ozone standards. As a result, Connecticut already imposes stringent controls on its sources, including through statewide Reasonably Available Control Technology (RACT) requirements, to limit emissions of the ozone precursors NO_x and VOCs. In addition, Connecticut must continue to control emissions of these precursors to attain, and then maintain, the ozone standards. As NO_x and VOCs are also contributors to visibility impairment, these requirements have had the additional effect of controlling haze-forming emissions from sources throughout the State and are generally reflected in the MANEVU contribution screening results. Based on the MANEVU contribution screening analysis, Connecticut’s highest percent mass-weighted sulfate and nitrate contribution to any Class I area is estimated to be 1.4% at Moosehorn Wilderness and Roosevelt Campobello International Park, and 1.3% and 1.2% to Acadia National Park and the Lye Brook Wilderness Area, respectively.⁸² Slightly lower percent contributions are estimated from Connecticut’s emissions to the other Class I areas in the MANEVU states: 1.0% to the Brigantine Wilderness Area and 0.7% to the two New Hampshire Wilderness Areas.⁸³ As discussed earlier, Connecticut’s submittal includes and adopts a four-factor analysis conducted by the MANEVU states to support low-sulfur fuel restrictions that Connecticut has included in its long-term strategy. EPA believes it was reasonable for Connecticut not to conduct additional four-factor analyses in this case because haze-forming emissions from the State are already limited by EPA-approved emissions limits in the SIP (as a result of other CAA requirements), there are no other large visibility impairing point sources of SO₂ or NO_x in the State, and the State’s overall small contributions to

⁷⁶ *See* CT RH SIP Submittal, table 5–2.

⁷⁷ *See id.* at 75.

⁷⁸ 81 FR 33134.

⁷⁹ 86 FR 37053; 82 FR 35454.

⁸⁰ 82 FR 35454.

⁸¹ *See* CT RH Submittal at 19–27, 46.

⁸² *See* table 4–1 of the CT RH SIP.

⁸³ *See id.*

visibility impairment in nearby Class I areas.

For the above reasons, the EPA proposes to find that Connecticut's SIP submittal satisfies the requirements that a State submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area that may be affected by emissions from the State and that the long-term strategy include the emission reduction measures that are necessary to make reasonable progress determined by considering the four factors.

c. Additional Long-Term Strategy Requirements

The consultation requirements of § 51.308(f)(2)(ii) provide that states must consult with other states that are reasonably anticipated to contribute to visibility impairment in a Class I area to develop coordinated emission management strategies containing the emission reductions measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require states to consider the emission reduction measures identified by other states as necessary for reasonable progress and to include agreed upon measures in their SIPs, respectively. Section 51.308(f)(2)(ii)(C) speaks to what happens if states cannot agree on what measures are necessary to make reasonable progress.

Connecticut participated in and provided documentation of the MANEVU intra- and inter-RPO consultation processes, which included consulting with both MANEVU and non-MANEVU states about emissions from Connecticut reasonably anticipated to contribute to visibility impairment in Class I areas within the MANEVU area and in adjacent areas. The consultations addressed developing coordinated emission management strategies containing the emission reductions necessary to make reasonable progress at the Class I areas impacted by emissions from States within MANEVU. Connecticut addressed the MANEVU Asks by providing information on the enforceable measures it has in place that satisfy each Ask.⁸⁴ While Connecticut did not receive any requests from non-MANEVU states to consider additional measures to address visibility impairment in Class I areas outside MANEVU, MANEVU documented disagreements that occurred during consultation. For instance, MANEVU noted in its Consultation Report that upwind states expressed concern regarding the analyses the RPO utilized

for the selection of states for the consultation. MANEVU agreed that these tools, as all models, have their limitations, but nonetheless deemed them appropriate. Additionally, there were several comments regarding the choice of the 2011 modeling base year. MANEVU agreed that the choice of base year is critical to the outcome of the study. MANEVU acknowledged that there were newer versions of the emission inventories and the need to use the best available inventory for each analysis. MANEVU, however, concluded that the selected inventories were appropriate for the analysis. Additionally, upwind states noted that they would not be able to address the MANEVU Asks until they finalize their SIPs. MANEVU believed the assumption of the implementation of the Asks from upwind states in its 2028 control case modeling was reasonable, and Connecticut included both the 2028 base case and control case modeling results in its SIP, representing visibility conditions at the Class 1 areas in the MANU-VU States assuming upwind states do not and do implement the Asks, respectively.

In sum, Connecticut participated in the MANEVU intra- and inter-RPO consultation and included in its SIP submittal the measures identified and agreed to during those consultations, thereby satisfying § 51.308(f)(2)(ii)(A) and (B). Connecticut satisfied § 51.308(f)(2)(ii)(C) by participating in MANEVU's consultation process, which documented the disagreements between the upwind states and MANEVU and explained MANEVU's reasoning on each of the disputed issues. Based on the entirety of MANEVU's intra- and inter-RPO consultation and MANEVU's and Connecticut's responses to comments on the SIP submission and various technical analyses therein, we propose to determine that Connecticut has satisfied the consultation requirements of § 51.308(f)(2)(ii).

The documentation requirement of § 51.308(f)(2)(iii) provides that states may meet their obligations to document the technical bases on which they are relying to determine the emission reductions measures that are necessary to make reasonable progress through an RPO, as long as the process has been "approved by all State participants." As explained above, Connecticut chose to rely on MANEVU's technical information, modeling, and analysis to support development of its long-term strategy. The MANEVU technical analyses on which Connecticut relied are listed in the state's SIP submission and include source contribution assessments, information on each of the

four factors and visibility modeling information for certain EGUs, and evaluations of emission reduction strategies for specific source categories. Connecticut also provided additional information to further demonstrate the technical bases and emission information it relied on to determine the emission reductions measures that are necessary to make reasonable progress. Based on the documentation provided by the state, we propose to find Connecticut satisfies this requirement of § 51.308(f)(2)(iii).

Section 51.308(f)(2)(iii) also requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the state has submitted triennial emissions data to the EPA (or a more recent year), with a 12-month exemption period for newly submitted data. Connecticut's SIP submission included 2017 NEI emission data for NO_x, SO₂, PM, VOCs and NH₃ and 2017 Air Markets Program Data (AMPD) emissions for NO_x and SO₂. Based on Connecticut's consideration and analysis of the 2017 and 2019 emission data in its SIP submittal, the EPA proposes to find that Connecticut has satisfied the emissions information requirement in § 51.308(f)(2)(iii).

We also propose to find that Connecticut reasonably considered the five additional factors in § 51.308(f)(2)(iv) in developing its long-term strategy. Pursuant to § 51.308(f)(2)(iv)(A), Connecticut noted that existing and ongoing state and federal emission control programs that contribute to emission reductions through 2028 would impact emissions of visibility impairing pollutants from point and nonpoint sources in the second implementation period. Connecticut included in its SIP a comprehensive lists of control measures and other requirements that will continue to reduce emissions of visibility impairing pollutants, identifying the source category and corresponding Connecticut regulatory provisions. These measures include SIP approved revisions to RCSA section 22a-174-38 (82 FR 35454) to obtain NO_x emission reductions from municipal waste combustors; implementation of RCSA sections 22a-174-22e (86 FR 37053) and 22a-174-22f (82 FR 35454) to obtain NO_x emissions from major and minor sources of NO_x; and implementation of the last phase of RCSA section 22a-174-19b (81 FR 33134) to reduce sulfur oxide emissions from fuel burning sources.

⁸⁴ See "MANEVU Regional Haze Consultation Report."

Connecticut's consideration of measures to mitigate the impacts of construction activities as required by § 51.308(f)(2)(iv)(B) includes, in section 8.2 of its SIP submission, measures that Connecticut has implemented to mitigate the impacts from such activities. Connecticut has implemented standards that reduce fugitive dust emissions from construction, rules to address exhaust emissions including rules to limit the idling of vehicles and equipment, rules to reduce allowable smoke from on-road diesel engines, and general conformity rules.

Pursuant to § 51.308(f)(2)(iv)(C), source retirements and replacement schedules are addressed in section 8.3 of Connecticut's submission. Source retirements and replacements were considered in developing the 2028 emission projections, with on the books/ on the way retirements and replacements included in the 2028 projections. The EGU point sources included in the inventories used in the MANEVU contribution assessment and that were subsequently retired are described in section 8.3 of the Connecticut submission. Connecticut calculated a net reduction of approximately 8,990 tons per year (tpy) of allowable NO_x emissions and 17,350 tpy of allowable SO₂ emissions between the 2011 base year and the 2028 projected year based on EGU retirements (including retirement of the last coal-fired unit in the state) and replacement during that time with lower emitting units.

In considering smoke management as required in 40 CFR 51.308(f)(2)(iv)(D), Connecticut explained, in section 8.4 of its submission, that it addresses smoke management through a program under state law at CGS section 22a-174(f) that authorizes open burning (including prescribed burns for agriculture and wildland vegetation management purposes) through permits issued by municipal officials but limits it on poor air quality days, thereby reducing the impacts of prescribed burns on visibility. EPA approved this program into Connecticut's SIP on September 1, 2016. 81 FR 60274. Connecticut considers these efforts to be sufficient to protect visibility in Class I areas, including from agriculture- and forestry-related smoke. The EPA agrees that Connecticut adequately considered smoke management practices as part of its submittal as required by § 51.308(f)(2)(iv)(D).

Connecticut considered the anticipated net effect of projected changes in emissions as required by § 51.308(f)(2)(iv)(E) by discussing, in section 8.1 of its submission, various

programs and state regulations that control emissions from the State's point, area, and mobile sources. Connecticut, through its nonattainment status for the 2008 and 2015 ozone National Ambient Air Quality Standards, is required to implement programs to reduce vehicle miles traveled (VMTs), which will reduce emissions in the mobile source sector. This sector also contributes to regional haze, so any reductions would have the added benefit of helping to improve visibility. Additionally, section 6 of the Connecticut submittal contains emissions projections for 2028, modeled in collaboration with MANEVU. These projected emissions incorporate the impact of strategies that are on-the-books, anticipated growth in the respective sector, and anticipated unit closures and the MANEVU "Ask." The 2028 inventory projections demonstrate an overall reduction in emissions between the 2011 base year and 2028 modeled year thus, satisfying (f)(2)(iv)(e).

Because Connecticut has reasonably considered each of the five additional factors, the EPA proposes to find that Connecticut has satisfied the requirements of 40 CFR 51.308(f)(2)(iv).

F. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I area. Because Connecticut does not host a Class I area, it is not subject to either § 51.308(f)(3)(i) or 51.308(f)(3)(ii)(A). Section 51.308(f)(3)(ii)(B) requires that, if a state contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in *another* state and the RPG for the most impaired days in that Class I area is above the URP glidepath, the upwind state must provide the same demonstration.

None of the Class I areas in or adjacent to the MANEVU region have RPGs above their respective URP glidepath. Table 2-1 of Connecticut's SIP submittal summarizes baseline visibility conditions (*i.e.*, visibility conditions during 2000-2004) for the most impaired and clearest days at each area as well as information on natural visibility conditions. Table 2-3 of the submittal shows the values on the URP glidepaths for 2028. Figures 7-1 and 7-2 summarize the 2028 RPG for the most impaired days for each area, as well as the modeled 2028 base case (representing visibility conditions in 2028 with existing controls), respectively. These visibility conditions, as well as the 2028 reasonable progress goals for the clearest days, are also included. The 2028 RPGs for each Class I area are well below their respective

URP glidepaths. Therefore, § 51.308(f)(3)(ii)(B) is not applicable to Connecticut.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a state's regional haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. Since Connecticut does not contain any Class I areas, it is not required to submit the monitoring strategy referenced in § 51.308(f)(6), nor are the requirements in § 51.308(f)(6)(i), (ii), and (iv) applicable.

40 CFR 51.308(f)(6)(iii), however, applies to states with no Class I areas (such as Connecticut) and requires them to include in their Regional Haze SIPs procedures by which monitoring data and other information are used in determining the contribution of emissions from within the state to visibility impairment at Class I areas in other states. Monitoring in Connecticut that contributes data for assessing visibility is described in section 2.1 of the Connecticut SIP submission.⁸⁵ Visibility data analysis procedures are described in the MANEVU visibility data report. Other procedures and data used for determining Connecticut contribution to visibility impairment are described in section 4 of the Connecticut SIP and the MANEVU documents referenced.⁸⁶ An IMPROVE monitor at the Mohawk Mountain site in Connecticut provides data to assess current visibility, track changes in visibility, and help determine the causes of visibility impairment in Class I areas in the region.

Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available and estimates of future projected emissions. It also requires a commitment to update the inventory periodically. Connecticut provides for emissions inventories and estimates for future projected emissions by participating in the MANEVU RPO and complying with EPA's Air Emissions Reporting Rule (AERR). In 40 CFR part 51, subpart A, the AERR requires states to submit updated

⁸⁵ Connecticut's submission contains two sections identified as 2.1. The first one discusses the IMPROVE monitoring network.

⁸⁶ Mid-Atlantic/Northeast U.S. Visibility Data, 2004-2019 (2nd RH SIP Metrics).

emissions inventories for criteria pollutants to EPA's Emissions Inventory System (EIS) every three years. The emission inventory data are used to develop the NEI, which provides for, among other things, a triennial state-wide inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment.

Section 3 of Connecticut's submission includes tables of NEI data. The source categories of the emissions inventories included are: (1) Point sources, (2) nonpoint sources, (3) non-road mobile sources, and (4) on-road mobile sources. The point source category is further divided into AMPD point sources and non-AMPD point sources. Connecticut included NEI emissions inventories for the following years: 2002 (one of the regional haze program baseline years), 2008, 2011, 2014, and 2017; and for the following pollutants: SO₂, NO_x, PM₁₀, PM_{2.5}, VOCs, and NH₃.

Section 51.308(f)(6)(v) also requires states to include estimates of future projected emissions and include a commitment to update the inventory periodically. Connecticut relied on the MANEVU 2028 emissions projections for MANEVU states. MANEVU completed two 2028 projected emissions modeling cases—a 2028 base case that considers only on-the-books controls and a 2028 control case that considers implementation of the MANEVU Asks.⁸⁷

The EPA proposes to find that Connecticut has met the requirements of 40 CFR 51.308(f)(6) as described above, including through its continued participation in the MANEVU RPO and its on-going compliance with the AERR, and that no further elements are necessary at this time for Connecticut to assess and report on visibility pursuant to 40 CFR 51.308(f)(6)(vi). Connecticut's SIP submittal also includes a commitment to update the statewide emissions inventory periodically.

H. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires that periodic comprehensive revisions of states' Regional Haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable RPGs for any Class I area within the state and each Class I area outside the state that may be affected by emissions from within that state. Sections 51.308(g)(1) and (2) apply to all states

and require a description of the status of implementation of all measures included in a state's first implementation period regional haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to states with Class I areas within their borders and requires such states to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. Section 51.308(g)(4) applies to all states and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, § 51.308(g)(5), which also applies to all states, requires an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

Connecticut's submission describes the status of measures of the long-term strategy from the first implementation period.⁸⁸ As a member of MANEVU, Connecticut considered the MANEVU Asks and adopted corresponding measures into its long-term strategy for the first implementation period. The MANEVU Asks were: (1) Timely implementation of Best Available Retrofit Technology (BART) requirements; (2) EGU controls including Controls at 167 Key Sources that most affect MANEVU Class I areas; (3) Low sulfur fuel oil strategy; and (4) Continued evaluation of other control measures. Connecticut met all the identified reasonable measures requested during the first implementation period. During the first planning period for regional haze, programs that were put in place focused on reducing SO₂ emissions. The reductions achieved led to vast improvements in visibility at the MANEVU Federal Class I Areas due to reduced sulfates formed from SO₂

emissions. Connecticut describes the control measures that help control the emissions of VOCs, NO_x, PM and SO₂ from a wide range of sources in the SIP submission and identifies BART and Alternative to BART requirements in section 5.5. The submission also includes periodic emission data that demonstrate a decrease in VOCs, NO_x, PM and SO₂ emissions throughout the state.⁸⁹

The EPA proposes to find that Connecticut has met the requirements of 40 CFR 51.308(g)(1) and (2) because its SIP submission describes the measures included in the long-term strategy from the first implementation period, as well as the status of their implementation and the emission reductions achieved through such implementation.

Pursuant to § 51.308(g)(4), in section 3 of its submittal, Connecticut provided a summary of emissions of NO_x, SO₂, PM₁₀, PM_{2.5}, VOCs, and NH₃ from all sources and activities, including from point, nonpoint, non-road mobile, and on-road mobile sources, for the time period from 2002 to 2017. With respect to sources that report directly to the EPA, Connecticut also included AMPD state summary data for SO₂ and NO_x emissions for 2018 and 2019.

The reductions achieved by Connecticut emission control measures are seen in the emissions inventory. Based on Connecticut's SIP submission, NO_x emissions have steadily declined in Connecticut from 2002 through 2017, especially in the point, nonroad and onroad mobile sectors. NO_x emissions are expected to continue to decrease as fleet turnover occurs and the older more polluting vehicles and equipment are replaced by newer, cleaner ones. Emissions of SO₂ have shown a decline of 93% in Connecticut over the period 2002 to 2017. Connecticut attributes the reductions in point emissions to fuel switching from coal and oil to natural gas, federal and state low sulfur fuel regulations, NO_x budget and successor programs for power plants and the retirement of older units as well as improved controls on new units. Since some components of the MANEVU low sulfur fuel strategy were not implemented until 2018, and as MANEVU states continue to adopt rules to implement the strategy, additional SO₂ emissions reductions are expected to continue into the future.

Table 3–11 of Connecticut's submission shows VOC emissions from all NEI data categories for the period 2002 to 2017 in Connecticut. VOC emissions have shown a steady decline in Connecticut over this period. VOC

⁸⁷ See "OTC MANEVU 2011 Based Modeling Platform Support Document October 2018—Final."

⁸⁸ See section 5.5 of the CT RH SIP.

⁸⁹ See section 3 of the CT RH SIP.

decreases were achieved in all sectors due to Federal new engine standards for onroad and nonroad vehicles and equipment, the National and State low emission vehicle programs, SIP-approved area source rules such as consumer products, portable fuel containers, paints, autobody refinishing, asphalt paving applications, and solvent cleaning operations, and VOC storage tank rules.

In Connecticut's submission, table 3–14 shows a summary of PM₁₀ emissions from all NEI data categories point, nonpoint, non-road, and onroad for the period from 2002 to 2017 in Connecticut. In Connecticut, PM₁₀ emissions steadily decreased in the point, nonpoint, and nonroad categories for the period from 2002 to 2017. The apparent increase in the onroad emissions is due to changes in emission inventory calculation methodologies, which resulted in higher particulate matter estimates. The variation in emissions in the nonpoint category is due to changes in calculation methodologies for residential wood burning and fugitive dust categories, which have varied significantly.

Table 3–17 of Connecticut's submission shows a summary of PM_{2.5} emissions from all NEI data categories for the period from 2002 to 2017 in Connecticut. PM_{2.5} emissions steadily decreased in the nonroad category for the period from 2002 to 2014. Most reductions came from the nonpoint category, which experienced periodic variation in emissions due to changes in calculation methodologies for residential wood burning and fugitive dust categories. The decrease in nonroad PM_{2.5} emissions can likely be attributed to new Federal engine standards for nonroad vehicles and equipment.⁹⁰ Similarly, an overall decrease in onroad emissions can be attributed to Federal and State vehicle regulations and standards, which impose increasingly tighter emissions limits with incremental model year vehicles.⁹¹ The increase in emissions in the onroad category from 2002 to 2008 is due to changes in emission inventory calculation methodologies and a model change, as previously explained, which resulted in higher fine particulate matter estimates.

Table 3–20 of Connecticut's submission shows ammonia (NH₃) emissions from all NEI data categories for the period 2002 to 2017 in

Connecticut. Though ammonia decreases were achieved in the onroad sector due to Federal new engine standards for vehicles and equipment, increases and decreases from 2002 to 2017 in the other categories are due to reporting, grouping and methodology changes. There was little change to nonroad ammonia emissions. Overall, ammonia emissions have decreased from 2008 to 2017.

The EPA is proposing to find that Connecticut has satisfied the requirements of § 51.308(g)(4) by providing emissions information for NO_x, SO₂, PM₁₀, PM_{2.5}, VOCs, and NH₃ broken down by type of source.

Connecticut uses the emissions trend data in the SIP submission to support the assessment that anthropogenic haze-causing pollutant emissions in Connecticut have decreased during the reporting period and that changes in emissions have not limited or impeded progress in reducing pollutant emissions and improving visibility. The data Connecticut presents for NO_x, SO₂, VOCs, PM₁₀, PM_{2.5}, and NH₃ show consistently declining emissions of those pollutants. The EPA is proposing to find that Connecticut has met the requirements of § 51.308(g)(5).

I. Requirements for State and Federal Land Manager Coordination

Section 169A(d) of the CAA requires states to consult with FLMs before holding the public hearing on a proposed regional haze SIP, and to include a summary of the FLMs' conclusions and recommendations in the notice to the public. In addition, § 51.308(i)(2)'s FLM consultation provision requires a state to provide FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs can meaningfully inform the state's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough, but the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the state level. Section 51.308(i)(2) also requires that the consultation include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and their recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires states, in developing their

implementation plans, to include a description of how they addressed FLMs' comments.

The states in the MANEVU RPO conducted FLM consultation early in the planning process concurrent with the state-to-state consultation that formed the basis of the RPO's decision making process. As part of the consultation, the FLMs were given the opportunity to review and comment on the technical documents developed by MANE–VU. The FLMs were invited to attend the intra- and inter-RPO consultations calls among states and at least one FLM representative was documented to have attended seven intra-RPO meetings and all inter-RPO meetings. Connecticut participated in these consultation meetings and calls.⁹²

As part of this early engagement with the FLMs, on April 12, 2018, the NPS sent letters to the MANEVU states requesting that they consider specific individual sources in their long-term strategies.⁹³ NPS used an analysis of emissions divided by distance (Q/d) to estimate the impact of MANEVU facilities. To select the facilities, NPS first summed 2014 NEI NO_x, PM₁₀, SO₂, and SO₄ emissions and divided by the distance to a specified NPS mandatory Class I Federal area. NPS summed the Q/d values across all MANEVU states relative to Acadia, Mammoth Cave, and Shenandoah National Parks, ranked the Q/d values relative to each Class I area, created a running total, and identified those facilities contributing to 80% of the total impact at each NPS Class I area. NPS applied a similar process to facilities in Maine but relative to just Acadia National Park. NPS merged the resulting lists of facilities and sorted them by their states. NPS suggested that a state consider those facilities comprising 80% of the Q/d total, not to exceed the 25 top ranked facilities. The NPS identified nine facilities in Connecticut in this letter.⁹⁴ Connecticut addressed the NPS initial letter in section 5.4 of its proposed SIP. Connecticut explained that five of the facilities are municipal waste combustors that became subject to more stringent NO_x and ammonia limits in 2017 through the implementation of SIP-approved RCSCA 22a–174–38 (82 FR 35454) and whose emissions have, as a result, been reduced from the levels the NPS noted in its initial letter.⁹⁵ In addition, units at four of the other facilities became subject to more

⁹⁰ See <https://www.epa.gov/emission-standards-reference-guide/epa-emission-standards-nonroad-engines-and-vehicles> for info on the EPA's nonroad engine programs.

⁹¹ See 80 FR 13768.

⁹² See “MANEVU Regional Haze Consultation Report and Consultation Documentation—Final.”

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Connecticut RH Submittal at 53–55.

stringent NO_x limits in 2023 through the implementation of RCSA 22a–174–22e, which is also in Connecticut’s SIP (86 FR 37053).⁹⁶ Further, the coal-burning unit at one of these latter facilities retired in 2021 (that is, Bridgeport Harbor Unit 3),⁹⁷ and, as noted earlier, DEEP revoked the permit. Finally, DEEP explained that the Cromwell compressor station has also reduced its emissions from those noted by the NPS for this facility.⁹⁸ In 2019, the facility replaced several engines with more efficient and lower-emitting turbines that are subject to the NO_x emission limits in RCSA 22a–174–22e that meet the “strive for” limits in Ask 5 (*i.e.*, 25 ppmvd).⁹⁹ ¹⁰⁰ This facility is located in a severe nonattainment area and was issued a New Source Review permit for the new turbines.

On January 15, 2020, Connecticut sent the proposed SIP, including the above explanations of how it addressed the FLM comments, to representatives of the NPS, the U.S. Forest Service (USFS), and the U.S. Fish and Wildlife Service for a 60-day review and comment period pursuant to 40 CFR 51.308(i)(2) before making it available for public comment. Connecticut received comments from the NPS and the USFS. Connecticut included responses to the comments in appendix A of its submission to EPA, in accordance with § 51.308(i)(3). In its comments, the NPS requested that the State consider 4 municipal waste combustors (MWCs) for four-factor analysis. In response to NPS’s request, Connecticut again noted that MWCs in the State are already subject to SIP approved 22a–174–38. Connecticut also noted that the state is currently in nonattainment for both the 2008 and 2015 ozone standards and is required to impose RACT and obtain emission reductions of ozone precursors of not less than 3% per year in order to attain the ozone standards. Related to the RACT requirement, CT DEEP explained that it actively participates in an Ozone Transport Commission (OTC) workgroup to evaluate and compare emissions from MWCs and pursue more stringent regulation of their NO_x emissions. CT DEEP explained that the State has already committed in its RACT SIP to act on the information compiled by this workgroup and adhere to the resultant OTC recommendations for

MWC emission limits.¹⁰¹ CT DEEP also responded to comments from the USFS regarding three EGUs.¹⁰²

On December 3, 2020, CT DEEP issued a notice of public hearing and comment and the availability of the draft Regional Haze SIP revision for 2018–2028 on CT DEEP’s Public Notices and Hearings web page. The document announced the opportunity to submit written comments until January 29, 2021, as well as a public hearing proposed for January 29, 2021, provided such hearing was requested. No such request was received, and the hearing was cancelled. The Connecticut SIP submittal contains the public comments received and CT DEEP’s responses, including responses to additional comments received from the NPS during the public comment period.

For the reasons stated above, the EPA proposes to find that Connecticut has satisfied the requirements under 40 CFR 51.308(i) to consult with the FLMs on its regional haze SIP for the second implementation period.

J. Other Required Commitments

Connecticut’s January 5, 2022, SIP submission includes a commitment to revise and submit a regional haze SIP in 2028, and every ten years thereafter. The state’s commitment includes submitting periodic progress reports in accordance with § 51.308(f) and a commitment to evaluate progress towards the reasonable progress goal for each mandatory Class I Federal area located within the state and in each mandatory Class I Federal area located outside the state that may be affected by emissions from within the state in accordance with § 51.308(g).

V. Proposed Action

The EPA is proposing to approve the “Connecticut Regional Haze State Implementation Plan Revision Second Planning Period (2018–2028)”, Final Submittal dated November 2021 and submitted to EPA on January 5, 2022, as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f), (g), and (i).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

¹⁰¹ See Appendix A—Summary of Comments from U.S. Environmental Protection Agency and Federal Land Managers (FLMs) with Responses from the Department.

¹⁰² *Id.*

Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.
- In addition, this proposed rulemaking action, pertaining to Connecticut regional haze SIP submission for the second planning period, is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations

⁹⁶ *Id.*

⁹⁷ *Id.* at 54–55.

⁹⁸ *Id.* at 55 (table 5–3).

⁹⁹ *Id.*

¹⁰⁰ The permit restricts these turbines to a ppmvd NO_x emission limit, well below the “strive for” limits of Ask 5.

and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: July 15, 2024.

David Cash,

Regional Administrator, Region 1.

[FR Doc. 2024–15857 Filed 7–18–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2020–0610; FRL–11996–01–R6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Oklahoma; Control of Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the CAA section 111(d)/129 state plan revision submitted

by the State of Oklahoma for sources subject to the Commercial and Industrial Solid Waste Incineration units (CISWI) Emission Guidelines (EG). The Oklahoma CISWI plan was submitted to fulfill state obligations under CAA section 111(d)/129 to implement and enforce the requirements under the CISWI EG. The EPA is proposing to approve the state plan and amend the agency regulations in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before August 19, 2024.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2020–0610, at <https://www.regulations.gov> or via email to ruan-lei.karolina@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Karolina Ruan Lei, (214) 665–7346, ruan-lei.karolina@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division—State Planning and Implementation Branch (R6–ARSH), (214) 665–7346, ruan-lei.karolina@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

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

I. Background

A. Clean Air Act Section 111(d)/129 Requirements

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and the EPA has established emission guidelines for such existing sources. CAA section 129 directs the EPA to establish standards of performance for new sources (NSPS) and emissions guidelines (EG) for existing¹ sources for each category of solid waste incinerator specified in CAA section 129. Under CAA section 129, NSPS and EG must contain numerical emissions limitations for particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. While NSPS are directly applicable to new sources, EG for existing sources (designated facilities) are intended for states to use to develop a state plan to submit to the EPA. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutants.

State plan submittals and revisions under CAA section 111(d) must be consistent with the applicable EG and the requirements of 40 CFR part 60, subpart B, and part 62, subpart A. The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans and plan revisions under CAA section 111(d). Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which the EPA will approve or disapprove such plans and plan revisions submitted by a state. Once approved by the EPA, the state plan becomes federally enforceable. If a state does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a federal plan. However, 40 CFR 60.23(b) and 40 CFR 62.06 provide that if there are no

¹ In this context and for purposes under CAA section 111(d)/129, the term “existing” source is synonymous with designated facility. These are sources that were constructed, reconstructed, or modified on or before the date specified in the emission guideline the source applies to.

designated facilities of the designated pollutant(s) in the state, the state may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a CAA section 111(d)/129 plan.

B. Commercial and Industrial Solid Waste Incineration Rules

On December 1, 2000, EPA promulgated the CISWI NSPS at 40 CFR part 60, subpart CCCC, and the CISWI EG at 40 CFR part 60, subpart DDDD (65 FR 75338). On March 21, 2011, after voluntarily remanding the 2000 CISWI NSPS and EG, the EPA promulgated revised CISWI NSPS and EG in a final rule (76 FR 15704). Correspondingly, on the same date, EPA promulgated a final rule under the Resource Conservation and Recovery Act (RCRA) to identify which non-hazardous secondary materials, when used as fuels or ingredients in combustion units, are “solid wastes” (76 FR 15456).² EPA subsequently promulgated amendments to both March 21, 2011 rules on February 7, 2013, to clarify several provisions in order to implement the non-hazardous secondary materials rule as EPA originally intended (78 FR 9112). Reconsideration of certain aspects of the final CISWI rule resulted in minor amendments (81 FR 40956, June 23, 2016).³ On April 16, 2019, EPA finalized further amendments to the CISWI NSPS and EG in order to provide clarity and address implementation issues (84 FR 15846).⁴

The CISWI NSPS and EG were significantly revised in the March 21, 2011, and February 7, 2013, rulemakings, and the subsequent final rulemakings on June 23, 2016, and April 16, 2019, contained minor amendments

to the CISWI rules that did not make any changes to the applicability of the designated facilities, including 40 CFR 60.2505, “Am I affected by this subpart?”. As provided by 40 CFR 60.2505, the designated facilities to which the CISWI EG apply are CISWI and air curtain incinerators (ACI)⁵ that commenced construction on or before June 4, 2010, or for which modification or reconstruction was commenced on or before August 7, 2013, with limited exceptions as provided under 40 CFR 60.2555.

C. Oklahoma CAA Section 111(d)/129 CISWI Plan Approval History

On June 29, 2005, the Oklahoma Department of Environmental Quality (ODEQ) submitted a CISWI state plan to address the 2000 CISWI EG requirements and fulfill obligations under CAA sections 111(d) and 129. Oklahoma’s 2005 CISWI plan controlled emissions from sources subject to the 2000 CISWI EG, found at 40 CFR part 60, subpart DDDD, within the State of Oklahoma. Oklahoma’s 2005 CISWI plan was approved by EPA on October 4, 2005 (70 FR 57764).

D. Oklahoma’s CAA Section 111(d)/129 CISWI Plan Submittal for This Rulemaking

In order to address the most recent CISWI EG requirements and fulfill obligations under CAA sections 111(d) and 129, ODEQ submitted a state plan revision for the control of emissions from sources subject to the CISWI EG for the State of Oklahoma on November 16, 2020. The Oklahoma 2020 CISWI plan implements and enforces the applicable provisions under the CISWI EG at 40 CFR part 60, subpart DDDD, most recently amended on April 16, 2019, and additionally meets the relevant requirements of the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B. A copy of the Oklahoma submittal is included in the docket for this rulemaking.

E. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) (“SAFETEA”), to administer in certain

areas of Indian country (as defined at 18 U.S.C. 1151) the State’s environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State’s request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).⁶

On October 1, 2020, the EPA approved Oklahoma’s SAFETEA request to administer all the State’s EPA-approved environmental regulatory programs, including Plans for Designated Facilities and Pollutants under sections 111(d) and 129, in the requested areas of Indian country. As requested by Oklahoma, the EPA’s approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

EPA’s approval under SAFETEA expressly provided that to the extent EPA’s prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.⁷ The approval also provided that future revisions or amendments to Oklahoma’s approved environmental

² See 40 CFR part 241, Solid Wastes Used as Fuels or Ingredients in Combustion Units, also known as the “Non-Hazardous Secondary Material Rule.” The identification of solid waste in the Non-Hazardous Secondary Material Rule is used to determine whether a combustion unit is required to meet the emissions standards for solid waste incineration units issued under sections 111 and 129 of the Act, or meet the emissions standards for commercial, industrial, and institutional boilers issued under section 112 of the Act.

³ In the June 23, 2016, final action, the EPA finalized amendments on these four topics: Definition of “continuous emission monitoring system (CEMS) data during startup and shutdown periods;” particulate matter (PM) limit for the waste-burning kiln subcategory; fuel variability factor (FVF) for coal-burning energy recovery units (ERUs); and the definition of “kiln.”

⁴ In the April 16, 2019, final action, the EPA made technical amendments to correct and clarify various parts of the June 23, 2016, final rule; this includes issues with implementation of the standards, testing and monitoring issues and inconsistencies, and other regulatory provisions.

⁵ These air curtain incinerators (ACI) that are subject to the CISWI EG at 40 CFR part 60, subpart DDDD, are those ACI that may not fit the definition of a “CISWI” under the CISWI EG. See 40 CFR 60.2875.

⁶ In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit’s decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA’s decision, described in this section, on October 1, 2020.

⁷ EPA’s prior approvals relating to Oklahoma’s CAA section 111(d)/129 plans did not apply in areas of Indian country located in the state. *See, e.g.*, 70 FR 57764 (October 4, 2005). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).⁸

As explained earlier in this action, the EPA is proposing to approve the Oklahoma CAA section 111(d)/129 CISWI state plan that was submitted by the State of Oklahoma on November 16, 2020. More specifically, we are proposing to approve Oklahoma's CISWI plan addressing CAA section 111(d)/129 requirements for CISWI under the CISWI EG codified at 40 CFR part 60, subpart DDDD. Consistent with the EPA's October 1, 2020, SAFETEA approval, if this approval is finalized as proposed, this Oklahoma CISWI plan will apply to all Indian country within Oklahoma, other than the excluded Indian country lands, as described earlier. The Oklahoma CISWI plan applies statewide, but only affects specific types of facilities, as discussed earlier in this notice. ODEQ has only identified one existing facility, located within the Muscogee Nation reservation, that is affected by the Oklahoma CISWI plan we are proposing to approve. Any newly constructed incinerators subject to the CISWI EG would be subject to the CISWI NSPS, not the CISWI plan implementing the CISWI EG requirements.

II. The EPA's Evaluation

The EPA has evaluated the Oklahoma CISWI plan to determine whether the plan meets applicable requirements from the CISWI EG at 40 CFR part 60, subpart DDDD, and the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B.

Section 60.2515 of the CISWI EG addresses what must be included in state plan submittals. These requirements include:

(1) Inventory of affected CISWI, including those that have ceased operation but have not been dismantled.

(2) Inventory of emissions from affected CISWI in the State.

(3) Compliance schedules for each affected CISWI.

(4) Emission limitations, operator training and qualification requirements, a waste management plan, and operating limits for affected CISWIs that are at least as protective as the emission guidelines contained in this subpart.

(5) Performance testing, recordkeeping, and reporting requirements.

(6) Certification that the hearing on the state plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

(7) Provision for State progress reports to EPA.

(8) Identification of enforceable State mechanisms that the State selected for implementing the emission guidelines of this subpart.

(9) Demonstration of the state's legal authority to carry out the sections 111(d) and 129 in the state plan.

Section 60.2515 of the CISWI EG also requires the state plan to demonstrate that it is at least as protective as the CISWI EG if it deviates from the format and content of the EG in 40 CFR part 60, subpart DDDD. The state plan must also follow the requirements of 40 CFR part 60, subpart B.

The EPA's detailed rationale and discussion on the Oklahoma CISWI plan and how the plan meets these requirements can be found in the Technical Support Document (TSD), located in the docket for this rulemaking.

III. Proposed Action

The EPA is proposing to approve the Oklahoma CISWI plan, submitted by ODEQ on November 16, 2020, and amend 40 CFR part 62 in accordance with the requirements under sections 111(d) and 129 of the CAA. The EPA is proposing to find that the Oklahoma CISWI plan is at least as protective as the Federal requirements provided under the CISWI EG, codified at 40 CFR part 60, subpart DDDD. Once approved by the EPA, the Oklahoma CISWI plan will become federally enforceable.

IV. Environmental Justice Considerations

Information on Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income

Populations, 59 FR 7629, February 16, 1994) and how EPA defines environmental justice can be found in the section titled "Statutory and Executive Order Reviews" in this proposed rule. EPA is providing additional analysis of environmental justice associated with this action. The results of this analysis are being provided for informational and transparency purposes, not as a basis of our proposed action.

EPA conducted screening analyses using EJSCREEN, an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.⁹ The EJSCREEN tool presents these indicators at a Census block group (CBG) level or a larger user-specified "buffer" area that covers multiple CBGs.¹⁰ An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to environmental justice and is subject to uncertainty in some underlying data (e.g., some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).¹¹ To help mitigate this uncertainty, we have summarized EJSCREEN data within larger "buffer" areas covering multiple block groups and representing the average resident within the buffer areas surrounding the sources. We present EJSCREEN environmental indicators to help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population. These indicators of overall pollution burden include estimates of ambient particulate matter (PM_{2.5}) and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan

⁸In accordance with Executive Order 13990, EPA is currently reviewing our October 1, 2020, SAFETEA approval. On December 22, 2021, EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. See <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. EPA expects to have further discussions with tribal governments and State of Oklahoma as part of this reconsideration. EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20–9635 (10th Cir.). Pending completion of EPA's review, EPA is proceeding with this proposed action in accordance with the October 1, 2020, approval. EPA may make further changes to the approval of Oklahoma's plan to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020 SAFETEA approval. To the extent any change occurs in the scope of Oklahoma's CAA 111(d)/129 authority in Indian country before the finalization of this proposed rule, such a change may affect the scope of the EPA's final action on the proposed rule.

⁹The EJSCREEN tool is available at <https://www.epa.gov/ejscreen>.

¹⁰See <https://www.census.gov/programs-surveys/geography/about/glossary.html>.

¹¹In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (i.e., lower sampling error), particularly for small geographic areas and population groups. For more information, see https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.

(RMP) sites, and hazardous waste facilities.¹² EJSCREEN also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and education.

The EPA prepared EJSCREEN reports covering a buffer area of approximately 3-mile radius around the incinerator identified by ODEQ as subject to the CAA section 111(d)/129 CISWI plan. Table 1 presents a summary of results

from the EPA's screening-level analysis for the areas surrounding the affected incinerator in Oklahoma compared to the U.S. as a whole. The full, detailed EJSCREEN report is provided in the docket for this rulemaking.

TABLE 1—EJSCREEN ANALYSIS SUMMARY FOR THE EXISTING INCINERATOR IN OKLAHOMA SUBJECT TO THE CISWI EG

Variables	Values for buffer areas (radius) for each affected incinerator and the U.S. (percentile within U.S. where indicated)	
	Henryetta Pallet Company (Henryetta, 3 miles)	U.S.
Pollution Burden Indicators		
Particulate matter (PM _{2.5}), annual average	8.63 µg/m ³ (62nd %ile)	8.08 µg/m ³ (—).
Ozone, summer seasonal average of daily 8-hour max	61.2 ppb (50th %ile)	61.6 ppb (—).
Traffic proximity and volume score *	43 (37th %ile)	210 (—).
Lead paint (percentage pre-1960 housing)	0.42% (68th %ile)	0.3% (—).
Superfund proximity score *	0.81 (97th %ile)	0.13 (—).
RMP proximity score *	0.051 (10th %ile)	0.43 (—).
Hazardous waste proximity score *	0.055 (10th %ile)	1.9 (—).
Demographic Indicators		
People of color population	34% (53rd %ile)	39% (—).
Low-income population	48% (79th %ile)	31% (—).
Linguistically isolated population	0% (0th %ile)	5% (—).
Population with less than high school education	18% (77th %ile)	12% (—).
Population under 5 years of age	7% (66th %ile)	6% (—).
Population over 64 years of age	22% (74th %ile)	17% (—).

* The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers.

A discussion on how Oklahoma's CISWI plan meets Federal requirements, including CISWI EG requirements, is provided under the section titled "The EPA's Evaluation" in this proposed rule. CISWI EG requirements result in emission reductions for nine specified pollutants: particulate matter (PM), sulfur dioxide (SO₂), hydrogen chloride (HCl), nitrogen oxides (NO_x), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins/furans, and they additionally provide for opacity limits. Information on emissions controlled by the CISWI EG, its relationship to negative health impacts, and the estimated benefits from the CISWI EG, can be found at the **Federal Register** document titled "Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste" (78 FR 9112, February 7, 2013) and its associated Regulatory Impact Analysis.¹³ We expect that this action will generally have positive environmental and health impacts on all

populations, including people of color and low-income populations, in Oklahoma that are located near an existing incinerator subject to the CISWI EG. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Oklahoma regulations as described in the section titled "Proposed Action" in this proposed rule. The Oklahoma regulations at OAC 252:100–17, Part 9, *Commercial and Industrial Solid Waste Incinerators*,

contains Oklahoma's CAA section 111(d)/129 plan provisions for sources subject to the Commercial and Industrial Solid Waste Incineration Units Emission Guidelines at 40 CFR part 60, subpart DDDD. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d)/129 state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing

¹² For additional information on environmental indicators and proximity scores in EJSCREEN, see "EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation," Chapter 3 (October 2022) at

https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.

¹³ See <https://www.regulations.gov/document/EPA-HQ-OAR-2003-0119-2493>. See also <https://>

www.epa.gov/air-quality-management-process/managing-air-quality-human-health-environmental-and-economic/what.

regulations. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason:

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA (44 U.S.C. 3501 *et seq.*) because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This action is certified to not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action will approve a state plan pursuant to CAA section 111(d)/129 and will therefore have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This proposal to approve the Oklahoma CISWI plan will apply, if finalized as proposed, to certain areas of Indian country throughout Oklahoma as discussed in the preamble, and therefore has tribal implications as specified in

E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA has offered consultation to tribal governments that may be affected by this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it approves a state program.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution and Use

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. This action is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address

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

The air agency did not evaluate environmental justice considerations as part of its submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as described in the section titled “Environmental Justice Considerations” in this proposed rule. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area. In addition, there is no information in the record upon which this action is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

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

Dated: July 9, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–15448 Filed 7–18–24; 8:45 am]

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**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 70****[EPA–R09–OAR–2022–0916; FRL–10530–01–R9]****Clean Air Act Operating Permit
Program; California; South Coast Air
Quality Management District****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of revisions to the Clean Air Act (CAA or “Act”) Operating Permit Program (title V) of the South Coast Air Quality Management District (SCAQMD or “District”) in California. Once approved by the EPA, these program revisions will modify the major source title V potential to emit (PTE) thresholds to conform with the recent reclassification of state lands within the Coachella Valley nonattainment area from “Severe-15” to “Extreme” nonattainment for the 1997 8-hour ozone national ambient air quality standards (NAAQS). In the “Rules and Regulations” section of this issue of the **Federal Register**, we are simultaneously publishing an approval of the District’s title V program revisions without a prior proposed rule. If the EPA receives no adverse comment, it will not take further action on this proposed rule.

DATES: Comments must be received on or before August 19, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0916 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary

submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Catherine Valladolid, Air Permits Section (Air-3–1), U.S. Environmental Protection Agency, Region IX, (415) 947–4103, valladolid.catherine@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA. This proposal addresses the following local rule: SCAQMD Rule 3001, “Title V Permits—Applicability.” In the Rules and Regulations section of this **Federal Register**, the EPA is approving the District’s submissions and making administrative updates as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the action is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA contemplates no further action. If the EPA receives adverse comments, the EPA will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. We do not plan to open a second comment period on this action, so anyone interested in commenting should do so at this time. Please note that if the EPA receives an adverse comment on an amendment, paragraph, or section of this proposed rule and if that provision may be severed from the remainder of the proposed rule, the EPA may adopt as final those provisions of the proposed rule that are not the subject of an adverse comment. For additional information, see the direct final rule of the same title that is located in the “Rules and Regulations” section of this **Federal Register**.

Table of Contents

I. Background

- II. What are the requirements for approval of revisions to title V programs?
III. What is the State’s proposed title V program revision?

I. Background

The CAA Amendments of 1990 include title V, which requires States to develop an operating permits program that meets the federal criteria codified in title 40 of the Code of Federal Regulations (CFR) part 70. The title V program requires certain sources of air pollution to obtain federal operating permits from their respective states. These federal operating permits improve enforcement and compliance by consolidating all applicable federal requirements into one federally enforceable document. Before a state can issue permits under 40 CFR part 70 (which are referred to as “title V permits”), the EPA must approve its programs under appendix A of 40 CFR part 70. States may submit revisions to their approved programs for EPA approval.

Title V of the CAA applies to “major stationary sources” as defined in title I, part D of the Act. 40 CFR 70.2 bases the definition of “major stationary source” on the nonattainment classification of the area where the source is located. Table 1 of this document shows the attainment/nonattainment/unclassifiable status for the applicable NAAQS within the District’s jurisdictional boundary. As shown in Table 1, the SCAQMD’s jurisdiction is classified as nonattainment for fine particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (PM₁₀), fine particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (PM_{2.5}), lead (Pb), and ozone.¹ The SCAQMD’s jurisdiction is composed of several air basins that have different nonattainment classifications. The District is designated attainment/unclassifiable for nitrogen dioxide (NO₂), carbon monoxide (CO), and sulfur dioxide (SO₂). 40 CFR 81.305.

¹ As discussed in the Summary of this proposed rulemaking, the EPA reclassified state lands within the Coachella Valley area from Severe-15 to an Extreme ozone nonattainment area for the 1997 8-hour ozone NAAQS, effective July 10, 2019. This reclassification to Extreme means that a major stationary source is now defined as a source emitting 10 tons or more per year of either oxides of nitrogen or volatile organic compounds. 84 FR 32841 (July 10, 2019).

TABLE 1—AIR QUALITY ATTAINMENT STATUS

NAAQS pollutant/standard	Designation ^a	Classification	Basin/air quality management area
Annual NO ₂ (1971 Standard)	A/U		Los-Angeles-South Coast Air Basin.
1-Hour NO ₂ (2010 Standard)	A/U		Los Angeles County (part).
1-Hour NO ₂ (2010 Standard)	A/U		Orange County.
1-Hour NO ₂ (2010 Standard)	A/U		Riverside County (part).
1-Hour NO ₂ (2010 Standard)	A/U		San Bernadino County (part).
CO (1971 Standard)	A/U		Los-Angeles-South Coast Air Basin Area.
Pb (2008 Standard)	NA		Los Angeles County-South Coast Air Basin.
1-Hour SO ₂ (2010 Standard)	A/U		South Coast Air Basin.
24-Hour PM ₁₀ (1987 Standard)	NA	Serious	Coachella Valley Planning Area.
24-Hour PM ₁₀ (1987 Standard)	A/U		South Coast Air Basin.
Annual PM _{2.5} (1997 Standard)	NA	Moderate	Los-Angeles-South Coast Air Basin.
24-Hour PM _{2.5} (1997 Standard)	NA	Moderate	Los-Angeles-South Coast Air Basin.
24-Hour PM _{2.5} (2006 Standard)	NA	Serious	Los-Angeles-South Coast Air Basin.
Annual PM _{2.5} (2012 Standard)	NA	Serious	Los-Angeles-South Coast Air Basin.
1-Hour Ozone (1979 Standard) ^b	NA	Extreme	Los-Angeles-South Coast Air Basin Area.
1-Hour Ozone (1979 Standard) ^b	NA	Severe-17	Southeast Desert Modified Air Quality Management Area.
8-Hour Ozone (1997 Standard) ^c	NA	Extreme	Riverside County (Coachella Valley).
8-Hour Ozone (1997 Standard) ^c	NA	Extreme	Los-Angeles-South Coast Air Basin.
8-Hour Ozone (2008 Standard)	NA	Extreme	Los-Angeles-South Coast Air Basin.
8-Hour Ozone (2008 Standard)	NA	Severe-15	Riverside County (Coachella Valley).
8-Hour Ozone (2015 Standard)	NA	Extreme	Los-Angeles-South Coast Air Basin.
8-Hour Ozone (2015 Standard)	NA	Severe-15	Riverside County (Coachella Valley).

^a NA = Nonattainment; A/U = Attainment or Unclassified.

^b On August 3, 2005, the EPA revoked the 1979 1-hour ozone NAAQS; however, the EPA is retaining the listing of the designated areas for the revoked 1979 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation. 70 FR 44470 (August 3, 2005).

^c On March 6, 2015, the EPA revoked the 1997 8-hour ozone NAAQS; however, the EPA is retaining the listing of the designated areas for the revoked 1997 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation. 80 FR 12264 (March 6, 2015). On July 10, 2019, the Coachella Valley was reclassified to Extreme ozone nonattainment for the 1997 ozone NAAQS. 84 FR 32841 (July 10, 2019).

The emissions thresholds, above which a title V operating permit is

required pursuant to 40 CFR 70.3(a), are shown in table 2.

TABLE 2—TITLE V EMISSIONS THRESHOLDS ^a

Nonattainment designation/classification	VOC or NO _x (tpy)	CO (tpy)	PM ₁₀ (tpy)
Marginal	100	100	100
Moderate	100	100	100
Serious	50	50	70
Ozone transport region (other than Severe or Extreme)	50 (VOC only)		
Severe	25		
Extreme	10		

^a 40 CFR 70.2.

The emissions thresholds for PM_{2.5}, SO₂, and Pb are 100 tons per year (tpy) regardless of attainment classification. For hazardous air pollutants (HAPs), the title V threshold is 10 tpy for any individual HAP and 25 tpy for any combination of HAPs.

II. What are the requirements for approval of revisions to title V programs?

Pursuant to 40 CFR 70.4(i), either the EPA or the state may initiate a title V program revision “when the relevant Federal or State statutes or regulations are modified or supplemented.” It is the responsibility of the state to keep the EPA apprised of any proposed modifications to its basic statutory or

regulatory authority or procedures. Revision of a state program shall be accomplished as follows:

(a) The state submits a modified program description, attorney general’s statement (if necessary for expanded or additional authority), or other documents as the EPA determines to be necessary. 40 CFR 70.4(i)(2)(i).

(b) After the EPA receives a proposed program revision, it will publish a notice of the proposed change in the **Federal Register** and provide for a public comment period of at least 30 days. 40 CFR 70.4(i)(2)(ii).

(c) The Administrator shall approve or disapprove program revisions based on the requirements of 40 CFR part 70 and the Act. 40 CFR 70.4(i)(2)(iii).

(d) The EPA must publish a notice of approval in the **Federal Register** for any substantial program revisions. 40 CFR 70.4(i)(2)(iv).

(e) Approval of nonsubstantial revisions may be given by a letter from the Administrator to the Governor or a designee. 40 CFR 70.4(i)(2)(iv).

(f) A program revision shall become effective upon the approval of the Administrator. 40 CFR 70.4(i)(2)(iv).

III. What is the State’s proposed title V program revision?

Table 3 lists the rules submitted as part of the SCAQMD’s title V program revisions and the dates they were adopted by the District and submitted to the EPA by the California Air Resources

Board (CARB), which is the Governor's designee for California rule submittals.²

TABLE 3—SUBMITTED RULES

Rule No.	Rule title	Adoption date	Submitted date ^a
3001	Title V Permits—Applicability	12/4/2020	2/25/2021

^a CARB transmitted the submittal to the EPA by a letter dated February 24, 2021.

The SCAQMD revised the title V emissions thresholds in its Rule 3001 for volatile organic compounds and oxides of nitrogen from 25 tpy to 10 tpy for the Riverside County portion of the Salton Sea Air Basin ³ to align with a recent reclassification for that area from Severe-15 to Extreme for the 1997 8-hour ozone NAAQS.

The District made two additional revisions to Rule 3001: (1) clarifying the geographic areas for the Phase One and Phase Two facilities; and (2) including an applicability cutoff date of December 4, 2020, for Phase One title V facilities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 2, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–15046 Filed 7–18–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 24–71; FR ID 231217]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to extend, for an additional six years, the jurisdictional separations category relationships and cost allocation factors (together, separations rules) freeze for rate-of-return incumbent local exchange carriers (LECs). Further extending the freeze will enable the Commission to

continue to work with the Federal-State Joint Board on Jurisdictional Separations (Joint Board) to determine next steps in amending the separations rules in light of sweeping technological and regulatory changes since these rules were initially adopted.

DATES: Comments are due on or before August 19, 2024; reply comments are due on or before September 3, 2024.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). You may submit comments, identified by WC Docket No. 80–286, by either of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.

- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

- **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

FOR FURTHER INFORMATION CONTACT:

Marv Sacks, Pricing Policy Division of the Wireline Communications Bureau, at (202) 418–2017 or via email at marvin.sacks@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 80–286, FCC 24–71, adopted and released on July 1, 2024. The full text of this document is available at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-24-71A1.pdf>. A notice of the renewal of the existing referrals to the Federal-State Joint Board on Separations relating to this document is published elsewhere in this issue of the **Federal Register**.

Paperwork Reduction Act. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

Providing Accountability Through Transparency Act. The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. Accordingly, the Commission will publish the required summary of this Further Notice on <https://www.fcc.gov/proposed-rulemakings>.

Synopsis

I. Introduction

1. Today, the separations rules remain applicable to only a limited and

² A detailed explanation of the EPA's evaluation of these proposed revisions as well as a change

copy of the revised rule can be found in the Technical Support Document (TSD) and docket.

³ The area often referred to as the “Coachella Valley” consists of the Riverside County portion of the Salton Sea Air Basin.

declining number of incumbent LECs that continue to rely on costs to calculate rates or universal service support. Due to the breadth and complexity of these rules, as well as their narrow applicability, the Commission has repeatedly extended the freeze that was first adopted in 2001. The Commission expects that the benefits of its proposal to further extend the separations rules' freeze likely outweigh the costs of allowing it to end and seeks comment on various aspects of its proposal.

II. Background

2. *Jurisdictional Separations Process.* The jurisdictional separations rules were designed to ensure that rate-of-return incumbent LECs apportion the costs of their regulated services between the interstate or intrastate jurisdictions in a manner that reflects the relative use of their networks to provide interstate or intrastate telecommunications services. Jurisdictional separations is the third step in a four-step regulatory cost-based rate-making process. First, a rate-of-return carrier records its costs and revenues in various accounts using the Uniform System of Accounts prescribed by the Commission's part 32 rules. Second, the carrier divides the costs in these accounts between regulated and nonregulated activities in accordance with the Commission's part 64 rules, a step that helps ensure that the costs of nonregulated activities will not be recovered through regulated interstate rates. Third, the carrier separates the regulated costs and revenues between the interstate and intrastate jurisdictions using the Commission's part 36 jurisdictional separations rules. Finally, the carrier apportions the interstate regulated costs among the interexchange services and the rate elements that form the cost basis for its exchange access tariffs. Carriers subject to rate-of-return regulation perform this apportionment in accordance with the Commission's part 69 rules.

3. To comply with these rules, rate-of-return incumbent LECs must perform annual cost studies that include jurisdictional separations. After separating non-regulated from regulated costs and revenues, the cost study directly assigns or allocates the regulated costs and revenues to various part 36 categories. Amounts in categories that are used exclusively for interstate or intrastate communications are directly assigned to the appropriate jurisdiction. Amounts in categories that support both interstate and intrastate services are divided between the jurisdictions using allocation factors developed in accordance with part 36

that reflect relative use or a fixed percentage.

4. *Attempts at Separations Reform and Separations Freezes.* In 1997, recognizing that "changes in the law, technology, and market structure of the telecommunications industry" necessitated a thorough reevaluation of the jurisdictional separations process, the Commission initiated a proceeding to comprehensively reform the separations rules. At the same time, pursuant to section 410(c) of the Communications Act of 1934, as amended (the Communications Act), the Commission referred the matter of jurisdictional separations reform to the Joint Board for a recommended decision.

5. In 2000, the Joint Board—comprised of both State and Federal members—issued a recommendation that the Commission freeze the part 36 category relationships and jurisdictional allocation factors pending resolution of comprehensive reform. In 2001, the Commission adopted an order concluding that a freeze would stabilize the separations process pending reform by minimizing any impact of cost shifts on separations results due to circumstances—such as the growth of internet usage, new technologies, and local competition—not contemplated by the rules. The Commission also determined that a freeze would simplify the separations process by eliminating the need for many separations studies until separations reform was implemented. Accordingly, the Commission froze all part 36 allocation factors and allowed rate-of-return carriers to voluntarily freeze their category relationships, enabling each carrier to determine whether such a freeze would be beneficial "based on its own circumstances and investment plans." In 2009, the Commission made another referral, asking the Joint Board to consider comprehensive jurisdictional separations reform as well as "an interim adjustment of the current jurisdictional separations freeze." In 2018, the Commission tasked the Joint Board with addressing two specific issues during the interim period pending comprehensive reform. These included exploring the possibility of amending separations rules to acknowledge that certain carriers are no longer bound by them, as well as updating existing recordkeeping requirements to align with the current applicability of separations rules. The Joint Board has not to date submitted a recommended decision on comprehensive separations reform or on any interim adjustments.

6. The Commission specified that the 2001 freeze would last five years or until the Commission completed comprehensive separations reform, whichever came first. The Commission also concluded that, prior to the expiration of the five-year period, the Commission would, in consultation with the Joint Board, determine whether the freeze period should be extended, explaining that "the determination of whether the freeze should be extended at the end of the five-year period shall be based upon whether, and to what extent, comprehensive reform of separations has been undertaken by that time."

7. Since 2001, the Commission has extended the separations freeze eight times, for periods ranging from one year to six years, the most recent extension of which expires on December 31, 2024. In repeatedly extending the freeze, the Commission has explained that the freeze would stabilize and simplify the separations process while the Joint Board and the Commission continued to work on separations reform.

8. *Declining Relevance of Jurisdictional Separations.* The jurisdictional separations rules no longer apply to the majority of carriers currently providing telecommunications services. Currently, out of 1,079 rate-of-return carriers, only about 247 carriers that receive cost-based Universal Service Fund (USF) support make the full use of separations to set end-user common line, business data services (BDS), and Consumer Broadband-Only Loop service rates, as well as to determine the level of USF support. Approximately 374 Alternative-Connect America Cost Model and Alaska Plan carriers use separations only for setting BDS rates. The separations rules were never applicable to wireless carriers, and in 2008, the Commission granted price cap incumbent LECs forbearance from the separations rules, leaving rate-of-return incumbent LECs as the only remaining carriers required to comply with the separations rules. In addition, in 2018, the Commission offered rate-of-return carriers the option to receive fixed or model-based high-cost universal service support with the ability to elect incentive regulation for their business data services (BDS). Carriers electing both model-based support and incentive regulation for BDS no longer need to engage in separation of their costs for any Federal regulatory purpose, whether for universal service funding or rate-making. Currently, 232 A-CAM carriers have elected incentive regulation for BDS. Moreover, apart from a handful of carriers performing sample cost studies,

the separations rules do not apply to rate-of-return carriers that are “average schedule companies.” At present, 226 companies participate in NECA’s average schedule. These companies do not perform jurisdictional separations; they receive pool revenues, or settlements, from the National Exchange Carrier Association, Inc. for interstate telecommunications services based on a series of statistical formulas, approved by the Commission, that approximate the amounts received by a similar cost company. What is more, the Commission expects additional rate-of-return carriers will take advantage of the Commission’s latest Enhanced A–CAM program for universal service support and will also select to be subject to incentive regulation for BDS—thus, the Commission expects the number of carriers that will be subject to the separations rules to decrease even further.

9. For carriers that remain subject to the separations rules, the separations process has increasingly limited application because of regulatory reforms by the Commission that remove the need to engage in the separations process. For example, as part of comprehensive reform and modernization of the universal service and intercarrier compensation systems, the Commission adopted rate caps for the switched access services of rate-of-return carriers (including a transition to bill-and-keep for certain rate elements), thereby eliminating the need to apply separations rules for calculating switched access rates. Further, rate-of-return carriers receiving high-cost universal service support based on the Commission’s A–CAM programs but not electing incentive regulation for business data services no longer need to use jurisdictional separations to quantify the amount of high-cost support for the interstate portion of their common line services or to set interstate rates for these services.

III. Further Notice of Proposed Rulemaking

10. The Commission proposes to extend the separations freeze for another six years and invites comment on this proposal. Several factors—recent changes to the composition of the Joint Board, the complex nature of the work required to develop comprehensive recommendations for separations reform, and the fact that the current freeze expires at the end of this calendar year—have combined to leave limited and insufficient time within which to develop and advance recommended decisions. Moreover, allowing the freeze to expire without further extension

would force rate-of-return carriers to engage in unnecessary, costly and burdensome cost studies based on outdated rules and assumptions that bear little relationship to the marketplace today. Accordingly, after weighing the likely benefits of extending the current freeze against the likely costs of allowing it to expire, the Commission proposes to extend the separations freeze until December 31, 2030. The Commission seeks comment on this proposal as well as whether it should change any aspect of the separations freeze should the Commission extend the freeze as proposed.

11. *Process Considerations.* The proposal to extend the freeze through December 31, 2030, would allow the Joint Board to consider next steps in addressing separations reform. This Joint Board has quite recently seated several new members who are just beginning their opportunity to delve into the complicated issues they need to grapple with in considering reform measures. For example, in 2018, the Commission referred a couple of discrete issues to the Joint Board, but the Joint Board has not been able to issue a recommended decision on them. In short the new Board will need time to develop a meaningful recommendation. The combination of these recent changes and the procedural process necessary for any recommendation render it unlikely that the Joint Board could issue a recommended decision on comprehensive reform and that the Commission could consider that recommendation, and then act upon it before the current freeze expires. Even if the Joint Board could develop a recommendation for consideration, the Commission would likely seek comment on that recommendation before issuing an order revising the rules. Section 410(c) contemplates a Joint Board recommendation before the Commission moves forward on comprehensive separations reform. Therefore, as a practical matter, the Commission is limited at this point to either extending the separations freeze or allowing the long-fallow and outdated separations rules to take effect on January 1, 2025.

12. *Benefits Outweigh the Costs.* The Commission seeks comment on the limited options it has under the current circumstances. The Commission has consistently found that letting the freeze expire would impose significant burdens on rate-of-return carriers, particularly smaller rural carriers, and create undue instability. In extending the most recent freeze in 2018, the Commission explained that lifting the

freeze and reinstating the separations rules after an absence of more than two decades, would make it extremely difficult, if not impossible, for most carriers to perform all of the studies needed to remain in full compliance. This would require substantial training and investment by rural incumbent LECs, and could cause significant disruptions to regulated rates, cost recovery, and other operating conditions when applying the outdated separations rules to today’s operations. Indeed, the Commission has found that requiring carriers to reinstate their separations systems “would be unduly burdensome when there is a significant likelihood that there would be no lasting benefit to doing so.” 82 FR 25535–01. The Commission has thus previously concluded that the benefits that will result from granting a further extension of the freeze far exceed any possible harms. These prior conclusions are also compelling and remain relevant today. The Commission proposes to find that an additional extension of the freeze far outweighs any potential harms, and the Commission seeks comment on this proposal.

13. In extending the separations freeze, the Commission also proposes to direct rate-of-return incumbent LECs to continue to use the same frozen category relationships and jurisdictional allocation factors. When the Commission allowed a one-time unfreeze of category relationships in 2018, only three carriers capitalized on this opportunity. The Commission seeks comment on whether it should reintroduce the option to unfreeze category relationships at this time. The Commission also seeks comment on the comparative costs and benefits of maintaining the separations freeze without offering an option to unfreeze category relationships.

14. *Length of the Freeze Extension.* The Commission proposes an extension period of up to six years. Under this proposal, the freeze would be extended until December 31, 2030 or until comprehensive reform of the part 36 rules is achieved, whichever occurs earlier. The Commission seeks comment on this proposal. In 2018, given the difficulty of achieving reform up to that point, the Commission initially proposed a 15 year freeze because short-term extensions adopted in the past would “not provide the Joint Board, the Commission, and interested stakeholders sufficient time” to revise its rules. After considering comments submitted in response to that proposal, including from the State members of the Joint Board, the Commission found that

an extension of up to six years was more appropriate.

15. When the Commission extended the freeze for six years in 2018, it concluded that this time period best “balances the competing considerations” of enabling the Joint Board to focus on solving the complex issues versus the Commission’s experience in granting a series of short-term separations extensions in the past when attempts at separations reform stalled. Does this assessment continue to weigh in favor of the Commission granting another six-year freeze extension? Have any circumstances changed that would lead to a different assessment, or do parties have other views on the length of an extension? Should the freeze be extended for a longer period of time than six years? Repeated short-term freeze extensions necessarily consume Commission, State, and industry resources. Alternatively, should the Commission permanently extend the separations freeze, as some commenters have suggested in the past?

16. The Commission asks commenters to discuss the advantages and disadvantages of a temporally defined extension period versus an unlimited extension until comprehensive reform is achieved, and seeks comment on the specific reasons in support of recommended timeframes. In this regard, the Commission recognizes that the Federal and State members of the Joint Board have not issued a recommended decision on comprehensive separations reform in the more than two decades since the Commission originally proposed such reform. Commenters supporting shorter extension periods than the proposed six years should also take into account the time necessary for the Commission and the industry to adopt and implement revised separations rules and procedures.

17. The Commission also invites comment on what effect, if any, particular extension periods would have on rates and ratepayers. Would a relatively long or permanent extension be inconsistent with section 201(b) of the Act’s prohibition on unjust and unreasonable charges? For example, in the past, some commenters have supported extending the freeze for 15 years, while others expressed concern that such a long freeze would result in unjust and unreasonable rates because of the frozen allocation of the underlying costs to the interstate and intrastate jurisdictions.

IV. Procedural Matters

18. *Ex Parte Requirements*. This proceeding shall be treated as a “permit-

but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

19. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) in appendix B of the Further Notice and set forth below concerning the possible/potential impact of the rule and policy changes contained in this Further Notice. Written public comments are requested on the IRFA. Comments must be

identified as responses to the IRFA and must be filed by the deadlines for comment on this Further Notice. Comments must have a separate and distinct heading designating them as responses to the IRFA.

20. *Paperwork Reduction Act*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

21. *Providing Accountability Through Transparency Act*. The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. Accordingly, the Commission will publish the required summary of this Further Notice on <https://www.fcc.gov/proposed-rulemakings>.

V. Initial Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules imposed in the Further Notice of Proposed Rulemaking (Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rules

23. The Commission’s part 36 rules regarding jurisdictional separations category relationships and cost allocation factors (separations rules) originated more than 35 years ago when the Commission and its State counterparts used costs to set rates, and the rules were designed to help prevent local exchange carriers (LECs) from recovering the same costs from both the interstate and intrastate jurisdictions. In 1997, the Commission initiated a proceeding to comprehensively reform those rules in light of the statutory, technological, and marketplace changes that had affected the

telecommunications industry. In 2001, the Commission, pursuant to a recommendation by the Federal-State Joint Board on Jurisdictional Separations (Joint Board), froze the part 36 separations rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first. The Commission has extended the freeze eight times, with the most recent extension set to expire on December 31, 2024.

24. In repeatedly extending the freeze, the Commission has explained that the freeze would stabilize and simplify the separations process while the Joint Board and the Commission continued to work on separations reform. This Joint Board has quite recently seated several new members who are just beginning their opportunity to delve into the complicated issues they need to grapple with in considering reform measures. In short, the new Joint Board will need time to develop a meaningful recommendation. The combination of these recent changes and the procedural process necessary for any recommendation render it unlikely that the Joint Board could issue a recommended decision on comprehensive reform and that the Commission could consider that recommendation, and then act upon it before the current freeze expires. Section 410(c) of the Communications Act of 1934, as amended, contemplates a Joint Board recommendation before the Commission moves forward on comprehensive separations reform. Therefore, as a practical matter, the Commission is limited at this point to either extending the separations freeze or allowing the outdated separations rules to take effect on January 1, 2025.

25. The Commission expects that permitting the freeze to expire would impose significant burdens on rate-of-return carriers, many of which include small carriers, that would far exceed the benefits, if any, of requiring those carriers to comply with rules that they have not implemented since 2001. As a result, the Further Notice proposes to extend for up to six years the freeze of part 36 category relationships and jurisdictional cost allocation factors to enable the Joint Board to address the complex nature of the work involved in developing comprehensive recommendations for separations reform. Under this proposal, this extension would continue until the earlier of December 31, 2030, or the completion of comprehensive reform of the part 36 jurisdictional separations rules. The Commission invites comments on this proposal.

B. Legal Basis

26. The proposed action is authorized pursuant to sections 1, 4(i) and (j), 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 205, 220, 221(c), 254, 303(r), 403, 410, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

27. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

28. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

29. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

30. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”

31. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

32. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have

1,500 or fewer employees.

Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

33. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

34. The Commission has included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. Because the Commission's proposal to freeze the part 36 rules will affect incumbent LECs, some entities employing 1,500 or fewer employees may be affected by the rule changes proposed in the Further Notice. The Commission has therefore included small incumbent LECs in this RFA analysis, although this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

35. The proposed rules, if adopted, would not impose any new or additional requirements on small or other entities. The Further Notice

proposes to extend an existing freeze, and the Commission does not anticipate small entities will incur additional compliance costs, or be required to hire professionals to comply with the rule proposals, if adopted.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for such small entities.

37. The Commission's proposed rules to extend the separations freeze is not expected to have a significant economic impact on a substantial number of small entities. To the contrary, an extension of the separations freeze constitutes an essential step towards reducing unnecessary and burdensome costs to small entities when compared to the alternative of not doing so. For example, if the freeze was allowed to expire and was not extended, the outmoded separations rules would be reinstated. The Commission has consistently over the years found that such a result would impose new significant economic burdens on rate-of-return carriers, particularly smaller rural carriers, and create undue instability for those carriers. Indeed, if the separations rules were reinstated after an absence of more than two decades, most affected carriers would find it extremely difficult, if not impossible, to perform all of the studies needed to remain in full compliance. This would require substantial training and investment by affected rural incumbent LECs, and could cause significant disruptions in regulated rates, cost recovery, and other operating conditions when applying the outdated separations rules to today's operations.

38. In addition, the jurisdictional freeze has eliminated the need for many rate-of-return incumbent LECs that still perform cost studies, including incumbent LECs with 1,500 employees or fewer, to complete certain annual separations studies that otherwise would be required by the Commission's

part 36 jurisdictional separations rules. Thus, an extension of this freeze would avoid increasing the administrative burden of regulatory compliance for these carriers, including small incumbent LECs.

39. The Commission has thus previously concluded that the benefits that will result from an additional extension of the freeze far exceed any possible harms and anticipates that those prior conclusions are compelling and remain relevant today. The Commission therefore proposes to extend the separations freeze to permit rate-of-return incumbent LECs to continue to use the same frozen category relationships and jurisdictional allocation factors. The Commission invites comment on this proposal and on the relative costs and benefits of continuing the separations freeze.

40. When the Commission granted a six-year freeze in 2018, it concluded that this time period best "balances the competing considerations" of enabling the Joint Board to focus on solving the complex issues versus the Commission's experience in granting a series of short-term separations extensions in the past when attempts at separations reform stalled. The Commission seeks comment on whether this assessment continues to weigh in favor of the Commission granting another six-year freeze extension, whether any circumstances changed that would lead to a different assessment, and whether parties have other views on the length of an extension.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

41. None.

VI. Ordering Clauses

42. Accordingly, *it is ordered*, pursuant to sections 1, 4(i) and (j), 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communication Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 205, 220, 221(c), 254, 303(r), 403, 410, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, that this Further Notice of Proposed Rulemaking *is adopted*.

43. *It is further ordered*, pursuant to section 220(i) of the Communications Act, 47 U.S.C. 220(i), that notice be given to each State commission of the above rulemaking proceeding, and that the Secretary *shall serve* a copy of this Further Notice of Proposed Rulemaking on each State commission.

44. *It is further ordered* that the Commission's Office of the Secretary *shall send* a copy of this Further Notice

of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 36 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

§§ 36.3, 36.123, 36.124, 36.125, 36.126, 36.141, 36.142, 36.152, 36.154, 36.155, 36.156, 36.157, 36.191, 36.212, 36.214, 36.372, 36.374, 36.375, 36.377, 36.378, 36.379, 36.380, 36.381, and 36.382
[Amended]

■ 2. In 47 CFR part 36 remove the date “December 31, 2024” in the following places wherever it appears and add, in its place, the date “December 31, 2030”.

- a. Section 36.3(a) through (c), (d) introductory text, and (e);
- b. Section 36.123(a)(5) and (6);
- c. Section 36.124(c) and (d);
- d. Section 36.125(h) and (i);
- e. Section 36.126(b)(5) and (6), (c)(4), (e)(4), and (f)(2);
- f. Section 36.141(c);
- g. Section 36.142(c);
- h. Section 36.152(d);
- i. Section 36.154(g);
- j. Section 36.155(b);
- k. Section 36.156(c);
- l. Section 36.157(b);
- m. Section 36.191(d);
- n. Section 36.212(c);
- o. Section 36.214(a);
- p. Section 36.372;
- q. Section 36.374(b) and (d);
- r. Section 36.375(b)(4) and (5);
- s. Section 36.377(a) introductory text, (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii), (a)(5)(vii), and (a)(6)(vii);

- t. Section 36.378(b)(1);
- u. Section 36.379(b)(1) and (2);
- v. Section 36.380(d) and (e);
- w. Section 36.381(c) and (d); and
- x. Section 36.382(a).

[FR Doc. 2024–15567 Filed 7–18–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No 240703–0185]

RIN 0648–BM70

International Fisheries; Pacific Tuna Fisheries; Fish Aggregating Device Design and Reporting Requirements in the Eastern Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Tuna Conventions Act of 1950 (TCA), as amended, to implement two resolutions adopted at the 101st meeting of the Inter-American Tropical Tuna Commission (IATTC) in August 2023. These resolutions include Resolution C–23–03 (“Amendment to Resolution C–99–07 on Fish Aggregating Devices”) and Resolution C–23–04 (“On the Design and Biodegradability of Drifting Fish Aggregating Devices (DFADs) in the IATTC Area of Competence”). The proposed rule would modify regulations for the design of fish aggregating devices (FADs) in the eastern Pacific Ocean (EPO) to require non-entangling and biodegradable materials. Furthermore, the proposed rule would require that data related to the recovery of FADs for the purpose of final disposal or recycling in the EPO be collected by vessel owners and operators, and submitted to the IATTC, unless that information is already collected and submitted to the IATTC by an observer.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by August 19, 2024.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2023-0147>. You may submit comments on this document, identified by NOAA–NMFS–2023–0147, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and enter “NOAA–NMFS–2023–0147” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Tyler Lawson, NMFS West Coast Region Portland Office, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232. Include the identifier “NOAA–NMFS–2023–0147” in the comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <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).

Copies of supporting documents that were prepared for this proposed rule, including the regulatory impact review are available via the Federal e-Rulemaking Portal: <https://www.regulations.gov>, docket NOAA–NMFS–2023–0147, or by contacting Tyler Lawson (see address above, and other contact information in **FOR FURTHER INFORMATION CONTACT**).

Send comments on aspects of the collection of information to Tyler Lawson (address above), by email to OIRA_Submission@omb.eop.gov, or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Tyler Lawson, NMFS West Coast Region, (503) 230–5421, tyler.lawson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission (1949 Convention). In 2003, the IATTC updated the 1949 Convention through the adoption of the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua

Convention on February 24, 2016. The full text of the Antigua Convention is available at: https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf.

The IATTC consists of 21 member nations and 5 cooperating non-member nations. The IATTC facilitates scientific research, as well as the conservation and management, of tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the IATTC Convention Area to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

International Obligations of the United States Under the Antigua Convention

As a party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC under the TCA, as amended (16 U.S.C. 951 *et seq.*). The TCA directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

IATTC Resolutions on Fish Aggregating Devices

The 101st Meeting of the IATTC was held in Victoria, Canada, in August 2023. At this meeting, the IATTC adopted Resolutions C–23–03 and C–23–04.

Resolution C–23–03 amends Resolution C–99–07 and continues to recommend that tender vessels remain prohibited, while clarifying that vessels may engage in FAD recovery activities that are limited to the collection of FADs for final disposal, but not for maintenance or adjustment. If FADs are recovered for final disposal or recycling, the resolution requires that all associated information on FAD recovery activities be reported to the IATTC Secretariat. The resolution encourages the initiation of recovery programs for FADs through cooperative initiatives

among fishing vessels and other vessels implementing recovery projects in the IATTC Convention Area.

Resolution C–23–04 contains new measures regarding materials that can be used in FADs that are deployed or redeployed in the IATTC Convention Area. These include biodegradable and non-entangling materials which would be phased in between 2025 and 2029. Beginning on January 1, 2025, purse seine vessel owners and operators are required to meet non-entangling design requirements for FADs and the use of mesh nets will be prohibited for any part of a FAD. Resolution C–23–04 defines “non-entangling FAD” as “a FAD that does not include any netting materials for any part of the FAD including both the surface structure (e.g., raft) and subsurface structure (e.g., tail).” Beginning on January 1, 2026, purse seine vessel owners and operators are required to begin using biodegradable materials in either the surface or subsurface portion of FADs. By January 1, 2029, both the surface and subsurface portion of the FAD must be composed of biodegradable materials. Resolution C–23–04 defines “biodegradable” as “non-synthetic materials and/or bio-based alternatives that are consistent with international standards for materials that are biodegradable in marine environments. The components resulting from the degradation of these materials should not be damaging to the marine and coastal ecosystems or include heavy metals or plastics in their composition.”

Proposed Regulations for Fish Aggregating Devices

This proposed rule would be implemented under the TCA (16 U.S.C. 951 *et seq.*) and proposes changes to part 300, subpart C of title 50 of the Code of Federal Regulations (CFR). This proposed rule would implement provisions in Resolutions C–23–03 and C–23–04 that would: (1) clarify that vessels may engage in the recovery of FADs for final disposal or recycling and implement reporting requirements for recovered FADs, while continuing to prohibit tender vessels; (2) specify requirements for non-entangling FADs starting on January 1, 2025; and (3) specify requirements to phase in biodegradable FAD components starting on January 1, 2026.

Recovery of FADs for Final Disposal or Recycling

The proposed rule would implement the provisions of Resolution C–23–03 by clarifying what are considered allowable FAD recovery activities by vessels and by implementing disposal and reporting

requirements for recovered FADs in the IATTC Convention Area. Cooperative initiatives and recovery projects are encouraged in the resolution; however, they are not intended to be the focus of the proposed rule or to be a formal NMFS program. Rather, the proposed rule is meant to clarify that vessels may volunteer to engage in recovery activities and to describe the permissible parameters of such activities. While tender vessels¹ are still prohibited in the IATTC Convention Area (see 50 CFR 300.24(c) and 50 CFR 300.25(b)), the proposed rule would clarify that U.S. vessel owners and operators may recover FADs, provided the recovery activities are limited to collecting FADs for final disposal or recycling in port and do not include any type of maintenance, adjustment, or deployment.

Tuna purse seine vessels that recover FADs are still allowed to deploy and maintain FADs when engaged in normal fishing operations, but other vessels engaged in FAD recovery are prohibited from deploying or maintaining FADs. Purse seine vessels that interact with FADs must continue to comply with the requirements in 50 CFR 300.22 (c)(1).

The proposed rule would also implement a reporting requirement for information associated with all FADs recovered by vessel owners and operators in the IATTC Convention Area, unless that information is already reported by an observer. These data would be reported to the IATTC scientific staff for analysis using a format and address provided by NMFS. Because this information is already collected and reported to the IATTC by observers, if a vessel has an observer onboard, FAD recovery data would not need to be separately collected and reported by the vessel owners and operators.

FAD Design Requirements

The proposed rule would also implement the provisions of Resolution C–23–04 by amending regulations at 50 CFR 300.28 to require non-entangling and biodegradable materials. Since January 1, 2019, the IATTC and the United States have required “less entangling” FAD designs which allow a raft with mesh netting, if that mesh size is less than 7 centimeters and tightly wrapped such that no netting hangs below the FAD when deployed (see 50 CFR 300.28(g)(1)). Additionally, existing regulations stipulate that any netting used in the subsurface structure of the

¹ A tender vessel is “a vessel that does not engage in purse seine fishing but tends to FADs in support of tuna fishing operations” (50 CFR 300.21).

FAD must be tightly tied into bundles (*i.e.*, sausages) or have stretched mesh size less than 7 centimeters in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column (see 50 CFR 300.28(g)(2)).

The proposed rule would amend the existing regulations on FAD design to prohibit the use of mesh net from any part of the FAD and require all materials to be non-entangling beginning on January 1, 2025. A definition of “non-entangling FAD,” consistent with the definition adopted by the IATTC, would be included at 50 CFR 300.21 as follows: “Non-entangling FAD means a FAD that does not include any netting materials for any part of the FAD including both the surface structure (*e.g.*, raft) and subsurface structure (*e.g.*, tail).”

Additionally, beginning on January 1, 2026, the proposed rule would implement a phased approach requiring FADs to be made out of biodegradable materials. As discussed in more detail in the next paragraphs, purse seine vessel owners and operators would be required to begin using biodegradable materials in either the surface or subsurface portion of FADs beginning on January 1, 2026, and would be required to use biodegradable materials in both the surface and subsurface portion of the FAD beginning on January 1, 2029. A definition of “biodegradable,” consistent with the definition adopted by the IATTC, would be included at 50 CFR 300.21 as follows:

Biodegradable means non-synthetic materials and/or bio-based alternatives that are consistent with approved international standards for materials that are biodegradable in marine environments. The components resulting from the degradation of these materials should not be damaging to the marine and coastal ecosystems or include heavy metals or plastics in their composition. Examples of non-synthetic biodegradable materials include plant-based materials such as cotton, jute, manila hemp (abaca), bamboo, and natural rubber; and animal-based materials such as leather, wool, and lard. The approved international standards are ASTM D6691, ASTM D7881, and TUV Austria.

NMFS seeks comments on additional materials that could be authorized as biodegradable. In the future, if the members of the IATTC approve other standards, NMFS will revise the definition accordingly to include them.

By January 1, 2026, the proposed rule would require all FADs deployed or redeployed in the IATTC Convention Area to be designed and constructed according to one of three sets of specifications. Under option one, the surface part of the FAD must be made of fully biodegradable materials, except

for flotation components, but the subsurface part may contain non-biodegradable materials (*e.g.*, synthetic raffia, metallic frame, plastic floats, nylon ropes). Under option two, the subsurface part of the FAD must be made of fully biodegradable materials, but the surface part and any flotation components may be made of non-biodegradable materials. Under option three, the surface part, except for flotation components, and subsurface part must both be made of fully biodegradable materials. All three options would allow for plastic-based flotation components (*e.g.*, plastic buoys, foam, purse-seine corks). The third option would allow an exception for satellite buoys that are attached to FADs to track them and for nylon ropes, which can be used exclusively to strengthen the structure of the floating or underwater component of the FAD.

By January 1, 2029, the proposed rule would require all FADs deployed or redeployed in the IATTC Convention Area to be designed and constructed such that the surface part and subsurface part are both made of fully biodegradable materials, except that any flotation component on the surface part may still be made of non-biodegradable materials. The exceptions for satellite buoys and nylon ropes discussed in the previous paragraph would continue to apply.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the TCA and other applicable laws, subject to further consideration after public comment.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This proposed rule contains changes to the collection of information requirement for the purposes of the Paperwork Reduction Act of 1995 (PRA). NMFS is amending the supporting statement for the “West Coast Region Pacific Tuna Fisheries Logbook, Fish Aggregating Device Form, and Observer Safety Reporting,” Office of Management and Business (OMB) PRA requirements (OMB Control No. 0648–0148) to include the data collection requirements for U.S. vessel owners and operators to report information on recovered FADs to the IATTC if that information is not already collected and submitted to the IATTC by an observer onboard the vessel. Current FAD reporting requirements

under that collection of information would continue to apply.

NMFS estimates that the public reporting burden for the collection of information for recovered FADs will average 5 minutes per form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Under existing regulations at 50 CFR 300.22(c), vessel owners and operators that do not have an observer onboard are required to report detailed information on any interaction or activity with a deployed FAD, including information about the design of the FAD. NMFS estimates that the public reporting burden for this existing collection of information for FAD design will not change if the proposed changes to FAD design requirements are implemented.

NMFS is requesting public comment on the addition of the FAD recovery program data collection to the PRA package, including whether the paperwork would unnecessarily burden any vessel owners and operators. Public comment is sought regarding: (1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the burden estimate; (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, including through the use of automated collection techniques or other forms of information technology. See **ADDRESSES** section above for information on where to send comments on these or any other aspects of the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: <https://www.reginfo.gov/public/do/PRAMain>.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic

impact on a substantial number of small entities. The rationale for the certification is provided in the following paragraphs.

The U.S. SBA defines a “small business” (or “small entity”) as one with annual revenue that meets or is below an established size standard. For RFA purposes only, NMFS has established a small business size standard of \$11 million in annual gross receipts for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). This standard applies to all businesses classified under North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses.

NMFS prepared analyses for this regulatory action in light of this size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. Under this size standard, some U.S. purse seine vessels affected by this action are considered large, and some are small businesses. Non-fishing vessels may also engage in these voluntary FAD recovery activities. NMFS is aware of one non-governmental organization engaging in this activity in the western Pacific Ocean but is not aware of non-fishing vessels engaged in this activity in the IATTC Convention Area. Given the lack of information on these non-fishing vessels, NMFS is unable to evaluate if these entities are a small or large business. NMFS plans to reevaluate engagement of non-fishing vessels in FAD recovery programs in the future if more data become available on these activities.

U.S. Purse Seine Vessels Fishing in the IATTC Convention Area

There are two components to the U.S. tuna purse seine fishery in the EPO: (1) large purse seine vessels (*i.e.*, size class 6; greater than 363 metric tons (mt) carrying capacity) that typically are based in the western and central Pacific Ocean (WCPO); and (2) coastal purse seine vessels with smaller fish hold volumes (*i.e.*, size class 2–3; between 46 and 181 mt carrying capacity) that are based out of California. The proposed regulations would apply only to vessels that recover FADs in the IATTC Convention Area. To date, NMFS is only aware of large purse seine vessels being potentially interested in engaging in this activity in the EPO.

As of February 2024, the U.S. has 15 large purse seine vessels (all size class 6) registered to fish in the IATTC Convention Area. These large purse seine vessels target skipjack tuna by fishing on FADs and also fish on unassociated sets of schooling tuna. They also catch and retain yellowfin and bigeye tuna.

Currently, there are 15 active large U.S. purse seine vessels on the IATTC Regional Vessel Register authorized to fish in the EPO. Thirteen of these vessels also have Western and Central Pacific Fisheries Commission (WCPFC) Area Endorsements. WCPFC Area Endorsements are NMFS-issued authorizations required for a vessel to fish commercially for highly migratory species on the high seas in the WCPFC Convention Area as defined at 50 CFR 300.211. NMFS used cannery data from the IATTC and Regional Purse Seine Logbook (RPL) data from Pacific Islands Fisheries Science Center to estimate fish landings in both the EPO and WCPO for the vessels that fished in both the IATTC and WCPFC Convention Areas within a year.

Because neither gross receipts nor ex-vessel price information specific to individual fishing vessels are available to NMFS, NMFS applied regional price data—as approximations of ex-vessel prices—to annual catches of individual vessels obtained from RPLs and IATTC observer data, to estimate the vessels’ annual receipts.

Using this approach, NMFS estimates that among the affected vessels, the range in average annual per-vessel receipts in 2021–2023 was \$500,000 to \$13.4 million with an average of approximately \$9.5 million. Ten of the active purse seine vessels had estimated average annual receipts of less than \$11 million, and thus are considered to be small entities. The remaining five are considered large businesses.

Economic Impacts

The expected economic effects of the proposed action are discussed in detail in the following paragraphs.

FAD recovery: Resolution C–23–03 encourages the commencement of recovery programs for FADs among fishing vessels and other vessels implementing recovery projects in the IATTC Convention Area. The proposed rule would establish reporting requirements for FAD recoveries if they occur. Because it is not mandatory to participate in the recovery of a FAD, any potential costs of recovering FADs are optional for U.S. vessels. For fishing vessel owners and operators opting to take part, the recovery operations could occur on fishing trips and would not

necessarily need to be a separate trip to recover a FAD. As stated previously, non-fishing vessels may also engage in voluntary FAD recovery activities, but NMFS does not have enough information on what types of vessels may do this to include in this analysis. For vessel owners or operators that choose to participate in the recovery of FADs, the reporting requirements are similar to existing requirements of 50 CFR 300.22 (c) and are not expected to reduce the profitability of the fishery.

Non-entangling and biodegradable FAD design: As described earlier in this preamble, the use of non-entangling and biodegradable materials would be required for FADs deployed or redeployed in the IATTC Convention Area beginning on January 1, 2025 and on January 1, 2026, respectively.

Given the differences in the designs and materials used by each vessel for FADs, there is variation in costs. The availability of supplies can also vary and can have an impact on the cost. Some owners and operators of U.S. purse seine vessels have been experimenting with non-entangling and biodegradable FAD designs for several years and are already familiar with costs and construction of non-entangling and biodegradable FADs. During the IATTC’s seventh meeting of the ad hoc working group on FADs in 2023, the IATTC scientific staff presented data on trials of non-entangling and biodegradable FAD prototypes paired with traditional FADs. The trials found the average catch rate for non-entangling and biodegradable FAD prototypes were comparable to traditional FADs, suggesting no substantial change in attracting target stocks. Furthermore, the IATTC trials showed that the lifespan (*i.e.*, the “operational” life) of traditional FADs and non-entangling and biodegradable prototypes were similar. At the 2019 IATTC FAD working group meeting, the International Seafood Sustainability Foundation (ISSF) presented and reported that the range of costs for non-entangling biodegradable FADs ranged from \$180 to \$450 depending on the design. In comparison, ISSF reported traditional FADs currently being used range from \$250 to \$900. Replacing and redeploying FADs is considered routine by large purse seine vessels, regardless of design type. NMFS does not expect the transition to the proposed FAD designs to reduce profitability of the fishery.

No disproportionate impacts between small and large businesses are expected. The proposed action to impose restrictions on FAD designs is not

expected to change the fishing behavior of the U.S. fleet.

In summary, the proposed action is not expected to substantially change the typical fishing practices of affected vessels. Any impact to the income of U.S. vessels is expected to be minor. Therefore, NMFS has determined that the action is not expected to have a significant economic impact on a substantial number of small entities, or a disproportionate economic impact on the small entities relative to the large entities. Given these conclusions, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: July 11, 2024.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

■ 1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

■ 2. Amend § 300.21 by adding definitions, in alphabetical order, for “biodegradable” and “non-entangling FAD” to read as follows:

§ 300.21 Definitions.

* * * * *

Biodegradable means non-synthetic materials and/or bio-based alternatives that are consistent with approved international standards for materials that are biodegradable in marine environments. The components resulting from the degradation of these materials should not be damaging to the marine and coastal ecosystems or include heavy metals or plastics in their composition. Examples of non-synthetic materials include plant-based materials such as cotton, jute, Manila hemp (abaca), bamboo, and natural rubber; and animal-based materials such as leather, wool, and lard. The approved

international standards are ASTM D6691, ASTM D7881, and TUV Austria.

* * * * *

Non-entangling FAD means a FAD that does not include any netting materials for any part of the FAD including both the surface structure (e.g., raft) and subsurface structure (e.g., tail).

* * * * *

■ 3. Amend § 300.22 by adding paragraph (c)(5) to read as follows:

§ 300.22 Recordkeeping and reporting requirements.

* * * * *

(c) * * *

(5) *Reporting on recovered FADs.* U.S. vessel owners and operators must report information on FADs that are recovered for disposal or recycling to the IATTC, unless that information is already reported to the IATTC by an observer. This information must be reported using a format and address provided by the HMS Branch. The owner and operator must ensure that the form is submitted within 30 days of each recovery to the address specified by the HMS Branch.

* * * * *

■ 4. Amend § 300.24 by adding paragraphs (rr) and (ss) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(rr) Except for tuna purse seine vessels, when recovering FADs, performing maintenance and adjustments on deployed FADs, or deploying a FAD.

(ss) Deploy or redeploy a FAD in the IATTC Convention Area that fails to comply with the FAD design requirements in § 300.28(g) and (h).

■ 5. Amend § 300.28 by revising the introductory text of paragraph (f), by adding paragraph (f)(3), by revising paragraph (g), and by adding paragraph (h) to read as follows:

§ 300.28 FAD restrictions.

* * * * *

(f) *Restrictions on FAD deployments, removals, and recovery.*

* * * * *

(3) U.S. vessel owners and operators may recover FADs for final disposal or recycling. Recovery activities must be limited to the collection of FADs for final disposal or recycling and may not include any type of maintenance or adjustment on deployed FADs.

(g) *Non-entangling FAD materials.* Beginning January 1, 2025, U.S. purse seine vessel owners and operators must ensure that the design and construction

of any FAD to be deployed or redeployed (*i.e.*, placed in the water) in the IATTC Convention Area uses only non-entangling FAD materials.

(h) *Biodegradable FAD materials.* In addition to complying with the requirement to use non-entangling materials specified in paragraph (g) of this section, vessel owners and operators must ensure that the design and construction of any FAD to be deployed or redeployed in the IATTC Convention Area meets the following specifications:

(1) Beginning January 1, 2026, all FADs deployed or redeployed in the IATTC Convention Area must be designed and constructed according to one of the following sets of specifications:

(i) The surface part of the FAD must be made of fully biodegradable materials, except for flotation components (*e.g.*, plastic buoys, foam, purse-seine corks), whereas the subsurface part of the FAD may contain non-biodegradable materials (*e.g.*, synthetic raffia, metallic frame, plastic floats, nylon ropes); or

(ii) The subsurface part of the FAD must be made of fully biodegradable materials, whereas the surface part and any flotation components (*e.g.*, plastic buoys, foam, purse-seine corks) of the FAD may contain non-biodegradable materials (*e.g.*, synthetic raffia, metallic frame, plastic floats, nylon ropes); or

(iii) The surface part, except for flotation components (*e.g.*, plastic buoys, foam, purse-seine corks), and subsurface part must be made of fully biodegradable materials. Non-biodegradable materials, in particular nylon ropes, can be used exclusively to strengthen the structure of the floating or underwater component of the FAD.

(2) Beginning on January 1, 2029, all FADs deployed or redeployed in the IATTC Convention Area must be made of fully biodegradable materials, except for flotation components (*e.g.*, plastic buoys, foam, purse seine corks), which may be made of non-biodegradable material. Non-biodegradable materials, in particular nylon ropes, can be used exclusively to strengthen the structure of the floating or underwater component of the FAD.

(3) Restrictions on biodegradable FAD materials set forth in paragraphs (h)(1) and (2) of this section do not apply to satellite buoys that are attached to FADs in order to track them.

[FR Doc. 2024–15654 Filed 7–18–24; 8:45 am]

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Notices

Federal Register

Vol. 89, No. 139

Friday, July 19, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0078]

Importation of Grapes From Chile Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to revise the requirements relative to the importation into the United States of fresh table grapes from regions of Chile where European grapevine moth (*Lobesia botrana*, EGVM) is either absent or at very low prevalence. Based on the findings of a commodity import evaluation document, which we made available to the public for review and comment through a previous notice, we have determined that, in addition to the existing option of methyl bromide fumigation for EGVM and Chilean false red mite (*Brevipalpus chilensis*), grapes from Chile may be safely imported under a systems approach or irradiation for EGVM and *B. chilensis*. Current mitigation measures for *Ceratitis capitata*, or Medfly, will remain unchanged.

DATES: The articles covered by this notification may be authorized for importation under the revised requirements after July 19, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, RCC, IRM, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (202) 836–0149; Claudia.Ferguson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart L—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–12, referred to below

as the regulations), the U.S. Department of Agriculture’s (USDA’s) Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 of the regulations provides the requirements for authorizing the importation of fruits and vegetables into the United States, as well as revising existing requirements for the importation of fruits and vegetables. Paragraph (c) of that section provides that the name and origin of all fruits and vegetables authorized importation into the United States, as well as the requirements for their importation, are listed on the internet at <https://epermits.aphis.usda.gov/manual>; this address provides access to the Agricultural Commodity Import Requirements database, or ACIR.¹ It also provides that, if the Administrator of APHIS determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk documentation and determination available for public comment.

Chile table grapes (*Vitis vinifera* L.) are currently listed in ACIR as authorized for importation into the United States subject to methyl bromide fumigation. This requirement was first adopted in 1960 as a risk mitigation measure against the Chilean false red mite (*Brevipalpus chilensis*), subsequently revised to apply only if quarantine pests were intercepted, and, following frequent pest interceptions, reinstated in 1996 for all shipments. Chile table grapes from areas of Chile under quarantine for Medfly (*Ceratitis capitata*) are subject to additional pest mitigation measures, which we did not propose to change.²

¹ The internet address listed in the regulations had previously provided access to the Fruits and Vegetables Import Requirements database, or FAVIR. However, on September 30, 2022, the FAVIR database was replaced by the ACIR database.

² We will, however, clarify that irradiation is an approved phytosanitary treatment for Medfly. This is specified in our PPQ Treatment Manual, but not currently reflected in ACIR.

On August 27, 2008, we published in the **Federal Register** (73 FR 50577–50582, Docket No. APHIS–2007–0152) a proposed rule³ to allow the importation of fresh table grapes from Chile into the continental United States under a systems approach. Following an outbreak of European grapevine moth (*Lobesia botrana*, EGVM) in Chile that same year, and subsequent public comments on the proposed rule regarding the outbreak, APHIS elected not to finalize the proposed rule, as the proposed systems approach did not include EGVM-specific measures. Since that time, we have continued to require that table grapes imported from Chile receive methyl bromide fumigation, which also mitigates the risk of EGVM.

The national plant protection organization (NPPO) of Chile, Servicio Agrícola y Ganadero (SAG), has requested that APHIS revise the import requirements for grapes from Chile to the United States to allow the export of table grapes from areas of Chile where EGVM is either absent or at very low prevalence (the Arica and Parinacota, Tarapacá, Antofagasta, Atacama, Coquimbo, and Valparaíso regions of Chile) under an APHIS preclearance program for a systems approach in Chile, or irradiation treatment. In response to this request, APHIS prepared a new pest risk assessment (PRA) that evaluates the risks associated with importation of commercially produced fresh grapes (*Vitis vinifera* L.) for consumption from Chile into the entire United States. Based on the PRA, a commodity import evaluation document (CIED) was prepared to identify phytosanitary measures that could be applied to grapes from Chile to mitigate pest risk. The CIED recommended that commercially produced shipments of fresh table grapes originating from the Arica and Parinacota, Tarapacá, Antofagasta, Atacama, Coquimbo, and Valparaíso regions of Chile could be imported into the United States under an APHIS preclearance program for a systems approach or irradiation without the risk of introducing quarantine pests.

Accordingly, in accordance with the requirements of § 319.56–4, we

³ To view the proposed rule, go to: <https://www.regulations.gov/document/APHIS-2007-0152-0001>.

published a notice⁴ in the **Federal Register** on October 17, 2022 (87 FR 62783–62784, Docket No. APHIS–2021–0078), in which we announced the availability, for review and comment, of the PRA and CIED. We also made available an economic effects assessment, or EEA, which contextualized the possible economic impacts associated with the notice.

We solicited comments on the notice for 60 days ending December 16, 2022. We extended the deadline for comments until January 17, 2023, in a document published in the **Federal Register** on December 13, 2022 (87 FR 76174, Docket No. APHIS–2021–0078).

We received 45 comments by that date. They were from producers, importers, United States and Chilean trade associations, industry groups representing domestic table grape producers, the NPPO of Chile, a port authority, a State department of agriculture, a State natural resources and environmental agency, and a private citizen. Thirty-four commenters expressed support for the notice, and two opposed it. The remaining nine commenters did not overtly express support or opposition, but posed questions, offered recommendations, or requested additional time to comment. Of the comments supporting the notice, 21 included a request for us to finalize the notice expeditiously. The comments are discussed below by topic.

General Comments

Four commenters asked us to extend the comment period by 75 days.

We extended the comment period by 30 days, which we consider appropriate given our prior outreach efforts to stakeholders in connection with this action. This includes: Making the PRA and CIED available for stakeholder review and providing an informal opportunity for comment before the notice was published in the **Federal Register**; providing briefings for the domestic table grape industry within the United States and the National Plant Board, which represents State plant protection organizations within the United States, regarding the provisions of the systems approach; and conducting a virtual site visit of Chilean grape production systems for domestic stakeholders.

Two commenters asked us to disclose the operational workplan (OWP) and reopen the comment period.

The OWP is a government-to-government document formulated using

the CIED and PRA, which were made available for public review and comment. It contains guidance on the detailed implementation of the systems approach that is outlined in the CIED without expanding or reducing its scope. The use of OWPs allows APHIS to adjust the details of how to execute the systems approach, within the bounds of the requirements laid out in the CIED, in response to situations such as changes in pest distribution and/or population density within a particular region, or technological advances. The OWP allows the Agency to work nimbly to adjust to operational realities within the parameters and strictures set forth by the CIED. Because the OWP is a government-to-government document that provides internal guidance regarding implementation of APHIS import requirements once they have been finalized, and because the OWP does not deal with subject matter outside the scope of the documents disclosed for notice and comment, it is long-standing APHIS policy not to publish draft OWPs for public review and comment. The OWP functions not as a document that provides the underlying basis for APHIS' determination, but as a further expression, and consistent with the requirements, of the CIED. As such, the non-disclosure of OWP does not deprive the public of ample opportunity for notice and comment.

One commenter requested access to all documentation supporting the PRA and CIED and asked us to reopen the comment period. The commenter also stated that they requested this information by filing a Freedom of Information Act (FOIA) request and, in response, only received the comments that APHIS received during the informal stakeholder input process.

The commenter is referencing a FOIA request received by APHIS in April 2022. The FOIA request specifically requested “all public comments, including any attachments or supporting documentation submitted and received by APHIS” during the informal stakeholder input process. APHIS provided this information to the requester in November 2022. We have no record of the requester expanding the scope of this request to include additional records.

We do not believe that reopening the comment period is warranted, as all of the documentation supporting the PRA and CIED is cited in those documents, and the majority of this information is publicly available (e.g., published, peer-reviewed literature) or available upon request (e.g., data from the Agricultural Quarantine Activity System, or AQAS,

and the Agricultural Risk Management System, or ARM). APHIS does not consider this information necessary in order to provide meaningful comment on the systems approach, particularly in light of the extensive outreach efforts to stakeholders that took place before the notice was published, including a virtual site visit. All documents essential for ample opportunity for notice and comment have been disclosed.

A commenter asked whether methyl bromide fumigation will remain an option for entry of the grapes into the United States if irradiation is not a feasible option for an importer.

Methyl bromide fumigation will remain an option.

Two commenters said that methyl bromide fumigation should be an option if the systems approach fails and grapes have pests.

If pests are detected in a shipment during the mandatory preclearance inspection in Chile, methyl bromide fumigation will remain an option for export of the grapes to the United States, provided that the pests detected can be addressed by methyl bromide fumigation.

If pests are detected in a shipment during an inspection at the port of entry, the possibility of methyl bromide fumigation as a remedial measure will be determined on a case-by-case basis. This determination will be based on whether the port has methyl bromide fumigation capacities and whether the pest detected can be addressed by methyl bromide fumigation.

Detection of quarantine pests on a shipment imported under the systems approach will trigger traceback, and could result in suspension of production sites and/or packinghouses from the systems approach, and/or reevaluation of the systems approach itself.

One commenter stated that APHIS failed to evaluate whether methyl bromide fumigation could be replaced with other fumigation methods, e.g., ethyl formate, phosphine, ozone, or multiple fumigants. As such, the commenter stated that the notice was issued in violation of the Administrative Procedures Act (5 U.S.C. 500 *et seq.*) insofar as there was not evidence of reasoned decision making because the Agency failed to consider alternatives to methyl bromide fumigation apart from the systems approach.

While we are committed as an Agency to evaluating alternatives to the use of methyl bromide, the commenter misunderstands the basis for the notice, which was articulated in the initial notice and its supporting

⁴ To view the notice, PRA, CIED, and the comments we received, go to: <https://www.regulations.gov/document/APHIS-2021-0078-0001>.

documentation. When a change is being sought to the conditions governing the importation of a commodity that is already authorized for importation into the United States, as is the case with Chilean grapes, the NPPO of the relevant exporting country must submit information in support of the requested change in accordance with 7 CFR 319.5. Pursuant to these regulations, APHIS was asked by the NPPO of Chile to evaluate whether a systems approach or irradiation would mitigate the risk of introducing pests of concern to the United States relevant to the importation of table grapes. In response to that request, and in accordance with the regulations, we prepared a pest risk analysis evaluating the risk associated with the requested change. The NPPO did not ask us to evaluate other fumigation methods, nor include information regarding other fumigation methods, and it would have therefore been inconsistent with our regulatory process to do so.

One commenter asked that we require the NPPO of Chile to fumigate imported grapes with sulfur dioxide once the Environmental Protection Agency (EPA) approves the use of sulfur dioxide as a pest mitigant.

As the commenter stated, sulfur dioxide is not currently approved by the EPA for use as a pest mitigant. If such approval occurs, APHIS would be open to evaluating the efficacy of sulfur dioxide as a treatment for table grapes from Chile if requested, in accordance with our regulations in 7 CFR part 305, which govern the approval process for phytosanitary treatments. APHIS would not require the use of sulfur dioxide, if it is determined to be efficacious, unless evidence emerges that the alternate conditions for importation of grapes from Chile into the United States (methyl bromide fumigation, irradiation, or the systems approach) are not effective.

Pest Risk Assessment

Four commenters requested additional assessments of the pest risk of potential tortricid pests, including *Accuminulia buscki*. The commenters requested that these assessments address the presence of *A. buscki* in Chilean table grapes, its potential to impact vineyards in the United States, and the potential impact this species could have if transmitted to the United States. Several of the commenters also expressed doubt that a lack of interceptions could be considered evidence for a weak pathway, since most grapes are fumigated at ports of entry into the United States and thus presumably not inspected as regularly

as other commodities, or fumigation is effective against *A. buscki* and therefore the pest would not be detected, or *A. buscki* has been present but has not been identified as such. One commenter noted that *A. buscki* has been intercepted on grapes imported into the United States from Chile.

The PRA addresses the concerns brought up by the commenters. While we do not know of the presence of *A. buscki* and the other potential tortricid pests in Chilean table grapes, we do know that grapes are a host for these moths, and because of this, we started our baseline rating at the highest rating (“High”) for all but one of the tortricid species. However, the tortricids (other than EGVM) identified in the PRA have a low likelihood of establishing via this pathway because the life stage most likely to be associated with the commodity is the larva, which feeds externally on the fruit and could be noticed during harvest. Those larvae that avoid detection would have to find a new host, complete development, find a mate, and establish a population, all while avoiding being disposed of, succumbing to the elements, predation, and other sources of mortality.

The PRA considers the pest’s potential to impact the United States by assessing its likelihood of entry and establishment in the United States. For the reasons outlined in the PRA, we have determined that the combined likelihood of entry and establishment is “Low” via the pathway of grapes from Chile for all tortricids (other than EGVM). While the PRA states that these pests are likely to cause unacceptable consequences if introduced into the United States, we believe that the mitigations outlined in the CIED will prevent such an introduction for the reasons articulated in the CIED.

APHIS disagrees that a lack of interceptions cannot be used to support our determination of a weak pathway. No tortricids or quarantine significant Lepidoptera have been intercepted on Chilean grapes since 1984, which includes the period between 1984 and 1996 that predates the mandatory methyl bromide fumigation requirement. The interception of *A. buscki* that one commenter mentioned, citing a 1999 manuscript, refers to a single adult male collected in 1926. We do not consider this to be sufficient evidence to contradict our determination.

Finally, the same commenter claimed that APHIS’ determination that *A. buscki* presented a low risk was not shared by researchers, citing a European and Mediterranean Plant Protection

Organization (EPPO) bulletin,⁵ which the commenter claimed classified “*A. buscki* in the same risk category as the Chilean false red mite.”

We disagree with the conclusions the commenter draws from this bulletin. In the bulletin, both species are listed as “intercepted” but not “spreading/emerging.” Importantly, the caption of the table listing the species reads, “‘intercepted’ means that the pest has been reported as intercepted in trade, but not necessarily on table grapes.” Additionally, while this report mentions some of the same pests as our pest risk assessment, APHIS uses different methodologies for risk assessment than the methodologies outlined in the EPPO bulletin. Therefore, direct comparisons are not possible.

Two commenters stated that, while the PRA assesses the risk of pests individually, it fails to assess the cumulative risk of all pests over time. The commenters provided a calculation of probability as an example, and added that grapes grow in tight clusters, increasing the probability of introduction.

The concept of cumulative risk presented by the commenter is based on faulty assumptions. The commenter assumes that each pest is biologically similar in terms of its plant pest status, each has a commensurate likelihood of attacking the grapes, each is commensurately likely to survive shipment to the United States, and each is commensurately likely to become established in the United States, if it enters the United States. This is not the case. For example, with regard solely to the likelihood of establishment, there are multiple factors that must be considered when determining if a pest could establish in an area, including life stage imported, development time, likelihood of finding hosts, finding mates, and being introduced into a suitable environment, all while avoiding mortality factors. In considering each pest distinctly, the PRA takes into consideration this variability from pest to pest. Additionally, we considered and factored into our assessment the physical parameters of the commodity (grape clusters) when determining if a pest would follow the pathway.

Finally, the PRA adopted a conservative methodology for assessing likelihood of introduction in certain instances. For example, some of the pests (e.g., tortricid moths) cause secondary infections, such as *Botrytis*, to infect the fruit and/or display visible

⁵ Suffert et al., 2018. *Identification of New Pests Likely to Be Introduced into Europe with the Fruit Trade*. 48 EPPO Bulletin 144, 150.

feeding damage. The feeding damage, as well as secondary infections, can be obvious in the field and would likely be culled, further reducing pest occurrence on the harvested commodity. We did not consider this factor in the PRA. Thus, the likelihood of introduction of some of the pests analyzed in the PRA may be lower than estimated.

Two commenters said that the PRA underestimates the risk of the Chilean fruit tree leaf folder (*Proeulia auraria*), stating that the pest has been intercepted 34 times on blueberries imported into the United States. One commenter also claimed that we disregarded European and Australian reports suggesting that *P. auraria* is an emergent pest with high potential quarantine risk and of more significance than the Chilean false red mite, and that we ignored scientific literature providing that *P. auraria* is an emerging danger that can be controlled using pheromone traps.

The PRA does indicate that it is possible that *P. auraria* larvae could enter the United States on grapes from Chile. However, pest entry is only part of likelihood of introduction in the PRA, as the pest would also have to establish. Establishment would be difficult for the pest, which feeds externally on grape fruit as larvae, because it would have to successfully complete development (on a perishable commodity), find a mate, and establish a population, all while avoiding being disposed of, succumbing to the elements, predation, and other sources of mortality. All these factors contribute to a low likelihood of introduction.

We read and considered the reports from Europe and Australia⁶ but did not cite them. The reports suggest that *P. auraria* should be considered a significant pest of grapes. This does not directly address whether it could follow the pathway of grapes from Chile to the United States. For that determination, the PRA relied on direct evidence and factors unique to exporting grapes to the United States. APHIS cites direct evidence in the PRA, not works that were considered but determined not germane.

The literature addressing pheromone traps that the commenter cited⁷

suggests that pheromone traps could be used to manage *P. auraria* in Chile. This literature does not address the pathway of grapes from Chile into the United States. Based on our determination of a low likelihood of introduction for the factors listed above, we determined that risk mitigation measures such as pheromone traps would not be scientifically justified.

With regard to the commenters' mention of interceptions of *P. auraria* on blueberry, the number referenced by the commenter does not correspond with our records. United States port inspectors have intercepted *Proeulia* sp. larvae (not identified to *P. auraria*) once on *Vaccinium* spp. in permit cargo originating from Chile since 1984. As noted earlier, no tortricids or quarantine significant Lepidoptera, which includes *Proeulia* sp., have been intercepted on Chilean grapes since 1984. This includes the period between 1984 and 1996, which pre-dates the mandatory methyl bromide fumigation requirement.

These two commenters also said that the PRA underestimates the risk of the South American fruit tree weevil (*Naupactus xanthographus*). One of the commenters stated that APHIS had ignored European and Australian reports suggesting the pest was a significant risk, and presented five scientific references that the commenter stated we had failed to consider in developing our PRA.

We found no evidence that *N. xanthographus* is regularly associated with grape clusters. As stated in the PRA, adults are polyphagous and may attack many parts of the plant, which could include fruit. However, this pest is not regularly associated with fruit. When disturbed, adult weevils drop to the ground, so they would likely move off fruit during harvest. Larvae are root pests and would not be associated with the harvested commodity. Additionally, the adults do not fly, which would limit their ability to establish.

Regarding the commenter's claims that the European Union considers *N. xanthographus* on the same level as the Chilean false red mite, and that Australia considers it high risk, while these assessments recognize that these organisms are pests of grapes, they each use their own methodologies to rate risk and determine what pests may follow the pathway that differ from our own. Therefore, direct comparisons between these assessments and APHIS'

assessments are not possible.

Additionally, it would lack context to cite the assessments without a full discussion of the limits of the assessments based on the differing methodologies.

The commenter is incorrect that APHIS never considered important scientific literature on *N. xanthographus*. We consulted many sources when developing our risk assessment, including sources referenced by the commenter.⁸ However, while we cite in the PRA all direct evidence that informed the assessment, we do not cite sources that were considered but determined not germane. None of the references cited by the commenter focused specifically on whether the pest would be associated with grape fruit or remain with the fruit during harvest. We cited references that assisted in our understanding of the biology of *N. xanthographus*, which led us to determine that fruit for consumption would not be a pathway for *N. xanthographus*.

One commenter disagreed with our risk rating of "Medium" for the likelihood of introduction of EGVM, stating that the assessment fails to recognize that grapes are distributed nationally and that EGVM previously became established in California. The commenter also noted that the data the rating was based on was not made available for public comment.

We acknowledge in the PRA that grapes are sold in every State, which results in a high likelihood of entry. However, risk of introduction has two separate components, likelihood of entry and likelihood of establishment. In this regard, there are some significant hurdles that EGVM must overcome that would reduce the likelihood of establishment. The eggs and larvae are the most likely life stages to enter, which would have to complete development, find a mate, and establish

⁶ W. Vera and J. Bergmann, 2018. *Distribution and Ultrastructure of the Antenna/Sensilla of the Grape Weevil Naupactus Xanthographus*. 81 Microscopy Rsch. & Tech. 590, 590.

A.A. Lanteri and M.G. del Rio, 2017. *Naupactus Xanthographus* (Germar) Species Group (Curculionidae: Entiminae: Naupactini): A Comprehensive Taxonomic Treatment. 51 J. Nat. Hist. 1557, 1557.

C. Aguirre et al., 2015. *A PCR-Based Diagnostic System for Differentiating Two Weevil Species (Coleoptera: Curculionidae) of Economic Importance to the Chilean Citrus Industry*. 108 J. Econ. Entomology 107, 107.

N. Guzman et al., 2010. *Isolation and Characterization of Microsatellite Loci in the Fruit Tree Weevil Naupactus Xanthographus*. 89 J. Genetics.

W. Vera et al., 2016. *Attraction to Host Plant Volatiles and Feeding Performance of Naupactus Xanthographus (Coleoptera: Curculionidae) Is Affected By Starvation*. 29 J. Insect Behav. 48, 48.

⁶ Wilstermann et al., 2016. Report on Table Grapes—Fruit Pathway and Alert List 51.

Suffert et al. 2018. *Identification of New Pests Likely to Be Introduced into Europe with the Fruit Trade*. 48 EPPO Bulletin 144, 150.

Biosecurity Australia, 2005. Final Report: Import Risk Analysis for Table Grapes from Chile 42.

⁷ Reyes-García, Luis et al., 2014. *A 4-component Sex Pheromone of the Chilean Fruit Leaf Roller Proeulia Auraria (Lepidoptera: Tortricidae)*. Ciencia E Investigacion Agraria: 187–196.

Flores, M., et al, 2021. *Development of Monitoring and Mating Disruption against the Chilean Leafroller Proeulia auraria (Lepidoptera: Tortricidae)*. In Orchards. Insects 12, no. 7: 625.

a population. This must occur all while avoiding being disposed of, succumbing to the elements, predation, and other sources of mortality. All these factors contribute to reducing the likelihood of establishment, and thus the overall likelihood of introduction, which rated “Medium.”

Our rating of “Medium” for likelihood of establishment acknowledges that establishment is possible, especially without risk mitigations. However, as explained above and in further detail in the PRA, the likelihood of introduction is limited by multiple factors. We also note that the PRA specifically assesses the risk of introduction via the hypothetical pathway of commercially produced grapes from Chile and is therefore based on factors specific to that pathway. A historical instance of establishment via an unknown pathway does not contradict our risk rating for the likelihood of introduction.

All sources supporting the PRA are listed in that document and publicly available or available upon request.

The commenter also disagreed with our risk ratings for *B. chilensis*, stating that the assessment fails to recognize that grapes are distributed nationally, and noting that the data the rating was based on was not made available for public review.

We acknowledge in the PRA that grapes are sold in every State. However, we also state that there are some significant hurdles that the mite must overcome that would reduce the likelihood of establishment, such as seasonality of host availability, dispersal ability of the mites, and intended use of the commodity. Our consideration of all these factors resulted in a rating of “Medium.”

As stated earlier, all sources supporting the PRA are listed in that document and publicly available or available upon request.

General Comments on the Systems Approach

One commenter said that a systems approach provides insufficient protection against known and emerging pests, and that APHIS has not considered the risk posed by unknown future pests.

We do not agree with the commenter that the systems approach provides inadequate protection against pest risk. For the reasons outlined in the CIED, APHIS has determined that the systems approach will provide an appropriate level of phytosanitary protection against known pests. APHIS continuously monitors foreign countries for quarantine pests. If a previously

unknown quarantine pest relevant to the importation of table grapes from Chile arises in the future, APHIS will reassess the associated pest risk and, if we determine that current phytosanitary measures would not provide an adequate level of phytosanitary protection, revise the import restrictions accordingly. Interception of even one quarantine pest for a commodity at a port of entry triggers an immediate review of the risk mitigations for that commodity.

The commenter also stated that, whereas fumigation with methyl bromide is efficacious for a broad spectrum of plant pests beyond those specifically identified in the PRA as potentially following the pathway on table grapes from Chile into the United States, the systems approach was constructed more narrowly to address EGVM and *B. chilensis*.

While the mitigations of the systems approach target EGVM and *B. chilensis*, the general phytosanitary measures of the systems approach, including commercial production, culling of damaged fruit, traceback to production sites, inspection, a phytosanitary certificate issued by the NPPO, and a Plant Protection and Quarantine (PPQ) Form 203 or vessel report (which we will require in addition to a phytosanitary certificate, as discussed later in this document), also mitigate for pests that were rated “Low” for likelihood of introduction in the PRA. Certain measures, such as packing in pest-exclusionary packinghouses, also help prevent hitchhiking pests (pests not normally associated with the fruit) from following the pathway. We are confident that these measures will sufficiently mitigate the pest risk.

One commenter stated that the systems approach was vulnerable to manipulation, providing a hypothetical example of a person failing to report a moth found in a trap. The commenter indicated that the PRA is flawed because of the failure to account for “gamesmanship”.

The PRA does not address “gamesmanship” in the systems approach because the PRA does not consider any mitigations (such as those of the subsequently developed systems approach) during the pathway, and therefore does not analyze risk based on whether or not mitigations are followed. Rather, the PRA considers the pest risk potential of organisms before any mitigations are applied, and the phytosanitary measures of the systems approach are developed in response to the pest risks we identify in the PRA.

If APHIS identifies evidence of underreporting or manipulation of

records of trap catches, we may determine not to allow the importation of any further grapes under the systems approach until corrective action acceptable to APHIS establishes that such records are accurate and reliable. We consider the possibility of such general prohibitions a sufficient incentive for the NPPO to sufficiently monitor the systems approach program in Chile, and for producers to adhere to the provisions of the systems approach.

The commenter also stated that the systems approach was vulnerable to accidents, such as comingling of grapes in packinghouses or problems caused by grapes grown near the border between regions. The commenter indicated that the PRA is flawed because of the failure to account for such accidents.

The PRA does not account for accidents in the systems approach because, as explained above, the PRA does not consider any mitigations (such as those of the subsequently developed systems approach) during the pathway, and therefore does not analyze risk based on whether or not mitigations are followed. Rather, the PRA considers the pest risk potential of organisms before any mitigations are applied, and the phytosanitary measures of the systems approach are developed in response to the pest risks we identify in the PRA.

Protocols will be in place in packinghouses to prevent comingling of systems approach and non-systems approach grapes, such as separate timing of the arrival of grapes grown under the systems approach and separate storage areas, and these protocols will be included in the operational workplan. Orchards that are eligible to ship grapes grown under the systems approach that are on the border of regions that are not approved to export grapes under the systems approach will be subject to the necessary trapping and survey requirements to ensure freedom from quarantine pests.

Moreover, with regard to both the possibility of deliberate manipulation of the systems approach or accidental lapses in various provisions of the systems approach, the systems approach consists of multiple independent but interlocking measures that mitigate pest risk; if one measure fails, other measures, including mandatory inspections of packed table grapes under the pre-clearance program in Chile, and possible additional inspections at the port of entry, remain.

We are confident that the mitigations individually as well as collectively will mitigate the pest risk.

One commenter stated that the systems approach for plums in Chile has

recently been unsuccessful, which casts doubt on the efficacy of the proposed systems approach.

There is no evidence that the systems approach for plums has been unsuccessful. EGVM was discovered on plums before there was a systems approach in place with specific mitigations for the pest. As we alluded to in the April 1, 2021 Federal Order that first established EGVM-specific mitigations for the importation of plums from Chile, until EGVM larvae were detected on precleared plums in February 2021, they had not previously been considered a host for EGVM.⁹ The systems approach for the importation of plums from Chile was subsequently established in a notice published in the **Federal Register** on January 25, 2022 (87 FR 3756–3758, Docket No. APHIS–2021–0041) after the detections.

We are confident that the proposed systems approach for table grapes from Chile will mitigate the risk presented by *B. chilensis*, *L. botrana*, and other quarantine pests.

CIED and Specific Provisions of the Systems Approach

Two commenters asked for details regarding regulated areas for EGVM, as well as whether, and under what conditions, fruit can be shipped from a regulated area.

In the case of multiple EGVM captures, there will be a regulated area following the protocol of Chile's national *Lobesia botrana* program. Fruit from a regulated area will only be eligible for export if it undergoes a phytosanitary treatment, such as methyl bromide fumigation or other approved treatment, either in Chile or at the port of first arrival in the United States.

Four commenters asked whether field inspections for EGVM will be required and requested details about these inspections.

Field sampling of grapes targeting EGVM is an integral part of any eradication program. However, field sampling is typically initiated in response to adult captures. According to the systems approach outlined in the CIED, capture of an adult moth will result in a regulated area from which grapes will not be eligible to ship to the United States without a phytosanitary treatment. Because these areas will already be suspended from participating in the systems approach, there is no justification to require sampling for larvae as part of the systems approach.

Information about Chile's eradication program, including information about field inspections, is available publicly on the SAG website.¹⁰ If a larva is detected in the field, it will result in a regulated area from which grapes cannot be shipped under the systems approach.

Three commenters requested more information about EGVM trapping protocol.

Details on trapping density and action thresholds are typically reserved for the operational workplan, as this allows the Agency to work nimbly to adjust to operational realities within the parameters and strictures set forth by the CIED.

That being said, Chile's national *Lobesia botrana* program is available publicly on SAG's website.¹¹ In its current form, the program requires 1 trap per 10 hectares, with a minimum of 1 trap per production site.

One commenter requested that sampling procedures targeting EGVM for Chilean growers be the same as those for California growers in order to “level the playing field.” The commenter also requested further field sampling and surveys for EGVM, as well as restoration of funding for this program in the United States.

As explained earlier in this document, field sampling is not a part of the systems approach, but it is a component of Chile's national *Lobesia botrana* program. The sampling procedures used in Chile (available publicly on the SAG website at the link provided in footnotes 10 and 11) are based off the same scientific data that were used to develop the sampling procedures used during eradication efforts in California.

Domestic EGVM programs and their funding is outside the scope of this notice.

One commenter stated that the CIED lacks evidence for designating specific regions of Chile as “low prevalence” for EGVM, as the CIED does not include survey data from recent years and provides no explanation as to what the phrase “mainly free” from EGVM means.

The populations of EGVM in these regions are under official eradication and suppression efforts by SAG. During the last 4 years, captures of adult EGVM

have not exceeded 100 moths in these regions during the first flight of the table grape production season. In contrast, there were over 2,000 adult captures of EGVM in the Metropolitan region, which did not qualify as an area of low pest prevalence.

We also note that grapes may only be exported from pest free production sites in the areas that qualified as low pest prevalence; areas that qualify for the systems approach will require trapping in production sites to ensure freedom from EGVM, and production sites that are within 3 kilometers (km) of locations with positive captures of EGVM will not be eligible to ship under the systems approach.

The statement that the regions of Chile considered for the systems approach are “mainly free of *Lobesia botrana*” refers to the fact that EGVM populations are transient and officially under eradication by SAG.

One commenter stated that the CIED should include a definition of a “shipping season” for purposes of counting EGVM captures and determining eligibility to export under the systems approach. The commenter suggested that a shipping season should start on October 1.

Due to climatic changes and geographic variability in participation of the growing areas, we cannot specify a calendar date for the start of the shipping season. We require recordkeeping of EGVM captures as part of the systems approach and will use the dates and locations of any captures of EGVM to determine eligibility of the production sites to participate in the systems approach.

One commenter said that the Valparaíso region should not be eligible to export grapes under the systems approach as it does not have a low prevalence of EGVM. As evidence, the commenter indicates that there were 91 EGVM captures by the end of the first flight of the moth during 2018/2019 season, and that those captures were made in 54 different traps and that 74 captures occurred in 35 different table grape vineyards.

The populations of EGVM in this region are under official eradication and suppression efforts by SAG. EGVM captures have decreased since the 2018/2019 season, with 78 adult EGVM captured in the Valparaíso region in the 2023/2024 season. Captures of EGVM during the intervening years were similarly lower than the 91 moths captured during the 2018/2019 season. Production sites that are within 3 km of captures will not be eligible to ship under the systems approach.

⁹ To view this Federal Order, go to: https://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/downloads/2021/da-2021-04.pdf.

¹⁰ SAG's National *Lobesia botrana* control program, including information about inspections, can be found here: <https://www.sag.gob.cl/sites/default/files/Estrategia%20Programa%20Nacional%20Lobesia%20botrana.%20Temporada%202023-2024.pdf>.

¹¹ SAG's National *Lobesia botrana* control program specifying trap density can be found here: <https://www.sag.gob.cl/sites/default/files/Estrategia%20Programa%20Nacional%20Lobesia%20botrana.%20Temporada%202023-2024.pdf>.

Four commenters asked about the rate for preharvest grape sampling for *B. chilensis*, and one commenter requested that it be specified in the CIED.

Sampling rates are typically reserved for the operational workplan. As noted earlier, reserving such details for the OWP allows APHIS to adapt to operational realities within the parameters and strictures set forth by the CIED. However, the sampling rate identified in the OWP will be within the same general parameters as that for other commodities in systems approach programs in Chile and in accord with International Standards for Phytosanitary Measures No. 6, "Surveillance," produced by the Secretariat of the International Plant Protection Convention.

One commenter suggested that we require a secondary random sampling for *B. chilensis* or other additional mitigation measures.

The phytosanitary measures required by the systems approach, including mite washes at the packinghouse, already serve as additional mitigation measures to ensure that no mites are present in exported table grapes from Chile. If mites are found during phytosanitary inspections, traceback will be conducted and the production site from which the grapes were produced will no longer be able to ship under the systems approach for the remainder of the season. Given these measures, a secondary random sampling is not supported.

One commenter stated that the window for *B. chilensis* testing in the CIED should be reduced from the proposed 1 to 30 days before harvest to 1 to 15 days, as the longer window increases the risk of a new generation of mites.

We have determined that preharvest sampling up to 30 days before harvest is sufficient to ascertain that prevalence of the mite is low. Although *B. chilensis* has multiple generations each year, these generations occur every 30–40 days and overlap with one another, so mites are likely to be detected during the preharvest sampling if they are present. The systems approach also requires post-harvest mite washes, which provide an additional layer of protection to ensure that no mites are present in the exported table grapes.

One commenter stated that the CIED should specify that, during testing for *B. chilensis*, the filtrate in the petri dish must be analyzed under a microscope.

We agree with the commenter that the filtrate in the petri dish must be examined under a microscope during testing to establish low prevalence for a shipping season. Although the CIED

published alongside the initial notice stated that the filtrate must be "microscopically examined," we have edited this language to "under a microscope" to state this requirement more clearly.

One commenter stated that the CIED did not include data from the pilot program of a systems approach consisting of low prevalence places of production for *B. chilensis* in Chile. The commenter also claimed that the data were outdated.

Data from the pilot programs are summarized in the CIED. As stated in that document, there were no detections of live *B. chilensis* during the inspections performed in Chile or in the United States.

We disagree that the data are outdated. While the pilot programs were conducted during the 2002/2003 and 2006/2007 growing seasons, they tested the efficacy of the control measures for *B. chilensis* in the systems approach, and were not therefore dependent on the conditions of any particular growing season. No additional pilot programs have been performed because the pilot program provided sufficient evidence that a systems approach that includes low prevalence of *B. chilensis* effectively removes this pest from the importation pathway.

The commenter also said there was a lack of evidence supporting APHIS' selection of a 6 percent infestation rate with 95 percent confidence as the sampling standard for *B. chilensis*.

The "6 percent" infestation rate stated in the CIED was based on extensive surveys in the field over multiple seasons, as stated in the CIED. However, APHIS has determined that details such as inspection rates are best kept in the OWP, rather than the CIED. The use of OWPs allows APHIS to adjust the details of how to execute the systems approach, within the bounds of the requirements laid out in the CIED, in response to situations such as changes in pest distribution and/or population density within a particular region, or technological advances. We are amending the CIED to remove the specified inspection rate.

We have extensive experience sampling for *B. chilensis* in systems approaches for other commodities from Chile, such as citrus, cherimoya, kiwi fruit, and pomegranate. The sampling requirements for *B. chilensis* in table grapes will match those commodity programs already sampling for *B. chilensis*, as well as sampling protocols for *B. chilensis* in place in other APHIS systems approaches in South America, such as that for lemons from Argentina. The proposed rate is consistent with

risk in grapes when compared to other commodities.

Two commenters asked for more information about Mediterranean fruit fly (Medfly) trapping and descriptions of eradication and regulatory activities.

As mentioned in the initial notice, the current mitigation measures for *Ceratitis capitata*, or Medfly, would remain unchanged. Therefore, activities related to Medfly are outside the scope of this notice. To reiterate, APHIS' Medfly-specific requirements for table grapes from Chile are not part of the systems approach and will remain unchanged as a result of this notice.

APHIS acknowledges that Medfly outbreaks occur sometimes in Chile. Chile maintains a national trapping program with the aim of detecting and eradicating Medfly. SAG regularly communicates updates regarding Medfly outbreaks to APHIS-PPQ, and current outbreaks are updated on SAG's website.¹²

Two commenters stated that the CIED lacked detail about requirements for packinghouses, specifically regarding culling damaged or diseased fruit. One commenter wanted "damaged or diseased" fruit to be defined so that even fruit with slight damage or disease will be culled at the packinghouses and only quality fruit without pests will be imported.

The CIED states that "all damaged or diseased fruits must be culled." Fruit with any amount of damage or disease, however minor, should be culled at the packinghouse. APHIS believes the language in the CIED clearly defines the required actions to ensure pest risk is mitigated. Any further details of activities to be conducted in the packinghouse will be contained in the operational workplan.

Two commenters requested that producers in Chile be allowed to pack outside of pest-exclusionary packinghouses under the systems approach.

We are making no changes in response to the commenters. Pest-exclusionary packinghouses are an integral part of the systems approach. As we stated in the CIED that accompanied the initial notice, requiring packing in pest-exclusionary packinghouses prevents infestation of fruit by pests after harvest and prevents hitchhiking pests (pests not normally associated with the fruit) from following the pathway. Accordingly, to mitigate pest risk, grapes must be packed in

¹² Current outbreaks are listed at: <https://www.sag.gob.cl/ambitos-de-accion/mosca-de-la-fruta>.

facilities with pest-exclusionary measures in place.

One commenter claimed that the CIED lacked information about the processes and criteria for recertification of production sites.

As stated in the CIED, a suspended production site may be reinstated to export under the systems approach under the following conditions: An adult capture would require 1 year with no more than 1 adult EGVM trapped, and a larval find would require 2 years without any immature stages of EGVM found in the field or in packed table grapes. Additional details concerning the operational execution of these requirements will be included in the operational workplan.

One commenter requested that the CIED be amended to provide that a suspended production site not be eligible for reinstatement to export under the systems approach unless there have been no captures of adult EGVM for 2 years, rather than 1 year, in order to avoid a mismatch between initial and reinstatement requirements.

As noted earlier, after an area has been approved to export under the systems approach, a larval find would require two whole seasons without any EGVM detections before the area would be eligible for reinstatement in the systems approach program, whereas an adult capture would require one whole season without EGVM detections. A larval detection would indicate a breeding population, whereas adult captures do not necessarily indicate a breeding population and may instead be transient individuals. For this reason, we believe one season without adult captures to be a sufficient amount of time to mitigate risk.

Between trapping and phytosanitary inspections, we are confident that EGVM populations will be detected.

One commenter stated that the CIED should disclose the remedial actions that APHIS may take if a production site or packinghouse does not comply with measures of the systems approach, and that any noncompliance should automatically make a production site or packinghouse ineligible for the systems approach for at least the rest of the shipping season.

If the noncompliance is due to a find of *L. botrana* or *B. chilensis*, remedial actions will begin with suspension of the noncompliant production site or packinghouse, followed by an investigation into the cause of the noncompliance. APHIS and SAG will then identify actions that must be taken that will allow the packinghouse or production site to be reinstated into the systems approach program once the pest

risk is sufficiently mitigated, if applicable. If SAG finds that a production site or packinghouse is not in compliance with the requirements of the systems approach, no table grapes from the production site or packinghouse will be eligible for export into the United States without a phytosanitary treatment (methyl bromide fumigation or irradiation) until APHIS and SAG investigate and implement appropriate satisfactory corrective actions.

Two commenters stated that there is no guidance for spotting pests and that the CIED should specify how inspectors will carry out inspections, including explicitly obligating inspectors to identify pests at the species level.

The CIED provides the framework for the phytosanitary requirements APHIS has put forth. Details on the implementation of those requirements, including expectations for inspectors, will be included in the bilaterally signed operational workplan. Regarding identifying pests to the species level, this is not always possible during inspection depending on the pest and life stage found. However, if conclusive identification is not possible and the pest is determined to belong to or share morphological similarities with a genus that contains a known plant pest of quarantine significance, APHIS policy is to consider the pest identified to be of quarantine significance.

One commenter stated that the CIED should be modified by providing that inspectors should be required to conduct visual inspections for pests using illuminating lamps, not hand lens.

As stated above, details on the implementation of the requirements laid out in the CIED will be included in the operational workplan. That being said, we can confirm that inspection tables are equipped with illumination to facilitate suitable visual detection of pests. Particularly small pests will be detected through mite washes, as the wash filtrate will be analyzed under a microscope.

One commenter stated that the CIED should disclose which records regarding the systems approach must be generated and retained by SAG. The commenter added that SAG should be required to retain communications with Chilean producers about EGVM detections or *B. chilensis*, and general communications between SAG and grape producers regarding the systems approach.

SAG will be required to inform APHIS of any detections of EGVM and *B. chilensis* in the areas of low pest prevalence. SAG already provides annual updates on the distribution of EGVM in Chile. Any further

requirements for recording communications would be included in the operational workplan.

One commenter stated that SAG should be required to retain records for at least 5 years. The commenter stated that this length of time was needed to address regulatory incidents.

APHIS agrees that record retention for more than 1 year is appropriate given the provisions of the systems approach. However, we do not agree that 5 years of records are warranted. EGVM has three life cycles or flights per year. Thus, the 5-year retention period requested by the commenter would cover up to 15 life cycles of the pest, which far exceeds the number needed in order to investigate individual regulatory incidents, which presumably would occur within a particular flight. We consider 3 years, or nine flights, worth of records sufficient to enable investigations of regulatory incidents, and have amended the CIED accordingly to require records to be kept for at least 3 years.

The same commenter said that the CIED should be modified to require that production sites, packinghouses, and SAG retain information about individuals who have handled consignments of grapes.

Traceability back to production sites and packinghouses will be required. As stated in the CIED, the identity and origin of the fruit must be maintained from the grove, through the packinghouse, and through the exporting process into the United States. We have determined that this information will be sufficient to backtrack pest detections, should they occur, and take appropriate remedial actions, as laid out in the CIED. Information on individuals who handled the fruit goes beyond the scope of pest risk management.

The commenter also suggested that the CIED be modified so that the required phytosanitary certificates are more specific about which measures of the systems approach have been followed, as this would help with any investigation into a failure of the systems approach and serve as a reminder to producers to comply with the systems approach.

The intent of the phytosanitary certificate is to have an NPPO-issued official document that certifies that all provisions of the systems approach that are required to take place in Chile have in fact taken place, and that the grapes in the consignment are free of *Brevipalpus chilensis* and *Lobesia botrana*. Given its intended function, this document would not be an appropriate vehicle to serve as a

reminder to producers to comply with the systems approach. The commenter did not provide reason to believe that such a reminder would be necessary or beneficial, and we believe that the consequences of failing to follow the measures of the systems approach will serve as sufficient incentive for producers to comply with its measures.

We also note that APHIS is editing the CIED to require a PPQ Form 203 or vessel report in addition to a phytosanitary certificate issued by the NPPO prior to export. Like a phytosanitary certificate, the PPQ Form 203 or vessel report certifies inspection at the country of origin, and can be used to certify that all in-country requirements have taken place. However, it is issued by APHIS-PPQ, rather than by the NPPO of the commodity's country of origin, and is used when a commodity is subject to an APHIS preclearance program. At packinghouses, APHIS preclearance personnel will confirm, based on the identification associated with the consignment, that it was produced and packed in accordance with the systems approach prior to inspecting the consignment for quarantine pests.

Other aspects of the systems approach, such as unique identification and recordkeeping requirements, will provide the traceability requested by the commenter in the event of failure of the systems approach.

One commenter expressed doubt that APHIS has adequate resources to conduct inspections at the port of entry and asked about the frequency of such inspections.

We affirm that APHIS and Customs and Border Protection (CBP) have adequate resources for conducting inspections at the port of entry. All shipments imported under the systems approach are subject to inspection at the port of entry. The exact frequency of inspections will be at the discretion of CBP.

One commenter claimed there was a lack of evidence that irradiation would mitigate risk of EGVM and *B. chilensis*.

APHIS has determined that a minimum absorbed dose of 400 Gy is adequate to neutralize all insects except pupae and adults of Lepidoptera, as set forth in the PPQ Treatment Manual pursuant to 7 CFR part 305, which contains APHIS' phytosanitary treatment regulations.¹³ Adults of EGVM are unlikely to follow the pathway because they readily take flight when disturbed. Pupae of EGVM

typically pupate on vines or in leaves and are therefore unlikely to follow the pathway. In the unlikely event that pupae are present in clusters of grape, signs such as webbing and damaged fruit will allow for detection of the pest during visual inspection, and such fruits will not be eligible for irradiation.

One commenter asked how APHIS will ensure that proper packaging is used for irradiated grapes and enforce the U.S. Food and Drug Administration's (FDA) requirements for marking irradiated foods.

APHIS' packaging requirements for articles imported to be irradiated upon arrival in the United States are listed in § 305.9(f)(3). These requirements include packing in cartons that have no openings that will allow the exit of the pests of concern and that are sealed with seals that will visually indicate if the cartons have been opened. The importer compliance process conducted by APHIS will verify that all labeling and pest-proof packaging meet these requirements. In accordance with § 305.9(c), an importer cannot receive a permit until this process is completed.

The FDA's labeling requirements for consumer-facing packaging of irradiated foods are outside the scope of APHIS' authority.

The commenter also expressed doubts as to whether there are sufficient irradiation facilities in the United States to handle grapes that will need treatment.

Irradiation is not a requirement of the systems approach; rather, it is authorized as an alternative to the system approach's pest-specific measures. Importers will be able to consider the current capacity of irradiation facilities as a factor in their decision making as to whether to employ the pest-specific measures of the systems approach or pursue irradiation or fumigation.

Economic Effects Assessment

One commenter disagreed that authorization of the systems approach would only marginally increase Chilean grape imports, citing the Chilean Minister of Agriculture's statement that, under the systems approach, annual table grape imports into the United States from Chile are expected to increase from \$400 million to \$650 million.

Contextually, the Chilean Minister of Agriculture was describing a scenario in which all Chilean grape exports to the United States were produced under the systems approach and Chile enjoyed a 165 percent price premium for grapes produced under the approach. As noted in the initial notice, not all grape-

producing areas in Chile are eligible for the systems approach, and, within a particular region, places of production and packinghouses will have to meet stringent requirements in order to participate. Additionally, the premium cited by the Minister of Agriculture would, in general, significantly exceed current "at-the-market" premiums for specialty grapes and would be predicated on consumer acceptance of that premium.

Chile's table grape exports to the United States increased by 22 percent from the 2021 marketing year to 2022. However, over the last 3 years (2021 to 2023), there has been a decrease in Chilean table grape acreage and exports. Production increased from 2021 to 2022, but decreased in 2023. Given the lag between planting new acreage and harvesting (which is about 3 to 5 years for peak yield), supply chain constraints, and other macroeconomic factors, it is unlikely that these trends will change in the short term.

Over the period 2018 to 2022, Chile's table grapes exports were approximately 780,000 metric tons (MT) valued at \$1.0 billion. Production has hovered around this value for the past 3 years. Chile's top five trading partners for table grapes were the United States (275,000 MT), China (99,000 MT), the Netherlands (36,000 MT), the United Kingdom (23,000 MT), and the Republic of Korea (22,000 MT). In the unlikely event that Chile diverted an amount of grapes equivalent to all grape exports from China to the United States, or all exports from the Netherlands, the Republic of Korea, and the United Kingdom, to the systems approach, the impact on the U.S. grape industry would not be economically significant by the current regulatory standard (the standard establishes a threshold of \$200 million or greater). If this notice increased table grape imports by 99,000 MT, which is Chile's export volume to China, the domestic price of table grapes would decrease by a little over 3 percent. Consumers' welfare would increase by \$59 million, which would offset U.S. producers' \$27 million loss of profits. The net benefit to society would be approximately \$31 million.

The same commenter expressed the opinion that the EEA underestimates the competition between Chilean and U.S. industries by failing to consider the partial overlap in shipping seasons of table grapes from California and Chile.

We appreciate that the market for table grapes is competitive, and that changes in the length of the growing season can affect the counter-seasonality of import markets. That being said, over the course of the last 4 years, on

¹³ The treatment manual is available at: https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.

average, less than five percent of Chilean grapes have been exported to the United States between May and June. In 2020, there was one shipment of Chilean table grapes in July. However, this shipment was small, constituting less than a percent of total table grape imports in that year.

The commenter also claimed that the EEA only focuses on the impact on the domestic organic grape market, while it should consider impact on the entire domestic grape market.

The EEA considered all table grapes, not just organic table grapes. An effect of the systems approach is that it would open the possibility of organic grape imports from Chile into the United States, which is precluded altogether under the status quo. Grapes from Chile produced under the systems approach could possibly be certified organic, provided that all other requirements for being certified organic are met. The initial EEA acknowledged this possibility, however, APHIS did not evaluate the systems approach against the standards set by the Agricultural Marketing Service for organic certification, but rather against known plant pest risk.

The same commenter stated that the EEA failed to assess the effects of a possible failure of the systems approach on: The domestic table grape industry (in terms of eradication efforts, price drops and the loss of export markets); the wine grapes, juice grapes, and raisin grapes industries; and industries of other host crops (almond, apple, fig, lemon, orange, pear, alfalfa, coffee, plum, and potato).

We understand the commenter's concerns regarding the negative impacts of a potential outbreak of pests of concern in the United States. For this reason, we have carefully analyzed the pest risks associated with the importation of table grapes from Chile under a systems approach. We have determined that, based upon the PRA, the measures specified in the CIED will effectively mitigate the pest risk. The economic effects assessment takes this determination of efficacy as a presupposition, and analyzes the potential economic effects of this action accordingly.

In a final rule titled "Establishing a Performance Standard for Authorizing the Importation and Interstate Movement of Fruits and Vegetables" (Performance Standard rule) and published in the **Federal Register** on September 14, 2018 (83 FR 46627–46639, Docket No. APHIS–2010–

0082),¹⁴ APHIS revised the regulations pertaining to the importation of fruits and vegetables to provide for approval of changes to existing requirements using a notice-based process, rather than by rulemaking. In that rule, APHIS provided that any notices published using the notice-based approach, as done here, would not contain an economic analyses but will include APHIS' consideration of trade volume and other economic factors. APHIS' determination as to whether a new agricultural commodity can be safely imported is based on the findings of the pest risk analysis, not on economic factors.

The commenter also said that APHIS has not met the requirements of the Regulatory Flexibility Act (5 U.S.C. 501) by failing to analyze the effect of the proposed systems approach on small businesses. The commenter indicated that APHIS should analyze the effects on grapes vineyards in the United States with less than \$4 million in annual receipts, noting that the systems approach could affect their insurance premiums, access to credit, and ability to bear eradication costs.

As indicated above, in accordance with the Performance Standard rule, APHIS does not prepare an economic analysis, nor are such notices subject to the Regulatory Flexibility Act. Nonetheless, even if this decision had been a rule subject to the Regulatory Flexibility Act, then regulated entities would have fallen within the zone of interest protected by the Regulatory Flexibility Act, not, in this instance, domestic vineyards, which are not regulated by the systems approach.

Two commenters stated that the systems approach could adversely impact domestic fumigators. The commenters noted that if methyl bromide capacity decreases, the ability to eradicate quarantine pests would be reduced.

We acknowledge that the initial EEA did not discuss losses that could be anticipated by domestic fumigators as a result of the systems approach, and that these possible losses should be evaluated. Currently, the vast majority of grapes imported into the United States from Chile (greater than 95 percent) are imported subject to methyl bromide fumigation at U.S. ports of entry. Grapes produced under the systems approach would not be subject to such port-of-entry fumigation unless a quarantine pest that can be neutralized using methyl bromide fumigation is

found or the shipment otherwise does not meet requirements for entry into the United States.

In order to quantify these potential losses, it thus becomes necessary to estimate the total annual volume of shipments that will occur under the provisions of the systems approach. While APHIS has received word of widespread interest among Chilean producers in participating in the systems approach, there is significant uncertainty regarding the volume that will actually be imported under its terms. This is due in part to the market dynamics mentioned in previous responses: The Chilean industry has shrunk in recent years, with both acreage and production trending downwards. If this trend continues, it will place a stricture on overall grape exports from Chile to the United States.

Additionally, the systems approach itself may impact trade volume. The provisions of the systems approach are stringent for places of production: If a production site does not pass an annual sampling protocol for low pest prevalence for *B. chilensis*, or if more than one adult EGVM has been detected at the production site in the previous shipping season (after initial approval to participate in the systems approach) or any immature EGVM has been detected at the production site in the previous two shipping seasons, the production site may not participate in the systems approach for that shipping season. In APHIS' experience with other systems approaches, pest-free places of production, or places of production with low pest prevalence, can be difficult to establish and maintain, and often significantly reduce producer participation, at least initially, irrespective of producer interest.

Finally, as evidenced by the remarks of Chile's Minister of Agriculture mentioned earlier in this document, it is possible that Chilean producers may be anticipating a significant "at-the-market" premium for grapes exported under the systems approach in comparison to fumigated grapes, one that significantly exceeds current premiums in the United States market and which domestic consumers may not accept. If producer interest in the systems approach is conditioned on this anticipated premium, that may also act to reduce producer participation if the premium is not realized.

With that being said, as noted above, we have modeled a high-end scenario in which approximately 12.5 percent of Chile's global exports (99,000 MT) are shipped to the United States under the terms of the systems approach. Based on dialog with the fumigation industry, a

¹⁴ To view the final rule, go to: <https://www.regulations.gov/document/APHIS-2010-0082-0031>.

containerized ship of Chilean grapes carries approximately between 3856 MT and 5716 MT of grapes, and is fumigated at a cost of approximately \$150,000 per vessel. If 99,000 MT of grapes are shipped to the United States under the systems approach, this equates to between 18 and 26 vessel shipments of grapes to the United States, resulting in foregone revenue of between \$2.7 million and \$3.9 million in aggregate for domestic fumigators. Again, this is a conservative, high-end estimate, and actual import volumes could be significantly lower for reasons discussed above. We have revised the EEA to include this estimate, and are making the revised EEA available alongside this notice.

Therefore, in accordance with the regulations in § 319.56–4(c), we are announcing our decision to authorize the importation into the United States of grapes from Chile subject to the conditions listed in the CIED that accompanies this final notice.

These conditions will be listed in the ACIR database (available at <https://acir.aphis.usda.gov/s/>). In addition to these specific measures, grapes from Chile will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Finally, we note that, in addition to the changes to the CIED discussed earlier in this document (requiring SAG to retain records for 3 years, and requiring PPQ Form 203 or vessel report in addition to a phytosanitary certificate), we have made additional non-substantive edits to the CIED to improve its clarity. We are publishing the revised CIED alongside this notice.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the recordkeeping and burden requirements associated with this action are included under the Office of Management and Budget (OMB) control number 0579–0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2533.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 15th day of July 2024.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–15887 Filed 7–18–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Information (RFI) Inviting Input About the \$50 Million Non-Traditional Shelf-Stable Commodities Pilot Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Request for information.

SUMMARY: The Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture requests comments from the public to inform an understanding on non-traditional, shelf-stable commodities that could be used in food assistance programming. FAS seeks to learn what commodities could be considered outside the traditional food assistance commodities. This RFI offers interested parties the opportunity to provide FAS with information regarding non-traditional, shelf-stable food aid commodities.

DATES: Comments on this notice must be received by August 23, 2024 in the **Federal Register** to be assured of consideration.

ADDRESSES: USDA invites submission of the requested information through one of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Email:** FAS will accept electronic submissions emailed to PPDED@usda.gov. The email should contain the subject line, “Response to RFI: \$50 million pilot program.”

Instructions: Response to this RFI is voluntary. All comments submitted in response to this RFI will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the comments publicly available via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Molly Kairn, Program and Management

Analyst, U.S. Department of Agriculture, Foreign Agricultural Service, email PPDED@usda.gov, Phone 202–713–8673.

SUPPLEMENTARY INFORMATION:

Background

In October 2023, USDA announced with USAID the use of \$1 billion of Credit Commodity Corporation funding to help fill food security gaps and supply safe and nutritious food to the global community in need.

Of this funding, up to \$50 million will be set aside for use in a pilot program that will operate to utilize U.S. commodities that:

1. Have not recently been substantially included in international food assistance programming,
2. Are shelf-stable, and
3. Are suitable for use in feeding food-insecure populations.

These U.S.-grown commodities could include, but are not limited to, nuts; dried fruits; grains such as quinoa, farro, and oats; and canned fish or canned meats.

Request for Information

FAS requests information from the public to help identify non-traditional, shelf-stable commodities that could be used in food assistance programming under the proposed \$50 million pilot program. Non-traditional commodities could include, but are not limited to, commodities that have never been used before in food assistance programming, commodities that have not been used in food assistance programming in at least the last 5 years, and/or commodities that can be made into a new product. Additionally, FAS requests information from the public about non-traditional commodities including:

1. Cost per metric tonnage, or other customary commercial unit of measure, including cost to the U.S. Government,
2. Estimated cost of delivery of commodities to a U.S. port,
3. Packaging details, including transportation/containerization requirements and costs,
4. The expected shelf life under normal storage conditions and adverse conditions that might be expected in developing countries (*i.e.* high humidity and temperatures),
5. Any history/documentation of successful storage performance for the commodity,
6. Nutritional benefits for adults and for children,
7. Essential minerals,
8. Testing requirements for food safety,
9. Consumer preparation instructions, if any, including requirements for potable water, fuel, and cooking time,

10. Whether the commodity meets current Food and Drug Administration requirements,

11. The current production capacity in the United States, and seasonality/availability of the commodity for export,

12. Known challenges and barriers around imports, and

13. Intended age range for population if product is fortified.

Please include any relevant data sources. The response to this RFI is voluntary, and the public is welcome to address any or all the questions and provide additional information that may be relevant to seeking information on non-traditional food aid commodities.

Responses may not exceed ten (10) pages per respondent and should focus on addressing the questions described above. Please do not submit applications, proposals, resumes or promotional materials. The submission shall be written in English and typed on standard 8 1/2" × 11" electronic paper (216mm by 297mm paper), single spaced, font size 12, with each page numbered consecutively. Any information obtained from this RFI is intended to be used by the Government on a non-attribution basis for planning and developing a pilot program for non-traditional, shelf-stable commodities. This RFI does not constitute a formal solicitation for proposals or abstracts. Your response to this notice will be treated as information only. FAS will not reimburse any costs incurred in responding to this RFI. Respondents are advised that FAS is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this RFI. Responses to this RFI do not bind FAS to any further actions related to this topic. Responses will become government property.

No confidential information, such as confidential business information or proprietary information, should be submitted in comments for this RFI. Comments received in response to this notice will be a matter of public record and will be made available for public inspection and posted without change and as received, including any business information or personal information provided in the comments, such as names and addresses. Please do not include anything in your comment submission that you do not wish to share with the public.

Daniel Whitley,
Administrator, Foreign Agricultural Service.

[FR Doc. 2024-15919 Filed 7-18-24; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF AGRICULTURE

Forest Service

Amendment to the Caribou National Forest Land Management Plan

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of opportunity to object to the amendment to the Land Management Plan for the Caribou National Forest.

SUMMARY: The Forest Service, U.S. Department of Agriculture, is amending the Caribou National Forest Land Management Plan (forest plan). The Forest Service has prepared a Final Supplemental Environmental Impact Statement for the Crow Creek Pipeline Project Lower Valley Energy and draft record of decision that includes a programmatic plan amendment to the forest plan. The plan amendment would establish a utility corridor and applies to approximately 44 acres of National Forest System lands on the Montpelier Ranger District. This notice is to inform the public that the Caribou-Targhee National Forest is initiating a 60-day period where individuals or entities with specific concerns about the amendment to the forest plan may file objections for Forest Service review prior to the approval of the amendment. **DATES:** The publication date of the legal notice in the Caribou-Targhee National Forest newspaper of record, *Idaho State Journal*, initiates the 60-day objection filing period and is the exclusive means for calculating the time to file an objection (36 CFR 219.52(c)(5)). An electronic copy of the legal notice with the publication date will be posted at <https://www.fs.usda.gov/project/ctnf/?project=63218>.

ADDRESSES: The Crow Creek Pipeline Project Lower Valley Energy Final Supplemental Environmental Impact Statement draft record of decision and other supporting information will be available for review at: <https://www.fs.usda.gov/project/ctnf/?project=63218>.

Objections must be submitted to the objection reviewing officer by one of the following methods:

- Objections may be submitted electronically at <https://www.fs.usda.gov/project/ctnf/?project=63218> with subject: Caribou National Forest Plan Amendment Objection. Electronic submissions must be submitted in a format (Word, PDF, or Rich Text) that is readable and searchable with optical character recognition software.

- By Fax: (801) 625-5365. Faxes must be addressed to "Objection Coordinator." The fax coversheet should include a subject line with "Caribou National Forest Plan Amendment Objection" and specify the number of pages being submitted.

- Via regular mail to the following address: Objection Reviewing Officer, Caribou National Forest Plan Amendment, Forest Service Intermountain Regional Office, 324 25th Street, Ogden, UT 84401.

- Hand delivery of written objections during normal working hours to the Intermountain Regional Office, Hansen Federal Building, Room 4016, 324 25th Street, Ogden, UT 84401.

FOR FURTHER INFORMATION CONTACT: Robbert Mickelsen, Caribou-Targhee National Forest Ecosystem Branch Chief, robbert.mickelsen@usda.gov, 208-557-5764. Individuals who use telecommunications devices for the hearing impaired may call the Federal Relay Service (FRS) at 1(800) 877-8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The amendment would establish a 20-foot-wide utility corridor (corresponding with the Crow Creek Pipeline Project's permanent right-of-way) where management prescription 8.1(b)—Concentrated Development Areas would apply instead of the existing management prescription. Management prescription 8.1(b) applies to concentrated developments, including communication sites, utility corridors, and administrative sites. The utility corridor would cross forest plan management prescription areas: 2.7.1(d)—Elk and Deer Winter Range, Critical; 2.7.2(d)—Elk and Deer Winter Range; 2.8.3—Aquatic Influence Zone; and 6.2(b)—Rangeland Vegetation Management. The plan amendment would change approximately 8.5 acres of prescription 2.7.1(d)—Elk and Deer Winter Range, Critical; 3.6 acres of prescription 2.7.2(d)—Elk and Deer Winter Range; and 32 acres of prescription 6.2(b)—Rangeland Vegetation Management to prescription 8.1(b)—Concentrated Development Areas. The portions of the proposed utility corridor that occur within prescription 2.8.3—Aquatic Influence Zone overlap with the other prescriptions and are accounted for in the aforementioned acres.

The decision to approve the amendment to the Caribou National Forest plan in association with the decision on the Crow Creek Pipeline Project Lower Valley Energy is subject to the objection process pursuant to 36

CFR 219 subpart B (219.50 to 219.62). Per 36 CFR 219.53 only individuals and entities who have submitted substantive formal comments related to amending the forest plan during the opportunities for public comment that are attributable to the objector may file an objection unless the objection concerns an issue that arose after the opportunities for formal comment.

How To File an Objection

Objections must be submitted to the reviewing officer at the address shown in the **ADDRESSES** section of this notice. An objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available. In cases where no identifiable name is attached to an objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name of the plan, plan amendment, or plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or parts of the plan, plan amendment, or plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the draft decision may be improved. If the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except the following need not be provided:

a. All or any part of a Federal law or regulation,

b. Forest Service Directive System documents and land management plans or other published Forest Service documents,

c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and

d. Formal comments previously provided to the Forest Service by the objector during the proposed plan, plan amendment, or plan revision comment period.

It is the responsibility of the objector to ensure that the reviewing officer receives the objection in a timely manner. The regulations generally prohibit extending the length of the objection filing period (36 CFR 219.56(d)). However, when the time period expires on a Saturday, Sunday, or a Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m. for objections filed by electronic means such as email or facsimile machine) (36 CFR 219.56).

Responsible Official

The responsible official who will approve the record of decision and the amendment to the forest plan is Mel Bolling, Caribou-Targhee Forest Supervisor, 1405 Hollipark Dr., Idaho Falls, ID 83401, 208-557-5761. The Deputy Regional Forester is the reviewing officer for the amendment to the forest plan because the Forest Supervisor is the responsible official (36 CFR 219.56(e)).

Keith Lannom,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024-15652 Filed 7-18-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Opportunity To Submit Content Request for the 2027 Census of Agriculture

AGENCY: National Agricultural Statistics Service.

ACTION: Notice and request for stakeholder input.

SUMMARY: The National Agricultural Statistics Service (NASS) is currently accepting stakeholder feedback in the form of content requests for the 2027 Census of Agriculture. This census is required by law under the Census of Agriculture Act of 1997.

DATES: Comments on this notice must be received by August 19, 2024 to be assured of consideration.

ADDRESSES: Requests *must* address items listed in comments section below. Please submit requests online at www.nass.usda.gov/go/aginput. or via

mail to: USDA-NASS, Census of Agriculture Program, Room 6351, 1400 Independence Ave. SW, Washington, DC 20250.

If you have any questions, send an email to nass.aginputcounts@usda.gov or call 1-800-727-9540.

FOR FURTHER INFORMATION CONTACT:

Joseph L. Parsons, Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-2707, Fax: (855) 493-0445, or email: nass.aa@usda.gov.

SUPPLEMENTARY INFORMATION: The results of the 2022 Census of Agriculture were released on February 13, 2024. For more information, visit www.nass.usda.gov/AgCensus. While the National Agricultural Statistics Service (NASS) is completing the censuses in Puerto Rico, American Samoa, Guam, US Virgin Islands, and the Commonwealth of the Northern Mariana Islands (which will be published in early 2025), plans are underway for the next census of agriculture, which will be conducted in 2028, referencing 2027.

NASS is the primary data collection Agency of the US Department of Agriculture (USDA). NASS is looking for ways to streamline the questionnaire to reduce respondent burden and data collection costs, while still providing data users with the detailed data they need. NASS is beginning the process of planning the content of the 2027 Census of Agriculture. As part of that process, NASS will review the content from the 2022 Census of Agriculture for data use, relevancy, and burden to the respondent. We are seeking input on ways to improve the census of agriculture. Recommendations or any other ideas concerning the census would be greatly appreciated. The 2022 Census of Agriculture questionnaire may be viewed on-line at: www.nass.usda.gov/go/censusform.

The following justification categories should be addressed when proposing a new line of questioning for the 2027 Census of Agriculture:

1. What data are needed?
 2. Why are the data needed?
 3. At what geographic level are the data needed? (U.S., State, County, other)
 4. Who will use these data?
 5. What decisions will be influenced with these data?
 6. What surveys have used the proposed question before; what testing has been done on the question; and what is known about its reliability and validity?
 7. Draft of the recommended question.
- All responses to this notice will become a matter of public record and be

summarized and considered by NASS in preparing the 2027 Census of Agriculture questionnaire for OMB approval.

Signed at Washington, DC, July 16, 2024.

Joseph J. Prusacki,

Acting Associate Administrator.

[FR Doc. 2024–15945 Filed 7–18–24; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the U.S. Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the U.S. Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to discuss potential topics for the Committee's next project.

DATES: Thursday, August 22, 2024, from 11:00 a.m.–12:30 p.m. Atlantic Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual):
<https://bit.ly/4cXoFPf>

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Webinar ID: 161 426 1077#

FOR FURTHER INFORMATION CONTACT:

David Barreras, Designated Federal Officer, at dbarreras@usccr.gov or 1–202–656–8937.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to 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 is available by selecting “CC” in the meeting platform. To

request additional accommodations, please email svillanueva@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 scheduled meeting. Written comments may be emailed to Sarah Villanueva at svillanueva@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–656–8937.

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, U.S. Virgin Islands 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 svillanueva@usccr.gov.

Agenda

- I. Welcome and Roll Call
- II. Committee Discussion
- III. Public Comment
- IV. Next Steps
- V. Adjournment

Dated: July 16, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–15969 Filed 7–18–24; 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; Current Population Survey, Annual Social and Economic Supplement

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's

reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed revision of the Annual Social and Economic Supplement (ASEC) to the Current Population Survey, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 17, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email to the Current Population Surveys Branch email address at dsd.cps@census.gov. Please reference the Annual Social and Economic Supplement (ASEC) in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2024–0018, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Kyra Linse, Survey Director, Current Population Surveys via the internet at dsd.cps@census.gov, or by phone at 301–763–9280.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of data concerning the Annual Social and Economic Supplement (ASEC) to be conducted in conjunction with the February, March, and April Current Population Survey (CPS). The Census Bureau and the Bureau of Labor Statistics sponsor this supplement, which had its beginnings in 1942. This collection is authorized under title 13, United States Code, sections 141 and 182; and title 29, United States Code, sections 1–9. The current clearance expires December 31, 2024. The ASEC data collection

questions and design will remain unchanged from its most recent collection in 2024, with the exception of a small number of additional questions on childcare. Adding questions on childcare to the ASEC is crucial to understanding the childcare landscape in the United States. While similar questions are asked on other federal surveys, the ASEC includes other measures of economic well-being, such as the official poverty and supplemental poverty measures. Including these additional questions will allow for more direct policy relevant analyses of the respondent group. Data gathered can provide valuable insights into the usage, accessibility, and difficulties faced by parents and caregivers, informing better policy outcomes. The data gathered would also advance research called for by the National Academies of Sciences, Engineering, and Medicine to improve the treatment of childcare in the supplemental poverty measure. A deeper understanding of these childcare dynamics can also help identify gaps and enhance family well-being.

Information on work experience, personal income, noncash benefits, current and previous year health insurance coverage, employer-sponsored insurance take-up, and migration is collected through the ASEC. The work experience items in the ASEC provide a unique measure of the dynamic nature of the labor force as viewed over a one-year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by people, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. We can make indirect measurements of discouraged workers and others with a casual attachment to the labor market.

The income data from the ASEC are used by social planners, economists, government officials, and market researchers to gauge the economic well-being of the country as a whole, and selected population group of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data to forecast economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use ASEC data to determine the effects of various economic forces, such as inflation, recession, recovery, and so on, and their

differential effects on various population groups.

The ASEC is the official source of national poverty estimates calculated in accordance with the Office of Management and Budget's Statistical Policy Directive 14. Two other important national estimates derived from the ASEC are real median household income and the number and percent of individuals without health insurance coverage.

The ASEC also contains questions related to (1) medical expenditures; (2) presence and cost of a mortgage on property; (3) child support payments; and (4) amount of childcare assistance received. These questions enable analysts and policymakers to obtain better estimates of family and household income, and more precisely gauge poverty status.

II. Method of Collection

The ASEC information will be collected by both personal visit and telephone interviews in conjunction with the regular February, March and April CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Control Number: 0607–0354.

Form Number(s): None.

Type of Review: Regular submission.

Request for a Revision of a Currently Approved Collection.

Affected Public: Households.

Estimated Number of Respondents: 78,000.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 32,500.

Estimated Total Annual Cost to Public: \$0 (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, sections 141 and 182; and title 29, United States Code, sections 1–9.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and

cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–15935 Filed 7–18–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Under Secretary for Economic Affairs

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Concrete Masonry Products Research, Education, and Promotion Evaluation and Compliance and Membership Application Forms

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 May 02, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Under Secretary for Economic Affairs, Department of Commerce.

Title: Concrete Masonry Products Research, Education, and Promotion Board Application Form.

OMB Control Number: 0605–0028.

Type of Request: Regular submission. This is an extension.

Affected Public: Business or other for-profit organizations.

Board Application

Estimated Number of Respondents: 220.

Estimated Time per Response: .25 hour.

Estimated Total Annual Burden Hours: 55.

Respondent's Obligation: Voluntary.

Needs and Uses: Ascertain applicant interest for Board membership.

Frequency: Annual.

Respondent's Obligation: Voluntary.

Legal Authority: Authorizing Statute: 15 U.S.C. chapter 13 (sections 8701–8717).

Evaluation and Compliance

Estimated Number of Respondents: 220.

Estimated Time per Response: .5 hour per quarterly report.

Estimated Total Annual Burden Hours: 440.

Respondent's Obligation: Mandatory.

Needs and Uses: Verify assessment payment.

Frequency: Quarterly.

Legal Authority: Authorizing Statute: 15 U.S.C. chapter 13 (sections 8701–8717).

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 0605–0028.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2024–15971 Filed 7–18–24; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Advisory Council on Doing Business in Africa

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Advisory Council on Doing Business in Africa will hold a meeting to deliberate and adopt recommendations on the reauthorization and modernization of the Africa Growth and Opportunity Act (AGOA). The PAC–DBIA will present recommendations focused on proposed duration of a renewal of AGOA, eligibility criteria for African nations, opportunities for greater utilization of AGOA benefits by eligible countries, coverage of specific key sectors under AGOA, and priorities for growing U.S.–Africa trade and investment relationships outside of the AGOA program. The final agenda for the meeting will be posted prior to the meeting on the Council's website at <http://trade.gov/pac-dbia>.

DATES: July 23, 2024, 10:00 a.m. Eastern Time.

ADDRESSES: The President's Advisory Council on Doing Business in Africa meeting will be held virtually via Cisco Webex. Members of the public may attend this meeting in listen-only mode, and must submit registration requests to Giancarlo.Cavallo@trade.gov and dbia@trade.gov, by 5:00 p.m. ET on July 19, 2024. Members of the public who request to attend this meeting by the above deadline will receive a registration link prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Giancarlo Cavallo, Designated Federal Officer, President's Advisory Council on Doing Business in Africa, Department of Commerce, 1401 Constitution Ave. NW, Room 22004, Washington, DC 20230, telephone: 202–766–8044; email: dbia@trade.gov, Giancarlo.Cavallo@trade.gov.

SUPPLEMENTARY INFORMATION:

Background: The PAC–DBIA was established on August 5, 2014, to advise the President, through the Secretary of Commerce, on strengthening commercial engagement between the United States and Africa. The Council's charter was renewed for a fifth two-year term in December 2023. The Council was established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Exceptional Circumstances: Pursuant to 41 CFR 102–3.150(b), the notice for

this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the U.S.–sub-Saharan Africa Trade and Economic Cooperation Forum (AGOA Forum) taking place in Washington, DC, from July 24 to 26, 2024, and the need for PAC–DBIA's recommendations on the topic of AGOA renewal to be incorporated and publicized at and in conjunction with this year's AGOA Forum events.

Public Participation: The meeting will be open to the public for observation. Members of the public wishing to observe the meeting live are required to register in advance by sending an email request to Giancarlo.Cavallo@trade.gov and dbia@trade.gov, by 5:00 p.m. ET on July 19, 2024. The public is also invited to submit written statements to the Council for consideration in advance of this meeting by 5:00 p.m. ET on July 19, 2024. Members of the public are encouraged to submit written comments via email to ensure timely receipt, but may submit by either of the following methods:

a. Electronic Submissions

Submit statements electronically to Giancarlo Cavallo, Designated Federal Officer, President's Advisory Council on Doing Business in Africa, via email: dbia@trade.gov.

b. Paper Submissions

Send paper statements to Giancarlo Cavallo, Designated Federal Officer, President's Advisory Council on Doing Business in Africa, Department of Commerce, 1401 Constitution Ave. NW, Room 22004, Washington, DC, 20230.

Statements will be provided to PAC–DBIA members in advance of the meeting for consideration and may be posted on the Council website (<http://trade.gov/pac-dbia>). Any business proprietary information should be clearly designated as such. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure.

Meeting transcripts: Copies of the Council's meeting transcript and a video recording of the meeting will be available within ninety (90) days of the meeting on the Council's website at <http://trade.gov/pac-dbia>.

Giancarlo Cavallo,

Deputy Director, Office of Africa.

[FR Doc. 2024–15926 Filed 7–18–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[RTID 0648–XE081]****Pacific Fishery Management Council; Public Meeting**

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad-Hoc Klamath River Fall Chinook Workgroup will hold two online meetings.

DATES: The first online meeting will be held Tuesday, August 6, 2024 and the second meeting will be held Wednesday, September 4, 2024. Both meetings will occur from 9 a.m. until 3 p.m., Pacific Daylight Time, or until business for the day concludes.

ADDRESSES: These meetings will be held online. Specific meeting information, including directions on how to join and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at 503–820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Angela Forristall, Staff Officer, Pacific Council; telephone: (503) 820–2419.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to discuss and further develop interim management measures, or a management framework, intended to address the response of Klamath River fall Chinook to the dynamic nature of the Klamath River environment and the available habitat immediately following dam removal, and post-dam removal until the natural environment is stabilized and the salmon population is more predictable. Additional discussions may include, but are not limited to, future meetings, workload planning, and upcoming items on the Pacific Council's agenda.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this

document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: July 15, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–15876 Filed 7–18–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[RTID 0648–XE097]****Pacific Fishery Management Council; Public Meeting**

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad-hoc Sacramento River Fall Chinook (SRFC) Workgroup (Workgroup) will hold a 2-day online meeting in August 2024 and a 1-day online meeting in September 2024.

DATES: The 2-day August online meeting will be held on Wednesday, August 7 and Thursday, August 8, 2024 and the 1-day September meeting will be held on Tuesday, September 3, 2024. Meetings will run from 9 a.m. until 3 p.m. Pacific Time or when business for the day concludes.

ADDRESSES: These meetings will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE

Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT:

Angela Forristall, Staff Officer, Pacific Council; telephone: (503) 820–2419.

SUPPLEMENTARY INFORMATION: The primary purpose of the meetings is to address guidance received from the Pacific Council at their June 2024 meeting. At the August meetings, the Workgroup will likely focus on developing an outline for the Workgroup's report to the Pacific Council in November 2024 that considers new or updated tools for SRFC management. At the September meeting, the Workgroup will likely continue to develop the report and may discuss potential 2024 Salmon Methodology Review topics relevant to their tasking. Additional discussions may include, but are not limited to, future meetings, workload planning, and upcoming Council agenda items.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820–2412) at least 10 days prior to the meeting dates.

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

Dated: July 15, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–15877 Filed 7–18–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[RTID 0648–XE105]****Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting**

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

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 98 Data Scoping Webinar for Gulf of Mexico Red Snapper.

SUMMARY: The SEDAR 98 assessment process of Gulf of Mexico red snapper will consist of a Data Workshop, a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 98 Data scoping webinar will be held August 7, 2024, from 10 a.m. to 12 p.m., Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571-4366; email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and

database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Data scoping webinar are as follows:

Participants will discuss what data may be available for use in the assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: July 16, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-15954 Filed 7-18-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE101]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public online meeting.

SUMMARY: The Ecosystem-Based Management Subcommittee (SSC ES) of the Pacific Fishery Management Council's (Pacific Council) Scientific and Statistical Committee (SSC) will convene an online meeting to review the use of ecosystem risk evaluation tables

and any other Ecosystem and Climate Information for Species, Fisheries, and Fishery Management Plan (Initiative 4) materials provided by the Council's Ecosystem Workgroup. In addition, they may review new analyses conducted by the NMFS California Current Integrated Ecosystem Assessment Team that may potentially inform future annual reports to the Pacific Council on the state of the California Current Ecosystem. The SSC ES meeting is open to the public.

DATES: The SSC ES meeting will be held Monday, August 5, 2024, from 1 p.m. until 5 p.m. (Pacific Time) or until business for the day has been completed.

ADDRESSES: This meeting will be conducted as an online meeting. Specific meeting information, including the agenda and directions on how to join the meeting and system requirements, will be provided in the workshop announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Marlene A. Bellman, Staff Officer, Pacific Council; telephone: (503) 820-2414; email: marlene.bellman@noaa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the SSC ES meeting is to review a methodological framework to incorporate ecosystem risk evaluation tables in the current Council process and any intersection with the SSC's scientific uncertainty buffers and stock category designations which result from the stock assessment process. Ecosystem risk evaluation tables were developed by the Council's Ecosystem Workgroup for several example groundfish species (*i.e.* sablefish and petrale sole), and the approach was reviewed by the SSC Ecosystem-Based Management and Groundfish Subcommittees in September 2023. At this meeting, the SSC ES will review any new developments to the risk table approach, including methodological frameworks for evaluating the ecosystem, assessment uncertainty, and population dynamics considerations the risk tables contain, and provide example applications for fisheries management. In March 2024, the Pacific Council also requested a retrospective analysis of how risk tables would have impacted

decision-making in past groundfish assessments if they had been used in the manner currently envisioned. Sablefish was selected for a full assessment and petrale sole for a catch-only projection in the 2025 stock assessment cycle. Thus, the Subcommittee may focus on consideration or pathways for incorporation of these species risk tables in the upcoming stock assessment cycle and 2027–2028 harvest specification process.

In addition, they may review new analyses conducted by the NMFS California Current Integrated Ecosystem Assessment Team that may potentially inform future annual reports to the Pacific Council on the state of the California Current Ecosystem.

No management actions will be decided by the meeting participants. The participants' role will be development of recommendations and reports for consideration by the SSC and the Pacific Council at a future Council meeting. The Pacific Council and SSC are scheduled to consider the Ecosystem and Climate Information for Species, Fisheries, and Fishery Management Plan Initiative 4 at their September 2024 meeting in Spokane, WA, and to consider the California Current Ecosystem Status Report at their March 2025 meeting in Vancouver, WA.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the workshop participants to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

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

Dated: July 16, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-15956 Filed 7-18-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE092]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public virtual meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Ecosystem-Based Fishery Management Technical Advisory Panel (EBFM TAP) will hold a public virtual meeting to address the items on the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The EBFM TAP public virtual meeting will be held on Thursday, August 1st, 2024, from 9 a.m. to 5 p.m. (AST), and Friday, August 2nd, 2024, from 9 a.m. to 5 p.m. (AST).

ADDRESSES: You may join the EBFM TAP public virtual meeting (via Zoom) from a computer, tablet or smartphone by entering the following address:

Join Zoom Meeting: [https://](https://us02web.zoom.us/j/89296642641)

us02web.zoom.us/j/89296642641

Meeting ID: 892 9664 2641

One tap mobile: + 13092053325, 8929664264 1# US

Dial by your location: +1 646 558 8656 US (New York); +1 301 715 8592 US (Washington DC); +1 305 224 1968 US; +1 309 205 3325 US; +1 939 945 0244 Puerto Rico; +1 787 945 1488 Puerto Rico; +1 787 966 7727 Puerto Rico

Meeting ID: 896 1564 7315

Passcode: 303561

Find your local number: [https://](https://us02web.zoom.us/j/89296642641)

us02web.zoom.us/j/89296642641

In case of problems with ZOOM please join the public virtual meeting via GoToMeeting: <https://meet.goto.com/676798557>

You can also dial in using your phone.

Access Code: 676-798-557

United States: +1 (312) 757-3121

Join from a video-conferencing room or system.

Meeting ID: 676-798-557

Dial in or type: 67.217.95.2 or

inroomlink.goto.com

Or dial directly: 676798557@67.217.95.2 or 67.217.95.2##676798557

FOR FURTHER INFORMATION CONTACT:

Liajay Rivera-García, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan,

Puerto Rico 00918-1903, telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

August 1, 2024

9 a.m.–10 a.m.

—Roll Call

—Approval of Verbatim Transcripts May 2023

—Overview FEP Development—Sennai Habtes, EBFM TAP Chair

10 a.m.–10:10 a.m.

—Break

10:10 a.m.–12 p.m.

—Working Groups Reports

—Conceptual Models Melding—Tarsila Seara

—Ecosystem Indicators—Sennai Habtes

—Risk Assessment—Tauna Rankin

12 p.m.–1 p.m.

—Lunch Break

1 p.m.–3 p.m.

—Working Groups Reports (Continued)

—Drafting FEP—Sennai Habtes

—Data repository—Liajay Rivera-García

3 p.m.–3:15 p.m.

—Break

3:15 p.m.–5 p.m.

—Ecosystem Status Report—Mandy

Karnauskas

—Risk Assessment Development—Tauna Rankin

August 2, 2024

9 a.m.–10:30 a.m.

—Other Themes for Discussion

—Lenfest EBFM

—EBFM Roadmap Implementation Plan Updates

—Regional Roadmap Update

10:30 a.m.–10:45 a.m.

—Break

10:45 a.m.–11:15 a.m.

—Other Themes for Discussion (Continued)

—Synergies

—CFMC Portal—Martha Prada

—SERO Ecosystem efforts—María López Mercer

11:15 a.m.–12:15 p.m.

—SEFSC—Kevin McCarthy

12:15 p.m.–1:15 p.m.

—Lunch

1:15 p.m.–3:15 p.m.

—Other Themes for Discussion (Continued)

—Synergies
—SEAMAP—C
—National SCS8—Tarsila Seara

3:15 p.m.–3:30 p.m.

—Break

3:30 p.m.–5 p.m.

—Future Planning and Coordination of Tasks;
—Meeting Schedule, Writing & Revisions Schedule, TAP Review
—Outcomes, Products, Deliverables and Deadlines
—Coordination of Working Group Leads and Independent Meeting Capacity and Infrastructure
—Adjourn

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on August 1, 2024, at 9 a.m. AST, and will end on August 2, 2024 at 5 p.m. AST. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated, at the discretion of the Chair.

Special Accommodations

For any additional information on this public virtual meeting, please contact Liajay Rivera-García, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 766–5926.

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

Dated: July 15, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–15872 Filed 7–18–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE127]

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, August 5, 2024, from 3:30 p.m. to 4:30 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 review the recommendations of the Scientific and Statistical Committee and Monitoring Committee for 2025 black sea bass catch and landings limits and to provide additional Advisory Panel input to the Council on 2025 specifications.

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: July 16, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–15955 Filed 7–18–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patent Prosecution Highway (PPH) Program

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comments on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting

burden. Public comments were previously requested via the **Federal Register** on May 14, 2024 during a 60-day comment period (89 FR 41948). This notice allows for an additional 30 days for public comment.

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

Title: Patent Prosecution Highway (PPH) Program.

OMB Control Number: 0651–0058.

Needs and Uses: The Patent Prosecution Highway (PPH) is a framework in which an application whose claims have been determined to be patentable by the Office of Earlier Examination (OEE) is eligible to go through an accelerated examination in an Office of Later Examination (OLE) with a simple procedure upon an applicant's request. By leveraging the search and examination work product of the OEE, PPH programs (1) deliver lower prosecution costs, (2) support applicants in their efforts to obtain stable patent rights efficiently around the world, and (3) reduce the search and examination burden, while improving the examination quality, of participating patent offices.

Initially, the PPH programs were limited to the utilization of search and examination results of national applications between cross filings under the Paris Convention. Later, the potential of the PPH was greatly expanded by the Patent Cooperation Treaty (PCT)-PPH programs, which permit participating patent offices to draw upon the positive results of the PCT work product from another participating office. PCT-PPH programs use international written opinions and international preliminary examination reports developed within the framework of the PCT, thereby making the PPH available to a larger number of applicants. Information collected for the PCT is approved under the USPTO information collection 0651–0021 (Patent Cooperation Treaty).

More recently, the USPTO and several other offices acted to consolidate and replace existing PPH programs, with the goal of streamlining the PPH process for both offices and applicants. To that end, the USPTO and other offices established the Global PPH pilot program and the IP5 PPH pilot program. Both the Global PPH and IP5 PPH pilot programs are running concurrently and are substantially identical, differing only with regard to their respective participating offices. The USPTO participates in both the Global PPH pilot program and the IP5 PPH pilot program. For USPTO applications, the Global PPH and IP5 PPH pilot programs

supersede any prior PPH program between the USPTO and each Global PPH and IP5 PPH participating office. Any existing PPH programs between the USPTO and offices that are not participating in either the Global PPH pilot program or the IP5 PPH pilot program remain in effect.

This information collection covers data gathered through the Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program, which the public uses to request an accelerated examination within the PPH provisions.

The USPTO makes one change to the information published in the 60-Day **Federal Register** Notice to add a new item, form PTO/SB/20BH (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the National Patent Office of Bahrain (NPOB) and the USPTO), due to the USPTO's decision to implement a PPH pilot program with the NPOB. The addition of this item results in an increase of 1 respondent, 1 response, and 2 hours to the estimated annual burden of this information collection.

Forms: (SB = Specimen Book)

- PTO/SB/20BH (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the National Patent Office of Bahrain (NPOB) and the USPTO)
- PTO/SB/20BR (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Brazilian National Institute of Industrial Property (INPI) and the USPTO)
- PTO/SB/20CZ (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Industrial Property Office of the Czech Republic (IPOCZ) and the USPTO)
- PTO/SB/20FR (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the National Institute of Industrial Property of France (INPI) and the USPTO)
- PTO/SB/20GLBL (Request for Participation in the Global/IP5 Patent Prosecution Highway (PPH) Pilot Program in the USPTO)
- PTO/SB/20MA (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Moroccan Office of Industrial and Commercial Property (OMPIC) and the USPTO)
- PTO/SB/20MX (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Mexican Institute of Industrial Property (IMPI) and the USPTO)

- PTO/SB/20MY (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Intellectual Property Corporation of Malaysia (MYIPO) and the USPTO)
- PTO/SB/20NI (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Nicaraguan Registry of Intellectual Property (NRIP) and the USPTO)
- PTO/SB/20PH (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Intellectual Property Office of the Philippines (IPOPH) and the USPTO)
- PTO/SB/20RO (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Romanian State Office for Inventions and Trademarks (OSIM) and the USPTO)
- PTO/SB/20SA (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Saudi Authority for Intellectual Property of the Kingdom of Saudi Arabia (SAIP) and the USPTO)
- PTO/SB/20TW (Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the Taiwan Intellectual Property Office (TIPO) and the USPTO)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 8,586 respondents.

Estimated Number of Annual Responses: 8,586 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 2 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 17,172 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: \$0.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

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, 0651-0058.

Further information can be obtained by:

- *Email:* InformationCollection@uspto.gov. Include "0651-0058 information request" in the subject line of the message.

- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Lisa Lawn,

Director, Records and Information Compliance Program Office, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2024-15933 Filed 7-18-24; 8:45 am]

BILLING CODE 3510-16-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

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

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to delete product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: August 18, 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) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

*Product(s)**NSN(s)—Product Name(s):*

7530-01-455-6055—Folders, File, Manila, 1/5 Cut, Legal, PG/25

7530-01-455-6056—Folders, File, Manila, 1/2 Cut, Legal, PG/24

7530-01-645-8092—File Folder, Single Tab, 1/3 Cut, Legal, Position 1

7530-01-645-8094—File Folder, Single Tab, 1/3 Cut, Legal, Position 2

7530-01-645-8095—File Folder, Single Tab, 1/3 Cut, Legal, Position 3

7530-01-661-8831—Booklet Envelope, Poly, String and Button, Side Loading, Red, 11 5/8" × 9 3/4"

7530-01-661-9618—Envelope, Poly, Hook and Loop, Top Loading, Clear, 11 5/8" × 9 3/4"

Authorized Source of Supply:

Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Switchboard Operation

Mandatory for: Department of Veterans Affairs, Michael E. DeBakey VA Medical Center, 2002 Holcombe Boulevard, Houston, TX

Authorized Source of Supply: Lighthouse for the Blind of Houston, Houston, TX

Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 256-NETWORK CONTRACT OFC 16(00256)

Service Type: Janitorial/Custodial

Mandatory for: US Army, PVT Sterling L. Morelock USARC, 7100 Leech Farm Road, Pittsburgh, PA

Contracting Activity: DEPT OF THE ARMY, W6QK ACC-PICA

Service Type: Janitorial/Grounds Maintenance

Mandatory for: US Army Corps of Engineers, East Totten Trail Recreation Area, Lake Sakakawea, 201 1st Street, Riverdale, ND

Authorized Source of Supply: MVW Services, Inc., Minot, ND

Contracting Activity: DEPT OF THE ARMY, W071 ENDIST OMAHA

Service Type: Laundry Service

Mandatory for: Navy Bureau of Medicine and Surgery (BUMED): 2300 East Street Northwest, Washington, DC

Authorized Source of Supply:

Rappahannock Goodwill Industries, Inc., Fredericksburg, VA

Contracting Activity: DEPT OF THE ARMY, W40M RHCO-ATLANTIC USAHCA

Service Type: Laundry Service

Mandatory for: Malcolm Grow Medical Center, Andrews AFB, MD

Authorized Source of Supply:

Rappahannock Goodwill Industries, Inc., Fredericksburg, VA

Contracting Activity: DEPT OF THE ARMY, W40M RHCO-ATLANTIC USAHCA

Service Type: Laundry Service

Mandatory for: Walter Reed Army Medical Center: 6900 Georgia Avenue NW, Washington, DC

Authorized Source of Supply:

Rappahannock Goodwill Industries, Inc., Fredericksburg, VA

Contracting Activity: DEPT OF THE ARMY, W40M RHCO-ATLANTIC USAHCA

Service Type: Laundry Service

Mandatory for: DiLorenzo Army Health Clinic: Pentagon, Arlington, VA

Authorized Source of Supply:

Rappahannock Goodwill Industries, Inc., Fredericksburg, VA

Contracting Activity: DEPT OF THE ARMY, W40M RHCO-ATLANTIC USAHCA

Service Type: Laundry Service

Mandatory for: Kimbrough Ambulatory Care Center, Fort Meade, MD

Authorized Source of Supply:

Rappahannock Goodwill Industries, Inc., Fredericksburg, VA

Contracting Activity: DEPT OF THE ARMY, W40M RHCO-ATLANTIC USAHCA

Service Type: Laundry Service

Mandatory for: National Naval Medical Center: Naval Surface Warfare Center, Bethesda, MD

Authorized Source of Supply:

Rappahannock Goodwill Industries, Inc., Fredericksburg, VA

Contracting Activity: DEPT OF THE ARMY, W40M RHCO-ATLANTIC USAHCA

Service Type: Laundry Service

Mandatory for: US NAVY, Patuxent River Naval Station And Branch Naval Health Clinics, 47149 Buse Road, Patuxent River, MD

Authorized Source of Supply: Louise W. Eggleston Center, Inc., Norfolk, VA

Contracting Activity: DEPT OF THE NAVY, NAVY MEDICINE EAST

Service Type: Grounds Maintenance

Mandatory for: US Air Force, Patrick Space Force Base, Athletic Fields, Patrick Air Force Base, FL

Authorized Source of Supply: Brevard Achievement Center, Inc., Rockledge, FL

Contracting Activity: DEPT OF THE AIR FORCE, FA2521 45 CONS LGC

Service Type: Food Service Attendant
Mandatory for: US Air Force, Alabama Air National Guard, HQ 117th Air Refueling Wing, 5401 East Lake Boulevard, Birmingham, AL

Authorized Source of Supply: Alabama Goodwill Industries, Inc., Birmingham, AL

Contracting Activity: DEPT OF THE ARMY, W7MT USPFO ACTIVITY ALANG 117

Service Type: Corrosion Repair Services

Mandatory for: US Marine Corps, Marine Corps Base Hawaii (MCBH), Corrosion Rehabilitation Facility, Building 3016 Harris Ave, Kaneohe Bay, HI

Authorized Source of Supply: Goodwill Contract Services of Hawaii, Inc., Honolulu, HI

Contracting Activity: DEPT OF THE NAVY, HQBN MCBH

Service Type: Grounds Maintenance

Mandatory for: US Army Reserve, Myrtle Beach USARC, 3392 Phillis Blvd., Myrtle Beach, SC

Authorized Source of Supply: Horry County Disabilities and Special Needs Board, Conway, SC

Contracting Activity: DEPT OF THE ARMY, W074 ENDIST CHARLESTON

Service Type: Switchboard Operation

Mandatory for: Department of Veterans Affairs, Birmingham VA Medical Center, 700 19th Street South, Birmingham, AL

Authorized Source of Supply: Alabama Goodwill Industries, Inc., Birmingham, AL

Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 247-NETWORK CONTRACT OFC 7(00247)

Service Type: Grounds Maintenance

Mandatory for: Prince George's County Memorial USARC, 6601 Baltimore Avenue, Riverdale, MD

Contracting Activity: DEPT OF THE ARMY, W6QM MICC-FT DIX (RC-E)

Service Type: Tactical Vehicle Wash Facility

Mandatory for: Yano Tactical Vehicle Wash Facility, Dir of Training Sustainment, Harmony Church, Building 5525, Fort Benning, GA

Authorized Source of Supply: Power Works Industries, Inc., Columbus, GA

Contracting Activity: DEPT OF THE ARMY, W6QM MICC-FT MOORE

Service Type: Janitorial/Custodial

Mandatory for: US Army Corps of Engineers, Coralville Lake Office Project, Iowa City, IA

Contracting Activity: DEPT OF THE ARMY, W07V ENDIST ROCK ISLAND

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–15937 Filed 7–18–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

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

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* August 18, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 489–1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On 5/24/2024, the Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) published an initial notice of proposed additions to the Procurement List. (89 FR 45859). The Committee determined that the service(s) listed below is suitable for procurement by the Federal Government and has added this service to the Procurement List as a mandatory purchase for the contracting activity listed. In accordance with 41 CFR 51–5.3(b), the mandatory purchase requirement is limited to the contracting activity at listed location, and in accordance with 41 CFR 51–5.2, the Committee has authorized the listed nonprofit agency as the mandatory source of supply.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent

contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the and service(s) to the Government.
2. The action will result in authorizing small entities to furnish the service(s) to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Contractor Operated Civil Engineer Supply Store

Mandatory for: U.S. Air Force, Hanscom Air Force Base, Hanscom AFB, MA

Authorized Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: DEPT OF THE AIR FORCE, FA2835 AFLCMC HANSCOM PZI

Deletions

On 6/14/2024 (89 FR 50579), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

7045–01–599–2658—Encrypted Digital Video Disc,—Recordable, 25 DVDs on Spindle, Silver

Authorized Source of Supply: North Central Sight Services, Inc., Williamsport, PA

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

7520–00–079–0285—Permanent Marker, Tube Type, Chisel Tip, Brown
7520–00–079–0287—Permanent Marker, Tube Type, Chisel Tip, Purple

Authorized Source of Supply: Dallas

Lighthouse for the Blind, Inc., Dallas, TX

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–15936 Filed 7–18–24; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. EDT, Friday, July 26, 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/>.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: July 17, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–16071 Filed 7–17–24; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER FINANCIAL PROTECTION BUREAU

Supervisory Highlights: Servicing and Collection of Consumer Debt, Issue 34, Summer 2024

AGENCY: Consumer Financial Protection Bureau.

ACTION: Supervisory Highlights.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing its thirty fourth edition of *Supervisory Highlights*.

DATES: The findings in this edition of *Supervisory Highlights* cover select examinations that were generally completed from April 1, 2023, to December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Jaclyn Sellers, Senior Counsel, at (202) 435-7449. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

1. Introduction

This edition of *Supervisory Highlights* focuses on the Consumer Financial Protection Bureau's (CFPB's) work in connection with debt collection. The collection of debt is an important and necessary part of the consumer financial marketplace, whether through servicing of current loans or the collection of delinquent debt. But servicing and collections also present risk of harm to consumers if handled improperly, particularly where there are violations of applicable law. This edition highlights violations of law and consumer harm in the areas of auto and student loan servicing and debt collection, including credit card debt collections.

This edition also presents findings in deposits and prepaid accounts as well as credit card account management with a focus on medical credit cards. The findings in this edition of *Supervisory Highlights* cover select examinations that were generally completed from April 1, 2023, to December 31, 2023.

Additionally, this edition summarizes supervisory activity related to section 1034(c) of the Consumer Financial Protection Act of 2010 (CFPA).¹ Section 1034(c) requires large banks and credit unions to comply with consumer requests for information concerning their accounts for consumer financial

products and/or services in a timely manner, subject to limited exceptions.² The supervisory activity indicates that some entities have ceased charging consumers fees to obtain account information and items such as printed copies of check images and account statements. Some entities are also offering free balance inquiry information at third-party ATMs. The CFPB is continuing to gather information and assess industry compliance with section 1034(c) across products, including mortgage, deposit, and credit card accounts.

To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights*, references to institutions generally are in the plural and the related findings may pertain to one or more institutions.³ We invite readers with questions or comments about *Supervisory Highlights* to contact us at CFPB_Supervision@cfpb.gov.

2. Supervisory Observations

2.1 Auto Loan Servicing

The CFPB continues to examine auto loan servicing activities, primarily to assess servicers' compliance with the CFPA's prohibition on unfair, deceptive or abusive acts or practices (UDAAP).⁴ Recent auto loan servicing examinations identified unfair acts or practices related to collecting the final payment for auto loans.

2.1.1 Failing To Auto-Debit the Final Payments Without Adequate Notification That Borrowers Must Make the Final Payment Manually

Examiners found that servicers engaged in unfair acts or practices by failing to debit consumers' final payment via their autopay system without adequate notification to borrowers enrolled in autopay that they need to make the final payment manually. An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.⁵

Servicers offered preauthorized recurring electronic fund transfer enrollment for consumers to make automatic payments on their loans. The servicers' autopay systems did not debit consumers' final payments when they

were a different amount from their regular monthly payments. Servicers failed to adequately communicate to consumers that they must remit the final payment manually, despite being enrolled in autopay. Servicers then charged consumers late fees for failing to make the final payment on time.

This practice caused substantial injury to the consumers in the form of late fees assessed when the final payment was not made. Consumers could not reasonably avoid the injury because they had no control over the autopay system the servicers chose to use. Further, consumers did not reasonably anticipate that a servicer's autopay system would not make the final payment. Consumers could not reasonably foresee incurring a late charge as a result. The injury was not outweighed by any countervailing benefits to consumers or competition.

In response to these findings, servicers are revising their policies and procedures to ensure that they either include the final payment in autopay withdrawals or adequately notify consumers enrolled in autopay if and when a payment is required to be submitted manually.

2.2 Student Loan Servicing

The CFPB continues to examine student loan servicing activities. This work includes assessing whether entities have engaged in any violations of the CFPA's prohibition against UDAAPs,⁶ the Electronic Fund Transfer Act and its implementing Regulation E,⁷ and the Fair Debt Collection Practices Act (FDCPA) and its implementing Regulation F.⁸

Examiners identified unfair and abusive acts or practices by student loan servicers related to failing to provide adequate avenues for communication due to excessive hold times. Examiners also identified deceptive acts or practices related to misrepresenting which forms consumers should use to enroll in certain programs. And examiners found that servicers failed to notify consumers of preauthorized funds transfers that exceeded the previous transfer amount.

2.2.1 Excessive Barriers to Assistance

Consumers frequently contact their servicer by phone to make payments, access benefits, and resolve disputes. Examiners found certain servicers had excessive hold times when consumers contacted them, with average hold times of 40 minutes over a six-month period.

⁶ 12 U.S.C. 5531, 5536.

⁷ 15 U.S.C. 1693 *et seq.*; 12 CFR part 1005 *et seq.*

⁸ 15 U.S.C. 1692 *et seq.*; 12 CFR part 1006 *et seq.*

² *Id.*

³ If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

⁴ 12 U.S.C. 5531, 5536.

⁵ *Id.*

¹ 12 U.S.C. 5534(c); CFPB, *Consumer Information Requests to Large Banks and Credit Unions*, 88 FR 71279 (Oct. 16, 2023), available at https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023_10.pdf.

As a result of these long hold times almost half of consumers dropped their calls before speaking with an agent. During the six-month period the servicers significantly understaffed their call centers. The servicers also disabled consumers' access to their online account management portals where consumers could make payments after a relatively short amount of time and had problems with their interactive voice response systems, limiting consumers' ability to pay or obtain assistance accessing benefits without speaking to an agent.

Examiners found that student loan servicers engaged in unfair and abusive acts or practices by failing to provide, for an extended period, an adequate avenue for consumers to timely resolve disputes or inquiries by phone or submit phone payments, when they offered the option of paying and resolving disputes or inquiries by phone.

An abusive act or practice: (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of: a lack of understanding on the part of the consumer of the material risks, costs or conditions of the product or service; the ability of the consumer to protect the interest of the consumer in selecting or using a financial product or service; or the reasonable reliance by the consumer on a covered person to act in the interest of the consumer.⁹

Examiners found that servicers engaged in abusive acts or practices because servicers took unreasonable advantage of consumers' inability to protect their interests. The servicers gained an advantage by understaffing their call centers because they reduced their salary expenses. The advantage gained by servicers was unreasonable because resolving disputes or inquiries and receiving payments are essential functions of a loan servicer.

Consumers were unable to protect their own interests, including their interest in "limiting the amount of time or effort necessary" to remedy problems,¹⁰ as well as their interest in making payments on their loans or accessing benefit programs. Typically, consumers are unable to choose their loan servicer and so are unable to switch to a new servicer when they

encounter problems reaching their servicer. Because consumers were unable to switch servicers, they were unable to limit the amount of time spent resolving problems, make payments, or access benefit programs. Consumers may ordinarily have alternatives to calling their servicer, such as making payments online or through an interactive voice response system, but many consumers were unable to access these alternatives because of problems with the interactive voice response system and the servicers' disabling of many consumers' online accounts. As a result, consumers often had no other recourse than to contact their servicers by phone. Therefore, the servicers engaged in abusive acts or practices.

Examiners also found that the servicers' conduct was unfair. The long hold times were likely to cause substantial injury to consumers. First, some consumers were unable to make timely payments because of long hold times, which likely resulted in additional late fees. Second, some consumers called to obtain information about how to enroll in forbearance or deferment programs and were therefore unable to enter these programs, which could result in additional unnecessary payments or late fees. Third, servicers injured consumers by forcing them to spend considerable amounts of time resolving issues or making payments. Consumers could not reasonably avoid the injury because they could not switch servicers and they have no control over call hold times. Some consumers were also unable to make payments through alternative means because of problems with interactive voice response systems or online accounts. Finally, the injury to consumers was not outweighed by countervailing benefits to consumers or competition. Consumers do not benefit from excessive hold times, and adequate staffing is inherent to being a functioning student loan servicer.

In response to these findings, servicers developed plans to reduce hold times and drop rates.

2.2.2 Providing Inaccurate Information About Benefit Forms

Examiners found that servicers engaged in deceptive acts or practices by providing inaccurate information regarding which forms consumers should submit in order to qualify for certain loan programs. Student loans often include certain benefits which consumers are entitled to access, such as forbearance. To access these programs consumers often must submit specific forms.

A representation, omission, act, or practice is deceptive when: (1) the

representation, omission, act or practice misleads or is likely to mislead the consumer; (2) the consumer's interpretation of the representation, omission, act or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act or practice is material.¹¹

Examiners found that some consumers contacted their servicers to determine the appropriate forms to submit in order to apply for a specific benefit. The servicers misrepresented to consumers which form to submit and, when the consumers submitted the specified forms, their requests were denied. Consumers had a reasonable belief the forms were correct when specified by the servicers and were acting reasonably when they followed their instructions. And the misrepresentations were material because they affected the consumers' decision to fill out the incorrect forms, which delayed consumers' ability to successfully apply for the benefit. In response to these findings, servicers improved training and monitoring.

2.2.3 Failing To Notify Consumers of Larger Preauthorized Electronic Funds Transfers

Regulation E, 12 CFR 1005.10(d)(1), requires the designated payee of a preauthorized electronic fund transfer from a consumer's account to provide the consumer with written notice of the amount and date of the transfer at least 10 days before the scheduled transfer date if the amount will vary from the previous transfer under the same authorization or from the preauthorized amount. Examiners found that servicers violated this provision when they did not provide written notices to consumers before withdrawing an amount that exceeded the previous transfer under the same authorization. In response to these findings, servicers are remediating consumers.

2.3 Debt Collection

The CFPB has supervisory authority to examine certain institutions that engage in consumer debt collection activities, including very large depository institutions, nonbanks that are larger participants in the consumer debt collection market, including nonbanks that collect student loan debt, and nonbanks that are service providers to certain covered persons. Recent examinations of larger participant debt collectors identified violations of Regulation F,¹² which implements the

⁹ 12 U.S.C. 5535(a)(1)(B). See also CFPB, *Policy Statement on Abusive Acts or Practices* (Apr. 3, 2023), available at <https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/#1>.

¹⁰ See *id.* at 14.

¹¹ 12 U.S.C. 5531.

¹² 12 CFR part 1006 *et seq.*

FDCPA. Examiners also identified unfair practices related to incorrect documentation related to the statute of limitations in credit card collections.

2.3.1 Failure To Provide Debt Validation Notice to Consumers

Section 1006.34(a) of Regulation F requires that within five days after the initial communication with the consumer in connection with the collection of any debt, a debt collector must send a written or electronic validation notice unless the validation information is contained, or provided orally, in the initial communication or the consumer has paid the debt before the validation information is required to be provided.¹³ A written or electronic validation notice must be sent in a manner that is reasonably expected to provide actual notice to the consumer.¹⁴ The Official Interpretation of Regulation F states that a debt collector who sends the requisite validation disclosure in writing or electronically but receives notice that the disclosure was not delivered to the consumer has not sent the disclosure in a manner that is reasonably expected to provide actual notice.¹⁵

Examiners found that debt collectors failed to provide the requisite validation information either orally in, or in writing within five days of, the initial oral communication with consumers. This happened when the initial communication occurred via telephone, but after the debt collector had received notice that its prior written disclosure was not delivered to the consumer. In response to these findings, debt collectors are revising their procedures and enhancing monitoring and training with respect to providing debt validation notices in these circumstances.

Examiners also found that student loan debt collectors failed to provide validation notices as required where the initial communication with the consumer occurred in writing. In response to these findings, the debt collectors will update their written communications with borrowers to provide the validation information.

2.3.2 Using False, Deceptive or Misleading Representations

Examiners found that student loan debt collectors violated Regulation F's prohibition on the use of false or misleading representations, section 1006.18(c)(4) and (e)(1)–(2). As a result

of these violations, the borrowers may have reasonably believed that the FDCPA did not apply and may have been misled about their rights under the FDCPA, such as their right to dispute the debt.

First, examiners found that debt collectors used false, deceptive, or misleading representations or means in connection with collection of a debt when they used a business, company, or organization name other than the true name of the debt collectors' business, company, or organization.¹⁶ In written communications and telephone calls reviewed by examiners, the debt collectors used different names and failed to disclose their true company names. In response to these findings, the debt collectors will cease using incorrect names and update all call scripts and written correspondence to use their true company names.

Second, examiners found that debt collectors also used false, deceptive, or misleading representations or means in connection with collection of a debt when they failed to provide key initial disclosures in communications with borrowers. Regulation F requires debt collectors to disclose, in initial communications with consumers, that the debt collectors are attempting to collect a debt and that any information obtained will be used for that purpose.¹⁷ If the debt collectors' initial communication with the consumer is oral, the debt collectors must make the disclosure again in their initial written communication with the consumer. And in all subsequent communications with the consumer, the debt collectors must disclose that the communication is from a debt collector.¹⁸ Examiners observed that the debt collectors failed to provide these disclosures in written communications and telephone calls with borrowers. In response to these findings, the debt collectors will update their written communications and call scripts to provide the required disclosures.

2.3.3 Communicating With Consumers at Inconvenient or Unusual Times or Places

Section 1006.6(b)(1) of Regulation F prohibits communicating or attempting to communicate, including electronically, with a consumer at a time or place the debt collector knows or should know to be inconvenient or unusual, with communications before 8 a.m. or after 9 p.m. in the consumer's time zone presumed to be inconvenient

in the absence of any knowledge of circumstances to the contrary.¹⁹ Examiners found that debt collectors communicated with consumers at times and places known by the collectors to be inconvenient or unusual. For example, debt collectors sent payment reminder emails to the consumer before 8 a.m. in the consumer's time zone. Examiners identified multiple phone calls where the consumer directly informed the collectors' agent that it was an inconvenient time or place for the consumer, but the agents continued the conversations beyond permissible follow-up questions. For example, examiners identified multiple instances where consumers told debt collectors' agents that it was an inconvenient time to talk, either because they were at work or driving, but the agents continued the conversation. Examiners also identified instances in which a consumer informed a debt collector's agent that it was a "bad time" to discuss the debt in question because they were at church without a wallet, but the agent nevertheless continued to discuss the debt. In response to these findings, the debt collectors are enhancing their policies and procedures and training to ensure that they do not communicate with consumers at inconvenient or unusual times or places.

2.3.4 Harassing, Oppressive or Abusive Conduct in Connection With the Collection of Debt

Section 1006.14(a) of Regulation F prohibits debt collectors, in connection with the collection of any debt, from engaging in any conduct the natural consequences of which would be to harass, oppress, or abuse any person.²⁰ Examiners found that debt collectors engaged in harassing, oppressive, or abusive conduct in connection with the collection of debt. For example, in phone calls, consumers explained to the debt collectors' agents that they were unable to make payments according to a prior settlement agreement because of a recent hospital stay. In response to consumers' explanations of the medical difficulties that left them without enough money to pay the debt in question, the agents took an aggressive tone and were verbally abusive towards the consumers. At other debt collectors, consumers requested that the debt collectors stop contacting them. Despite this request, the debt collectors subsequently placed over 100 telephone calls to the consumers. Although the frequency of calls to the consumer was within the limits established by section

¹³ 12 CFR part 1006.34(a).

¹⁴ 12 CFR part 1006.42(a).

¹⁵ 12 CFR part 1006, supp. I, comment 42(a)(1)–2.

¹⁶ 12 CFR part 1006.18(c)(4).

¹⁷ 12 CFR part 1006.18(e)(1).

¹⁸ 12 CFR part 1006.18(e)(2).

¹⁹ 12 CFR part 1006.6(b)(1).

²⁰ 12 CFR part 1006.14(a).

1006.14(b)(2)(i), and so the collectors were entitled to a presumption that their conduct was not harassing, examiners found that the collectors placing over 100 calls to the consumer after being specifically asked to stop overcame that presumption and had the effect of harassing the consumer. In response to these findings, debt collectors are enhancing their training and oversight to prevent harassing communications.

2.3.5 Failure To Cease Communicating Through a Specific Medium After a Consumer Request

Section 1006.14(h) of Regulation F provides that if a consumer has requested that the debt collector not use a medium of communication to communicate with the consumer, the debt collector must not use that medium to communicate or attempt to communicate with the consumer in connection with the collection of any debt, with certain exceptions.²¹ For example, Regulation F explains that if a consumer requests that a debt collector “stop calling” the consumer, the debt collector is prohibited from communicating or attempting to communicate with the consumer through telephone calls.²² The regulation also states that, within a medium of communication, a person may request that a debt collector not use a specific address or telephone number.²³

Examiners found that debt collectors communicated or attempted to communicate with consumers through a medium of communication, such as a text message, and/or through a specific telephone number that the consumers had requested the debt collectors not use to communicate with the consumers. In response to these findings, debt collectors are revising their procedures and enhancing monitoring and training to prevent communications, or attempts to communicate, through specified mediums following a consumer’s request.

2.3.6 Failure To Disclose in Subsequent Communications That Communication Is From a Debt Collector

Section 1006.18(e) of Regulation F requires that a debt collector disclose, in each communication subsequent to the initial communication with the consumer, that the communication is from a debt collector. Examiners found

that debt collectors failed to disclose in subsequent communications that those communications were from a debt collector. Examiners found that the debt collectors’ service providers, when communicating about the debt with consumers on the telephone or via text message on behalf of the collectors, failed to disclose that the communication was from a debt collector. Examiners also found that when consumers requested an electronic payment confirmation, service providers responsible for producing those confirmations on behalf of debt collectors failed to include the required disclosure that the communication was from a debt collector. In response to these findings, the debt collectors are enhancing their service provider oversight.

2.3.7 Incorrect Documentation Related to the Statute of Limitations in Credit Card Collections

Examiners found that credit card issuers engaged in an unfair act or practice when they failed to properly calculate and document the debt collection statute of limitations for a particular State and then sold the credit card debt to debt collectors. The statute of limitations for credit card debt is the amount of time—set by each State—that lenders and collection agencies have to file a lawsuit against consumers for nonpayment. Examiners determined that the entities sold thousands of credit card debts to debt collectors misrepresenting the State’s statute of limitations for credit card debt as ten years rather than five years, including some accounts on which the statute of limitations had already expired. The entities’ practices created the risk of substantial injury to consumers because third parties may rely on the entities’ statute of limitations data when determining their ability to file a collections lawsuit. The injury was not reasonably avoidable because consumers could neither anticipate nor control how the entities coded accounts in their systems and were not likely to recognize the entities’ errors. Finally, the injury caused by the miscoding of accounts for sale was not outweighed by countervailing benefits to consumers or competition. To remedy the issue, the entities contacted their debt buyers to ensure that they used the correct statute of limitations period for debts already sold. Also, the entities updated their systems and procedures to state the correct statute of limitations period for current and future debts.

2.4 Credit Card Account Management—Medical Payment Products

In assessing the operations of supervised entities for compliance with Federal consumer financial laws, examiners reviewed medical payment products issued by supervised entities. Consumers may apply for medical payment products, such as a medical credit card—often at the point of sale, such as a doctor’s office or hospital. Consumers then use these products to pay for healthcare-related products or services. When offering a medical payment product to consumers, healthcare providers commonly use sales and marketing materials provided by the issuer of the medical payment product.

2.4.1 Service Provider Oversight in Offering Medical Payment Products

At one entity, examiners identified a significant number of consumer complaints regarding how dentists and other healthcare providers promoted, offered, and sold medical credit cards to consumers. For example, where credit card issuers offer “deferred interest” promotions—credit terms under which interest accrues, but consumers are not obligated to pay if the balances are paid in full by a specific date—consumers frequently complained of healthcare providers misrepresenting the specifics of these promotions. Consumers also complained that it was unclear whether their monthly payments would be allocated to their promotional or non-promotional balances. Other consumers complained that they felt pressured by healthcare providers to open a credit card while receiving treatment.

Supervision expects supervised entities to have effective processes for managing the risks of service provider relationships, including relationships with medical providers who directly communicate with consumers about medical payment products. In examining entities that offer medical payment products, examiners reviewed materials related to oversight of medical providers that directly communicate with consumers about the entities’ medical payment products. These materials did not provide enough information for examiners to assess the program’s adequacy, and Supervision plans to continue to assess entities’ oversight of medical providers, including whether the oversight is commensurate to the risks in the product offering. Additionally, Supervision intends to monitor the incentives entities offer to enroll

²¹ 12 CFR part 1006.14(h).

²² 12 CFR part 1006, supp. I, comment 14(h)(1)–3.

²³ 12 CFR part 1006, supp. I, comment 14(h)(1)–2.

patients in specific products and marketing materials about the products.

2.5 *Deposit and Prepaid Accounts*

In reviewing deposits and prepaid account practices, examiners have focused on practices that prevent consumers from accessing their funds or important account information, and have assessed whether entities have complied with the CFPB's prohibition against engaging in UDAAPs.²⁴ In certain instances, examiners found that entities engaged in unfair acts or practices with respect to account freezes. Examiners also observed problems related to the failure to provide periodic statements for allotment accounts. Additionally, in reviewing bank practices in providing consumers access to account information, examiners have observed a number of changes in how supervised entities impose fees when customers seek to obtain basic account information. Many entities eliminated fees for responding to requests for account information.

2.5.1 *Account Freezes*

As part of administering deposit accounts and prepaid accounts, institutions regularly review account activity to identify fraud and other suspicious activity and then freeze funds to prevent such activity. Examiners found that institutions engaged in unfair practices in connection with how they handle consumer communications related to these account freezes.

For example, some institutions failed to affirmatively notify consumers after blocking their accounts. In other instances, institutions provided notices but failed to provide clear guidance to consumers, such as directing them to write in by mail for more information without specifying the information the consumer needed to unfreeze their accounts. Institutions sometimes exacerbated these practices by frustrating consumers' ability to contact the institution. For example, certain institutions dropped or blocked most calls from numbers associated with the frozen accounts so that consumers could not connect with a customer service representative to ask questions or challenge the freezes. In other instances, institutions automatically forwarded calls from these numbers to a pre-recorded message that did not provide meaningful information about the consumer's account.

These practices caused or were likely to cause substantial injury to consumers

as those consumers were unable to access frozen funds for weeks or months. In these instances, this injury was not reasonably avoidable as consumers would not have reason to believe their account activity would trigger a freeze. Additionally, institutions deprived consumers of the information needed to address the account suspensions. The injury was not outweighed by countervailing benefits to consumers or competition as consumers need to be able to address holds on their accounts in a timely manner so they may access their own money.

In response to these findings, the institutions planned to enhance their processes to provide automatic notice of account freezes and describe in these notices the process for consumers to unfreeze their accounts. Institutions also changed their processes to allow consumers to communicate directly with customer service representatives and challenge account freezes over the telephone, among other process improvements.

2.5.2 *Failure To Provide Periodic Statements for Allotment Saving Accounts*

Supervision examined institutions holding allotment savings accounts for servicemembers and other Federal employees. Military and other Federal employee payroll deductions—called allotments—are one way that companies can collect first-in-line payments on contracts for expensive items such as insurance or rent. Without adequate oversight of these allotment accounts, servicemembers and other Federal employees may have had accounts opened without their knowledge, or kept open, resulting in excess fees and other harm.

In its recent exam work, Supervision observed that institutions did not send periodic statements to consumers with dormant allotment accounts for an extended time period. The institutions charged fees on thousands of dormant accounts, including where consumers were not provided timely notice of their account information. In response to examiners' observations, the institutions corrected system issues and committed to remediating affected servicemembers and other Federal employees.

2.5.3 *Consumer Requests for Information*

Section 1034(c) requires large banks and credit unions to comply with consumer requests for information concerning their accounts for consumer financial products and/or services in a timely manner, subject to limited

exceptions.²⁵ In a recent advisory opinion, the CFPB noted that responding to consumer requests for information is vital to ensuring high levels of customer service and enabling consumers to resolve issues with their accounts when they encounter problems.²⁶ A large bank or credit union would not comply with section 1034(c) if it imposed conditions or requirements on consumer information requests that unreasonably impede a consumer's ability to request and receive account information.²⁷ Charging fees to consumers to request account information can impede consumers' ability to exercise their rights under section 1034(c).²⁸ To assess industry practices and compliance with section 1034(c), the CFPB issued information requests to select entities regarding their deposit and credit card-related services and fees associated with consumer requests for information.

Examiners found that some responding entities ceased charging consumers fees to obtain account information. This has resulted in several changes, including consumers being able to request and obtain printed copies of check images and account statements without charge. Some responding entities have ceased the practice of charging consumers fees related to bank account research and analysis when consumers have questions about their accounts. Some entities are no longer imposing fees for balance inquiries at third-party ATMs. Finally, some responding entities are fulfilling requests to confirm a consumer's deposit activity—often called “verifications of deposit”—at no charge.

In line with eliminating these charges, some entities have taken steps to update policies and procedures and provide their employees with tailored instructions and training. These changes will ensure that frontline employees are aware of and able to implement the fee changes. Some entities have also updated applicable fee schedules to reflect “No Charge” for services covered by section 1034(c) and are including updated fee schedules in consumer correspondence. Concurrently, these entities also have made relevant system changes to ensure that any applicable system-generated fees are no longer assessed. The steps taken also reflect the ability and willingness of these supervised entities to ensure they comply with Federal consumer financial

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁴ 12 U.S.C. 5531, 5536.

law. The CFPB estimates that these adjustments in fee schedules will result in millions of dollars in savings on an annual basis for customers seeking basic account information from these entities.

3. Supervisory Developments

3.1 Recent CFPB Supervisory Developments

Set forth below are select supervision program developments including circulars and rules that have been issued since the last regular edition of *Supervisory Highlights*.

3.1.1 CFPB Creates Registry To Detect Corporate Repeat Offenders

On June 3, 2024, the CFPB finalized a rule to establish a registry to detect and deter corporate offenders that have broken consumer laws and are subject to Federal, State, or local government or court orders.²⁹ The registry will also help the CFPB to identify repeat offenders and recidivism trends.

3.1.2 CFPB Issues Interpretive Rule Regarding Buy Now, Pay Later

On May 22, 2024, the CFPB issued an interpretive rule that confirms that Buy Now, Pay Later lenders are credit card issuers.³⁰ Accordingly, Buy Now, Pay Later lenders must provide consumers some key legal protections and rights that apply to conventional credit cards. These include a right to dispute charges and demand a refund from the lender after returning a product purchased with a Buy Now, Pay Later loan.

3.1.3 CFPB Issues Rule on Procedures for Supervisory Designation Proceedings

On April 23, 2024, the CFPB updated its procedures for designating nonbank covered persons for supervision to conform to a recent organizational change and to further ensure that proceedings are fair, effective, and efficient for all parties.³¹

3.1.4 Consumer Financial Protection Circular 2024-02 on Remittance Transfers

On March 27, 2024, the CFPB issued a circular regarding deceptive marketing practices about the speed or cost of sending a remittance transfer.³² The

circular states that remittance transfer providers may be liable under the CFPA for deceptive marketing about the speed or cost of sending a remittance transfer. Providers may be liable under the CFPA for deceptive marketing practices regardless of whether the provider follows the disclosure requirements of the Remittance Rule. For example, among other things, it may be deceptive to: market remittance transfers as being delivered within a certain time frame when transfers actually take longer to be made available to recipients; marketing remittance transfers as “no fee” when in fact the provider charges fees; market promotional fees or promotional exchange rates for remittance transfers without sufficiently clarifying when an offer is temporary or limited; market remittance transfers as “free” if they are not in fact free.

4. Remedial Actions

4.1 Public Enforcement Actions

The CFPB’s supervisory activities resulted in and supported the below enforcement actions.

4.1.1 Pennsylvania Higher Education Assistance Agency

On May 31, 2024, the CFPB sued student loan servicer Pennsylvania Higher Education Assistance Agency (PHEAA), which does business as American Education Services, for illegally collecting on student loans that have been discharged in bankruptcy and sending false information about consumers to credit reporting companies.³³ The CFPB’s lawsuit asks the court to order PHEAA to stop its illegal conduct, provide redress to borrowers it has harmed, and pay a civil penalty.

4.1.2 Chime, Inc. d/b/a Sendwave

On October 17, 2023, the CFPB issued an order against Chime, Inc., doing business as Sendwave, a nonbank remittance transfer provider. Sendwave offers and provides consumers international money transfer services, known as remittance transfers, in 50 States and the District of Columbia through its mobile application, the Sendwave App.³⁴ The app enables users to send money to recipients in several countries primarily in Africa and Asia. The CFPB found that Sendwave violated the CFPA’s prohibition on deceptive acts and practices by misrepresenting to

consumers the speed and cost of its remittance transfers. The CFPB also found that Sendwave violated the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E, including subpart B, known as the Remittance Transfer Rule, by: (1) wrongly requiring customers to waive their rights; (2) failing to provide required disclosures, including the date of fund availability and exchange rate; (3) failing to provide timely disclosures; and (4) failing to investigate errors properly and maintain required policies and procedures for error resolution. The violations of EFTA and Regulation E also constitute violations of the CFPA. The order requires Sendwave to provide approximately \$1.5 million in redress to consumers and to pay a \$1.5 million civil money penalty. Sendwave must also take measures to ensure future compliance.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024–15960 Filed 7–18–24; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Proposed Extension

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: DOE invites public comment on the proposed three-year extension, with changes, to the Form NWP-830G *Appendix G—Standard Remittance Advice for Payment of Fees*, including Annex A to Appendix G, as required by the Paperwork Reduction Act of 1995. Form NWP-830G is part of the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste. Generators and owners of spent nuclear fuel and high-level radioactive waste of domestic origin paid fees into the Nuclear Waste Fund based on net electricity generated and sold as defined in the Standard Contract.

DATES: DOE must receive all comments on this proposed information collection no later than September 17, 2024. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

²⁹ The final rule is available at [cfpb_nonbank-registration-orders_final-rule.pdf](https://www.consumerfinance.gov/registration-orders_final-rule.pdf) (consumerfinance.gov).

³⁰ The interpretive rule is available at [cfpb_bnp1-interpretive-rule_2024-05.pdf](https://www.consumerfinance.gov/interpretive-rule_2024-05.pdf) (consumerfinance.gov).

³¹ The final rule is available at <https://www.federalregister.gov/documents/2024/04/23/2024-08430/procedures-for-supervisory-designation-proceedings>.

³² The circular is available at <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-02/>.

³³ The complaint is available at <https://www.consumerfinance.gov/enforcement/actions/pennsylvania-higher-education-assistance-agency-pheaa-dba-american-education-services-or-aes/>.

³⁴ The consent order is available at [cfpb-0012-chime-inc-dba-sendwave-consent-order_2023-10.pdf](https://www.consumerfinance.gov/consent-orders/chime-inc-dba-sendwave-consent-order_2023-10.pdf) (consumerfinance.gov).

ADDRESSES: Submit comments electronically to Guang Wei, Office of Standard Contract Management, at standardcontracts@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: If you need additional information, contact Guang Wei, Office of Standard Contract Management, U.S. Department of Energy, telephone (240) 388-5685, or by email at standardcontracts@hq.doe.gov. The forms and instructions are available on DOE's website at <https://www.energy.gov/gc/office-standard-contract-management> and at EIA's website at www.eia.gov/survey/.

SUPPLEMENTARY INFORMATION: This information collection request contains:

- (1) OMB No.: 1901-0260;
- (2) *Information Collection Request Title:* Form NWPA-830G, *Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste, Appendix G*;
- (3) *Type of Request:* Three-year extension with changes;
- (4) *Purpose:* The Form NWPA-830G survey included in the *Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste, Appendix G*, collect information on energy resource reserves, production, demand, technology, and related economic and statistical information.

The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

As part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), EIA provides the general public and other federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with EIA. Also, EIA will later seek approval for this collection by OMB under Section 3507(a) of the Paperwork Reduction Act of 1995.

The Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 *et seq.*) required that DOE enter into Standard Contracts with all generators or owners of spent nuclear fuel and high-level radioactive waste of domestic origin. Form NWPA-830G *Appendix G—Standard Remittance Advice for Payment of Fees*, including Annex A to Appendix G, is an

Appendix to this Standard Contract. Appendix G and Annex A to Appendix G are commonly referred to as Remittance Advice (RA) forms. RA forms must be submitted quarterly by generators and owners of spent nuclear fuel and high-level radioactive waste of domestic origin who signed the Standard Contract. Appendix G is designed to serve as the source document for entries into DOE accounting records to transmit data to DOE concerning payment of fees into the Nuclear Waste Fund for spent nuclear fuel and high-level waste disposal. Annex A to Appendix G is used to provide data on the amount of net electricity generated and sold, upon which these fees are based.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible non-statistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section;

(4a) *Proposed Changes to Information Collection:* The reduction of 20 annual burden hours for Form NWPA-830G results from the reduction of the number of total respondents representing reactors that decreased from 95 to 94. One reactor permanently shut down since the last clearance cycle and no longer is required to pay fees into the Nuclear Waste Fund nor respond to this survey. The number of respondents includes one new reactor in Georgia, VOGTLE 4, which is planned to be operational within 2024.

(5) *Annual Estimated Number of Respondents:* 94;

(6) *Annual Estimated Number of Total Responses:* 376;

(7) *Annual Estimated Number of Burden Hours:* 1,880;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$171,381 (1,880 estimated number of burden hours times \$91.16 per hour current average loaded wage rate). EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and the maintenance of the information during the normal course of business.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) DOE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) DOE

can improve the quality, utility, and clarity of the information it will collect; and (d) DOE can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93-275, codified as (15 U.S.C. 772(b) *et seq.*); the DOE Organization Act of 1977, Public Law 95-91, codified as (42 U.S.C. 7101 *et seq.*); and Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 *et seq.*)

Signed in Washington, DC, on July 15, 2024.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2024-15927 Filed 7-18-24; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 12104-01-OA]

Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) and Animal Agriculture and Water Quality Subcommittee (AAWQ); Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given that the next meeting of the Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) will be held in a hybrid setting on Aug 5-6, 2024, at the Lancaster Marriott in Lancaster, PA. The FRRCC provides independent policy advice, information, and recommendations to the Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities. Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given that the next meeting of the Animal Agriculture and Water Quality Subcommittee, subcommittee of the Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) will be held in a hybrid setting on Aug 8-9, 2024, at the Lancaster Marriott in Lancaster, PA. The goal of the AAWQ subcommittee is to provide recommendations that will inform the Agency's decisions regarding how to improve the implementation of the Clean Water Act (CWA) National Pollutant Discharge Elimination System

(NPDES) Concentrated Animal Feeding Operation (CAFO) permitting program.

DATES: The public meeting of the FRRCC will be held in-person and virtually Monday, August 5, 2024, from approximately 12:00 p.m. to 5:30 p.m. through Tuesday August 6, 2024, from approximately 8:30 a.m. to 5:30 p.m. (EST).

The public meeting of the AAWQ will be held in-person and virtually on Thursday August 8, 2024, from approximately 8:30 a.m. to 5:30 p.m. (EST) through Friday August 9, 2024, from approximately 8:30 a.m. to 2:00 p.m. (EST).

ADDRESSES: Both the FRRCC and the AAWQ meetings will take place in-person at the Lancaster Marriott at Penn Square, 25 South Queen Street, Lancaster, PA 17603. To register to attend in person, virtually and receive information on how to listen to the meeting and to provide comments, please visit: www.epa.gov/faca/frcc. Attendees must register for each meeting independently.

Virtual Attendance: Virtual attendance will be via Zoom. The link to register for the meeting can be found on the FRRCC web page, www.epa.gov/faca/frcc.

FOR FURTHER INFORMATION CONTACT: Dr. Venus Welch-White, Designated Federal Officer (DFO), at FRRCC@epa.gov and/or AAWQ@epa.gov or tel. (202) 564-0595. General information regarding the FRRCC and AAWQ can be found on the EPA website at: www.epa.gov/faca/frcc.

SUPPLEMENTARY INFORMATION: Meetings of the FRRCC are open to the public. An agenda will be posted at www.epa.gov/faca/frcc.

Access and Accommodations: For information on access or services for individuals with disabilities, please visit: www.epa.gov/faca/frcc.

Venus Welch-White,

Acting Deputy Director, Office of Agriculture and Rural Affairs, EPA.

[FR Doc. 2024-15740 Filed 7-18-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP-OFA-135]

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 July 8, 2024 10 a.m. EST Through July 15, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20240124, Final Supplement, USFS, ID, Crow Creek Pipeline Project, Review Period Ends: 09/03/2024, Contact: Robbert Mickelsen 208-557-5764.

EIS No. 20240125, Final, NRCS, ND, Cart Creek Site 1 of the North Branch Park River Watershed, Review Period Ends: 08/23/2024, Contact: Christi Fisher 701-530-2091.

EIS No. 20240126, Final, USFS, OR, Powder River Mining, Review Period Ends: 09/03/2024, Contact: Keifer Nace 541-523-1362.

EIS No. 20240127, Final, BLM, CO, Proposed Resource Management Plan Amendment and Final Environmental Impact Statement for Big Game Habitat Conservation for Oil and Gas Management, Review Period Ends: 08/19/2024, Contact: Alan Bittner 303-239-3768.

EIS No. 20240128, Draft, TVA, MS, New Caledonia Gas Plant Project, Comment Period Ends: 09/04/2024, Contact: Erica McLamb 423-751-8022.

Dated: July 15, 2024.

Nancy Abrams,

Associate Director, Office of Federal Activities.

[FR Doc. 2024-15943 Filed 7-18-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OIA Docket No. 24-30; DA 24-670; FR ID 232285]

World Radiocommunication Conference Advisory Committee Schedules Its Second Meeting on August 5, 2024

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the secondary meeting of the World Radiocommunication Conference Advisory Committee (WRC Advisory Committee) will be held on August 5, 2024 at the Federal Communications Commission (FCC). The second meeting of the WRC Advisory Committee will consider status reports and recommendations from its Informal

Working Groups (IWG) concerning preparation for the 2027 World Radiocommunication Conference (WRC-27). This meeting is open to the public. The meeting will be broadcast live with open captioning over the internet from the FCC Live web page at www.fcc.gov/live. There will be audience participation available; send live questions to livequestions@fcc.gov during this meeting. The Commission's WRC-27 website (www.fcc.gov/wrc-27) contains the latest updated information and agendas on all scheduled meetings and Advisory Committee matters. Comments may be presented at the WRC Advisory Committee meeting or in advance of the meeting by email to: WRC-27@fcc.gov.

DATES: Monday, August 5, 2024 at 9:30 a.m.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Room 1.200, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Gregory Baker, Designated Federal Official, World Radiocommunication Conference Advisory Committee, FCC Office of International Affairs, Global Strategy and Negotiation Division, at gregory.baker@fcc.gov, (202)-919-0758 or WRC-27@fcc.gov.

SUPPLEMENTARY INFORMATION: The FCC established the WRC Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2027 World Radiocommunication Conference (WRC-27).

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the second meeting of the WRC Advisory Committee. The Commission's WRC-27 website (www.fcc.gov/wrc-27) contains the latest information on the IWG and WRC Advisory Committee meeting agendas and audience participation information, all scheduled meeting dates and updates, and WRC Advisory Committee matters. The second WRC Advisory Committee meeting will be broadcast live with open captioning over the internet from the FCC Live web page at www.fcc.gov/live. There will be audience participation available; send live questions to livequestions@fcc.gov only during this meeting. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need and tell us how to contact you if we need more information. Make your request as early as possible. Last minute requests will be accepted, but may be impossible to fill.

Send an email to: FCC504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

The proposed agenda for the second WRC Advisory Committee meeting is as follows:

Agenda

Second Meeting of the World Radiocommunication Conference Advisory Committee

Federal Communications Commission

Monday, August 5, 2024; 9:30 a.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the First Meeting
4. IWG Reports and Consideration Documents
5. Future Meetings
6. Other Business

Nese Guendelsberger,

Deputy Office Chief, Office of International Affairs, Federal Communications Commission.

[FR Doc. 2024–15901 Filed 7–18–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–24ER]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “Direct Reading, Sensor, and Robotics Technology Assessment in Lab/Simulator-based Settings” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on insert April 23, 2024, to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Direct Reading, Sensor, and Robotics Technology Assessment in Lab/Simulator-based Settings—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), is requesting approval of a New Generic information collection for a period of three years under the project titled “Direct Reading Methodologies, Sensor Technologies, and Robotics Technology Assessment in Lab/Simulator-based Settings.” NIOSH is a federal institute that operates within the CDC specifically dedicated to generating new knowledge in the field of occupational safety and health and is responsible for transferring that knowledge into practice for the betterment of workers. Given NIOSH’s

mission to develop new knowledge, the Institute is uniquely positioned to evaluate potential benefits and risks relative to occupational safety and health issues of the 21st century workplace, work, and workforce—also discussed as the Future of Work (FOW). Areas requiring detailed attention and advancement include research and development in artificial intelligence, robotics, and sensor technologies. NIOSH has established alliances and partnerships with other federal agencies and external partners to collaborate and share technical knowledge to improve awareness around workplace hazards and appropriate safeguards as it relates to technology. Consequently, NIOSH created two Centers charged with leading and coordinating these FOW efforts, with a focus on technology assessment and integration in the workplace that revolves around emerging recommendations and standards in advancing automation.

First, in 2014, the NIOSH Center for Direct Reading and Sensor Technologies (CDRST) was established to research and develop recommendations on the use of 21st century technologies in occupational safety and health. Both direct-reading methodologies and sensors are used to detect and monitor hazardous conditions, to assess and document intervention strategies, and especially to immediately trigger alarms in the event of unsafe conditions. Examples of direct reading and sensor technologies include real-time personal monitoring, wearable monitors, and exoskeletons including wearable robots.

Second, in 2017, NIOSH established the Center for Occupational Robotics Research (CORR) to study the nature of robots in the workplace, conduct workplace interventions to prevent robot-related worker injuries, and develop guidance for safe interactions between humans and robots. There are several common types of robots used in occupational environments—traditional industrial robots; professional or service robots; collaborative robots; and mobile robots (e.g., drones and powered exoskeletons). In most cases, NIOSH laboratories including virtual reality (VR) facilities, are used to conduct this research in a safe and controlled environment. Within these studies, human factors, safety engineering, and test strategies are utilized to provide feedback about the utility of various robotics technology in the workplace to inform design, as well as possible standards.

Direct reading methodologies, sensor technologies, and robotics technology play important roles in advancing automation to keep many workers

within various industries safe while performing their professional duties but rapidly evolve and change in scope and use. NIOSH requests a Generic information collection package for assessing the safety and health considerations of these rapidly changing direct reading methods, sensor, and robotics technologies. Different types of data collection will be collected around these technologies including: (1) body function assessments to identify the validity and reliability of direct reading, sensor, and robotic technologies; (2) physiological assessments to identify the impact of direct reading, sensor, and robotic technologies on worker outputs; (3) perceived knowledge, attitudes, skills, and other personal attributes to assess risks associated with the use and integration of direct reading, sensor, and robotics technologies among workers; and (4) barriers that workers face while using or interacting with direct reading methodologies, sensor technologies, and

robotic technologies to prevent unintended safety and health consequences—including adoption and maintenance challenges. Collectively, this information will be used to inform research, development, and integration recommendations to advance the nation's FOW needs. These data collection efforts will most often occur in controlled laboratory space, including virtual reality space that simulates these technologies. In some cases (*e.g.*, survey or follow-up interview administration) data collection may occur electronically.

Respondents are expected to be reflective of the full spectrum of the U.S. workforce and from industries that rely heavily on direct reading methodologies, sensor technologies, and robotics technologies to protect workers (*e.g.*, public safety and emergency response, manufacturing, retail and trade, construction, mining, and oil and gas). Expected respondents include any

worker who has experience with, is required to use, or willing to use and provide feedback on any sort of direct reading method, sensor, or robotics technology in the workplace—these could be wearable or non-wearable. Common job roles that wear or interact with such technology include construction workers, manufacturing workers, oil gas and extraction workers, mineworkers, retail workers, maintenance workers, manufacturing workers, fire chiefs/firefighters, law enforcement officers, and any industrial hygiene or occupational safety and health professional who oversees the integration and use of new technologies in the workplace.

CDC requests OMB approval for an estimated 205,002 total burden hours with an estimated annual burden of 68,334 hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Members of the general public who represent a variety of industrial sectors (Age 18–65).	Informed Consent	4,000	1	5/60
	Pre-Screening Health Questionnaire: Standardized form with decision logic allowing some questions to be omitted.	4,000	2	15/60
	Demographics Questionnaire: Standardized form with decision logic allowing some questions to be omitted.	4,000	1	15/60
	Job Survey: Occupational tasks, postures used, duration of exposure, etc.	4,000	1	15/60
	Pre- and Post-Assessments: Determine changes in knowledge, skills, and abilities as it related to efficacy, confidence, and perceived competence in technology assessment/intervention (this could be strictly quantitative or semi-structured).	4,000	2	15/60
	Anthropometric Measurements: Calipers/digital measuring of facial and body dimensions with and without gear (<i>e.g.</i> , chest depth; foot breadth with and without proper personal protective equipment) to assess functional integration of wearables and other sensors.	4,000	12	5/60
	Physiological Measurements: Measurements recorded using chest worn heart rate monitor strap, blood pressure cuff/strap, COSMED Kb5 or similar, SQ2020–1F8 temperature logger, TOSCA 500 pulse oximeter, Koken breathing waveform recording mask, MOXY muscle oxygenation strap sensor, neurophysiological measures including Electroencephalography (EEG), and Functional near-infrared spectroscopy (fNIRS), etc.	4,000	4	60/60
	Perceived Rate of Exertion: using validated perceived exertion scales (<i>e.g.</i> , Borg Ratings).	3,000	12	5/60
	Body Function Assessments: Measurements taken (<i>e.g.</i> , on the low back, neck, shoulder, arm, etc.) to conduct strength testing, range of motion testing, reference or maximum voluntary exertions, endurance testing with different direct reading, wearable sensor, and robotics technologies.	3,000	6	30/60
	Motion Measurement Cameras: Camera with motion amplification technology (<i>e.g.</i> , Iris M, Moasure One, etc.) that can measure deflection, displacement, movement, and vibration not visible to the human eye using biomechanical markers for motion capture.	2,000	12	15/60
	Perceived Usability Assessments: Close- and open-ended questions to determine system usability including usability scales, mental workload, body part discomfort, and contact stress experiences of new direct reading, sensor, and robotics technologies (lab- and virtual reality-based).	4,000	6	10/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
	Self-Perception Surveys and other Structured Questions: Perceived comfort level with technology, perceived safety and trust level with technology, perceived fatigue while interacting with technology, etc.	4,000	6	10/60
	Biomechanics measurements: Force plate, strain gauges, stopwatch, accelerometers (including dataloggers), electromyography sensors human/equipment interaction forces, whole-body motion, Electromyography (EMG) for muscle activity, Near-infrared spectroscopy (NIRS) for muscle oxygenation, etc.	2,000	4	30/60
	Task Performance Measures: Measures recorded using various virtual reality systems (e.g., Vive, Meta quest) and components (e.g., controllers) that quantify the subjects' performance such as time to complete, errors, movement path, and omissions.	2,000	12	15/60
	Eye Tracking Measures: Recorded using various virtual reality glasses (e.g., Ergoneers) to assess eyes-off-task time and recognition in response to simulated environments designed to assess integration of new robotic technologies and design set-up.	2,000	12	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2024–15966 Filed 7–18–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–0978]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “Emerging Infections Program (EIP)” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on February 29, 2024 to obtain comments from the public and affected agencies. CDC received one non-substantive comment. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Emerging Infections Program (EIP) (OMB Control No. 0920–0978, Exp. 2/28/2026)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Emerging Infections Programs (EIP) are population-based centers of excellence established through a network of state health departments collaborating with academic institutions; local health departments; public health and clinical laboratories; infection control professionals; and healthcare providers. EIPs assist in local, state, and national efforts to prevent, control, and monitor the public health impact of infectious diseases. Activities of the EIPs fall into the following general categories: (1) active surveillance; (2) applied public health epidemiologic and laboratory activities; (3) implementation and evaluation of pilot prevention/intervention projects; and (4) flexible response to public health emergencies. Activities of the EIPs are designed to: (1) address issues that the EIP network is particularly suited to investigate; (2) maintain sufficient flexibility for emergency response and new problems as they arise; (3) develop and evaluate public health interventions to inform public health policy and treatment guidelines; (4) incorporate training as a key function; and (5) prioritize projects that lead directly to the prevention of disease. Activities in the EIP Network to which all applicants must participate are:

- Active Bacterial Core surveillance (ABCs): active population-based laboratory surveillance for invasive bacterial diseases.
- Foodborne Diseases Active Surveillance Network (FoodNet): active population-based laboratory surveillance to monitor the incidence of select enteric diseases.
- Influenza: active population-based surveillance for laboratory confirmed influenza-related hospitalizations.

- Healthcare-Associated Infections-Community Interface (HAIC) surveillance: active population-based surveillance for healthcare-associated pathogens and infections.

A Revision is being submitted to make existing collection instruments clearer and to add several new forms specifically surveying laboratory practices. These forms will allow the EIP to better detect, identify, track changes in laboratory testing

methodology, gather information about laboratory utilization in the EIP catchment area to ensure that all cases are being captured, and survey EIP staff to evaluate program quality.

CDC requests OMB approval for an estimated 41,483 annual burden hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form No.	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Health Department	ABC.100.1	ABCs Case Report Form	10	809	20/60
	ABC.100.2	ABCs Invasive Pneumococcal Disease in Children and Adults Case Report Form.	10	127	10/60
	ABC.100.3	ABCs <i>H. influenzae</i> Neonatal Sepsis Expanded Surveillance Form.	10	6	10/60
	ABC.100.4	ABCs Severe GAS Infection Supplemental Form	10	136	20/60
	ABC.100.5	ABCs Neonatal Infection Expanded Tracking Form	10	37	20/60
	FN.200.1	FoodNet Campylobacter	10	970	21/60
	FN.200.2	FoodNet Cyclospora	10	42	10/60
	FN.200.3	FoodNet <i>Listeria monocytogenes</i>	10	16	20/60
	FN.200.4	FoodNet Salmonella	10	855	21/60
	FN.200.5	FoodNet Shiga toxin producing <i>E. coli</i>	10	290	20/60
	FN.200.6	FoodNet Shigella	10	234	10/60
	FN.200.7	FoodNet Vibrio	10	46	10/60
	FN.200.8	FoodNet Yersinia	10	55	10/60
	FN.200.9	FoodNet Hemolytic Uremic Syndrome	10	10	1
	FN.200.10	FoodNet Clinical Laboratory Practices and Testing Volume.	10	70	10/60
	FSN.300.1	FluSurv-Net Influenza Hospitalization Surveillance Network Case Report Form.	15	576	25/60
	FSN.300.2	FluSurv-Net Influenza Hospitalization Surveillance Project Vaccination Phone Script and Consent Form (English/Spanish).	13	16	10/60
	FSN.300.3	FluSurv-Net Influenza Hospitalization Surveillance Project Provider Vaccination History Fax Form (Children/Adults) and notification letter.	13	126	5/60
	FSN.300.4	FluSurv-NET Laboratory Survey	15	16	10/60
	HAIC.400.1	HAIC—Multi-site Gram-Negative Surveillance Initiative (MuGSI) Case Report Form (CRF).	11	1,581	29/60
	HAIC.400.2	HAIC MuGSI CA CP—CRE Health interview	10	10	30/60
	HAIC.400.3	HAIC MuGSI Supplemental Surveillance Officer Survey.	11	1	20/60
	HAIC.400.4	HAIC—Invasive <i>Staphylococcus aureus</i> Infection Case Report Form.	10	788	29/60
	HAIC.400.5	HAIC—Invasive <i>Staphylococcus aureus</i> Laboratory Survey.	10	11	9/60
	HAIC.400.6	HAIC—Invasive <i>Staphylococcus aureus</i> Supplemental Surveillance Officers Survey.	10	1	11/60
	HAIC.400.7	HAIC—CDI Case Report and Treatment Form	10	1,650	38/60
	HAIC.400.8	HAIC—Annual Survey of Laboratory Testing Practices for <i>C. difficile</i> Infections.	10	16	17/60
	HAIC.400.9	HAIC—CDI Annual Surveillance Officers Survey	10	1	15/60
	HAIC.400.10	HAIC—Emerging Infections Program <i>C. difficile</i> Surveillance Nursing Home Telephone Survey (LTCF).	10	45	5/60
	HAIC.400.11	HAIC Candidemia Case Report Form	10	170	40/60
	HAIC.400.12	HAIC—Laboratory Testing Practices for Candidemia Questionnaire.	10	20	14/60
	HAIC.400.13	HAIC Death Ascertainment Project	10	8	24

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2024-15967 Filed 7-18-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****Solicitation of Nominations for Appointment to the Lead Exposure and Prevention Advisory Committee**

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is soliciting nominations for membership on the Lead Exposure and Prevention Advisory Committee (LEPAC). The LEPAC is composed of not more than 15 members and not less than half of the members shall be Federal members in fields associated with lead screening, the prevention of lead exposure, and services for individuals and communities affected by lead exposure.

DATES: Nominations for membership on the LEPAC must be received no later than August 19, 2024. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be emailed to LEPAC@cdc.gov.

FOR FURTHER INFORMATION CONTACT: Paul Allwood, Ph.D., M.P.H., Designated Federal Officer, Lead Exposure and Prevention Advisory Committee, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, Atlanta, Georgia 30341. Telephone: (770) 488-6774; Email: PAAllwood@cdc.gov.

SUPPLEMENTARY INFORMATION:

Nominations are sought for individuals with expertise in the fields of epidemiology, toxicology, mental health, pediatrics, early childhood education, special education, diet and nutrition, and environmental health. Members may be invited to serve for three-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of Lead Exposure and Prevention Advisory Committee (LEPAC) objectives.

The members of this Committee are selected by the Secretary of the Department of Health and Human Services (HHS). The Committee's objective is to advise the Secretary, HHS, and the Director, Centers for Disease Control and Prevention (CDC)/

Administrator, Agency for Toxic Substances and Disease Registry on a range of activities to include: (1) review of Federal programs and services available to individuals and communities exposed to lead; (2) review of the current research on lead exposure to identify additional research needs; (3) review of and identification of best practices, or the need for best practices regarding lead screening and the prevention of lead exposure; (4) identification of effective services, including services relating to healthcare, education, and nutrition for individuals and communities affected by lead exposure and lead poisoning, including in consultation with, as appropriate, the lead exposure registry as established in Public Law 114-322 Section 2203(b) (42 U.S.C. 300j-27); and (5) undertaking of any other review or activities that the Secretary determines to be appropriate.

Annually as determined necessary by the Secretary or as required by Congress, the Committee shall submit a report to include: (1) an evaluation of the effectiveness of the Federal programs and services available to individuals and communities exposed to lead; (2) an evaluation of additional lead exposure research needs; (3) an assessment of any effective screening methods or best practices used or developed to prevent or screen for lead exposure; (4) input and recommendations for improved access to effective services relating to healthcare, education, or nutrition for individuals and communities impacted by lead exposure; and (5) any other recommendations for communities affected by lead exposure, as appropriate.

At least half of the Committee will consist of Federal representatives from a range of agencies that may include the Department of Housing and Urban Development; the Environmental Protection Agency; the Consumer Product Safety Commission; the Centers for Medicare and Medicaid Services; the Health Resources and Services Administration; the Food and Drug Administration (FDA); the U.S. Department of Agriculture; the Occupational Safety and Health Administration; the National Institute of Environmental Health Sciences; the U.S. Geological Survey; and such additional Federal, state, tribal, and local public and private officials as the Secretary deems necessary for the Committee to carry out its function. The rest of the Committee will consist of non-Federal members. Only non-Federal members are being solicited with this announcement.

HHS policy stipulates that committee membership be balanced in terms of

points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on Federal workgroups or prior experience serving on a Federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. CDC reviews potential candidates for LEPAC membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).

- At least one letter of recommendation from person(s) not employed by HHS. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (e.g., CDC, National Institutes of Health, FDA).

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024-15917 Filed 7-18-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention**

[60Day–24–24GO; Docket No. CDC–2024–0052]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Formative Research on Adverse and positive childhood experiences, social determinants of health, and health equity among young adults in the U.S. This data collection is designed to allow CDC to better understand the relationship between childhood experiences and health outcomes among young adults from populations that have been socially and economically marginalized.

DATES: CDC must receive written comments on or before September 17, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0052 by either of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger,

Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Formative Research on Adverse and positive childhood experiences, social determinants of health, and health equity among young adults in the U.S.—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC requests OMB approval for a new data collection for the study titled Formative research on adverse and positive childhood experiences, social determinants of health, and health

equity among young adults in the U.S. This study will help CDC to better understand the relationship between adverse childhood experiences (ACEs), positive childhood experiences (PCEs), social determinants of health (SDOH), and health outcomes among young adults from populations that have been socially and economically marginalized. This is a group at high risk for experiencing childhood adversity and has been historically underrepresented in research studies.

CDC is seeking approval to conduct a one-time information collection effort, with data collection occurring over a 12-month period. The study will include 6,000 young adults ages 18–24 living in the U.S. Primary data collection, in English and Spanish, via a probability-based web panel survey, will obtain new data on retrospective assessments of ACEs and other potentially traumatic experiences, PCEs, SDOHs, and health and violence outcomes. Sampling frameworks will be designed to ensure overrepresentation of some populations that are disproportionately impacted by ACEs, as well as underrepresented in research and violence prevention programming, including individuals with disabilities; individuals from racial and ethnic minority groups; and individuals who identify as sexual or gender minority.

This project expands the existing evidence base and addresses several gaps in extant data collection systems in the following three ways. First, this study expands how ACEs are measured. Traditional ACEs research has measured eight to 10 highly interconnected, household-level childhood stressors. These include sexual abuse, physical abuse, emotional abuse, emotional neglect, physical neglect, witnessing intimate partner violence, parent separation/divorce, and living in a home with exposure to mental illness, substance misuse, and incarceration (hereafter referred to as traditional ACEs). However, most ACE research does not account for a wide array of other potentially traumatic experiences that can exist across all levels of the social ecology, including stressors that uniquely impact populations that are socially and economically marginalized (e.g., fear of deportation; experiences of transphobia; exposure to neighborhood or community violence). These potentially traumatic experiences may have an additive or multiplicative effect on risk for poor outcomes, or may have a greater effect on risk relative to the conventional ACEs categories.

Second, this study will create a diverse sample which is statistically powered to answer questions on how to

prevent ACEs and mitigate the impact of specific and cumulative ACEs exposures among communities that have been traditionally socially and economically marginalized. Most samples used in prior surveillance and research studies do not sufficiently oversample under-represented communities to allow for disaggregation of results by sub-group. Thus, there is a need for data samples that allow for disaggregated analysis and results.

Third, this study will link individual level data to community-level variables. While ACEs are individual experiences, they are influenced by the contexts in which children and families live. SDOH are the conditions in which people are born, grow, live, work, and age that are shaped by the distribution of money, power, and resources. SDOH contribute to health and social inequities for groups with disparities in access to money, power and resources. Many

existing ACEs datasets involving individual-level respondents cannot be linked to community-level variables. This formative study will link survey data with publicly available data on structural factors (e.g., minimum wage; generosity of unemployment benefits) via zip code or other geographic indicators.

It is estimated that up to 6,000 young adults will complete the one-time questionnaire. On average, the web-based surveys are estimated to take 30 minutes to complete. These estimates were informed by consultations with individuals with lived experiences and individuals who participated in cognitive interviews. The study team engaged three consultants with lived experience across the three main areas of interest (individuals with a disability, individuals who identify as sexual and gender minorities, and individuals who identify as racial/ethnic minorities) to

inform the development and administration of the instrument. The study team also engaged up to nine individuals, in cognitive testing to ensure the relevance, validity, and equitable nature of the survey instrument. These cognitive interviews were a key component for developing a final draft of the instrument that accurately and reliably reflects the experiences and perspectives of a diverse range of individuals, families, and communities. Using a standard estimated time for question completion, the project team calculated the burden by averaging the time to complete the minimum and maximum number of survey items a respondent could be asked based on varying skip patterns. The estimated annualized burden is 3,985 hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)
18–24-year-old Survey Respondents	Recruitment Email	5,908	1	5/60	493
	Follow up Recruitment Email—Non-panel.	5,907	1	5/60	492
	Web Survey—English	5,700	1	30/60	2,850
	Web Survey—Spanish	300	1	30/60	150
Total .....	.....	.....	.....	.....	3,985

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.
[FR Doc. 2024–15968 Filed 7–18–24; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
[30Day–24–24CB]
Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “Evaluation of an Online Prostate Cancer Decision Aid” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations”

notice on January 26, 2024 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

- (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (c) Enhance the quality, utility, and clarity of the information to be collected;
- (d) Minimize the burden of the collection of information on those who are to respond, including, through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Evaluation of an Online Prostate Cancer Decision Aid—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), Division of Cancer Prevention and Control (DCPC) is requesting a new, three-year OMB approval to conduct a three-arm, randomized controlled trial (RCT) to evaluate the impact of a virtual human decision aid to help improve the quality of prostate cancer screening and treatment decisions. Talk to Nathan About Prostate Cancer Screening (hereafter referred to as Nathan) is DCPC's online, interactive, human simulation decision aid designed to help men learn and make informed decisions about prostate cancer screening. A small, preliminary evaluation of Nathan showed promise in increasing men's knowledge about prostate cancer and likelihood of engaging in shared decision-making about prostate cancer screening with their health care providers. At this time,

a larger, more systematic evaluation can help to understand whether Nathan is effective in areas such as improving knowledge, overcoming health literacy barriers, and resolving decisional conflict, especially among priority populations who are most likely to be affected by prostate cancer and least likely to be screened. Further, as some experts consider the digital divide to be the newest social determinant of health, it is important to explore how, where, and for which populations there may be disparities in accessing and using Nathan.

Broadly, the purpose of this information collection is to: (1) assess whether Nathan is more effective at helping men make decisions about prostate cancer screening than an established decision aid or standard educational materials; (2) determine if changes or improvements to Nathan are warranted; and (3) identify ways to incorporate Nathan into primary care. We will select four primary care clinics to participate in this study. The RCT includes a three-group parallel design with one treatment arm and two control arms to test the effectiveness of Nathan for men aged 55–69. We will recruit 900 men aged 55–69 who have an upcoming

general health exam at one of the four primary care clinics and randomize them to one of three arms: (1) Nathan (intervention = 300 men); (2) the Massachusetts Department of Public Health's (MDPH's) Patient Decision Aid, Get the Latest Facts about Screening for Prostate Cancer (control 1 = 300 men); and (3) standard educational materials from the National Cancer Institute (NCI), Prostate Cancer Screening (PDQ®)—Patient Version (control 2 = 300 men).

Eight forms of information collection will be implemented to answer our evaluation questions. These include a provider survey; a patient eligibility screener; patient pre-exposure, post-exposure, and post-clinic visit surveys; a patient usability survey; patient user experience interviews; and clinic coordinator interviews. Each instrument will be administered once per respondent throughout the course of the study. The provider survey and clinic coordinator interviews will be conducted in English only. All other information collections will be conducted in English or Spanish. The total response burden is estimated to be 1,129 hours. There are no costs to respondents other than their time to participate in data collection activities.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Primary care providers	Provider survey	40	1	10/60
Men ages 55–69	Patient eligibility screener	900	1	8/60
Men ages 55–69	Pre-exposure survey	900	1	20/60
Men ages 55–69	Post-exposure survey	900	1	20/60
Men ages 55–69	Usability survey	300	1	18/60
Men ages 55–69	User experience interview	30	1	20/60
Men ages 55–69	Post-clinic survey	900	1	20/60
Clinic coordinators	Clinic coordinator interview	4	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2024–15965 Filed 7–18–24; 8:45 am]

BILLING CODE 4163–18–P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Centers for Medicare & Medicaid
Services**

[Document Identifier: CMS–10434 #66]

**Medicaid and Children's Health
Insurance Program (CHIP) Generic
Information Collection Activities:
Proposed Collection; Comment
Request**

AGENCY: Centers for Medicare &
Medicaid Services, Health and Human
Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office
of Management and Budget (OMB)

issued Paperwork Reduction Act (PRA)
guidance related to the “generic”
clearance process. Generally, this is an
expedited process by which agencies
may obtain OMB's approval of
collection of information requests that
are “usually voluntary, low-burden, and
uncontroversial collections,” do not
raise any substantive or policy issues,
and do not require policy or
methodological review. The process
requires the submission of an
overarching plan that defines the scope
of the individual collections that would
fall under its umbrella. This **Federal
Register** notice seeks public comment
on one or more of our collection of
information requests that we believe are
generic and fall within the scope of the

umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 2, 2024.

ADDRESSES: When commenting, please reference the applicable form number (CMS-10434 #66) and the OMB control number (0938-1188). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS-10434 #66/OMB control number: 0938-1188, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRAListing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Because of system limitations, we are submitting this generic collection of information request on an interim basis under CMS-10434 (OMB 0938-1188). At the appropriate time we will move this request under its proper place (CMS-10398, OMB 0938-1148) and subsequently remove it from CMS-10434 to prevent duplication. The public can monitor the status of such activities at [reginfo.gov](https://www.reginfo.gov).

Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the

collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title of Information Collection:* Medicaid and Children's Health Insurance Program Eligibility Processing Data Report; *Type of Information Collection Request:* Revision of a previously approved collection of information request; *Use:* The COVID-19 outbreak and implementation of federal policies to address the public health emergency disrupted routine Medicaid, Children's Health Insurance Program (CHIP), and Basic Health Program eligibility and enrollment operations. Medicaid and CHIP enrollment grew to historic levels due in large part to the Medicaid continuous enrollment condition that states implemented as a condition of receiving a temporary federal medical assistance percentage (FMAP) increase under section 6008 of the Families First Coronavirus Response Act (Pub. L. 116-127). In March 2022, CMS announced that states were required to submit a one-time baseline report and an ongoing monthly report on renewal activities for their total caseload of Medicaid and CHIP enrollees prior to unwinding, including the dispositions of renewals, for a minimum of 14 months through the submission of the "Unwinding Data Report", hereinafter referred to as the "Eligibility Processing Data Report."

The Consolidated Appropriations Act of 2023 (Pub. L. 117-238) (CAA, 2023) ended the continuous enrollment condition on March 31, 2023, and required states to meet additional conditions, including conducting renewals consistent with federal requirements or CMS approved strategies, as a condition of receiving increased FMAP through December 2023. The CAA, 2023 also required states to submit and CMS to publicly report data related to redeterminations conducted between April 2023 through June 2024. Some of the data outlined in the CAA, 2023 are collected through the Eligibility Processing Data Report.

States have faced challenges completing the volume of work during unwinding and restoring routine operations, and many states continue to process unwinding related renewals. This package describes the Eligibility Processing Data Report that states will continue to submit to CMS on an ongoing basis to support monitoring and oversight efforts for the remainder of states' unwinding periods and to ensure on-going compliance with federal eligibility renewal requirements beyond unwinding.

CMS is requiring mandatory state reporting of their efforts to restore and maintain eligibility and enrollment operations and understand coverage retention under the authority in sections 1902(a)(4)(A), 1902(a)(6) and 1902(a)(75) of the Social Security Act (the Act), 42 CFR 431.16 to ensure proper and efficient administration of the Medicaid program, and section 2101(a) of the Act to promote the administration of CHIP in an effective and efficient manner. CMS announced that the Eligibility Processing Data Report collection will continue beyond unwinding in State Health Official Letter #24-002.

The Eligibility Processing Data Report is a monthly report containing metrics on application processing, renewals initiated and the dispositions of those renewals and fair hearings that states submit using the existing Performance Indicators portal for submission. States can correct their data as needed. Given that some renewals remain pending at the end of a reporting month, states also submit an update to each monthly report to CMS in the fourth month after the report is first due to provide more complete renewal outcome data for the renewal cohort reflected in the initial report month. States started submitted the monthly Eligibility Processing Data Report to CMS in 2023 when they began their unwinding periods.

In addition to changing the title of this collection of information request, in this July 2024 iteration we are also extending the existing monthly data collection and one-time update to the renewal outcome data in each report for the remainder of unwinding as well as beyond unwinding. States will continue to submit a monthly report in the Eligibility Processing Data Report in the submission portal. States will also continue to provide a one-time update to the data captured in the monthly report concerning renewal outcomes (metrics 5a, 5a(1), 5a(2), 5b, 5c, 5d) in the submission portal. To provide the updated report, states replace renewal outcome data in the initial monthly report in the portal and overwrite their previously submitted data.

The Eligibility Processing Data Report is accompanied by an excel workbook that states may use for planning purposes and a separate instruction document (data specifications). The excel workbook is a planning tool that was provided to states in 2022 so they could see all metrics in the report before they had access to the Eligibility Processing Data Report forms in the submission portal. This workbook is not submitted to CMS, nor are states required to use it. While this workbook is still available on www.Medicaid.gov

for states, it is not updated for this 2024 iteration as states have access to the metrics in the submission portal. The data specifications document is updated to reflect the changes made in this 2024 iteration of the Eligibility Processing Data Report.

States submit the application processing data in the Eligibility Processing Data Report until states complete working on pending applications received before unwinding began and report to CMS that zero applications remain pending. When the Eligibility Processing Data Report was first launched, states previously submitted a one-time baseline report prior to submitting the monthly reports and could make corrections to this report as needed. The baseline report form has remained available in the submission portal. CMS is not extending the use of the baseline report in this 2024 iteration since it was intended to be a one-time submission. The baseline report form will also be removed from the submission portal in late summer/early fall 2024.

Additionally, states submitted to CMS a one-time State Report on Plans for Prioritizing and Distributing Renewals Following the End of the Medicaid Continuous Enrollment Provisions ("State Renewals Report") that was used to assess state's plans for processing renewals and mitigating against inappropriate beneficiary coverage losses when states begin restoring routine Medicaid and CHIP operations after the public health emergency. CMS is not extending the use of this report in this 2024 iteration.

Form Number: CMS-10434 #66 (OMB control number: 0938-1188); *Frequency:* Monthly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 1,344; *Total Annual Hours:* 18,816. (For policy questions regarding this collection contact: Shannon Lovejoy at (410) 786-1718.)

William N. Parham III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024-15882 Filed 7-18-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-2682]

Pediatric Inflammatory Bowel Disease: Developing Drugs for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Pediatric Inflammatory Bowel Disease: Developing Drugs for Treatment." The draft guidance was prepared by the Division of Gastroenterology in the Center for Drug Evaluation and Research at FDA to help sponsors in the clinical development of drugs to treat pediatric patients with inflammatory bowel disease. The draft guidance provides FDA's recommendations about the necessary attributes of clinical studies for drugs being developed for the treatment of pediatric ulcerative colitis or pediatric Crohn's disease, including study population, study design, efficacy considerations, and safety assessments.

DATES: Submit either electronic or written comments on the draft guidance by September 17, 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-2024-D-2682 for "Pediatric Inflammatory Bowel Disease: Developing Drugs for Treatment." 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.regulations.gov>

www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov>

and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Kelly Richards, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5378, Silver Spring, MD 20993-0002, 240-402-4276.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Pediatric Inflammatory Bowel Disease: Developing Drugs for Treatment." The draft guidance was prepared by the Division of Gastroenterology in the Center for Drug Evaluation and Research at FDA.

The purpose of the draft guidance is to help sponsors in the clinical development of drugs to treat pediatric patients with inflammatory bowel disease. Specifically, the draft guidance provides FDA's recommendations about the necessary attributes of clinical studies for drugs being developed for the treatment of pediatric ulcerative colitis or pediatric Crohn's disease, including study population, study design, efficacy considerations, and safety assessments.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Pediatric Inflammatory Bowel Disease: Developing Drugs for Treatment." 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 312 have been approved under OMB control number 0910-0014. The collections of information in 21 CFR 314.50(d)(5) have been approved under OMB control number 0910-0001. The collections in 21 CFR 601.2 have been approved under OMB control number 0910-0338. The collections of information in 21 CFR 201.56 and 201.57 pertaining to the content and format of labeling have been approved under OMB control number 0910-0572. The collections of information in 21 CFR parts 50 and 56 pertaining to the protection of human subjects in clinical trials and institutional review board considerations have been approved under OMB control number 0910-0130.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: July 15, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-15942 Filed 7-18-24; 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: HRSA Ryan White HIV/AIDS Program Part F Regional AIDS Education and Training Center Program Activities, OMB No. 0915-XXX New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). 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 September 17, 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: HRSA Ryan White HIV/AIDS Program Part F Regional AIDS Education and Training Center Program Activities, OMB No. 0906-xxxx—New.

Abstract: The Ryan White HIV/AIDS Program's (RWHAP) AIDS Education and Training Center (AETC) Program, authorized under Title XXVI of the Public Health Service Act, supports a network of regional centers that conduct targeted, multi-disciplinary education and training programs for health care providers treating people with HIV. The RWHAP Regional AETC Program's purpose is to increase the number of health care providers who are effectively educated and motivated to counsel, diagnose, treat, and medically manage people with HIV. The RWHAP Regional AETC Program recipients are required to report data on the training activities and trainees to HRSA once a year. HRSA is requesting the approval of new AETC data collection forms to accurately capture data relating to Regional AETC activities, participants, and site information for both Practice Transformation (PT) and Interprofessional Education (IPE) sites as well as involvement in the HIV care and treatment workforce (1-year post-participation), knowledge gained through participating in an activity, and

satisfaction with the activity. The RWHAP Regional AETC Program recipients will gather data on the training activities they conduct using six data collection instruments. The Individual Participant Record is completed at least once every reporting period by participants actively engaging in Regional AETC activities. This form includes Regional AETC participant demographic, workplace, and client-served data for the participant's respective provider sites. The Training Activity Record is a form completed at the end of each Regional AETC activity that takes place during the reporting period and is completed by the regional recipients. This form describes the activity in hours, modality, and topic(s). The PT Site Characteristics/Outcomes form collects site characteristics information for PT recipient sites only, like clinic activities and procedures, and aggregate counts of clients. PT sites provide clinical services and differ from IPE sites that support students, thus necessitating a different form. The IPE Site Characteristics/Outcomes form collects site characteristics information for IPE recipient sites only. The Participant Post-Activity Immediate

Survey collects information from participants immediately after an activity, specifically, their satisfaction and potential increased knowledge due to participating in said activity. The IPE Long-Term form collects 1-year post-participation information from participant students who engaged in an IPE program to gauge involvement in the field of HIV care and treatment.

Need and Proposed Use of the Information: HRSA uses the data collected when conducting RWHAP AETC programmatic assessments to determine future program needs. These data allow HRSA to identify where gaps exist in training HIV professionals as well as to measure whether training activities are meeting the goals of the National HIV/AIDS Strategy and the RWHAP statute.

Likely Respondents: RWHAP Regional AETC participants complete the Individual Participant Record at least once a reporting period. Regional AETC recipients complete a Training Activity Record for each training activity they conduct during the reporting period. All Regional AETC participants will take the Participant Post-Activity Survey immediately after any attended activity.

The IPE Long-Term form will only be completed by participants who engaged in an IPE program, 1-year post-participation in the IPE program. Finally, PT recipients will complete the PT Site Characteristics/Outcomes form at least once per reporting period, and IPE recipients will complete the IPE Site Characteristics/Outcomes form at least once per reporting period.

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
Individual Participant Record	59,576	1	59,576	0.27	16,085.52
Training Activity Record	12,226	1	12,226	0.21	2,567.46
PT, Site Characteristics and Outcomes	128	1	128	0.31	39.68
IPE, Site Characteristics and Outcomes	86	1	86	0.09	7.74
Participant Post-Activity Immediate Survey	59,576	3	178,728	0.06	10,723.68
IPE, Long-Term	4,403	1	4,403	0.07	308.21
Combined Data Set	8	1	8	64	512.00
Total	136,003	.....	255,155	.....	30,244.29

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. 2024-15957 Filed 7-18-24; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Department of Health and Human Services.

ACTION: Notice of a virtual meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA or the Council) will convene the 82nd full council meeting on Wednesday, August 28–Thursday, August 29, 2024. The meeting will include panels on the U.S. government's

global HIV response; the science and impact of “Undetectable = Untransmittable”, or U = U; Affordable Care Act risk adjustment model to expand access and uptake of PrEP. It will be open to the public and there will be a public comment session during the meeting; pre-registration is required to provide public comment. To pre-register to provide public comment, please send an email to PACHA@hhs.gov and include your name, organization, and title by close of business Wednesday, August 21, 2024. If you decide you would like to provide public comment but do not pre-register, you may submit your written statement by emailing PACHA@hhs.gov by close of business Thursday, September 5, 2024. The meeting agenda will be posted on the PACHA page on HIV.gov at [https://](https://HIV.gov)

www.hiv.gov/federal-response/pacha/about-pacha prior to the meeting.

DATES: The meeting will convene on Wednesday, August 28, 2024 from approximately 1 p.m. to 5:30 p.m. (ET) and Thursday, August 29, 2024 from approximately 1 p.m. to 5:30 p.m. (ET).

ADDRESSES: This meeting will be held virtually. To stream the meeting, please visit www.hhs.gov/live.

FOR FURTHER INFORMATION CONTACT: Ms. Chloe Loving, MPH, Committee Manager for PACHA, at PACHA@hhs.gov or 202-795-7697. Additional information can be obtained by accessing the Council's page on the HIV.gov site at www.hiv.gov/pacha.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996 and is currently operating under the authority given in Executive Order 14109, dated September 29, 2023. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective HIV diagnosis, treatment, prevention, and quality care services. The functions of the Council are solely advisory in nature. The Council consists of not more than 35 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, population health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. PACHA selections also include persons with lived HIV experience and persons disproportionately affected by HIV. Council members are appointed by the Secretary.

Dated: July 9, 2024.

Caroline Talev,

Executive Director, Presidential Advisory Council on HIV/AIDS, Senior Management Analyst, Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 2024-15964 Filed 7-18-24; 8:45 am]

BILLING CODE 4150-43-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<https://videocast.nih.gov/>).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 17, 2024.

Open: 9:30 a.m. to 2:45 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Street, Bethesda, MD 20892 (Hybrid Meeting).

Closed: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Street, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Darren D. Sledjeski, Ph.D., Director, Division of Extramural Activities (DEA), National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Bethesda, MD 20892, (301) 451-7766, darren.sledjeski@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at [https://www.nih.gov/about-](https://www.nih.gov/about-nih/visitor-information/campus-access-security)

[nih/visitor-information/campus-access-security](https://www.nih.gov/about-nih/visitor-information/campus-access-security) for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.niams.nih.gov/about/working-groups/advisory-council>, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 16, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-15950 Filed 7-18-24; 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 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 of Allergy and Infectious Diseases Special Emphasis Panel; Interventional Agents Chemistry Services (IACS) Services.

Date: August 5-12, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Soheyla Saadi, 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 3E70A, Rockville, MD 20892, (240) 669–5178, saadisoh@niaid.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: July 16, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–15952 Filed 7–18–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Defining the Social Epigenome in Type 2 Diabetes Development in a High-Risk Diverse Population (RC2).

Date: October 2, 2024.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney, National Institute of Health, 6707 Democracy Boulevard, Rm. 7345, Bethesda, MD 20892–5452, (301) 594–8895, rushingp@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 16, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–15949 Filed 7–18–24; 8:45 am]

BILLING CODE 4140–01–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; NST–2 202410 conflict/overflow.

Date: August 12, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Video Assisted Meeting).

Contact Person: DeAnna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, deanna.adkins@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: July 16, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–15951 Filed 7–18–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Air Declaration Zone Test

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) will conduct a Declaration Zone test at air terminal facilities at participating air ports of entry (POEs) to fulfill a regulatory declaration requirement and allow for streamlined processing. Current CBP regulations require each traveler at air POEs to provide an oral or written declaration of all articles brought into the United States, to a CBP officer (CBPO). The test will provide arriving travelers with an alternative method to meet this requirement by allowing a demonstrative initial declaration. During the test, CBP will establish two queues for travelers entering the country to choose from: Items to Declare and No Items to Declare. Known as “Declaration Zones,” these queues will allow travelers entering the country through participating air POEs to make their initial declaration simply by choosing which queue to enter. This notice describes the test, and also sets forth requirements for participating in the test, the duration of the test, and how CBP will evaluate the test. This notice also invites public comment on any aspect of the test.

DATES: The test will begin no earlier than August 19, 2024 and will run for approximately two years. The start date will be in accordance with the air POE’s ability to implement the declaration zones. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period to the address set forth below.

ADDRESSES: Written comments concerning program, policy, and technical issues may be submitted at any time during the test period via email to BiometricAir@cbp.dhs.gov. Please use “Comment on Declaration Zone Test” in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Natascha Gutermuth, Program Manager, Biometrics Program Office, Office of Field Operations, U.S. Customs and Border Protection, (202) 417–0096, or email at: Natascha.A.Gutermuth@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Current U.S. Customs and Border Protection (CBP) regulations require each traveler to provide an oral or written declaration of all articles brought into the United States, to a CBP officer (CBPO). See part 148, subpart B of title 19 of the Code of Federal Regulations (19 CFR part 148, subpart B). There are currently three types of Federal Inspection Services (FIS) air port of entry (POE) air terminal facilities: standard, modified egress, and baggage first. At standard air terminal facilities, a traveler is processed by a CBPO at primary inspection to determine whether the traveler may enter the United States. Once cleared for entry, the traveler then proceeds to the baggage area to collect any luggage and subsequently proceeds through the egress area to the facility exit where a CBPO takes an oral declaration from the traveler or collects a written declaration through CBP Form 6059-B if the traveler completes one. See 19 CFR 148.12, 148.13. The CBPO then determines whether the declaration requires the payment of a duty or if further examination is necessary. If either is required, the CBPO refers the traveler to secondary inspection. Otherwise, the traveler may then exit the air terminal facility.

At modified egress air terminal facilities, a traveler is processed by a CBPO at primary inspection to determine whether the traveler may enter the United States. Concurrently, the CBPO takes an oral declaration from the traveler or collects a written declaration through CBP Form 6059-B if the traveler completes one. The CBPO then determines whether the declaration requires the payment of a duty or if further examination is necessary. If either is required, the CBPO refers the traveler to secondary inspection. Once cleared for entry, the traveler proceeds to the baggage area to collect any luggage. The traveler may then exit the air terminal facility without being stopped, unless a roving CBPO engages with the traveler.

At baggage first air terminal facilities, the traveler collects any luggage prior to being processed at primary inspection, where a CBPO then determines whether the traveler may enter the United States. If the traveler is cleared for entry, the CBPO also takes an oral declaration from the traveler or collects a written declaration through CBP Form 6059-B if the traveler completes one. The CBPO then determines whether the declaration requires the payment of a duty or if further examination is necessary. If either is required, the CBPO refers the

traveler to secondary inspection.

Otherwise, the traveler may then exit the air terminal facility, unless a roving CBPO engages with the traveler.

At all three types of air terminal facilities described above, CBPOs also perform roving enforcement operations within the baggage area and egress area. At any point prior to exiting the air terminal facility, a traveler may be questioned by a CBPO and referred for secondary inspection. Travelers referred to secondary inspection may be directed to complete CBP Form 6059-B, if not already completed.

As air travel returns to, and exceeds, pre-pandemic levels, innovative methods of processing are necessary to ensure the safe and streamlined movement of travelers. Declaration zones, whereby travelers provide an initial declaration via selection of a queue, are an established concept in many countries and are being tested in several U.S. sea POEs. See 86 FR 48436 (Aug. 30, 2021) (announcing a Declaration Zone test at certain cruise terminal facilities); 88 FR 71372 (Oct. 16, 2023) (announcing the extension and expansion of the 2021 test). Declaration zones facilitate the processing of travelers by separating those who need to go directly to a CBPO for additional processing from those who do not. With declaration zones, travelers provide an initial declaration by selecting one of two clearly marked queues, either that they have items to declare or no items to declare. This selection acts as travelers' initial declaration simply through the queue that they choose. This addition of a physical, demonstrative form of declaration would allow CBPOs to shift focus from conducting some of the administrative tasks they do currently, such as taking oral declarations from all applicable travelers and instead focus on conducting roving enforcement operations. Roving CBPOs would be able to use their observation skills, as well as their knowledge of trends and smuggling techniques, to actively monitor and select individuals for inspection. As is the case currently, travelers would still be subject to questions upon inspection, and as the travelers move through the Federal Inspection Station (FIS), as appropriate.

The Air Declaration Zone Test

CBP will conduct an Air Declaration Zone Test under 19 CFR 101.9 to fulfill the declaration requirement, while also allowing for streamlined processing. Current CBP regulations require each traveler to provide an oral or written declaration of all articles brought into the United States, to a CBPO. See 19

CFR part 148, subpart B. The test will provide arriving travelers with an alternative method to meet this requirement by allowing a demonstrative initial declaration through the use of declaration zones at air terminal facilities at certain air POEs. The test does not change any other aspect of the processing of arriving travelers. Travelers will continue to have the option of making an oral or written declaration.

Description and Procedures

Within an air terminal facility, two distinct customs declaration zone queues will be established after travelers collect their luggage: one for *No Items to Declare* and another for *Items to Declare*. The location of the queues, either at the entrance to the egress area or prior to processing in primary inspection, will depend on the air terminal facility. At all air terminal facilities, signage will be posted to clearly label the queues. The physical act of selecting the *No Items to Declare* queue or the *Items to Declare* queue in and of itself will constitute an initial demonstrative declaration. CBPOs and CBP Agricultural Specialists will conduct roving enforcement operations within the baggage area and egress area to ensure traveler compliance.

No Items To Declare Queue

Travelers who determine that they have nothing to declare will enter the *No Items to Declare* queue. Depending on the location of the queue in the air terminal facility, the traveler will either proceed to primary inspection or proceed through the egress area to facility exit. CBPOs will conduct roving operations in the *No Items to Declare* zone to affirm traveler compliance. When the queue is located at the entrance of the egress area, CBPOs will also receive oral declarations and make referrals to secondary inspection as necessary; travelers who are not questioned by CBPOs conducting roving operations proceed to the exit.

Items To Declare Queue

Travelers with items to declare will enter the *Items to Declare* queue and will present before a CBPO to make an oral declaration. The CBPO will make a determination if duty is owed by the traveler or if additional inspection is warranted. The CBPO will then direct the traveler accordingly.

Referral to Secondary Inspection

If a traveler is referred to secondary inspection at any point, CBPOs will follow standard procedures, including collecting oral and/or written

declarations during the referral and inspection. CBPOs will follow current agency policy on declaration amendment opportunities.

Eligibility and Participation Requirements

This test allowing a demonstrative declaration to be an acceptable declaration method will begin at one air POE, Dallas-Fort Worth, Texas. CBP may choose to expand this test to other air POEs during the two-year test period. Any such expansion will be announced on the CBP website, <https://www.cbp.gov>.

CBP will provide directional signage for use in the implementation of the declaration zones. Port management will coordinate with the airport authority and terminal managers for the printing and posting of the directional signage and for establishing the corresponding queues. The signage is ancillary to the statutory signage currently posted within air terminal facilities and the FIS area. These directional signs will facilitate the declaration zone process and help travelers understand the expectation when entering a specific queue.

CBP will also work with each airline at eligible POEs to develop educational materials to provide to travelers regarding U.S. Customs declaration responsibilities and how travelers should navigate the declaration zones.

Authorization for the Test

The test described in this notice is authorized pursuant to 19 CFR 101.9(a), which allows the Commissioner of CBP to impose requirements different from those specified in the CBP Regulations for purposes of conducting a test program or procedure designed to evaluate the effectiveness of new operational procedures regarding the processing of passengers. This test is authorized pursuant to this regulation as it is designed to evaluate whether allowing a demonstrative initial declaration is a feasible way to fulfill the declaration requirement and allow for streamlined processing.

Waiver of Certain Regulatory Requirements

CBP regulations require each traveler to provide an oral or written declaration of all articles brought into the United States, to a CBP officer. See 19 CFR 148.12, 148.13. The test will provide arriving travelers with an alternative method to meet this requirement by allowing a demonstrative initial declaration. All other requirements of 19 CFR part 148, subpart B, regarding declarations, including those provided

by 19 CFR 148.18, regarding failure to declare, and 19 CFR 148.19, regarding false or fraudulent statements, will still apply.

Duration of Test

This test will run for approximately two years, beginning no earlier than August 19, 2024. While the test is ongoing, CBP will evaluate the results and determine whether the test will be extended or otherwise modified. CBP reserves the right to discontinue this test at any time in CBP's sole discretion. CBP will announce any modifications to the duration of the test by notice in the **Federal Register**.

Evaluation of Declaration Zone Test

CBP will use the results of this test to assess the operational feasibility of allowing an initial demonstrative declaration to be an acceptable method of declaration at air POEs. CBP will evaluate this test based on a number of criteria, including:

- Evaluation of airline customer satisfaction surveys gathering feedback on the debarkation process; and
- Comparison of year-over-year enforcement statistics for each test period to ensure no impact to duty collection or to the frequency of enforcement activities.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. As there is no new collection of information required in this document, the provisions of the PRA are inapplicable.

Signing Authority

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2024-15947 Filed 7-18-24; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500179856]

Notice of Availability of the Proposed Resource Management Plan Amendment and Final Environmental Impact Statement for Big Game Habitat Conservation for Oil and Gas Management in Colorado

AGENCY: Bureau of Land Management.

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) Amendment and Final Environmental Impact Statement (EIS) for Big Game Habitat Conservation for Oil and Gas Management and by this notice is announcing the start of a 30-day protest period of the proposed RMP amendment.

DATES: This notice announces a 30-day protest period to the BLM on the proposed RMP amendment. 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) in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

ADDRESSES: The proposed RMP amendment and final EIS is available on the BLM ePlanning project website at <https://go.usa.gov/xzXxY>. Documents pertinent to this proposal may also be examined at the BLM Colorado State Office, Denver Federal Center, Building 1A, Lakewood, Colorado.

Instructions for filing a protest with the BLM for the Big Game Habitat Conservation for Oil and Gas Management Proposed RMP Amendment and Final EIS 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. All protests must be submitted in writing by one of the following methods—

Website: <https://go.usa.gov/xzXxY>; or
Regular mail and overnight mail: BLM Director, Attention: Protest Coordinator (HQ210), Denver Federal Center, Building 40 (Door W-4), Lakewood, CO 80215.

FOR FURTHER INFORMATION CONTACT:

Alan Bittner, Deputy State Director, Resources, telephone 303-239-3768;

address BLM Colorado State Office, Attn: Big Game Corridor amendment/EIS, Denver Federal Center Building 40, P.O. Box 151029, Lakewood, CO 80215; email *BLM_CO_corridors_planning@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 Mr. Bittner. 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 RMP amendment would change the following existing plans:

- Eastern Colorado RMP for the Royal Gorge Field Office (2024)
- San Luis Resource Area RMP (1991)
- Gunnison Resource Area RMP (1993)
- Uncompahgre Field Office RMP (2020)
- Colorado River Valley Field Office RMP (2015) and Roan Plateau Amendment (2016)
- Grand Junction Field Office RMP (2015)
- Kremmling RMP (2015)
- Little Snake RMP (2011)
- White River Field Office RMP (1997)
- Tres Rios Field Office RMP (2015)
- Canyons of the Ancients National Monument RMP (2010)
- Gunnison Gorge National Conservation Area RMP (2004)

The proposed RMP amendment addresses alternative approaches for oil and gas management to maintain, conserve, and protect big game high priority habitat (HPH). The planning area includes all counties in Colorado and encompasses approximately 8.3 million acres of public land and approximately 27 million acres of Federal mineral estate. The decision area includes all 8.3 million acres of BLM-administered surface land (except where Federal minerals have been withdrawn from mineral leasing) plus approximately 4.7 million acres of Federal mineral split estate where the surface is owned by private owners, local government, or the State.

Public Involvement

Formal public scoping for the draft RMP amendment/EIS started with the publication of the notice of intent (NOI) in the **Federal Register** on July 19, 2022 (87 FR 43050). The NOI contained information about the purpose and need, preliminary planning criteria, preliminary alternatives, expected impacts, and information about how to comment. The BLM requested that the

public submit scoping comments in response to the NOI by September 2, 2022. Comments were used to inform development of the draft management plan.

The draft RMP amendment/EIS was available for a 90-day public review and comment period beginning with publication of the Notice of Availability (NOA) in the **Federal Register** on November 9, 2023 (88 FR 77350). Issues analyzed in detail in the draft EIS included air quality, geology, fluid minerals, climate, noise and the acoustic environment, lands and realty, soil resources, big game species and habitat, special status species and other wildlife, vegetation, Native American religious concerns, cultural and paleontological resources, socioeconomic and environmental justice, recreation, travel and transportation, and visual resources.

Purpose and Need for the Planning Effort

The purpose of this RMP amendment is to evaluate alternative approaches for oil and gas planning decisions to maintain, conserve, and protect big game corridors and other big game HPH on BLM-administered lands and Federal mineral estate in Colorado. Under the authority of section 202 of FLPMA, the BLM also seeks to evaluate consistency with plans, policies, and programs of other Federal agencies, State and local governments, and Tribes, to the extent consistent with Federal laws, regulations, policies, and programs applicable to BLM-administered lands.

This RMP amendment considers current big game population and habitat data and evaluates planning alternatives' consistency with the policies and programs of State agencies that manage big game populations and regulate oil and gas operations in Colorado: Colorado Parks and Wildlife (CPW) and the Colorado Energy and Carbon Management Commission (ECMC).

This RMP amendment process also complies with the terms of the settlement agreement in *State of Colorado v. Bureau of Land Management*, No. 1:21-cv-00129 (U.S. District Court for the District of Colorado).

Alternatives Considered in the Draft EIS

The BLM analyzed four alternatives in detail in the draft RMP amendment, including the no action alternative. Alternative A was the No Action alternative and reflected management decisions in existing approved RMPs, as amended, throughout Colorado. The

analysis considered how the BLM is currently managing big game habitat protection and oil and gas development across the State and provided a characterization of the existing environment for comparison with the action alternatives.

Alternative B was based on management alignment with the ECMC rules for oil and gas development in elk, mule deer, pronghorn, and bighorn sheep HPH (Rule 1202.c, d; Rule 1203). Where lands are open to oil and gas leasing under existing RMPs, Alternative B prescribed measures consistent with the ECMC rules to conserve HPH. Alternative B incorporated various oil and gas lease stipulations, including a controlled surface use density limitation of one well pad per square mile in big game HPH and two no surface occupancy stipulations to protect big horn sheep production areas and pinch points (both highway crossing and as mapped), all subject to waivers, exceptions, and modifications in some circumstances.

Alternative C, in addition to incorporating lease stipulations similar to alternative B, applied a 3 percent surface disturbance cap on oil and gas development within big game HPH on BLM surface lands. This limit did not apply to private, local government, or State lands in the decision area. This alternative provided for waivers, exceptions, and modifications to the stipulations in some circumstances.

Alternative D was similar to the other action alternatives in that it also incorporated lease stipulations that aligned the BLM's oil and gas management with ECMC's rules for big game HPH in the decision area. Alternative D included a 3 percent surface disturbance cap on oil and gas development on all lands, regardless of land ownership, within big game HPH in the decision area; the application of this cap was not limited to BLM surface lands as it is under Alternative C. Additionally, unlike Alternatives B and C, this alternative proposed to reduce the area open to leasing of oil and gas. Specifically, big game HPH identified lands with low, moderate, or no known oil and gas development potential that would be closed to new Federal oil and gas leasing.

The State Director identified Alternative B as the preferred alternative in the draft EIS.

Public Input Received

During the public comment period on the draft EIS, the BLM received a total of 746 comment submissions. Submissions were focused on suggestions for specific alternatives or

alternative elements, statements pertaining to the cumulative effects analysis, best available science and data, and detailed input pertaining to various resource topics analyzed in the draft EIS such as big game species, air quality and climate, social and economic conditions, and fluid mineral development.

Changes Between the Draft EIS and the Final EIS

Based on public feedback on the draft EIS, the BLM has updated the final EIS. The BLM has provided responses to substantive comments in Appendix O. The BLM developed a new alternative, Modified Alternative B. The new alternative includes updated big game HPH from December 2023 CPW data. The new alternative also includes management guidance for assessing route density in addition to the existing Controlled Surface Use stipulation applicable to active oil and gas facilities. Minor language changes were made throughout the plan to provide clarity.

Summary of the Proposed RMP Amendment

The State Director's proposed alternative in the proposed RMP amendment/final EIS is Modified Alternative B. This alternative aligns BLM management of oil and gas in high priority wildlife habitats with the ECMC rules for oil and gas development in elk, mule deer, pronghorn, and bighorn sheep HPH (Rule 1202.c, d; Rule 1203). Modified Alternative B includes additional management guidance for enhanced coordination and use of best available science and information during implementation. Where lands are open to oil and gas leasing under existing RMPs, Modified Alternative B prescribes measures consistent with the ECMC rules to conserve seasonal habitats and connectivity within big game HPH in support of CPW's big game population objectives. Modified Alternative B incorporates a Controlled Surface Use stipulation that limits facility density to no more than one active oil and gas location per square mile in big game HPH. A consideration of CPW recommendations for route density is included as an objective and as a lease notice to further guide implementation. Existing disturbance may also be used to inform implementation. The plan would require operators to develop and implement mitigation plans to minimize and offset direct, indirect, and cumulative adverse impacts.

The BLM considers potential mitigation in compliance with Council on Environmental Quality, Department

of the Interior, and BLM guidance. Mitigation would provide a conservation benefit to big game species when impacts from oil and gas development activity are not avoidable. Consistent with valid existing rights and applicable law, when oil and gas development results in habitat loss or degradation within big game HPH, the BLM will require and ensure mitigation that provides a conservation benefit to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation.

Modified Alternative B calls for the BLM to consider alternative locations for oil and gas operations that either avoid big game HPH altogether, or, where avoidance is not feasible, minimize adverse impacts to the maximum extent possible. The action alternatives include a surface density limitation that would require the operator to address direct and unavoidable adverse indirect impacts through compensatory mitigation. This includes avoidance, minimization, and mitigation strategies in subsequent implementation-level NEPA analyses for proposed actions that may result in big game HPH loss and degradation. Subsequent implementation-level mitigation could limit the duration and extent of development activities in big game HPH through all phases of development by avoiding activities in HPH, applying surface density and timing limitations, and mitigating residual impacts. The BLM may also require compensatory mitigation to offset disturbance or density limitation exceedances and direct and unavoidable adverse indirect impacts that result in the functional loss of habitat from oil and gas development in big game HPH. The BLM, after coordination with CPW, will determine whether compensatory mitigation proposed by the operator is sufficient to protect big game HPH from direct and unavoidable adverse indirect impacts.

The BLM has the discretion to require an operator to modify surface operations to change or add specific mitigation measures when supported by scientific analysis and consistent with existing rights. Potential mitigation or conservation measures not already required as stipulations would be analyzed in a site-specific NEPA document and incorporated, as appropriate, as conditions of approval of the permit, plan of development, or other use authorization. In discussing surface use rights, 43 CFR 3101.1–2 states that the lessee has the right “to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the

leased resource.” However, lessees are subject to lease stipulations, nondiscretionary statutes, and, as identified in 43 CFR 3101.1–2, “such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed.”

Protest of the Proposed RMP Amendment

The BLM planning regulations state that any person who participated in the preparation of the RMP amendment and has an interest that will or might be adversely affected by approval of the proposed RMP amendment may protest its approval to the BLM. Protest on the proposed RMP amendment constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an approved RMP amendment. Instructions for filing a protest regarding the proposed RMP amendment with the BLM Director may be found online (see **ADDRESSES**). All protests must be in writing and mailed to the appropriate address or submitted electronically through the BLM ePlanning project website (see **ADDRESSES**). Protests submitted by any other means will be invalid. The BLM will render a written decision on each protest. The protest decision of the BLM 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 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,
State Director.

[FR Doc. 2024–15690 Filed 7–18–24; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[BLM_AK_FRN_MO4500179660; F-22625, F-22637]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to Doyon, Limited, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended. Ownership of the subsurface estate will be retained by the United States.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513-7504.

FOR FURTHER INFORMATION CONTACT:

Alban Burton, Land Law Examiner, BLM Alaska State Office, 907-271-1312 or aburton@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Doyon, Limited. The decision approves conveyance of the surface estate in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended. Ownership of the subsurface estate will be retained by the United States.

The lands are located within the Arctic National Wildlife Refuge, in the following townships, and aggregate 53.93 acres: T. 8 S., R. 31 E., Umiat Meridian (UM); T. 11 S., R. 41 E., UM; T. 14 S., R. 44 E., UM.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands approved for conveyance.

The BLM will also publish notice of the decision once a week for four consecutive weeks in the Fairbanks Daily News-Miner newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until August 19, 2024 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Alban L. Burton,

Land Law Examiner, Adjudication Section.

[FR Doc. 2024-15916 Filed 7-18-24; 8:45 am]

BILLING CODE 4331-10-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[BLM_AK_FRN_MO4500179675; AA-12300, F-22475, F-22750, F-22788]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface and subsurface estates in certain lands to Doyon, Limited, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513-7504.

FOR FURTHER INFORMATION CONTACT:

Alban Burton, Land Law Examiner, BLM Alaska State Office, 907-271-1312 or aburton@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Doyon, Limited. The decision approves conveyance of the surface and subsurface estates in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended.

The lands are located within the Alaska interior, in the following townships, and aggregate 22.38 acres: T. 25 N., R. 12 E., Copper River Meridian; T. 1 N., R. 7 W., Fairbanks Meridian (FM); T. 1 N., R. 19 W., FM; T. 1 S., R. 19 W., FM; T. 34 N., R. 29 W., Seward Meridian.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands approved for conveyance.

The BLM will also publish notice of the decision once a week for four consecutive weeks in the Fairbanks Daily News-Miner newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until August 19, 2024 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal

transmitted by facsimile will not be accepted as timely filed.

Alban L. Burton,

Land Law Examiner, Adjudication Section.

[FR Doc. 2024–15961 Filed 7–18–24; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500180580; AA–6650–A2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to Belkofski Corporation for the Native village of Belkofski, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA). The subsurface estate in a portion of the lands will be conveyed to The Aleut Corporation when the surface estate is conveyed to Belkofski Corporation.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Rebecca Curtiss, Land Law Examiner, BLM Alaska State Office, 907–271–5066 or rcurtiss@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Belkofski Corporation. The decision approves conveyance of the surface estate in certain lands pursuant to ANCSA (43

U.S.C. 1601, *et seq.*), as amended. As provided by ANCSA, the subsurface estate in a portion of the lands will be conveyed to The Aleut Corporation when the surface estate is conveyed to Belkofski Corporation. The lands are located in the vicinity of Belkofski, Alaska, and are described as:

Seward Meridian, Alaska

T. 57 S., R. 83 W.,
Sec. 21.

Containing 302.09 acres.

T. 57 S., R. 84 W.,
Sec. 2.

Containing approximately 580 acres.
Aggregating approximately 882 acres.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands described above.

The BLM will also publish notice of the decision once a week for four consecutive weeks in the “The Bristol Bay Times & The Dutch Harbor Fisherman” newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until August 19, 2024 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Rebecca L. Curtiss,

Land Law Examiner, Adjudication Section.

[FR Doc. 2024–15904 Filed 7–18–24; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038296;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion:
University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Davis (UC Davis) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 19, 2024.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email mnnoble@ucdavis.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service’s administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UC Davis and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, four individuals have been reasonably identified. There are a total of 4,015 lots of associated funerary objects (102 of which are currently missing). The 3,913 lots of present associated funerary objects are one clay pipe, two bone ornaments, two shaft straighteners, three bone needles, four charmstones, five bone flakers, five fire-cracked rock, five net sinkers, eight point blanks, eight stone beads/ornaments, 10 worked stone, 21 haliotis beads and shell, 36 ochre, 44 worked bone, 56 awls, 59 fired clay, 62 soil samples, 76 historic glass/possible quartz, 95 clamshell disc beads and shell, 101 groundstone, 124 unworked stone/minerals, 138 projectile points, 147 charcoal, 172 unmodified shell, 179 miscellaneous shell beads and ornaments, 197 unmodified bone, 240 plant/miscellaneous organic material, 281 debitage, 357 chipped stone, 1,475 *Olivella* beads and shell. The 102 lots of currently missing associated funerary objects are three charcoal, three chipped stone, three clamshell disc beads, five soil samples, five projectile points, nine groundstone, 15 plant/miscellaneous organic material, 17 unworked stone, 41

Olivella beads and shell, and one lot of unidentified missing material. UC Davis conducted a field school, directed by Charles Slaymaker, at CA–NAP–539 (Accession 265) in 1980.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

UC Davis has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The 4,015 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Kletsel Dehe Wintun Nation of the Cortina Rancheria (*previously* listed as Kletsel Dehe Band of Wintun Indians); and the Yocha Dehe Wintun Nation, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, UC Davis must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UC Davis is responsible for sending a copy of this notice to the Indian Tribes and Native

Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15894 Filed 7–18–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038295; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Ralph T. Coe Center for the Arts, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Ralph T. Coe Center for the Arts intends to repatriate a certain cultural item that meets the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after August 19, 2024.

ADDRESSES: Rachel Wixom, Ralph T. Coe Center for the Arts, 1590B Pacheco, Santa Fe, NM 87505, telephone (505) 983–6372, email rwixom@coartscenter.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Ralph T. Coe Center for the Arts and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one object of cultural patrimony is a Mississippian Head Pot (catalog number NA1245).

The Ralph T. Coe Center for the Arts acquired NA1245 in 2011 as a gift from Ralph T. Coe. Ralph T. Coe acquired NA1245 on 01/30/2006 from Elenore

Tulman Hancock Incorporated, a New York-based art dealer. When purchased, the accompanying provenance stated that it was from a family living in Jackson, Missouri, that had inherited it from their grandfather. The Coe Center for the Arts has no further provenance information.

Head pots are highly distinctive vessels. Upon assessment by the Quapaw Nation, it was determined that this vessel originates from the bootheel of Missouri and northeastern Arkansas. This vessel has a very high likelihood of originating from Pemiscot County, MO, Mississippi County, AR or one of the surrounding counties.

The Quapaw Nation has provided eight of the accepted categories to support ancestral connection to the area and sites this vessel is associated with. The provided lines of evidence are Historical, Geographical, Linguistic, Anthropological, Archeological, Folkloric, Oral Traditional, and Expert Opinion. These lines of evidence demonstrate a Quapaw connection to the archeological sites located along the St. Francis River and the central Mississippi River Valley. This habitation likely began during the Mississippian archeological phase and declined pre-contact, but nevertheless continued at a reduced level into the French colonial period. Because of comingling with previous groups, the Quapaw are connected to and affiliated with pre-contact, Mississippian, and also with earlier archeological phases of this region.

While this area was not in the treaty cession of the Quapaw, it was nevertheless a significant place in Quapaw history. Evidence from a variety of sources exists demonstrating Quapaw connection to this region. Based on the evidence provided, the Quapaw Nation is the primary federally recognized tribal nation connected to the sites associated with this style of vessel.

There are no known hazardous substances used to treat NA1245.

Determinations

The Ralph T. Coe Center for the Arts has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural item described in this notice and the Quapaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, the Ralph T. Coe Center for the Arts must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Ralph T. Coe Center for the Arts is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15893 Filed 7–18–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038297;
PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana University, Bloomington, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Indiana University has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects

in this notice may occur on or after August 19, 2024.

ADDRESSES: Dr. Jayne-Leigh Thomas, Office of the Native American Graves Protection and Repatriation Act, Indiana University, Student Building 318, 701 E Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email thomajay@indiana.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Indiana University and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, 128 individuals have been identified. The one associated funerary object is one lot of potsherds. Collection is labeled 'ARK' which has been interpreted as an abbreviation for 'Arkansas'. Labels also indicate ancestral remains come from specific Arkansas counties. Artifacts are similar to Mississippian styles; however, no additional time period information is available due to no archaeological site information.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by tribal oral histories and the geographical location of the ancestral remains and associated funerary objects described in this notice.

Determinations

Indiana University has determined that:

- The human remains described in this notice represent the physical remains of 128 individuals of Native American ancestry.
- The one lot of objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Caddo Nation of Oklahoma; Quapaw Nation; and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the

authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, Indiana University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Indiana University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15895 Filed 7–18–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038298;
PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: Weber State University, Ogden, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Weber State University has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after August 19, 2024.

ADDRESSES: David Yoder, Weber State University, 1299 Edvalson Street, Dept. 1208, Ogden, UT 84408–1208, telephone (801) 896–6286, email davidyoder@weber.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Weber State University, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on information available, human remains representing at least 12 individuals have been identified. No funerary objects are present. Eleven of the sets of remains were given to WSU in the 1960s and 1970s by private individuals. Seven of these have no associated provenience information and four were reportedly found in Weber or Davis County, Utah. The twelfth individual was turned over to WSU in the early 1990s and may have been found in Cache County, Utah. The number of materials vary, from an individual represented by a single tooth to an individual represented by ~85% of the skeleton present.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

Weber State University has determined that:

- The human remains described in this notice represent the physical remains of 12 individuals of Native American ancestry.
- There is a connection between the human remains described in this notice and the Northwestern Band of the Shoshone Nation; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes); and the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, Weber State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Weber State University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15896 Filed 7–18–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS–WASO–NAGPRA–NPS0038306;
PPWOCRADNO–PCU00RP14.R50000]**

Notice of Inventory Completion: Office of the State Archaeologist Bioarchaeology Program, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Office of the State Archaeologist Bioarchaeology Program (OSA–BP) has completed an inventory of human remains and associated funerary objects and has determined that there is no lineal descendant and no Indian Tribe or Native Hawaiian organization with cultural affiliation.

DATES: Upon request, repatriation of the human remains and associated funerary objects in this notice may occur on or after August 19, 2024.

ADDRESSES: Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email lara-noldner@uiowa.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the OSA–BP, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

At an unknown date, human remains representing a minimum of 14 individuals were removed from an unknown location or locations. Some of the human remains were originally kept in the collection of a private citizen, Richard Herrmann, in Dubuque, Dubuque County, IA. All of the human remains were at some point donated to the Ham House Museum, which is managed by the Dubuque County Historical Society in Dubuque, IA. The human remains were transferred to the OSA–BP in 1986. One juvenile, aged 6–10 years, two adolescents or young adults (approximately 15 to 20 years), five adult females (one young, two middle-aged, one older, and one of indeterminate age) and six adult males (three young, one middle-aged, one older, and one of indeterminate age) are represented (Burial Project 655). Scant archival information indicates that the Herrmann collection was primarily composed of Native American artifacts and human remains, but their original location in the U.S. is not given. There is also no documentation of whether artifacts are associated with the human remains. No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location. The human remains were kept in a privately owned store for over 60 years. The family believed the human remains may have come from Arkansas, Iowa, Missouri, New York, or Tennessee. In 1994, the human remains were transferred to the OSA–BP. A young adult of indeterminate sex is represented (Burial Project 771). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of two individuals were removed from an unknown location. The human remains were part of the collection of Robert Breckenridge, a former professor of metallurgy at Iowa State University. At

an unknown date, Dr. Breckenridge donated his collections to the Iowa State University Archaeological Laboratory (catalog # ISUAL 1–815). In 1994, the human remains were transferred to the OSA–BP. No indication of the individuals' original burial locations was given. A juvenile 4–10 years old and an adult of indeterminate age and sex are represented by the cranial remains (Burial Project 763). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of five individuals were removed from an unknown location. The remains were housed at the Luther College Archaeological Laboratory in Decorah, Iowa. The catalog numbers for these remains were as follows: 2000.Human.1.1; 2000.Human.1.2; 2000.Human.1.3; 2000.Human.1.4; 2000.Human.1.5; 2000.Human.1.6; 2000.Human.1.7; 2000.Human.1.8; 102.00US00.1.1203.1; 102.00US00.1.1203.2; 102.00US00.1.1203.4. In 2001, these remains were transferred to the OSA–BP with no available indication of their original locations. Three middle-aged adults and two juveniles, aged 6.4 to 7.8 years old and 9 to 11 years old, are represented by the human remains (Burial Project 1471). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location. The human remains were part of the collections in the Luther College Archaeology Laboratory and were associated with the catalog numbers 2001.00US00.88.1, 2001.00US00.88.3, and 2001.00US00.88.4. They were transferred to the OSA–BP in 2003 with no available information indicating their original location. An adult of indeterminate age and sex is represented by the fragmentary human remains (Burial Project 1681). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location. The remains were purchased by a couple (now deceased) from Plymouth County, IA, during a trip “out west” in the 1970s. Around 1999, the remains were transferred to the Iowa Department of Criminal Investigation. In 2007, the remains were found in the

Department of Criminal Investigation storeroom. The State Medical Examiner assigned the case number 07SME405 and transferred the remains to the OSA–BP. A middle-aged adult male is represented by the nearly complete cranium and mandible. Cranial morphology suggests the individual was Native American (Burial Project 2187). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location. The human remains were part of the collections at the College of Dentistry at the University of Iowa and had no associated information indicating their original location. In 2014, the remains were transferred to the OSA–BP. A middle-aged to old adult of indeterminate sex is represented by the incomplete cranial and dental remains. Osteological evidence suggests the individual was Native American (Burial Project 2984). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of eight individuals were removed from an unknown location or locations. The remains were part of the materials collected by anthropologist Amy Harvey. She began her collections at the University of Wisconsin–Madison in the early 1960s, and continued to acquire materials throughout her career at Stephens College in Columbia, Missouri. The human remains described in this notice are not accompanied by any kind of provenience information, and were transferred to the OSA–BP in 2010 and 2013. Five adults and three juveniles are represented by the remains. These individuals include two young adults and three middle-aged to old adults. Of the three juveniles, one is fetal, one newborn to six months, and one is a young child (Burial Project 2930). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of two individuals were removed from an unknown location or locations. The human remains were part of the collections at the Sioux City Public Museum in Sioux City, IA (accession # P.X.3B). Accession records for the human remains are dated January 9, 1965, but no provenience information is given. The human remains were transferred to the OSA–BP in 1994. A

middle-aged male and a middle-aged to older female are represented. Osteological evidence suggests the individuals are of Native American ancestry (Burial Project 737). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location. A partial human cranium was discovered in a private residence in 2014 with no associated provenience information, and was removed by Audubon County Sheriff's officers. The human remains were transferred to the Iowa State Medical Examiner's Office (Case number 14SME341). In June 2014, the human remains were determined likely ancient and transferred to the OSA–BP. A young adult, possibly male, is represented by the remains. Osteological evidence indicates Native American ancestry (Burial Project 3032). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of five individuals were removed from an unknown location. The human remains were found in the basement of a residence in Dubuque, Dubuque County, IA with no associated provenience information. The homeowner gave the human remains to a local funeral director, who transferred them to the Dubuque Police Department. The Dubuque Police Department sent the human remains to the State Medical Examiner's Office, which transferred them to the OSA–BP in March 2013. Two children, both aged 6.5 to 9.5 years, and three adults (two males and one indeterminate) are represented by the human remains. Osteological evidence indicates Native American ancestry (Burial Project 2871). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location. The remains were used as a part of the Luther College teaching collection until they were transferred to the OSA–BP in December 2015. A middle-aged to older adult female is represented by the cranial remains. The human remains have been identified as Native American based on cranial metrics (Burial Project 3165). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of four individuals were removed from an unknown location or locations. The human remains were collected by an Iowa resident who acquired Native American human remains and artifacts by excavation, purchase, and trade from various locations in the U.S. In 2001, well after the collector's death, a box of human remains was discovered in his home and was transferred to the OSA-BP with no associated provenience information. A juvenile aged 5.0 to 6.5 years and three adults of indeterminate age and sex are represented by the remains (Burial Project 1452). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of two individuals were removed from an unknown location or locations. The human remains were in the possession of a private collector in Fort Madison, IA, and were transferred to the OSA-BP after the collector's death in 1994 with no associated provenience information. Two adults of indeterminate age and sex are represented (Burial Project 785). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of five individuals were removed from an unknown location or locations. The remains, which consist of 112 teeth, were in the possession of a private collector in Fort Madison, IA. After the collector's death in 1994, the remains were transferred to the OSA-BP with no associated provenience information. At least five adults are represented by the dental remains (Burial Project 785). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

In 1966, human remains representing a minimum of three individuals were removed from a mound at an unknown location. The human remains were excavated by a private collector and were transferred to the OSA-BP after the collector's death in 1994. Three adults are represented by the human remains, including one male 25 to 29 years old (Burial Project 785). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, possibly in the 1960s, human remains representing a minimum of seven individuals were removed from an unknown location or locations. The human remains were excavated by a private collector and were transferred to the OSA-BP after

the collector's death in 1994 with no associated provenience information. Four adults are represented by the human remains, including one young adult female. The three juveniles were newborn to 2.0 years, 2.5 to 3.5 years, and 3.0 to 6.5 years old (Burial Project 785). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of 14 individuals were removed from an unknown location or locations. The human remains were in the possession of a private collector in Fort Madison, IA, and were transferred to the OSA-BP after the collector's death in 1994 with no associated provenience information. Six adults are represented by the remains, along with a neonate, an infant approximately one year old, a 3.0 to 4.0-year-old, a 5.0 to 6.5-year-old, a 6.0 to 8.0-year-old, a 9.0 to 11.0-year-old, and two adolescents (Burial Project 785). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of five individuals were removed from an unknown location. The human remains were in the possession of a private collector in Fort Madison, IA, and were transferred to the OSA-BP after the collector's death in 1994 with no associated provenience information. Two adults, including one male, are represented by the adult remains. Three juveniles are also represented, including an infant, a 3.5 to 6.0-year-old, and a 6.5 to 9.0-year-old (Burial Project 785). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of eight individuals were removed from an unknown location. The human remains were in the possession of a private collector in Fort Madison, IA, and were transferred to the Office of the State Archaeologist after the collector's death in 1994 with no associated provenience information. Four adults are represented by the adult remains, including at least one male. Four juveniles are also present, including two infants, a five to seven-year-old, and a 10 to 14-year-old (Burial Project 785). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

On November 16, 1970, human remains representing a minimum of two individuals were removed from a plowed field at an unknown location. The human remains were discovered by

a private collector and were transferred to the OSA-BP after the collector's death in 1994 with no more specific provenience information. An adult female and an adult of unknown age and sex are represented by the remains (Burial Project 785). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing a minimum of four individuals were removed from an unknown location or locations. The human remains were in the possession of a private collector in Fort Madison, IA, and were transferred to the OSA-BP after the collector's death in 1994 with no associated provenience information. Three adults of indeterminate age and sex and a juvenile seven to nine years old are represented by the human remains (Burial Project 785). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location. Also at an unknown time, this human cranium, which had been prepared as an anatomical specimen, became part of the OSA-BP comparative osteological collection. In 2018, an exercise using the FORDISC discriminant function software for ancestry determination identified the human remains as likely Native American. The preparation of the human remains and the presence of modern dentistry (root canal with traces of amalgam filling) suggest the individual died sometime between 1833 and the mid-twentieth century (BP3283). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location. At some point in time, these human remains became part of the teaching collection at Sidney High School in Fremont County, Iowa. In June 2019, the human remains were transferred to the OSA-BP. A young or middle adult of unknown sex is represented. Craniofacial morphology suggests Native American ancestry (Burial Project 3445). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing, at minimum, four individuals were removed from an unknown site in an unknown location. In the 1950s, these human remains were

purchased at auction by a private citizen in Clinton, Iowa. The human remains were contained in a Southwestern style pot, suggesting they may have originated from a Native American site in the Southwest, but this cannot be verified. The original provenience of the pot is also unknown. In September 2019, the human remains were transferred to the OSA-BP; the pot was not included in the transfer. One young adult, two middle-to-old adults and a juvenile are represented by the cranial and dental remains (Burial Project 3463). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing, at minimum, three individuals were removed from an unknown location. These human remains were collected by a private citizen who collected throughout Iowa, Nebraska, and Wyoming, and his collection was transferred to an avocational archaeologist upon his death. In August 2019, the remains were transferred to the OSA-BP. Two adults, one a young adult of unknown sex, are represented by postcranial elements and a juvenile is represented by cranial elements. The artifacts the human remains were stored with suggest their antiquity and Native American ancestry, but the association of the artifacts and human remains is unknown. The preservation and condition of the human remains are consistent with a burial context (Burial Project 3458). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing, at minimum, five individuals were removed from an unknown location. In June 2020, a private citizen sent the human remains to the OSA-BP reporting that they had been obtained from a relative. The original collector created a catalog of some human remains he had taken, but these individuals did not have original burial locations referenced. Represented are one juvenile around 11–13 years old, and four adults of unknown sex and age (BP3524). The 21 associated funerary objects include 16 pieces of faunal bones, four pieces of charcoal, and one piece of shell. No known hazardous substances were used to treat the human remains or associated funerary objects.

At an unknown date and time, human remains representing, at minimum, one individual were removed from an unknown location and were added to the University of Iowa's Biology Department Anatomical Teaching Collection. The human remains were

transferred from the Biology department to the OSA-BP when the educational collection was being updated. The human remains have not had any postmortem modification typical of anatomical collections and have a dark brown staining that suggests a prior burial context. FORDISC analysis indicated Native American ancestry. One adult male is represented (Burial Project 3680, Individual 1). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date and time human remains representing at minimum one individual were removed from an unknown location. A physician at University of Iowa Hospitals identified the human remains in her recently deceased father's possessions and contacted the OSA for transfer. The individual is represented by a complete skull including the mandible and was from her father's anatomical collection when he was medical student in the 1940s. One adult male is represented (Burial Project 3742, Individual 1). Cranial metrics indicated Native American ancestry. No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown time, human remains representing at minimum one individual were removed from an unknown location. The individual was acquired by a private citizen through unknown means and was given to the grandmother of a University of Northern Iowa (UNI) student. The student brought the human remains to her professor of forensic anthropology, Dr. Tyler O'Brien, for documentation. Dental and cranial morphology indicated Native ancestry so the human remains were transferred to the OSA-BP. The individual is a young adult female between the ages of 20 and 30 with mixed African American and Native American ancestry (BP3667). Dirt present in foramina suggest a previous burial context. No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown time, human remains representing at minimum one individual were removed from an unknown location. The human remains were discovered in a retired University of Iowa professor's private collection and transferred to the OSA-BP in 2022. The professor collected widely from the U.S. and other countries; no indication of the individual's original provenience or geographical location accompanied the human remains. The human remains consist of a mandible with a full dental

arcade; dental wear is typical of pre-contact Native Americans in North America. One adult male is represented (BP3736). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown time, human remains representing at minimum six individuals were removed from and unknown location. The human remains were partially exposed along a service road bordering Evergreen Cemetery in Sabula, IA in Jackson County, and discovered by a local resident. Investigation by the IOSME revealed they were ancient, not of medicolegal significance, and likely represented an unauthorized reburial by an unknown person. No associated artifacts were included with the human remains and no evidence of the individuals' original burial location is evident. The remains were temporarily reposed at the Sabula Police Department and then transferred to the OSA-BP. At least two females, one male, one adult of unknown sex, a juvenile 12–16 years old and an infant or fetus are represented (BP 3801). The unauthorized reburial location was designated as Notable Location XX15032 in the Iowa Site File. No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown time, human remains representing at minimum one individual were removed from and unknown location. The human remains were part of a teaching collection at Iowa Wesleyan University, and were donated to the OSA-BP along with human remains representing several other non-Native individuals in June 2023. Documentation of the collection revealed that the condition and preservation of one individual's remains indicated they were originally in a burial environment and likely did not belong to other non-Native individuals in the collection. One adult of unknown age and sex is represented by fragmentary long bones (BP3802). The original provenience and geographical location of origin of the individuals is unknown. No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown time, human remains representing at minimum two individuals were removed from and unknown location. The human remains were transferred to the IOSME after being discovered in a decedent's home in Clay County, IA in 2023. The decedent's family said he used to live in Arizona before moving to Iowa, but there was no documentation of where

the human remains were collected from. Craniofacial features and dental morphology are indicative of Native American ancestry. As the human remains were determined not of medicolegal significance they were transferred to the OSA-BP the same year. One young adult female is represented by a mostly complete cranium and an additional individual's teeth were introduced by the collector during attempted dental arcade reconstruction (BP3813). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown time, human remains representing at minimum one individual were removed from an unknown location. The human remains were discovered in retired UI professor, Russ Ciochon's, private collection in November of 2022 and transferred to the OSA BP. The professor collected widely throughout the U.S. and other countries but was inconsistent about recording the provenience or original source of human skeletal remains. The mandible reported here has no associated documentation or labels but has staining and adhering sediment consistent with being taken from a burial environment. Advanced and uniform dental wear is typical of ancient Native American populations using ground stone tools to process food, but a narrower geographic region cannot be identified. One mandible with mostly complete dentition and advanced dental wear represents a middle to older adult male individual (BP3736). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

In 1964 and 1989, human remains representing at minimum four individuals were removed from unknown locations and were transferred to the University of Northern Iowa (UNI) at an unknown date. When discovered in UNI collections the human remains were transferred to the OSA BP in 2023. Three different UNI accession numbers associated with the human remains represent three different collection events by separate individuals, and none recorded the location of original interments. Three individuals were acquired in 1964 and one in 1989. One individual (UNI acc#: 00.4.13.520.4) was collected by Dr. D. A. Hoffman from an unknown location, and three individuals (UNI acc#:1989.43.0317(MNI=1) and 00.4.13.519.2 (MNI=2)) were collected by unknown individuals from unknown locations. Commingled human remains represent a juvenile 1–5 years old, a young adult of unknown sex, an adult

of unknown age and sex, and a mid-older adult of unknown sex (OSA BP3777). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

At an unknown date, human remains representing, a minimum of four individuals were removed from an unknown location. The cranial and dental remains were part of the Gene W. Whittenburg Collection before they were given or sold to a private collector in Fort Madison, IA. There is indication that Whittenburg resided in Texas, but it is unknown whether the human remains were collected in that state and no other documentation accompanied the human remains. After the collector's death in 1994, the remains were transferred to the Office of the State Archaeologist Bioarchaeology Program. Two adults, including one middle-aged female, and two juveniles are represented by the remains (Burial Project 785). No associated funerary objects are present. No known hazardous substances were used to treat the human remains.

Consultation

Invitations to consult were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lower Sioux Indian Community in the State of Minnesota; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oglala Sioux Tribe; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of

Indians, Oklahoma; Pawnee Nation of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; The Osage Nation; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

Cultural Affiliation

The following types of information about the cultural affiliation of the human remains and associated funerary objects in this notice are available: biological. The information, including the results of consultation, identified:

1. No earlier group connected to the human remains or associated funerary object.
2. No Indian Tribe or Native Hawaiian organization connected to the human remains or associated funerary objects.

Determinations

The OSA-BP has determined that:

- The human remains described in this notice represent the physical remains of 132 individuals of Native American ancestry.
- The 21 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No known lineal descendant who can trace ancestry to the human remains and associated funerary objects in this notice has been identified.
- No Indian Tribe or Native Hawaiian organization with cultural affiliation to the human remains and associated funerary objects in this notice has been clearly or reasonably identified.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in

this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Upon request, repatriation of the human remains and associated funerary objects described in this notice may occur on or after August 19, 2024. If competing requests for repatriation are received, the OSA-BP must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The OSA-BP is responsible for sending a copy of this notice to any consulting lineal descendant, Indian Tribe, or Native Hawaiian organization.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15900 Filed 7-18-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038303;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: David A. Fredrickson Archaeological Collections Facility at Sonoma State University, Rohnert Park, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Sonoma State University has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 19, 2024.

ADDRESSES: Doshia Dodd, Sonoma State University, 1801 East Cotati Avenue, Rohnert Park, CA 94928, telephone

(530) 514-8472, email *Doshia.dodd@sonoma.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Sonoma State University, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

CA-MRN-201, CA-MRN-202, and CA-MRN-363 are located on a peninsula along the shoreline of Tomales Bay, on the eastern shore toward the bay's northern end, within the Audubon Canyon Ranch Tom's Point Preserve. The collections are the result of previous excavations at the sites. During analysis of cultural items from CA-MRN-202, ancestral remains were identified. The Federated Indians of Graton Rancheria, California were notified regarding this identification. They determined that all three collections would be accessioned into the holdings of Sonoma State University (SSU), with the understanding that they would request repatriation of the remains, and the cultural items from all three collections, in the future. The three collections have been housed at SSU since September 2022, under the following accession numbers: CA-MRN-201; Accession Number 2018-19; CA-MRN-202; Accession Number 2018-20; and CA-MRN-363, Accession Number 2018-21.

Based on the information available, human remains representing, at least, one individual removed from CA-MRN-202 in Marin County, California, have been reasonably identified. The 8,456 associated funerary objects removed from CA-MRN-202 are groundstone, unmodified shell, modified shell, soil samples, faunal, flaked tools and debitage, and historic material. The 769 associated funerary objects removed from CA-MRN-201 are a shell bead, glass beads, flaked glass tools, groundstone, unmodified shell, faunal, flaked tools and debitage, and historic material. The 1,992 associated funerary objects removed from CA-MRN-363 are groundstone, unmodified shell, modified shell, soil samples, faunal, flaked tools and debitage. Based on records concerning the associated funerary objects and the institution in which they were housed, there is no evidence of the three lots of cultural

items being treated with hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the associated funerary objects described in this notice.

Determinations

The Sonoma State University has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 11,217 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Federated Indians of Graton Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after August 19, 2024. If competing requests for repatriation are received, Sonoma State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Sonoma State University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15898 Filed 7–18–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038305;
PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist Bioarchaeology Program, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Office of the State Archaeologist Bioarchaeology Program (OSA–BP) has completed an inventory of human remains and has determined that there is no lineal descendant and no Indian Tribe or Native Hawaiian organization with cultural affiliation.

DATES: Upon request, repatriation of the human remains in this notice may occur on or after August 19, 2024.

ADDRESSES: Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email lara-noldner@uiowa.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Office of the State Archaeologist Bioarchaeology Program, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

At an unknown date, sometime after 1920, human remains representing a minimum of one individual were removed from an unknown location. The human remains, a human cranium and mandible, were kept in the possession of a private citizen who travelled and did construction in several states, including Illinois, Iowa, Minnesota, Missouri, and Wisconsin. The skull was passed on to a grandchild who lived in Keokuk, Iowa. In 2002, the

descendant transferred the remains to the OSA BP. A probable male, aged 25 to 35 years, is represented by the cranial remains. Cranial metrics and dental morphology support the identification of this individual as Native American (Burial Project 1558). No associated funerary objects are present. No known hazardous substances were used to treat any of the human remains.

At an unknown date, human remains representing a minimum of six individuals were removed from an unknown location. The human remains were kept in the collections of the Historical Society of Marshall County in Marshalltown, Iowa. Little is known of the history of the collection, but archival information suggests they had been acquired around the turn of the 20th century from mound locations, possibly along the Mississippi in Wisconsin and Iowa. The human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program in April of 1988. The human remains represent four adult males, one adult female, and one adult of indeterminate sex (BP 250). No associated funerary objects are present. No known hazardous substances were used to treat any of the human remains.

At an unknown date, human remains representing a minimum of four individuals were removed from unknown locations. The human remains were in the possession of the Grand Meadows Heritage Center in Washta, IA, Cherokee County. Upon their discovery they were transferred to the OSA in November 2020 accompanied by two inventory sheets. The descriptions declared there was a skull from Illinois "possibly Sioux", a skull from a "stone grave" in Illinois, and a "Moundbuilder's skull" from an unknown location. A fourth skull with no provenience information was also determined to be of Native American ancestry. Three adults, two males and one female, and one juvenile are represented (BP 3542). No associated funerary objects are present. No known hazardous substances were used to treat any of the human remains.

In 1965, human remains representing a minimum of one individual were removed from an unknown location somewhere near Chicago, IL by private collector, Bill Borden. They were transferred to the University of Northern Iowa (UNI) at an unknown date (UNI acc #: 70.74.0482F) and when found in their collections, were transferred to the OSA BP in 2023. A singular right parietal fragment represents a juvenile of unknown age (BP 3775). No associated funerary objects are present.

No known hazardous substances were used to treat any of the human remains.

At an unknown time prior to 1964, human remains representing a minimum of one individual were removed from a mound in southern Illinois by an unknown individual. The human remains were transferred to UNI at an unknown date (UNI acc #: 00.4.11.280.0003), and when found in their collections, were transferred to the OSA BP in 2023. A partial cranium represents an adult male individual of unknown age (BP3775). No associated funerary objects are present. No known hazardous substances were used to treat any of the human remains.

Consultation

Invitations to consult were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lower Sioux Indian Community in the State of Minnesota; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte and (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oglala Sioux Tribe; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma;

Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; The Osage Nation; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

Cultural Affiliation

The following types of information about the cultural affiliation of the human remains and associated funerary objects in this notice are available: biological and geographical. The information, including the results of consultation, identified:

1. No earlier group connected to the human remains or associated funerary objects.
2. No Indian Tribe or Native Hawaiian organization connected to the human remains or associated funerary objects.

Determinations

The OSA BP has determined that:

- The human remains described in this notice represent the physical remains of 13 individuals of Native American ancestry.
- No known lineal descendant who can trace ancestry to the human remains and associated funerary objects in this notice has been identified.
- No Indian Tribe or Native Hawaiian organization with cultural affiliation to the human remains in this notice has been clearly or reasonably identified.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Upon request, repatriation of the human remains described in this notice may occur on or after August 19, 2024. If competing requests for repatriation are received, the OSA BP must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human

remains are considered a single request and not competing requests. The OSA BP is responsible for sending a copy of this notice to any consulting lineal descendant, Indian Tribe, or Native Hawaiian organization.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15899 Filed 7-18-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038299; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of the Interior, Bureau of Reclamation, Region 10: California-Great Basin, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Reclamation, Region 10: California-Great Basin (Bureau of Reclamation) intends to carry out the disposition of human remains and associated funerary objects, removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after August 19, 2024. If no claim for disposition is received by July 21, 2025, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects.

ADDRESSES: Dr. Melanie Ryan, Bureau of Reclamation, Region 10: California-Great Basin, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978-5526, email emryan@usbr.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Bureau of Reclamation, and additional information on the human remains and associated funerary objects in this notice, including the results of

consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, seven individuals of Native American ancestry, have been reasonably identified. The 238 associated funerary objects include 127 faunal remains and 111 cultural items (abalone shells, awls, beads, bifaces, bone tubes, debitage, flake tools, formed flake tools, modified faunal bones, pestles, projectile points).

On November 16, 2022, after months of severe drought, Reclamation identified human remains eroding from the exposed, deflated lake bottom in the draw-down zone at Lake Berryessa, Napa County, California, at a previously recorded site identified as CA-NAP-099. After consultation with the Yocha Dehe Wintun Nation, Reclamation removed three inhumations, numerous disassociated human remains, and funerary objects on November 17 and December 20-23, 2022, as requested by the Nation. No known individuals were identified.

Determinations

The Bureau of Reclamation has determined that:

- The human remains described in this notice represent the physical remains of at least seven individuals of Native American ancestry.
- The 238 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- The Yocha Dehe Wintun Nation, California has priority for disposition of the human remains or cultural items described in this notice.

Claims for Disposition

Written claims for disposition of the human remains and associated funerary objects in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by July 21, 2025, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows,

by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains and associated funerary objects in this notice may occur on or after August 19, 2024. If competing claims for disposition are received, the Bureau of Reclamation must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Bureau of Reclamation is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: July 10, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15897 Filed 7–18–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–032]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 25, 2024 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–692 and 731–TA–1628 (Final) (Pea Protein from China). The Commission currently is scheduled to complete and file its determinations and views of the Commission on August 12, 2024.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 17, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–16059 Filed 7–17–24; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1374–1376 (Review)]

Citric Acid and Certain Citrate Salts From Belgium, Colombia, and Thailand

Determinations

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the antidumping duty orders on citric acid and certain citrate salts from Belgium, Colombia, and Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on June 1, 2023 (88 FR 35923) and determined on September 5, 2023 that it would conduct full reviews (88 FR 66052, September 26, 2023). Notice of the scheduling of the Commission’s reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 21, 2023 (88 FR 81099). Since the domestic interested parties submitted a request to cancel the hearing after no other party submitted a request to appear, the public hearing in connection with these reviews, scheduled for May 16, 2024, was cancelled (89 FR 44707).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on July 16, 2024. The views of the Commission are contained in USITC Publication 5524 (July 2024), entitled *Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Investigation Nos. 731–TA–1374–1376 (Review)*.

By order of the Commission.

¹ The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

Issued: July 16, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–15977 Filed 7–18–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1409]

Certain Storage Containers and Toolboxes, Organizers, Component Boxes, and Coolers; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 13, 2024, under section 337 of the Tariff Act of 1930, as amended, on behalf of Milwaukee Electric Tool Corporation of Brookfield, Wisconsin and Keter Home and Garden Products Ltd. of Israel. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain storage containers and toolboxes, organizers, component boxes, and coolers by reason of the infringement of certain claims of U.S. Patent No. 11,365,026 (“the ‘026 patent”); U.S. Patent No. 11,794,952 (“the ‘952 patent”); and U.S. Patent No. 11,952,167 (“the ‘167 patent”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

FOR FURTHER INFORMATION CONTACT:

Heidi Yoo, The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205-1802.

SUPPLEMENTARY INFORMATION:

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 15, 2024, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–5 and 7–11 of the '026 patent; claims 1–23 of the '952 patent; and claims 1–9, 11, and 13–16 of the '167 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 C FR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “interlockable storage containers and toolboxes, organizers, component boxes, and coolers”;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Milwaukee Electric Tool Corporation,
13135 West Lisbon Road, Brookfield,
WI 53005-2550

Keter Home and Garden Products Ltd.,
2 Sapir Street, Industrial Zone,
Herzliya, Israel 4685206

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Klein Tools, Inc., 450 Bond Street,
Lincolnshire, IL 60069

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as

amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2024).

By order of the Commission.

Issued: July 15, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-15890 Filed 7-18-24; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1121-0240]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection: 2024 Law Enforcement Management and Administrative Statistics (LEMAS) Survey

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Justice Statistics, 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 60 days until September 17, 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 Sean E. Goodison (email: Sean.Goodison@usdoj.gov; telephone: 202-307-0765), Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: The LEMAS core survey, conducted every 3 to 4 years since 1987, is currently based on a nationally representative sample of approximately 3,500 general-purpose law enforcement agencies (LEAs). The 2024 LEMAS has been revised to remove questions to help reduce burden and increase clarity. The LEMAS survey has been used to produce national estimates for a wide range of topics, including LEA responsibilities, operating expenditures, job functions of sworn and civilian employees, officer salaries and special pay, demographic characteristics of officers, weapons policies, education and training requirements, special units, and community policing activities. BJS plans to publish this information in reports and reference it when responding to queries from the U.S. Congress, Executive Office of the

President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others interested in criminal justice statistics.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with change, of a previously approved collection.
2. *Title of the Form/Collection:* 2024 Law Enforcement Management and Administrative Statistics (LEMAS) survey.
3. *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire

- is CJ–44. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.
4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* State and local government. Respondents will be general purpose state, county, and local law enforcement agencies (LEAs), including local and county police departments, sheriff’s offices, and primary state law enforcement agencies. The 2024 LEMAS is revised from the 2020 LEMAS. The obligation to respond is voluntary.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

- respond:* An agency-level survey will be sent to approximately 3,500 LEAs. We estimate responses from 81% (2,835) of LEAs sampled for the 2024 LEMAS. The expected burden placed on these respondents is 110 minutes spent on completing the survey. Additionally, an estimated 50% of respondents (1,417) will be contacted for data quality follow-up at 10 minutes per respondent.
6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 5,435 total burden hours associated with this information collection.
7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$360,500.

TOTAL ESTIMATED BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Participation time (minutes)	Total annual burden (hours)
Data collection	2,835	1	2,835	110	5,198
Data quality follow-up	1,417	1	1,417	10	237
Total	2,835	.....	2,835	.....	5,435

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: July 16, 2024.

Darwin Arceo,
Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–15932 Filed 7–18–24; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0043]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Drug Use Statement

AGENCY: Drug Enforcement Administration, Department of Justice.
ACTION: 60-Day notice.

SUMMARY: The Drug Enforcement Administration, 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 60 days until September 17, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional 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 Kannessia Jordan, Section Chief, Office of Compliance, Policy Administration Section, 700 Army Navy Drive, Arlington VA 22202, telephone: 571–776–2262, email: Kannessia.S.Jordan@DEA.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the

information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: The Drug Enforcement Administration (DEA) is a federal law enforcement agency charged with enforcing the controlled substances laws and regulations of the United States. Its principal responsibilities include investigation and prosecution of major violators of controlled substances laws.

Because of the nature of DEA’s mission, and its status as a law enforcement agency, past use of illegal drugs by potential employees presents special concerns, and therefore the agency evaluates a job applicant’s illegal drug use and abuse during the application process. Executive Order 12564 is supported in the DEA Pre-Employment Drug Policy that a history of illegal drug use or abuse may be a disqualification for employment with DEA.

This new form notifies job applicants of the DEA Pre-Employment Drug Policy and asks them to acknowledge their understanding of those requirements to

move forward in the employment process.

Overview of This Information Collection

1. *Type of Information Collection:* Revision.

2. *The Title of the Form/Collection:* Drug Enforcement Administration Pre-Employment Drug Policy Notification and Acknowledgement.

3. *The agency form number, if any, and the applicable component of the*

Department sponsoring the collection: Form number: DEA-200. The sponsoring component is the Drug Enforcement Administration.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* DEA job applicants are asked to complete the form. While not mandatory, an applicant can be disqualified in the hiring process for failing to provide the requested acknowledgement.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The total or estimated number of respondents for the DEA-200 is 4727. The time per response is 7 minutes.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 551 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
DEA Form 200	4,727	1/annually	4,727	7	551
Unduplicated Totals	4,727	1/annually	4,727	7	551

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: July 16, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-15934 Filed 7-18-24; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

[OMB Control Number 1103-0120]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; DOJ's OMB Circular A-11 Section 280 Information Collection Request: Improving Federal Customer Experience

AGENCY: Department of Justice, Office of the Chief Information Officer.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of the Chief Information Officer 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 August 19, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional 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 Catalina Martinez, 950 Penn Ave. NW, Washington, DC 20530, Phone: 202-705-5740, Email: Catalina.martinez@usdoj.gov.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** on May 15, 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 U.S. Department of Justice, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms

of information technology, e.g., permitting electronic submission of responses.

Abstract: Under the PRA, (44 U.S.C. 3501-3520) Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "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 requires Federal Agencies to provide a 30-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, DOJ is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veteran's benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private

sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.*, in person, video and audio collections), interviews, questionnaires, surveys, and focus

groups. Inquiries will be limited to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.
2. *The Title of the Form/Collection:* DOJ’s OMB Circular A–11 Section 280 Information Collection Request: Improving Federal Customer Experience.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DOJ, Office of the Chief Information Officer.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: State, local and tribal governments, individuals and households, Private Sector—for or not for profit institutions, and Federal Government]. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,001,550.

The time per response Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 1.5 hours to participate in an interview.

6. *An estimate of the total annual burden (in hours) associated with the collection:* Ex: The total annual burden hours for this collection is 101,125.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

TOTAL BURDEN HOURS					
Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
Title	2,001,550	1/annually	2,001,550	Varies	101,125
Unduplicated Totals.					

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: July 16, 2024.
Darwin Arceo,
Department Clearance Officer for PRA, U.S. Department of Justice.
[FR Doc. 2024–15976 Filed 7–18–24; 8:45 am]
BILLING CODE 4410–PN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Safe + Sound Campaign

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 19, 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: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: OSHA established the Safe + Sound Campaign, a voluntary effort to support the implementation of safety and health programs in businesses throughout the United States. The Campaign includes period activities and events, ranging from regular email updates to quarterly national Webinars to local meetings to an annual national stand down, designated to increase overall employer and employee awareness and understanding of safety and health programs and promote employer adoption of these programs. To gain information needed to support this effort, OSHA is proposing to survey, and in some cases interview, those participating in the Campaign activities. The goal of the information collection is to understand and respond to the needs of participants and publicly highlight outcomes to enhance the effectiveness of the Campaign. For additional substantive information about this ICR, see the related notice published in the

Federal Register on April 29, 2024 (89 FR 33399).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Safe + Sound Campaign.

OMB Control Number: 1218–0269.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 190,155.

Total Estimated Number of Responses: 190,155.

Total Estimated Annual Time Burden: 20,088 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D)).

Nicole Bouchet,

Certifying Official.

[FR Doc. 2024–15884 Filed 7–18–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Voluntary Protection Program Information

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 19, 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: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Voluntary Protection Program (VPP) recognizes employers and workers in the private industry and federal agencies who have implemented effective safety and health management systems and maintain injury and illness rates below national Bureau of Labor Statistics averages for their respective industries. In VPP, management, labor, and OSHA work cooperatively and proactively to prevent fatalities, injuries, and illnesses through a system focused on: hazard prevention and control; worksite analysis; training; and management commitment and worker involvement. OSHA Challenge provides interested employers and workers the opportunity to gain assistance in improving their safety and health management systems. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 24, 2024 (89 FR 31221).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of

the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Voluntary Protection Program Information.

OMB Control Number: 1218–0239.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 3,295.

Total Estimated Number of Responses: 3,295.

Total Estimated Annual Time Burden: 69,657 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D)).

Nicole Bouchet,

Certifying Official.

[FR Doc. 2024–15885 Filed 7–18–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to

the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before August 19, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA-2024-0009 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2024-0009.

2. *Fax:* 202-693-9441.

3. *Email:* petitioncomments@dol.gov.

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Petitionsformodification@dol.gov (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Mine Act allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2024-005-C.

Petitioner: Banner Blue Coal Company, 1073 Riverview Street, Grundy, VA 24614.

Mines: Paw Paw 2 South, MSHA ID No. 44-07401, located in Buchanan County, Virginia; Paw Paw 2, MSHA ID No. 15-19842, located in Pike County, Kentucky; and Shop Branch, MSHA ID No. 15-19866, located in Pike County, Kentucky.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), to allow non-permissible battery-powered surveying equipment to be taken into or used in by the last crosscut of the coal mine.

The petitioner states that:

(a) Both 30 CFR 75.372 and 30 CFR 75.1200 necessitate the use of the most practicable and accurate survey equipment in the preparation of mine maps.

(b) There are currently no manufacturers of non-electric permissible surveying equipment that can provide the accuracy needed for mine mapping.

(c) Only older, used non-electric permissible surveying equipment is available in limited supply.

(d) Older non-electric permissible surveying equipment is difficult to service and calibrate as parts are no longer available.

(e) Accurate surveying and mapping is critical to the health and safety of miners. It ensures the mine is developed as planned around gas wells and under streams or other geologic anomalies. It also provides a record of the area mined in the event of an emergency. The use of older non-electric permissible surveying equipment results in a diminution of safety to miners.

(f) Modern battery-powered non-permissible surveying equipment is much more accurate than older style mechanical instruments.

(g) Several manufacturers and models of modern battery-powered non-permissible surveying equipment are ingress protected for dust and water with IP66 ratings. Intuitively, this sealing offers safety from methane and coal dust.

(h) No manufacturers of modern battery-powered surveying equipment have pursued MSHA approval as permissible for use in or in by the last open crosscut due to the limited demand and use of such a surveying instrument.

The petitioner proposes the following alternative method:

(a) Surveying equipment shall consist of battery-powered non-permissible total stations and theodolites with an ingress protection rating for dust and water resistance at a minimum of IP 66.

(b) The surveying instruments proposed in the petition are the Sokkia Digital Theodolite DT 950 LG/PS and/or the Stonex R1 Plus.

(c) A logbook shall be maintained for the battery-powered non-permissible surveying equipment documenting the manufacturer, model number, and date of manufacture or purchase. The logbook shall be maintained at the mine office with other logbooks. The logbooks shall be made available to MSHA for inspection, upon request.

(d) The battery-powered non-permissible surveying equipment shall be examined by the person operating it prior to taking it underground to ensure the equipment is being maintained in a safe operating condition. The examination shall include:

(1) Checking the instrument for any physical damage and the integrity of the case;

(2) Removing the battery and inspecting it for corrosion;

(3) Inspecting the contact points to ensure a secure connection to the battery;

(4) Reinstalling the battery, powering the instrument up, and shutting it down to ensure proper connections; and

(5) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

The results of the examination shall be recorded in the logbook.

(e) At least weekly, the equipment shall be examined by a qualified person as defined in 30 CFR 75.153. The examination results shall be recorded weekly in the equipment's logbook. Examination entries in the logbook may be expunged after one year.

(f) The battery-powered non-permissible surveying equipment shall be serviced in accordance with the manufacturer's recommendations. Dates of service and a description of the service shall be recorded in the logbook.

(g) The battery-powered non-permissible surveying equipment shall not be put in service at the mine until MSHA has inspected the equipment and determined that it is in compliance with all the requirements in this petition.

(h) All areas to be surveyed shall be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has

been examined according to 30 CFR 75.361, an additional examination is not required.

(i) Prior to energizing any of the non-permissible surveying equipment in or inby the last open crosscut, methane tests shall be conducted in accordance with 30 CFR 75.323(a).

(j) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut. A second person in the surveying crew, if there are two people in the crew, shall also continuously monitor for methane. The second person shall either be a qualified person as defined in 30 CFR 75.151 or be in the process of being trained to be a qualified person but has yet to "make such tests for a period of 6 months" as required by 30 CFR 75.151. Upon completion of the 6-month training period the second person on the surveying crew shall become qualified in order to continue on the surveying crew. If the surveying crew consists of one person, rather than two, the individual shall monitor for methane with two separate devices.

(k) All hand-held methane detectors shall be MSHA approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(l) The battery-powered non-permissible surveying equipment shall not be used if methane concentrations at or above 1.0 percent are detected. When methane concentrations at or above 1.0 percent are detected while the equipment is being used, the equipment shall be de-energized immediately and withdrawn outby the last open crosscut. Prior to being taken into or inby the last open crosscut all the requirements of 30 CFR 75.323 for excess methane shall be complied with.

(m) Personnel engaged in the use of surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

(n) When using battery-powered non-permissible electronic surveying equipment in or inby the last open crosscut, the surveyor shall confirm with the person in charge of the section that the air quantity in the section, on that shift, in the last open crosscut, is at least the minimum quantity that is required by the mine's ventilation plan.

(o) A safety check shall be performed by the surveyor(s), prior to setting up and energizing non-permissible

electronic equipment in or inby the last open crosscut of any coal mine. The surveyor(s) shall conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulations of float coal dust has been cleaned up.

(p) Batteries contained in the surveying equipment shall be "changed out" in the intake air outby the last open crosscut. Replacement batteries for the electronic surveying equipment shall be carried only in the compartment provided for a spare battery in the electronic equipment carrying case. Before each shift of surveying, all batteries for the electronic surveying equipment shall be charged sufficiently such that they are not expected to be replaced on that shift. Lithium ion batteries shall not be charged underground. Lithium ion batteries shall only be charged on the surface area of the underground mine.

(q) All members of the surveying crew using battery-powered non-permissible surveying equipment shall receive specific training on the terms and conditions of this plan prior to using the equipment in or inby the last open crosscut. A record of the training shall be kept with other training records.

(r) Within 60 days after the Proposed Decision and Order (PDO) is granted by MSHA, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plan to the Coal Mine Safety and Health District Manager. The proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in this petition. The training shall be documented on a MSHA Certificate of Training (Form 5000-23). Comments shall be included on the Certificate of Training indicating that surveying training was completed.

(s) Battery-powered non-permissible theodolites (Sokkia DT 950 LG/PS) shall not be taken or used inby the last crosscut of the coal mine after they are five (5) years old. Battery-powered total stations (Stonex R1 Plus) shall not be taken or used inby the last crosscut of the coal mine after they are ten (10) years old. The operator shall maintain a cycle of purchasing new electronic surveying equipment whereby theodolites shall be no older than five years from the date of manufacture and total stations and other electronic surveying equipment shall be no older

than 10 years from the date of manufacture.

(t) Any surveying contractors hired by the operator that are using electronic equipment shall do so in accordance with the requirements of section (s). The conditions of use in this petition shall apply to all non-permissible electronic surveying equipment used in or inby the last open crosscut regardless of whether the equipment is used by the operator or by an independent contractor.

(u) Battery-powered non-permissible surveying equipment may be used when production is occurring, subject to these conditions:

(1) On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as "baloney skins") or curtains.

(2) Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.

(3) Non-permissible surveying equipment shall not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plans.

(4) If, while surveying, a surveyor must disrupt ventilation, the surveyor shall cease surveying and communicate to the section foreman that the ventilation must be disrupted. Production must stop while ventilation is disrupted. Ventilation control shall be reestablished immediately after the disruption is no longer necessary. Production can only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

(5) Any disruption in ventilation shall be recorded in the logbook required by the PDO granted by MSHA. The logbook shall include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(6) All surveyors, section foreman, section crew members and other personnel who shall be involved with or

affected by surveying operations shall receive training in accordance with 30 CFR 48.7 on the requirements of this plan within 60 days of the PDO granted by MSHA. Such training shall be completed before any non-permissible surveying equipment can be used while production is occurring. The operator shall keep a record of such training and provide such record to MSHA, upon request.

(7) The operator shall provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of this plan in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA, upon request.

In support of the proposed surveying equipment, the petitioner submitted specifications for the Sokkia Digital Theodolite DT 950 LG/PS and the Stonex R1 Plus.

The petitioner asserts that the alternative method proposed in the petition will at all times guarantee no less than the same measure of protection afforded by 30 CFR 75.500(d).

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024-15883 Filed 7-18-24; 8:45 am]

BILLING CODE 4520-43-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-2024-047]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We have submitted a request to the Office of Management and Budget (OMB) for approval to continue to collect information from people who participate in the National Historical Publications and Records Commission (NHPRC) grant programs. Organizations requesting a grant from the NHPRC must submit certain information the NHPRC staff, reviewers, and the Commission use to determine if the applicant and proposed project are eligible for an NHPRC grant; if the request is recommended for approval, the prospective grantee provides additional information acknowledging the offer of the grant and regulatory requirements; and, grantees must respond to an

accounting questionnaire designed to identify potential recipients with limited experience managing Federal funds and provide appropriate training or additional safeguards for Federal funds. We invite you to comment on the proposed information collections.

DATES: OMB must receive written comments on or before August 19, 2024.

ADDRESSES: Send any comments and recommendations on the proposed information collection in writing to www.reginfo.gov/public/do/PRAMain. You can 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:

Tamee Fechhelm, Paperwork Reduction Act Officer, by email at

tamee.fechhelm@nara.gov or by telephone at 301.837.1694 with any requests for additional information.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for these information collections on May 13, 2024 (89 FR 41476) and we received no comments. We are therefore submitting the described information collections to OMB for approval.

If you have comments or suggestions, they should address one or more of the following points: (a) whether the proposed information collections are necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collections and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether these collections affect small businesses.

In this notice, we solicit comments concerning the following information collections:

1. **Title:** National Historical Publications and Records Commission (NHPRC) Grant Program Budget Form and Instructions and NHPRC Grant Offer Acknowledgement.

OMB Number: 3095-0013.

Agency form number: NA Form 17001 and 17001a.

Type of review: Regular.

Affected public: Nonprofit organizations and institutions, state and local government agencies, and Federally-acknowledged or state-recognized Native American tribes or

groups, who apply for and receive NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.

Estimated number of respondents: 244 per year submit applications; approximately 25 grantees need to submit revised budgets.

Estimated time per response: 10 hours per application; five hours per revised budget.

Frequency of response: On occasion for the application; as needed for revised budget. Currently, the NHPRC considers grant applications two times per year. Respondents usually submit no more than one application per year, and, for those who need to submit revised budgets, only one revised budget per year.

Estimated total annual burden hours: 1,765 hours.

Abstract: The NHPRC posts grant announcements to their website and to grants.gov (www.grants.gov), where the information will be specific to the grant opportunity named. The basic information collection remains the same. The NA Form 17001 is used by the NHPRC staff, reviewers, and the Commission to determine if the applicant and proposed project are eligible for an NHPRC grant, and whether the proposed project is methodologically sound and suitable for support. The NA Form 17001a, NHPRC Grant Offer Acknowledgement, is used after the Archivist of the United States, as chair of the Commission, recommends a grant for approval. The prospective grantee must acknowledge the offer of the grant and agree to meet the requirements of applicable Federal regulations. In addition, they must verify the existence of an indirect cost agreement with a cognizant Federal agency if they are claiming indirect costs in the project's budget.

2. **Title:** Accounting System and Financial Capability Questionnaire.

OMB number: 3095-0072.

Agency form numbers: NA Form 17003.

Type of review: Regular.

Affected public: Not-for-profit institutions and state, local, or tribal government.

Estimated number of respondents: 75.

Estimated time per response: 4 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 300.

Abstract: Pursuant to title 2, section 215 of the Code of Federal Regulations, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (formerly OMB Circular A-110), and

OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, grant recipients are required to maintain adequate accounting controls and systems in managing and administering Federal funds. Some of the recipients of grants from the NHPRC have proven to have limited experience with managing Federal funds. This questionnaire is designed to identify those potential recipients and provide appropriate training or additional safeguards for Federal funds. Additionally, the questionnaire serves as a pre-audit function in identifying potential deficiencies and minimizing the risk of fraud, waste, abuse, or mismanagement, which we use in lieu of a more costly and time consuming formal pre-award audit.

Sheena Burrell,

Executive for Information Services/CIO.

[FR Doc. 2024–15974 Filed 7–18–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Committee on Awards and Facilities (A&F) hereby gives notice of the scheduling of meetings for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: The A&F meeting sessions will be held on Tuesday, July 23, 2024. The open session will be from 2:00 p.m.–2:30 p.m. The closed session will be from 3:30 p.m.–4:30 p.m.

PLACE: The meetings will be held at NSF headquarters, 2145 Eisenhower Ave., Alexandria, VA 22314, and by videoconference.

STATUS: One session is open, and one session is closed.

MATTERS TO BE CONSIDERED:

A&F open session agenda: Opening Remarks; Information Item: Antarctic Science and Engineering Support Contract Update.

A&F closed session agenda: Opening Remarks; Antarctic Infrastructure Update.

CONTACT PERSON FOR MORE INFORMATION:

Point of contact for this meeting is: Michelle McCrackin, mmccrack@nsf.gov, (703) 292–7000. Members of the public can observe the public portion of this meeting through a YouTube livestream: <https://youtube.com/live/nRd-qP053w4?feature=share>. Meeting

information and updates may be found at www.nsf.gov/nsb.

Ann E. Bushmiller,

Senior Legal Counsel to the National Science Board.

[FR Doc. 2024–16097 Filed 7–17–24; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–390, 50–391, and 72–1048; NRC–2024–0118]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a request dated September 28, 2023, as supplemented by letter dated March 14, 2024, from Tennessee Valley Authority related to the use of a locked door or gate with a monitored alarm at the access control point to radioactive waste that contains category 1 or category 2 quantities of radioactive material at the Watts Bar Nuclear Plant, Units 1 and 2, site.

DATES: The exemption was issued on July 15, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0118 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2024–0118. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *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 ADAMS accession number for each document

referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *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.

FOR FURTHER INFORMATION CONTACT:

Kimberly Green, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1627; email: Kimberly.Green@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: July 16, 2024.

For the Nuclear Regulatory Commission.

Kimberly Green,

Senior Project Manager, Licensing Plant Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–390, 50–391, and 72–1048; NRC–2024–0118]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Exemption

I. Background

The Tennessee Valley Authority (TVA) is the holder of Facility Operating License Nos. NPF–90 and NPF–96, and General License No. 72–1048, for operation of the Watts Bar Nuclear Plant, Units 1 and 2, and an independent spent fuel storage installation (Watts Bar site), respectively, located in Rhea County, Tennessee. The operating licenses are subject to all applicable provisions of the Atomic Energy Act, and to the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or Commission) now or hereafter in effect.

II. Request/Action

By letter dated September 28, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML23271A063), as supplemented on March 14, 2024 (ML24074A457), TVA requested an exemption from the requirement in Title 10 of the *Code of Federal Regulations* (10 CFR), part 37, paragraph 37.11(c)(2) to use a locked door or gate at the access control point to where radioactive waste

that contains category 1 or category 2 quantities of radioactive material is stored.

The provisions of 10 CFR part 37 establish physical security requirements to prevent the theft or diversion of risk-significant radioactive materials (*i.e.*, category 1 and category 2 quantities of radioactive material). As stated in NUREG-2155, Rev. 2, "Implementation Guidance for 10 CFR part 37, 'Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material'" (ML22083A141), 10 CFR 37.11 exempts radioactive wastes that contain category 2 quantities or greater of radioactive material from the security requirements in subparts B, C, and D of 10 CFR part 37. Instead, the radioactive waste is subject to the requirements in 10 CFR 37.11(c)(1) through (c)(4). The regulation at 10 CFR 37.11(c)(2) requires that the licensee secure the radioactive waste by a locked door or gate with monitored alarm at the access control point.

The Watts Bar site includes old steam generator storage facilities (OSGSFs) that are used to store the contaminated old steam generators (OSGs). The OSGs exceed the threshold for a category 2 quantity of radioactivity, as defined in 10 CFR 37.5, but do not contain discrete radioactive sources, ion-exchange resins, or activated materials that weigh less than 2,000 kilograms (4,409 pounds), as described in 10 CFR 37.11(c). As such, the licensee is required by 10 CFR 37.11(c)(2) to have a monitored alarm at the access control point to the OSGSFs where the OSGs are stored.

TVA describes the OSGSFs as robust structures that are closed with 10 stacked precast concrete panels weighing approximately 17,237 kilograms (38,000 pounds) each. The OSGSFs are located outside the Watts Bar protected area, but within the exclusion area and site boundary. Removal of the concrete panels is the only access point of sufficient size to remove an OSG and requires heavy lifting and rigging equipment that cannot be staged or utilized quickly. Removal of the concrete panels is an evolution that is easily observable over an extended period of time.

TVA has requested a permanent exemption from the requirement in 10 CFR 37.11(c)(2) to address a regulatory noncompliance that has resulted in the issuance of minor violations at the Watts Bar site.

III. Discussion

Pursuant to 10 CFR 37.11(a), the Commission may, upon application of any interested person or upon its own

initiative, grant such exemptions from the requirements of the regulations in 10 CFR part 37 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

A. The Exemption Is Authorized by Law

The exemption would exempt the licensee from the requirement to have a monitored alarm at the access control point to the OSGSFs where the OSGs are stored. As stated previously, 10 CFR 37.11(a) allows the NRC to grant exemptions from the requirements of 10 CFR part 37. The NRC staff has determined that granting of the exemption is permissible under the Atomic Energy Act of 1954, as amended, and other regulatory requirements. Therefore, the exemption is authorized by law.

B. The Exemption Will Not Endanger Life or Property or the Common Defense and Security

The purpose of 10 CFR part 37 is to provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material by protecting these materials from theft or diversion. As required by 10 CFR 37.11, each licensee that possesses radioactive waste that contains category 1 or category 2 quantity of radioactive material shall implement the following requirements to secure the radioactive waste: (1) use continuous physical barriers that allow access to the radioactive waste only through established access control points; (2) use a locked door or gate with monitored alarm at the access control point; (3) assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and (4) immediately notify the local law enforcement agency (LLEA) and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

After issuance of the final part 37 rule, the NRC issued Enforcement Guidance Memorandum (EGM) 2014-001, "Interim Guidance for Dispositioning 10 CFR part 37 Violations with Respect to Large Components or Robust Structures Containing Category 1 or Category 2 Quantities of Material at Power Reactor Facilities Licensed Under 10 CFR parts 50 and 52" (ML14056A151), on March 13, 2014, to provide guidance to NRC

staff for dispositioning violations associated with 10 CFR part 37 with respect to large components containing category 1 and category 2 quantities of radioactive material stored in robust structures at power reactor facilities licensed under 10 CFR parts 50 and 52. The EGM acknowledges that due to their size and weight, these large components are not easily moved without cranes, rigging, and heavy equipment. In addition, these large components are not easily concealed during loading or when they are in motion, and the amount of time required to steal or divert these large components is such that it is reasonable to expect that the licensee would detect these activities.

TVA has a written 10 CFR part 37 security plan for Watts Bar that identifies the OSGs as large components and the OSGSFs as robust structures containing category 1 or category 2 quantities of radioactive material. The plan also identifies the security measures that are adequate to detect, assess, and respond to actual or attempted theft or diversion of stored materials from the OSGSFs. TVA provided a written analysis that considers the time needed to accomplish these activities given the proximity and mobility of the equipment available for the large components and robust structures supporting the 10 CFR part 37 security plan. TVA also provided a written analysis documenting that the measures for the protection of large components or robust structures containing category 1 or category 2 quantities of material do not decrease the effectiveness of the 10 CFR part 73 security plan.

Because TVA has a security plan that contains measures to control access to the radioactive waste, assess and respond to unauthorized access, and notify and request an armed response by the LLEA, the NRC finds that the exemption will not endanger life or property or the common defense and security.

C. The Exemption Is in the Public Interest

TVA stated that the exemption would preclude the expenditure of resources that provide no additional security and protection for the OSGs. Granting of the exemption would also allow TVA to address a regulatory noncompliance and avoid future violations.

As noted previously, the OSGs are large components that are stored in robust structures that would require the use of heavy lifting and rigging equipment that cannot be staged or utilized quickly. Requiring the use of a

locked door or gate with monitored alarm at the access control point is supplanted by the licensee's security plan which utilizes other means to detect unauthorized access, while the exemption would reduce the regulatory burden on the licensee and the NRC staff. Therefore, the NRC staff concludes that the exemption is in the public interest.

IV. Environmental Considerations

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact regarding this exemption request was published in the **Federal Register** on June 27, 2024 (89 FR 53665). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

V. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 37.11(a), the exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest.

Dated: July 15, 2024.

For the Nuclear Regulatory Commission.
/RA/
Bo Pham,
Director, Division of Operating Reactor
Licensing, Office of Nuclear Reactor
Regulation.

[FR Doc. 2024-15940 Filed 7-18-24; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2023-0160]

Information Collection: Voluntary Reporting of Performance Indicators

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, "Voluntary
Reporting of Performance Indicators."

DATES: Submit comments by August 19,
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](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-
0160 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-2023-0160.
- *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](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. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML19025A257. The supporting statement is available in ADAMS under Accession Nos. ML24071A201.

- *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](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](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, "Voluntary
Reporting of Performance Indicators."
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
March 5, 2024, 89 FR 15903.

1. *The title of the information
collection:* Voluntary Reporting of
Performance Indicators.

2. *OMB approval number:* 3150-0195.

3. *Type of submission:* Revision.

4. *The form number, if applicable:*
Not applicable.

5. *How often the collection is required
or requested:* Quarterly for Performance
Indicator reporting and, on occasion, for
the Frequently Asked Question process.

6. *Who will be required or asked to
respond:* Power reactor licensees.

7. *The estimated number of annual responses:* 400 (379 reporting responses + 21 recordkeepers).

8. *The estimated number of annual respondents:* 94.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 82,034 (80,960 hours reporting + 1,074 hours recordkeeping).

10. *Abstract:* As part of a joint industry-NRC initiative, the NRC receives information submitted voluntarily by power reactor licensees regarding selected performance attributes known as performance indicators (PIs). PIs are objective measures of the performance of licensee systems or programs. The NRC uses PI information and inspection results in its Reactor Oversight Process (ROP) to make decisions about plant performance and regulatory response. Licensees transmit PIs electronically to reduce burden on themselves and the NRC. Licensees also participate in the ROP Performance Indicator Frequently Asked Question (FAQ) process that it is used to resolve interpretation issues with Nuclear Energy Institute (NEI) document, NEI 99-02, "Regulatory Assessment Performance Indicator Guideline." The ROP PI FAQ process and white papers may also be used to propose changes to NEI 99-02 guidance and the PI Program. The NRC and industry review FAQs and white papers and work to achieve resolution during periodic public meetings.

Dated: July 16, 2024.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024-15925 Filed 7-18-24; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-259, 50-260, 50-296, and 72-052; NRC-2024-0114]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a request dated September 28, 2023, as supplemented by letter dated March 14, 2024, from Tennessee Valley Authority related to the use of a locked door or

gate with a monitored alarm at the access control point to radioactive waste that contains category 1 or category 2 quantities of radioactive material at the Browns Ferry Nuclear Plant, Units 1, 2, and 3, site.

DATES: The exemption was issued on July 15, 2024.

ADDRESSES: Please refer to Docket ID NRC-2024-0114 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0114. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *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.

FOR FURTHER INFORMATION CONTACT:

Kimberly Green, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1627; email: Kimberly.Green@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: July 16, 2024.

For the Nuclear Regulatory Commission.

Kimberly Green,

Senior Project Manager, Licensing Plant Branch II-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

Nuclear Regulatory Commission

[Docket Nos. 50-259, 50-260, 50-296, and 72-052; NRC-2024-0114]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Exemption

I. Background

The Tennessee Valley Authority (TVA) is the holder of Renewed Facility Operating License Nos. DPR-33, DPR-52, and DPR-68, and General License No. 72-052, which authorize the operation of the Browns Ferry Nuclear Plant, Units 1, 2, and 3, and an independent spent fuel storage installation (Browns Ferry or Browns Ferry site), respectively, located in Limestone County, Alabama. The renewed operating licenses are subject to all applicable provisions of the Atomic Energy Act, and to the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or Commission) now or hereafter in effect.

II. Request/Action

By letter dated September 28, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML23271A063), as supplemented on March 14, 2024 (ML24074A457), TVA requested an exemption from the requirement in Title 10 of the *Code of Federal Regulations* (10 CFR), part 37, paragraph 37.11(c)(2) to use a locked door or gate at the access control point to where radioactive waste that contains category 1 or category 2 quantities of radioactive material is stored.

The provisions of 10 CFR part 37 establish physical security requirements to prevent the theft or diversion of risk-significant radioactive materials (*i.e.*, category 1 and category 2 quantities of radioactive material). As stated in NUREG-2155, Rev. 2, "Implementation Guidance for 10 CFR part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material"" (ML22083A141), 10 CFR 37.11 exempts radioactive wastes that contain category 2 quantities or greater of radioactive material from the security requirements in subparts B, C, and D of 10 CFR part 37. Instead, the radioactive waste is subject to the requirements in 10 CFR 37.11(c)(1) through (c)(4). The

regulation at 10 CFR 37.11(c)(2) requires that the licensee secure the radioactive waste by a locked door or gate with monitored alarm at the access control point.

The Browns Ferry site includes a low-level radioactive waste storage facility (LLRWSF) that is used to store the original steam dryers for Browns Ferry, which were removed during the extended power uprate outages. The steam dryers exceed the threshold for a category 2 quantity of radioactivity, as defined in 10 CFR 37.5, but do not contain discrete radioactive sources, ion-exchange resins, or activated materials that weigh less than 2,000 kilograms (4,409 pounds), as described in 10 CFR 37.11(c). As such, the licensee is required by 10 CFR 37.11(c)(2) to have a monitored alarm at the access control point to the LLRWSF vaults where the steam dryers are stored.

TVA describes the LLRWSF as a robust structure consisting of a group of rectangular box-type concrete storage modules that are located outside the Browns Ferry protected area, but inside the owner-controlled area and exclusion zone. Each LLRWSF storage module is closed by five precast concrete caps, weighing approximately 45,813 kilograms (101,000 pounds) each. Removal of the caps is the only access point to the stored steam dryers and requires heavy lifting and rigging equipment that cannot be staged or utilized quickly. Removal of the caps is an evolution that is easily observable over an extended period of time.

TVA has requested a permanent exemption from the requirement in 10 CFR 37.11(c)(2) to address a regulatory noncompliance that has resulted in the issuance of minor violations at the Browns Ferry site.

III. Discussion

Pursuant to 10 CFR 37.11(a), the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in 10 CFR part 37 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

A. The Exemption Is Authorized by Law

The exemption would exempt the licensee from the requirement to have a monitored alarm at the access control point to the LLRWSF vaults where the steam dryers are stored. As stated previously, 10 CFR 37.11(a) allows the NRC to grant exemptions from the requirements of 10 CFR part 37. The

NRC staff has determined that granting of the exemption is permissible under the Atomic Energy Act of 1954, as amended, and other regulatory requirements. Therefore, the exemption is authorized by law.

B. The Exemption Will Not Endanger Life or Property or the Common Defense and Security

The purpose of 10 CFR part 37 is to provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material by protecting these materials from theft or diversion. As required by 10 CFR 37.11, each licensee that possesses radioactive waste that contains category 1 or category 2 quantity of radioactive material shall implement the following requirements to secure the radioactive waste: (1) use continuous physical barriers that allow access to the radioactive waste only through established access control points; (2) use a locked door or gate with monitored alarm at the access control point; (3) assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and (4) immediately notify the local law enforcement agency (LLEA) and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

After issuance of the final part 37 rule, the NRC issued Enforcement Guidance Memorandum (EGM) 2014–001, “Interim Guidance for Dispositioning 10 CFR part 37 Violations with Respect to Large Components or Robust Structures Containing Category 1 or Category 2 Quantities of Material at Power Reactor Facilities Licensed Under 10 CFR parts 50 and 52” (ML14056A151), on March 13, 2014, to provide guidance to NRC staff for dispositioning violations associated with 10 CFR part 37 with respect to large components containing category 1 and category 2 quantities of radioactive material stored in robust structures at power reactor facilities licensed under 10 CFR parts 50 and 52. The EGM acknowledges that due to their size and weight, these large components are not easily moved without cranes, rigging, and heavy equipment. In addition, these large components are not easily concealed during loading or when they are in motion, and the amount of time required to steal or divert these large components is such that it is reasonable

to expect that the licensee would detect these activities.

TVA has a written 10 CFR part 37 security plan for Browns Ferry that identifies the original steam dryers as large components and the LLRWSF as a robust structure containing category 1 or category 2 quantities of radioactive material. The plan also identifies the security measures that are adequate to detect, assess, and respond to actual or attempted theft or diversion of stored materials from the LLRWSF. TVA provided a written analysis that considers the time needed to accomplish these activities given the proximity and mobility of the equipment available for the large components and robust structures supporting the 10 CFR part 37 security plan. TVA also provided a written analysis documenting that the measures for the protection of large components or robust structures containing category 1 or category 2 quantities of material do not decrease the effectiveness of the 10 CFR part 73 security plan.

Because TVA has a security plan that contains measures to control access to the radioactive waste, assess and respond to unauthorized access, and notify and request an armed response by the LLEA, the NRC finds that the exemption will not endanger life or property or the common defense and security.

C. The Exemption Is in the Public Interest

TVA stated that the exemption would preclude the expenditure of resources that provide no additional security and protection for the stored steam dryers. Granting of the exemption would also allow TVA to address a regulatory noncompliance and avoid future violations.

As noted previously, the original steam dryers are large components that are stored in robust structures that would require the use of heavy lifting and rigging equipment that cannot be staged or utilized quickly. Requiring the use of a locked door or gate with monitored alarm at the access control point is supplanted by the licensee's security plan which utilizes other means to detect unauthorized access, while the exemption would reduce the regulatory burden on the licensee and the NRC staff. Therefore, the NRC staff concludes that the exemption is in the public interest.

IV. Environmental Considerations

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact regarding this exemption request was

published in the **Federal Register** on June 27, 2024 (89 FR 53663). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

V. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 37.11(a), the exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest.

Dated: July 15, 2024.

For the Nuclear Regulatory Commission.

/RA/

Bo Pham,
Director, Division of Operating Reactor
Licensing, Office of Nuclear Reactor
Regulation.

[FR Doc. 2024-15938 Filed 7-18-24; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2023-0083]

Information Collection: NRC Form 833, Form To Propose a Generic Issue (GI)

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 proposed collection of
information to the Office of
Management and Budget (OMB) for
review. The information collection is
entitled, NRC Form 833, Form to
Propose a Generic Issue (GI).

DATES: Submit comments by August 19,
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](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-2023-0083 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-2023-0083.
- **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](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. A copy of Form 833 may be obtained without charge by accessing ADAMS Accession No. ML24121A178. The supporting statement is available in ADAMS under Accession No. ML24086A009.

- **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](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 proposed collection of information to OMB for review entitled NRC Form 833, “Form to Propose a Generic Issue (GI).”

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on December 21, 2023, 88 FR 88422.

1. *The title of the information collection:* NRC Form 833, Form to Propose a Generic Issue (GI).
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* Form 833.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* The public.
7. *The estimated number of annual responses:* 1.
8. *The estimated number of annual respondents:* 1.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1.
10. *Abstract:* NRC Form 833 is used for submission of a proposed generic safety issue that has potential for affecting two or more nuclear facilities. The form calls for information on the nature of the postulated issue and why it represents a potential generic unresolved safety issue. The issue may affect public health, safety, common defense and security, or environment; and it is not being addressed by other regulatory processes.

Dated: July 16, 2024.

For the Nuclear Regulatory Commission.
David Cullison,
*NRC Clearance Officer, Office of the Chief
 Information Officer.*
 [FR Doc. 2024–15923 Filed 7–18–24; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0168]

Privacy Act of 1974; Systems of Records

AGENCY: Nuclear Regulatory
Commission.

ACTION: Notice of modified systems of
records; request for comment.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, to ensure the system of records notices remain accurate, the U.S. Nuclear Regulatory Commission (NRC) staff reviews each notice on a periodic basis. As a result of this review, the NRC is republishing 16 of its system of records notices and has made various revisions to ensure that the NRC’s notices remain clear, accurate, and up to date. Three of the system notices—NRC 37, Information Security Files and Associated Records, NRC 44, Employee Fitness Center Records, and NRC 46, Health Emergency Records—are subject to a 30-day comment period based on the nature of their revisions. The revisions to these systems are in effect upon this publication with the exception of the NRC 37, NRC 44 and NRC 46 modifications, which will go into effect 30 days after this publication. The remaining systems revisions are minor corrective and administrative changes that do not meet the threshold criteria established by OMB for either a new or altered system of records. The minor modifications include updating authorities, system managers, retention schedules, and various other minor updates, in accordance with OMB Circular A–108.

DATES: Submit comments on revisions and changes by August 19, 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 before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search

for Docket ID NRC–2023–0168. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Sally Hardy, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5607; email: Sally.Hardy@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0168 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–2023–0168.
- *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.

- *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website ([https://](https://www.regulations.gov)

www.regulations.gov). Please include Docket ID NRC–2023–0168 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to the Privacy Act of 1974 and OMB Circular No. A–108, “Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,” notice is hereby given that the NRC is republishing 16 of its system of records notices. In 12 of those system of records notices, there are revisions that include minor and administrative changes that do not meet the criteria for either a new or altered system of records notice. One system is being republished without any revisions as part of our review process for ease of use and reference since the last publication in 2019.

The changes in the following three Privacy Act system of records notices do meet the criteria for an altered system of records:

The NRC is revising NRC 37, Information Security Files and Associated Records. Modifications include revision of the purpose, categories of records in the system, record source categories and storage of records.

The NRC is revising NRC 44, Employee Fitness Center Records. Modifications include removing duplicate system locations.

The NRC is revising NRC 46, Health Emergency Records. Modifications include revision of the authority for maintenance of the system, categories of individuals covered, categories of records, record source categories, routine uses and storage of records.

A report on these revisions has been sent to OMB, the Committee on

Homeland Security and Governmental Affairs of U.S. Senate, and the Committee on Oversight and Accountability of the U.S. House of Representatives, as required by the Privacy Act.

If changes are made based on the NRC's review of comments received, the NRC will publish a subsequent notice.

The text of the report, in its entirety, is attached.

Dated: July 16, 2024.

For the Nuclear Regulatory Commission.

Jonathan Feibus,

Senior Agency Official for Privacy, Office of the Chief Information Officer.

Attachment—Nuclear Regulatory Commission Privacy Act Systems of Records NRC Systems of Records

- 25. Oral History Program—NRC.
- 26. Transit Subsidy Benefits Program Records—NRC.
- 27. Radiation Exposure Information and Reporting System (REIRS) Records—NRC.
- 32. Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC.
- 33. Special Inquiry Records—NRC.
- 35. Drug Testing Program Records—NRC.
- 36. Employee Locator Records—NRC.
- 37. Information Security Files and Associated Records—NRC.
- 38. Mailing Lists—NRC.
- 39. Personnel Security Files and Associated Records—NRC.
- 40. Facility Security Access Control Records—NRC.
- 41. Tort Claims and Personal Property Claims Records—NRC.
- 43. Employee Health Center Records—NRC.
- 44. Employee Fitness Center Records—NRC.
- 45. Electronic Credentials for Personal Identity Verification—NRC.
- 46. Health Emergency Records—NRC.

These systems of records are maintained by the NRC and contain personal information about individuals that is retrieved by an individual's name or identifier.

The notice for each system of records states the name and location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in those records, and the routine uses of each system of records. Each notice also includes the business address of the NRC official who will inform interested persons of the procedures whereby they may gain access to and request amendment of records pertaining to them.

The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system of records from unauthorized disclosure and to ensure that information is current and accurate for its intended use and that adequate safeguards are provided to prevent misuse of such information.

SYSTEM NAME AND NUMBER:

Oral History Program—NRC 25.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Office of the Secretary, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161(b) and 44 U.S.C. 3301.

PURPOSE(S) OF THE SYSTEM:

Recorded interviews and transcribed scripts of interviews for providing a history of the nuclear regulatory program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who volunteer to be interviewed for the purpose of providing information for a history of the nuclear regulatory program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of recorded interviews and as needed, transcribed scripts of the interviews.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from interviews granted on a voluntary basis to the Historian.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

- a. For incorporation in publications on the history of the nuclear regulatory program;
- b. To provide information to historians and other researchers;
- c. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC

has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

d. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Maintained on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is accessed by the name of the interviewee.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Narrative Histories will be retained under NRC's approved schedule found in the NUREG 0910 version 4 at 2.22.7.a(1): Record copy maintained by the NRC Historian. Permanent. Transfer to the National Archives when 20 years old. (Paper records created before 4/1/2000. ADAMS PDF files and TIFF files (2.22.7.a(4) re cutoff at the close of the fiscal year. Transfer to the National Archives 5 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Maintained on an access restricted drive. Access to and use of these records is limited to those authorized by the Historian or a designee.

SYSTEM MANAGER(S):

NRC Historian, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Transit Subsidy Benefits Program Records—NRC 26.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Facility and Logistics Branch, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Chief, Facility and Logistics Branch, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7905; 26 U.S.C. 132; 31 U.S.C. 3511; 41 CFR 102-74.210; 41 CFR subtitle F; 41 CFR 102-71.20; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 13150.

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is used to enroll employees in the Transit Subsidy Program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for subsidized mass transit costs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of an individual's application to participate in the program which includes, but is not limited to, the applicant's name, home address, office telephone number, and information regarding the employee's commuting schedule and mass transit system(s) used.

RECORD SOURCE CATEGORIES:

NRC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may

disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide statistical reports to the city, county, State, and Federal government agencies;

b. To provide the basis for program approval and issue monthly subsidies;

c. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

e. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

f. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

g. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or

to prevent, minimize, or remedy such harm; and

h. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Accessed by name and smart trip card.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 2.4: Employee Compensation and Benefit Records, Item 130, Transportation subsidy program administrative records. Destroy when 3 years old, but longer retention is authorized if required for business use. Records are also retained under General Records Schedule 2.4, item 131, Transportation subsidy program individual case files. Destroy 2 years after employee participation concludes, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Computer files are maintained on a hard drive, access to which is password protected. Access to and use of these records is limited to those persons whose official duties require access.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington,

DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Radiation Exposure Information and Reporting System (REIRS) Records—NRC 27.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Oak Ridge Associated Universities (ORAU), Oak Ridge, Tennessee (or current contractor facility).

Duplicate system—Duplicate systems exist, in part, regarding employee exposure records, with the NRC's Radiation Safety Officers at Regional office locations listed in Addendum 1, Part 2, in the Office of Nuclear Reactor Regulations (NRR), the Office of Nuclear Material Safety and Safeguards (NMSS), The Office of Administration (ADM), NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, maintains the employee dosimeter tracking system.

SYSTEM MANAGER(S):

REIRS Project Manager, Radiation Protection Branch, Division of Systems Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902; 29 U.S.C. 668; 42 U.S.C. 2051, 2073, 2093, 2095, 2111, 2133, 2134, and 2201(o); 10 CFR parts 20 and 34; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 12196, as amended.

PURPOSE(S) OF THE SYSTEM:

REIRS serves as the central repository for all NRC radiation exposure monitoring records that are recorded and reported pursuant to part 20 of title 10 of the *Code of Federal Regulations* (10 CFR) and Regulatory Guide 8.7. This central repository is used for the oversight of radiation protection policies and practices at NRC-licensed facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals monitored for radiation exposure while employed by or visiting or temporarily assigned to certain NRC-licensed facilities; individuals who are exposed to radiation or radioactive materials in incidents required to be

reported under 10 CFR 20.2201–20.2204 and 20.2206 by all NRC licensees; individuals who may have been exposed to radiation or radioactive materials offsite from a facility, plant installation, or other place of use of licensed materials, or in unrestricted areas, as a result of an incident involving byproduct, source, or special nuclear material.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's name, sex, social security number, birth date, place and period date of exposure; name and license number of individual's employer; name and number of licensees reporting the information; radiation doses or estimates of exposure received during this period, type of radiation, part(s) or organ(s) exposed, and radionuclide(s) involved.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from licensees; the subject individual; the individual's employer; the person in charge of the facility where the individual has been assigned; NRC Form 5, "Occupational Exposure Record for a Monitoring Period," or equivalent, contractor reports, and Radiation Safety Officers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

- a. To provide data to other Federal and State agencies involved in monitoring and/or evaluating radiation exposure received by individuals as enumerated in the paragraph "Categories of individuals covered by the system;"
- b. To return data provided by licensee upon request;
- c. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records

is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media. The electronic records maintained in Oak Ridge, TN, are in a centralized database management system that is password protected. Backup tapes of the database are generated and maintained at a secure, off-site location for disaster recovery purposes. During the processing and data entry, paper records are temporarily stored in designated business offices that are locked when not in use and are accessible only to authorized personnel. Upon completion of data entry and processing, the paper records are stored in an offsite security storage facility accessible only to authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are accessed by individual name, social security number, date of birth, and/or by licensee name or number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records managed using REIRS are scheduled under NRC's NUREG-0910, Revision 4. Transfer a copy of REIRS data to the National Archives and Records Administration every 5 years (2.19.16). Retain Personnel monitoring reports and personnel overexposure reports entered into REIRS. Paper records, are retained under 2.19.14.a(1). Destroy 2 years after data are input into REIRS. ADAMS PDF files, TIFF files, ADAMS document profiles, and ADAMS digital signature and concurrence data are retained under 2.19.14.a(4) and are cut off at the end of the fiscal year and destroyed 2 years after cutoff. Personnel monitoring reports and personnel overexposure reports of which only selected data are entered into REIRS, records are retained under 2.19.14.b(1). Cut off at end of fiscal year. Transfer to National Archives and Records Administration (NARA) when 20 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information maintained at ORAU is accessible by the Office of Nuclear Regulatory Research (RES) and individuals that have been authorized access by NRC, including all NRC Radiation Safety Officers and ORAU employees that are directly involved in the REIRS project. Reports received and reviewed by the NRC's RES, NRR, NMSS, and Regional offices are in lockable file cabinets and bookcases in secured buildings. A log is maintained of both telephone and written requests for information.

The data maintained in the REIRS database are protected from unauthorized access by several means. The database server resides in a protected environment with physical security barriers under keycard access control. Accounts authorizing access to the server and databases are maintained by the ORAU REIRS system administrator. In addition, ORAU maintains a computer security "firewall" that further restricts access to the ORAU computer network. Authorization for access must be approved by NRC, ORAU project management, and ORAU computer security. Transmittal of data via the internet is protected by data encryption.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC 32.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. NRC has an interagency agreement with

the U.S. Treasury, Administrative Resource Center (ARC), Parkersburg, WV, as a Federal service provider for transactional services in the NRC core financial system since March 2018.

Other systems of records contain information that may duplicate some of the records in this system. These other systems include, but are not limited to:

NRC-10, Freedom of Information Act (FOIA) and Privacy Act (PA) Request Records—NRC;

NRC-18, Office of the Inspector General (OIG) Investigative Records—NRC;

NRC-19, Official Personnel Training Records—NRC;

NRC-21, Payroll Accounting Records—NRC;

NRC-41, Tort Claims and Personal Property Claims Records—NRC; and

GSA/GOVT-4, Contracted Travel Services Program (E-Travel).

SYSTEM MANAGER:

Comptroller, Division of the Comptroller, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a; 5 U.S.C. 5514; 15 U.S.C. 1681; 26 U.S.C. 6103; 31 U.S.C. chapter 37; 31 U.S.C. 6501-6508; 42 U.S.C. 2201; 42 U.S.C. 5841; 31 CFR 900-904; 10 CFR parts 15, 16, 170, 171; Executive Order (E.O.) 9397, as amended by E.O. 13478; and E.O. 12731.

PURPOSE(S) OF THE SYSTEM:

Financial Transactions and Debt Collection

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are those to who the NRC owes/owed money, those who receive/received a payment from NRC, and those who owe/owed money to the United States. Individuals receiving payments include, but are not limited to, current and former employees, contractors, consultants, vendors, and others who travel or perform certain services for NRC. Individuals owing money include, but are not limited to, those who have received goods or services from NRC for which there is a charge or fee (NRC licensees, applicants for NRC licenses, Freedom of Information Act requesters, etc.) and those who have been overpaid and owe NRC a refund (current and former employees, contractors, consultants, vendors, etc.).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes, but is not limited to, names, addresses,

telephone numbers, Social Security Numbers (SSN), employee identification number (EIN), Taxpayer Identification Numbers (TIN), Individual Taxpayer Identification Numbers (ITIN), Data Universal Numbering System (DUNS) number, fee categories, application and license numbers, contract numbers, vendor numbers, amounts owed, background and supporting documentation, correspondence concerning claims and debts, credit reports, and billing and payment histories. The overall agency accounting system contains data and information integrating accounting functions such as general ledger, funds control, travel, accounts receivable, accounts payable, property, and appropriation of funds. Although this system of records contains information on corporations and other business entities, only those records that contain information about individuals that is retrieved by the individual's name or other personal identifier are subject to the Privacy Act.

RECORD SOURCE CATEGORIES:

Record source categories include, but are not limited to, individuals covered by the system, their attorneys, or other representatives; NRC; collection agencies or contractors; employing agencies of debtors; and Federal, State, and local agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement, the NRC may disclose records to Treasury ARC as a Federal service provider for transactional services in the NRC core financial system. In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses or, where determined to be appropriate and necessary, the NRC may authorize Treasury ARC to make the disclosure:

- a. To debt collection contractors (31 U.S.C. 3718) or to other Federal agencies such as the Department of the Treasury (Treasury) and Department of Interior (DOI) for the purpose of collecting and reporting on delinquent debts as authorized by the Debt Collection Improvement Act (DCIA) of 1996 and the Digital Accountability and Transparency Act (DATA) of 2014;
- b. To Treasury; the Defense Manpower Data Center, Department of

Defense; the United States Postal Service; government corporations; or any other Federal, State, or local agency to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals, including Federal employees, who are delinquent in their repayment of certain debts owed to the U.S. Government, including those incurred under certain programs or services administered by the NRC, in order to collect debts under common law or under the provisions of the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996 and DATA of 2014 which include by voluntary repayment, administrative or salary offset, and referral to debt collection contractors;

- c. To the Department of Justice, United States Attorney Treasury ARC, or other Federal agencies for further collection action on any delinquent account when circumstances warrant;
- d. To credit reporting agencies/credit bureaus for the purpose of either adding to a credit history file or obtaining a credit history file or comparable credit information for use in the administration of debt collection. As authorized by the DCIA, NRC may report current (not delinquent) as well as delinquent consumer and commercial debt to these entities in order to aid in the collection of debts, typically by providing an incentive to the person to repay the debt timely;

- e. To any Federal agency where the debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the Federal Government on NRC's behalf by counseling the debtor for voluntary repayment or by initiating administrative or salary offset procedures, or other authorized debt collection methods under the provisions of the Debt Collection Act of 1982 or the DCIA of 1996. Under the DCIA, NRC may garnish non-Federal wages of certain delinquent debtors so long as required due process procedures are followed. In these instances, NRC's notice to the employer will disclose only the information that may be necessary for the employer to comply with the withholding order;

- f. To the Internal Revenue Service (IRS) by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by NRC against the taxpayer under 26 U.S.C. 6103(m)(2) and under 31 U.S.C. 3711, 3717, and 3718 or common law. Re-disclosure of a mailing address obtained from the IRS may be made only for debt collection purposes,

including to a debt collection agent to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982 or the DCIA of 1996, except that re-disclosure of a mailing address to a reporting agency is for the limited purpose of obtaining a credit report on the particular taxpayer. Any mailing address information obtained from the IRS will not be used or shared for any other NRC purpose or disclosed by NRC to another Federal, State, or local agency which seeks to locate the same taxpayer for its own debt collection purposes;

- g. To refer legally enforceable debts to the IRS or to Treasury's Debt Management Services to be offset against the debtor's tax refunds under the Federal Tax Refund Offset Program;

- h. To prepare W-2, 1099, or other forms or electronic submittals, to forward to the IRS and applicable State and local governments for tax reporting purposes. Under the provisions of the DCIA, NRC is permitted to provide Treasury with Form 1099-C information on discharged debts so that Treasury may file the form on NRC's behalf with the IRS. W-2 and 1099 Forms contain information on items to be considered as income to an individual, including certain travel related payments to employees, payments made to persons not treated as employees (e.g., fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part;

- i. To banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his or her credit card number for this purpose;

- j. To another Federal agency that has asked the NRC to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to name, address, SSN, EIN, TIN, ITIN, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset;

- k. To Treasury or other Federal agencies with whom NRC has entered into an agreement establishing the terms and conditions for debt collection cross servicing operations on behalf of the NRC to satisfy, in whole or in part, debts owed to the U.S. Government. Cross servicing includes the possible use of all debt collection tools such as administrative offset, tax refund offset, referral to debt collection contractors, salary offset, administrative wage garnishment, and referral to the

Department of Justice. The DCIA of 2014 requires agencies to transfer to Treasury or Treasury-designated Debt Collection Centers for cross servicing certain nontax debt over 120 days delinquent. Treasury has the authority to act in the Federal Government's best interest to service, collect, compromise, suspend, or terminate collection action under existing laws under which the debts arise;

l. Information on past due, legally enforceable nontax debts more than 120 days delinquent will be referred to Treasury for the purpose of locating the debtor and/or effecting administrative offset against monies payable by the Government to the debtor, or held by the Government for the debtor under the DCIA's mandatory, Government-wide Treasury Offset Program (TOP). Under TOP, Treasury maintains a database of all qualified delinquent nontax debts and works with agencies to match by computer their payments against the delinquent debtor database in order to divert payments to pay the delinquent debt. Treasury has the authority to waive the computer matching requirement for NRC and other agencies upon written certification that administrative due process notice requirements have been complied with;

m. For debt collection purposes, NRC may publish or otherwise publicly disseminate information regarding the identity of delinquent nontax debtors and the existence of the nontax debts under the provisions of the DCIA of 1996;

n. To the Department of Labor (DOL) and the Department of Health and Human Services (HHS) to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to match NRC's debtor records with records of DOL and HHS to obtain names, name controls, names of employers, addresses, dates of birth, and TINs. The DCIA requires all Federal agencies to obtain taxpayer identification numbers from each individual or entity doing business with the agency, including applicants and recipients of licenses, grants, or benefit payments; contractors; and entities and individuals owing fines, fees, or penalties to the agency. NRC will use TINs in collecting and reporting any delinquent amounts resulting from the activity and in making payments;

o. If NRC decides or is required to sell a delinquent nontax debt under 31 U.S.C. 3711(I), information in this system of records may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids

and information necessary for purchasers to pursue collection remedies;

p. If NRC has current and delinquent collateralized nontax debts under 31 U.S.C. 3711(i)(4)(A), certain information in this system of records on its portfolio of loans, notes and guarantees, and other collateralized debts will be reported to Congress based on standards developed by the Office of Management and Budget, in consultation with Treasury;

q. To Treasury in order to request a payment to individuals owed money by the NRC;

r. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

s. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

t. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

u. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

v. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

w. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to

an inquiry from the Congressional office made at the request of that individual;

x. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

y. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

z. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in this system is stored on paper, microfiche, and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Automated information can be retrieved by name, SSN, TIN, DUNS number, license or application number, contract or purchase order number, invoice number, voucher number, and/or vendor code. Paper records are retrieved by invoice number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records

Schedule 1.1: Financial Management and Reporting Records, Item 010, Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting as the Official record held in the office of record. Destroy 6 years after final payment or cancellation, but longer retention is authorized if needed for business use. Records related to Administrative claims by or against the United States are retained under General Records Schedule 1.1: Financial Management and Reporting Records, item 080. Destroy 7 years after final action, but longer retention is authorized if required for business use. Records used to calculate payroll, arrange paycheck deposit, and change previously issued paychecks are scheduled under General Records Schedule 2.4: Employee Compensation and Benefits Records, item 010. Destroy 3 years after paying agency or payroll processor validates data, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force. Records are kept in lockable file rooms or at user's workstations in an area where access is controlled by keycard and is limited to NRC and contractor personnel who need the records to perform their official duties. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by NRC or contractor personnel.

RECORDS ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures Pursuant to 5 U.S.C. 552a(b)(12): Disclosures of information

to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)).

SYSTEM NAME AND NUMBER:

Special Inquiry Records—NRC 33.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION:

Primary system—Special Inquiry Group, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

SYSTEM MANAGER(S):

Records Manager—, Special Inquiry Group, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2051, 2052, 2201(c), (i) and (o).

PURPOSE(S) OF THE SYSTEM:

Investigation material for potential or actual concerns in connection with investigations of accidents or incidents at nuclear power plants or other nuclear facility, nuclear materials or an allegation regarding public health and safety.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals possessing information regarding or having knowledge of matters of potential or actual concern to the Commission in connection with the investigation of an accident or incident at a nuclear power plant or other nuclear facility, or an incident involving nuclear materials or an allegation regarding the public health and safety related to the NRC's mission responsibilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records which are arranged by subject matter, title, or identifying number(s) and/or letter(s). The system incorporates the records of all Commission correspondence, memoranda, audit reports and data, interviews, questionnaires, legal papers, exhibits, investigative reports and data, and other

material relating to or developed as a result of the inquiry, study, or investigation of an accident or incident.

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State, local, and foreign agencies; NRC licensees; nuclear reactor vendors and architectural engineering firms; other organizations or persons knowledgeable about the incident or activity under investigation; and relevant NRC records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide information relating to an item which has been referred to the Commission or Special Inquiry Group for investigation by an agency, group, organization, or individual and may be disclosed as a routine use to notify the referring agency, group, organization, or individual of the status of the matter or of any decision or determination that has been made;

b. To disclose a record as a routine use to a foreign country under an international treaty or convention entered into and ratified by the United States;

c. To provide records relating to the integrity and efficiency of the Commission's operations and management and may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations;

d. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to

an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and electronic media. Documents are maintained in secured vault facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Accessed by name (author or recipient), corporate source, title of document, subject matter, or other identifying document or control number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Permanent Records retained as General Program Correspondence Files (Subject Files) at the Office Director Level are scheduled under NUREG 0910 rev 4—2.18.5.a(1). Cut off at close of fiscal year. Transfer to the National Archives and Records Administration when 20 years old. Permanent Nuclear Power Plant Docket Files are scheduled under NUREG 0910 Rev 4—2.18.11.a(1). Cut off files upon license termination following completion of decommissioning procedure. Closing date is the termination date following completion of decommissioning procedure. Transfer to the National Archives and Records Administration 20 years after termination of license.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

These records are located in locking filing cabinets or safes in a secured facility and are available only to authorized personnel whose duties require access.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures." Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has

exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

SYSTEM NAME AND NUMBER:

Drug Testing Program Records—NRC 35.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in part at the NRC Regional office locations listed in Addendum I, Part 2 (for a temporary period of time); and at the current contractor testing laboratories, collection/evaluation facilities.

SYSTEM MANAGER(S):

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 7301; 5 U.S.C. 7361-7363; 42 U.S.C. 2165; 42 U.S.C. 290dd; Executive Order (E.O.) 12564; 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

This record system will maintain information gathered by and in the possession of NRC Drug Testing Program, used in verifying positive test results for illegal use of controlled substance, as well as collecting and maintaining evidence of possession, distribution, or trafficking of controlled substances.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, applicants, consultants, licensees, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by NRC employees, employment applicants, consultants, licensees, or contractors in challenge to positive test results; and written statements or medical evaluations of attending physicians and/or information regarding prescription or nonprescription drugs.

RECORD SOURCE CATEGORIES:

NRC employees, employment applicants, consultants, licensees, and contractors who have been identified for

drug testing who have been tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; NRC contractors for processing including, but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and NRC staff administering the drug testing program to ensure the achievement of a drug-free workplace.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

- a. To identify substance abusers within the agency;
- b. To initiate counseling and/or rehabilitation programs;
- c. To take personnel actions;
- d. To take personnel security actions;
- e. For statistical reporting purposes.

Statistical reporting will not include personally identifiable information;

- f. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

- g. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

- h. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1)

responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media. Specimens are maintained in appropriate environments.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed and accessed by name, social security number, testing position number, specimen number, drug testing laboratory accession number, or a combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Employee drug test plans, procedures, and scheduling records are retained under the National Archives and Records Administration's General Records Schedule 2.7: Employee Health and Safety Records, item 100. Destroy when 3 years old or when superseded or obsolete. Employee drug test acknowledgement of notice forms are retained under General Records Schedule 2.7, item 110. Destroy when employee separates from testing-designated position. Employee drug testing specimen records are retained under General Records Schedule 2.7, item 120. Destroy 3 years after date of last entry or when 3 years old, whichever is later. Employee drug test results (Positive Results) are retained under General Records Schedule 2.7, item 130. Destroy when employee leaves agency or when 3 years old, whichever is later. Employee drug test results (Negative results) are retained under General Records Schedule 2.7, item 131. Destroy when 3 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in use are protected to ensure that access is limited to those persons whose official duties require such access. Unattended records are maintained in NRC-controlled space in locked offices, locked desk drawers, or locked file cabinets. Stand-alone and network processing systems are password protected and removable media is stored in locked offices, locked desk drawers, or locked file cabinets when unattended. Network processing systems have roles and responsibilities protection and system security plans.

Records at laboratory, collection, and evaluation facilities are stored with appropriate security measures to control and limit access to those persons whose official duties require such access.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

SYSTEM NAME AND NUMBER:

Employee Locator Records—NRC 36.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Part 1: For Headquarters personnel: Office of Chief Human Capital Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. For Regional personnel: Regional Offices I–IV at the locations listed in Addendum 1, Part 2.

Part 2: Operations Division, Office of the Chief Information Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Part 3: Division of Administrative Services, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, for Incident Response Operations within the Office of Nuclear Security and Incident Response, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and at the NRC's Regional Offices, at the locations listed in Addendum I, Part 2.

Duplicate system—Duplicate systems may exist, in part, within the organization where an individual actually works, at the locations listed in Addendum I, Parts 1 and 2.

SYSTEM MANAGER(S):

Part 1: For Headquarters personnel: Associate Director for Human Resources

Operations and Policy, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555-0001; and for Regional personnel: Regional Personnel Officer at the Regional Offices listed in Addendum I, Part 2; Part 2: IT Specialist, Network/Infrastructure Services Branch, IT Services Development & Operations Division, Office of the Chief Information Officer, NRC, Washington, DC 20555-0001; Part 3: Mail Services Team Leader, Administrative Services Center, Division of Administrative Services, Office of Administration, NRC, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3301; Executive Order (E.O.) 9397, as amended by E.O. 13478; and E.O. 12656.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is for NRC employees and contractor's accountability, to support NRC emergency response, and to contact designated persons in the event of an emergency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include, but are not limited to, an individual's name, home address, office organization and location (building, room number, mail stop), telephone number (home, business, and cell), person to be notified in case of emergency (name, address, telephone number), and other related records.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; Employee Express; Enterprise Identity Hub (EIH), and other related records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

- a. To contact the subject individual's designated emergency contact in the case of an emergency;
- b. To contact the subject individual regarding matters of official business;
- c. To maintain the agency telephone directory (accessible from www.nrc.gov);

d. For internal agency mail services;

e. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

f. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

g. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

h. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is accessed by name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Mail, printing, and telecommunication service control records are retained under the National Archives and Records Administration's General Records Schedule 5.5: Mail, Printing, and Telecommunications Service Management Records, item 020. Destroy when 1 year old or when superseded or obsolete, whichever is applicable, but longer retention is authorized if required for business use. Custom/client records are retained under General Records Schedule 6.5: Public Customer Service Records, item 020. Destroy when superseded, obsolete, or when customer requests the agency to remove the records.

Administrative records maintained in any agency office are retained under General Records Schedule 5.1: Common Office Records, item 010. Destroy when business use ceases.

Employee emergency contact information records are retained under the National Archives General Records Schedule 5.3 item 020. Destroy when superseded or obsolete, or upon separation or transfer of employee. These records are used to account for and maintain communication with personnel during emergencies, office dismissal, and closure situations.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Information Security Files and Associated Records—NRC 37.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Division of Security Operations,
Office of Nuclear Security and Incident
Response, NRC, One White Flint North,
11555 Rockville Pike, Rockville,
Maryland.

SYSTEM MANAGER(S):

Director, Division of Security
Operations, Office of Nuclear Security
and Incident Response, U.S. Nuclear
Regulatory Commission, Washington,
DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161-2169 and 2201(i);
Executive Order 13526; 10 CFR part 95.

PURPOSE(S) OF THE SYSTEM:

Keep track of NRC employees,
contractors, consultants, licensees, and
other cleared persons who have been
granted classification authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals include present and
former NRC employees, contractors,
consultants, licensees, and other cleared
persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information
regarding:

- a. Personnel who are authorized
access to specified levels, categories and
types of information, the approving
authority, and related documents; and
- b. Names of individuals who classify
and/or declassify documents (*e.g.*, for
the protection of Classified National
Security Information and Restricted
Data).

RECORD SOURCE CATEGORIES:

NRC employees, contractors,
consultants, and licensees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of
disclosures permitted under subsection
(b) of the Privacy Act, the NRC may
disclose information contained in this
system of records without the consent of
the subject individual if the disclosure
is compatible with the purpose for
which the record was collected under
the following routine uses:

- a. To prepare statistical reports for the
Information Security Oversight Office;
- b. A record from this system of
records which indicates a violation of
civil or criminal law, regulation or order
may be referred as a routine use to a
Federal, State, local or foreign agency
that has authority to investigate,
enforce, implement or prosecute such
laws. Further, a record from this system

of records may be disclosed for civil or
criminal law or regulatory enforcement
purposes to another agency in response
to a written request from that agency's
head or an official who has been
delegated such authority;

c. A record from this system of
records may be disclosed as a routine
use to a Federal, State, local, or foreign
agency to obtain information relevant to
an NRC decision concerning hiring or
retaining an employee, letting a
contract, or issuing a security clearance,
license, grant or other benefit;

d. A record from this system of
records may be disclosed as a routine
use to a Federal, State, local, or foreign
agency requesting a record that is
relevant and necessary to its decision on
a matter of hiring or retaining an
employee, issuing a security clearance,
reporting an investigation of an
employee, letting a contract, or issuing
a license, grant, or other benefit;

e. A record from this system of
records may be disclosed as a routine
use in the course of discovery; in
presenting evidence to a court,
magistrate, administrative tribunal, or
grand jury or pursuant to a qualifying
order from any of those; in alternative
dispute resolution proceedings, such as
arbitration or mediation; or in the
course of settlement negotiations;

f. A record from this system of records
may be disclosed as a routine use to a
Congressional office from the record of
an individual in response to an inquiry
from the Congressional office made at
the request of that individual;

g. A record from this system of
records may be disclosed as a routine
use to NRC-paid experts or consultants,
and those under contract with the NRC
on a "need-to-know" basis for a purpose
within the scope of the pertinent NRC
task. This access will be granted to an
NRC contractor or employee of such
contractor by a system manager only
after satisfactory justification has been
provided to the system manager;

h. A record from this system of
records may be disclosed as a routine
use to appropriate agencies, entities,
and persons when (1) NRC suspects or
has confirmed that there has been a
breach of the system of records, (2) NRC
has determined that as a result of the
suspected or confirmed breach there is
a risk of harm to individuals, NRC
(including its information systems,
programs, and operations), the Federal
Government, or national security; and
(3) the disclosure made to such
agencies, entities, and persons is
reasonably necessary to assist in
connection with NRC efforts to respond
to the suspected or confirmed breach or

to prevent, minimize, or remedy such
harm; and

i. A record from this system of records
may be disclosed as a routine use to
another Federal agency or Federal
entity, when the NRC determines that
information from this system of records
is reasonably necessary to assist the
recipient agency or entity in (1)
responding to a suspected or confirmed
breach or (2) preventing, minimizing, or
remediating the risk of harm to
individuals, the recipient agency or
entity (including its information
systems, programs, and operations), the
Federal Government, or national
security, resulting from a suspected or
confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on electronic
media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Accessed by name and/or assigned
number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the
National Archives and Records
Administration's, General Records
Schedule 4.2: Information Access and
Protection Records. FOIA, Privacy Act,
and classified administrative records are
retained under General Records
Schedule 4.2, item 001. Destroy when 3
years old, but longer retention is
authorized if needed for business use.
Information access and protection
tracking and control records are retained
under General Records Schedule 4.2,
item 030. Destroy 2 years after last form
entry, reply, or submission; or when
associated documents are declassified or
destroyed; or when authorization
expires; whichever is appropriate.
Longer retention is authorized if
required for business use. Access
control records are retained under
General Records Schedule 4.2, item 031.
Destroy when superseded or obsolete,
but longer retention is authorized if
required for business use. Accounting
for and control of access to classified
and controlled unclassified records and
records requested under FOIA, PA and
MDR are retained under General
Records Schedule 4.2, item 040. Destroy
or delete 5 years after date of last entry,
final adjudication by courts, or final
action by agency (such as downgrading,
transfer or destruction of related
classified documents, or release of
information from controlled
unclassified status), as may apply,
whichever is later; but longer retention

is authorized if required for business use.

Classified information nondisclosure agreements which are maintained separately from the individual's official personnel folder are retained under the National Archives and Records Administration's General Records Schedule 4.2 item 121. Destroy records when 50 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information maintained in locked buildings, containers, or security areas under guard and/or alarm protection, as appropriate. Records are processed only on systems approved for processing classified information or accessible through password protected systems for unclassified information. The classified systems are stand-alone systems located within secure facilities or with removable hard drives that are either stored in locked security containers or in alarmed vaults cleared for open storage of TOP SECRET information.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedures."

RECORD ACCESS PROCEDURE:

Same as "Notification procedures." Some information is classified under Executive Order 13526 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f).

SYSTEM NAME AND NUMBER:

Mailing Lists—NRC 38.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Digital Communications & Administrative Services Branch, Division of Facilities and Securities, Office of Administration,

NRC, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in whole or in part at the locations listed in Addendum I, Parts 1 and 2.

SYSTEM MANAGER(S):

Digital Communications & Administrative Services Branch, Division of Facilities and Securities, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3301.

PURPOSE(S) OF THE SYSTEM:

The system is maintained for the purpose of mailing informational literature or responses to those who request it; maintaining lists of individuals who attend meetings; and for other purposes for which mailing or contact lists may be created.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including NRC staff, with an interest in receiving information from the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists include an individual's name and address; and title, occupation, and institutional affiliation, when applicable.

RECORD SOURCE CATEGORIES:

NRC staff, NRC licensees, and individuals expressing an interest in NRC activities and publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. A record from this system of records may be disclosed as a routine use for distribution of documents to persons and organizations listed on the mailing list;

b. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

c. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

d. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records maintained on paper, and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are accessed by company name, individual name, or file code identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Customer/client records are retained under the National Archives and Records Administration's General Records Schedule 6.5: Public Customer Service Records, Item 020. Delete when superseded, obsolete, or when customer requests the agency to remove the records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Personnel Security Files and Associated Records—NRC 39.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, Rockville, Maryland.

SYSTEM MANAGER(S):

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2011 *et seq.*; 42 U.S.C. 2165, 2201(i), 2201a, and 2284; 42 U.S.C. 5801 *et seq.*; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 10450, as amended; E.O. 10865, as amended; E.O. 13467; E.O. 13526; E.O. 13587; 10 CFR parts 10, 11, 14, 25, 50, 73, 95; OMB Circular No. A-130, Revised; 5 CFR parts 731, 732, and authorities cited therein.

PURPOSE(S) OF THE SYSTEM:

This record system will maintain information gathered by and in the possession of the NRC Division of Facilities and Security to maintain the NRC's Personnel Security and Insider Threat programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, employment applicants, consultants, contractors, and licensees; other Government agency personnel, other persons who have been considered for an access authorization, special nuclear material access authorization, unescorted access to NRC buildings or nuclear power plants, NRC building access, access to Federal automated information systems or data, or participants in the criminal history program; aliens who visit NRC's facilities; and actual or suspected violators of laws administered by NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about individuals, which includes, but is not limited to, their name(s), address, date and place of birth, social security number, identifying information, citizenship, residence history, employment history, military history, financial history, foreign travel, foreign contacts, education, spouse/cohabitant and relatives, personal references, organizational membership, medical, fingerprints, criminal record, and security clearance history. These records also contain copies of personnel security investigative reports from other Federal agencies, summaries of investigative reports, results of Federal agency indices and database checks, records necessary for participation in the criminal history program, reports of personnel security interviews, clearance actions information (*e.g.*, grants and terminations), access approval/disapproval actions related to NRC building access or unescorted access to nuclear plants, or access to Federal automated information systems or data, violations of laws, reports of security infraction, insider threat program inquiry records including analysis, results, referrals, and/or mitigation actions, and other related personnel security processing documents.

RECORD SOURCE CATEGORIES:

NRC applicants, employees, contractors, consultants, licensees, visitors and others, as well as information furnished by other Government agencies or their contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Facilities and Security and on a need-to-know basis by appropriate NRC officials, Hearing Examiners, Personnel Security Review Panel members, Office of Personnel Management, Central Intelligence Agency, Office of the Director of National intelligence, and other Federal agencies under the following routine uses:

- a. To determine clearance or access authorization eligibility;
- b. To determine eligibility for access to NRC buildings or access to Federal automated information systems or data;
- c. To certify clearance or access authorization;
- d. To maintain the NRC personnel security program, including the Insider Threat Program;
- e. To provide licensees information needed for unescorted access or access

to safeguards information determinations;

f. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

g. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

h. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

i. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

j. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

k. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

l. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is

a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

m. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records maintained on paper, tapes, and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed and accessed by name, social security number, docket number, or a combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Security administrative records are retained under the National Archives and Records Administration's General Records Schedule 5.6: Security Records, Item 010. Destroy when 3 years old, but longer retention is authorized if required for business use. Visitor processing records in areas requiring highest level security awareness are retained under General Records Schedule 5.6, item 110. Destroy when 5 years old, but longer retention is authorized if required for business use. Visitor processing records in all other facility security areas are retained under General Records Schedule 5.6, item 111. Destroy when 2 years old, but longer retention is authorized if required for business use. Personnel security and access clearance records of people issued clearances are retained under General Records Schedule 5.6, item 181. Destroy 5 years after employee or contractor relationship ends, but longer retention is authorized if required for business use. Indexes to the personnel security case files are retained according to General Records Schedule 5.6 item

190 and destroyed when superseded or obsolete.

Insider threat inquiry records are retained according to General Records Schedule 5.6 item 220 and destroyed 25 years after close of inquiry, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in use are protected to ensure that access is limited to those persons whose official duties require such access. Unattended records are maintained in NRC-controlled space in locked offices, locked desk drawers, or locked file cabinets. Mass storage of records is protected when unattended by a combination lock and alarm system. Unattended classified records are protected in appropriate security containers in accordance with Management Directive 12.1.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedures." Some information is classified under Executive Order 12958 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent the disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedures."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

SYSTEM NAME AND NUMBER:

Facility Security Access Control Records—NRC 40.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in part at NRC Regional Offices

and the NRC Technical Training Center at the locations listed in Addendum I, Part 2.

SYSTEM MANAGER(S):

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165-2169 and 2201; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 13462, as amended by E.O. 13516.

PURPOSE(S) OF THE SYSTEM:

Tracking issued NRC personal identification badges issued for access to NRC-controlled space and approved visitors to the NRC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government agency personnel, and approved visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes information regarding: (1) NRC personal identification badges issued for continued access to NRC-controlled space; and (2) records regarding visitors to NRC. The records include, but are not limited to, an individual's name, social security number, electronic image, badge number, citizenship, employer, purpose of visit, person visited, date and time of visit, and other information contained on Government issued credentials.

RECORD SOURCE CATEGORIES:

Sources of information include NRC employees, contractors, consultants, employees of other Government agencies, and visitors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To control access to NRC classified information and to NRC spaces by human or electronic means;

b. Information (identification badge) may also be used for tracking applications within the NRC for other than security access purposes;

c. The electronic image used for the NRC employee personal identification

badge may be used for other than security purposes only with the written consent of the subject individual;

d. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

f. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

g. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

h. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

i. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

j. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the

suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

k. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is indexed and accessed by individual's name, social security number, identification badge number, employer's name, date of visit, or sponsor's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The National Archives and Records Administration's General Records Schedule 5.6 includes Security Records. Visitor processing records in areas requiring highest level security awareness, including areas designated by the interagency Security Committee as Facility Security Level V, are retained according to General Records Schedule 5.6, item 110. Destroy when 5 years old, but longer retention is authorized if required for business use. Visitor processing records in facility security areas not requiring highest level security awareness, including areas designated by the interagency Security Committee as Facility Security Levels I through IV, are retained under General Records Schedule 5.6, item 111. Destroy when 2 years old, but longer retention is authorized if required for business use. Indexes to personnel security case files are retained under General Records Schedule 5.6, item 190. Destroy when superseded or obsolete. Records of routine security operations are retained

under General Records Schedule 5.6, item 090. Destroy when 30 days old, but longer retention is authorized if required for business use. Personal identification credentials and cards, including application and activation records, are retained according to General Records Schedule 5.6, item 120. Destroy 6 years after the end of an employee or contractor's tenure, but longer retention is authorized if required for business use. Personal identification cards are retained according to General Records Schedule 5.6 item 121 and destroyed after expiration, confiscation, or return. Personnel suitability and eligibility investigative reports are retained according to General Records Schedule 5.6, item 170. Destroy in accordance with the investigating agency instruction. Reports and records created by agencies conducting investigations under delegated investigative authority are retained according to General Records Schedule 5.6, item 171. Destroy in accordance with delegated authority agreement or memorandum of understanding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All records are maintained in NRC-controlled space that is secured after normal duty hours or a security area under guard presence in a locked security container/vault. There is an approved security plan which identifies the physical protective measures and access controls (*i.e.*, passwords and software design limiting access based on each individual's role and responsibilities relative to the system) specific to each system.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Tort Claims and Personal Property Claims Records—NRC 41.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, in the Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and at the locations listed in Addendum I, Parts 1 and 2. Other NRC systems of records, including but not limited to, NRC-18, “Office of the Inspector General (OIG) Investigative Records—NRC and Defense Nuclear Facilities Safety Board (DNFSB), ” and NRC-32, “Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC,” may contain some of the information in this system of records.

SYSTEM MANAGER:

Assistant General Counsel for Labor, Employment and Contract Law, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*; Military Personnel and Civilian Employees’ Claims Act, 31 U.S.C. 3721; 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

Claims with the NRC under the Federal Tort Claims Act or the Military Personnel and Civilian Employees’ Claims Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed claims with NRC under the Federal Tort Claims Act or the Military Personnel and Civilian Employees’ Claims Act and individuals who have matters pending before the NRC that may result in a claim being filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information relating to loss or damage to property and/or personal injury or death in which the U.S. Government may be liable. This information includes, but is not limited to, the individual’s name, home address and phone number, work address and phone number, driver’s license number, claim forms and supporting documentation, police reports, witness statements, medical records, insurance information, investigative reports, repair/replacement receipts and estimates, litigation documents, court decisions, and other

information necessary for the evaluation and settlement of claims.

RECORD SOURCE CATEGORIES:

Information is obtained from a number of sources, including but not limited to, claimants, NRC employees involved in the incident, witnesses or others having knowledge of the matter, police reports, medical reports, investigative reports, insurance companies, and attorneys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, NRC may disclose information contained in a record in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To third parties, including claimants’ attorneys, insurance companies, witnesses, potential witnesses, local police authorities where an accident occurs, and others who may have knowledge of the matter to the extent necessary to obtain information that will be used to evaluate, settle, refer, pay, and/or adjudicate claims;

b. To the Department of Justice (DOJ) when the matter comes within their jurisdiction, such as to coordinate litigation or when NRC’s authority is limited, and DOJ advice or approval is required before NRC can award, adjust, compromise, or settle certain claims;

c. To the appropriate Federal agency or agencies when a claim has been incorrectly filed with NRC or when more than one agency is involved, and NRC makes agreements with the other agencies as to which one will investigate the claim;

d. To the Department of the Treasury to request payment of an award, compromise, or settlement of a claim;

e. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. This public information, including information concerning the nature, status, and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

f. To the National Archives and Records Administration or to the

General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

g. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency’s head or an official who has been delegated such authority;

h. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

i. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

j. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

k. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

l. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a “need-to-know” basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

m. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC

has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

n. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in this system of records is stored on paper and computer media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is indexed and accessed by the claimant's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be retained under the National Archives and Records Administration's General Records Schedules and the NRC NUREG 0910 Revision 4.

Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting, are retained according to General Records Schedule 1.1: Financial Management and Reporting Records, item 010 ("Official record held in the office of record"). Financial transaction records are destroyed 6 years after final payment or cancellation, but longer retention is authorized if required for business use. Since the General Records Schedule (GRS) allows for longer retention, NRC chooses to retain records for 7 years as required for its business use, before destruction. Administrative claims by or against the United States are retained according to General Records Schedule 1.1, item 080. Administrative claims records are destroyed 7 years after final action, but longer retention is authorized if required for business use. Litigation

Case Files, are retained according to NRC's NUREG 0910, Revision 4, Part 2.12.7.a. Closed files are retired 7 years after cases are closed and transferred to the National Archives and Records Administration 20 years after cases are closed. ADAMS PDF files and TIFF files are cutoff when case is closed and transferred to the National Archives 20 years after case is closed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The paper records are stored in locked file cabinets and access is restricted to those agency personnel whose official duties and responsibilities require access. Automated records are protected by password.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12): Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system of records to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)).

SYSTEM NAME AND NUMBER:

Employee Health Center Records—NRC 43.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Employee Health Center, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, at health care facilities operating under a contract or agreement with NRC for health-related services in

the vicinity of each of NRC's Regional offices listed in Addendum I, Part 2. NRC's Regional offices may also maintain copies of occupational health records for their employees.

This system may contain some of the information maintained in other systems of records, including NRC-11, "Reasonable Accommodation Records—NRC," NRC-44, "Employee Fitness Center Records—NRC, and DOL/GOVT-1 "Office of Worker's Compensation Programs, Federal Employee's Compensation Act File."

SYSTEM MANAGERS(S):

Technical Assistance Project Manager, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

Maintaining health records for current and former NRC employees, consultants, contractors, other Government personnel, and anyone who may require emergency or first-aid treatment on NRC premises.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government personnel, and anyone on NRC premises who requires emergency or first-aid treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of voluntary employee use of health services provided by the Health Center, and of emergency health services rendered by Health Center staff to individuals for injuries and illnesses suffered while on NRC premises. Specific information maintained on individuals may include, but is not limited to, their name, date of birth, and social security number; medical history and other biographical data; test reports and medical diagnoses based on employee health maintenance physical examinations or health screening programs (tests for single medical conditions or diseases); history of complaint, diagnosis, and treatment of injuries and illness rendered by the Health Center staff; immunization records; records of administration by Health Center staff of medications prescribed by personal physicians; medical consultation records; statistical records; daily log of patients; and medical documentation such as personal physician correspondence, test

results submitted to the Health Center staff by the employee; and occupational health records. This system does not maintain records that are a result of a condition of employment, records and reports generated in relation to a Workers' Compensation claim, or records resulting from participation in an agency-sponsored health and wellness program. Such records are maintained in the government-wide system of records notice "OPM/GOVT-10 Employee Medical File System Records."

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from a number of sources including, but not limited to, the individual to whom it pertains; laboratory reports and test results; NRC Health Center physicians, nurses, and other medical technicians or personnel who have examined, tested, or treated the individual; the individual's coworkers or supervisors; other systems of records; the individual's personal physician(s); NRC Fitness Center staff; other Federal agencies; and other Federal employee health units.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

- a. To refer information required by applicable law to be disclosed to a Federal, State, or local public health service agency concerning individuals who have contracted certain communicable diseases or conditions in an effort to prevent further outbreak of the disease or condition;
- b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority;
- c. To disclose information to the Office of Workers' Compensation Programs in connection with a claim for benefits filed by an employee;
- d. To Health Center staff and medical personnel under a contract or agreement with NRC who need the information in order to schedule, conduct, evaluate, or follow up on physical examinations, tests, emergency treatments, or other medical and health care services;

- e. To refer information to private physicians designated by the individual when requested in writing;

- f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

- g. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

- h. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

- i. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

- j. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

- k. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

- l. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

- m. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

- n. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in file folders, on electronic media, and on file cards, logs, x-rays, and other medical reports and forms.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the individual's name, date of birth, and social security number, or any combination of those identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Clinic Scheduling Records are retained under the National Archives and Records Administration's General Records Schedule 2.7: Employee Health and Safety Records, item 010. Destroy when 3 years old, but longer retention is authorized if required for business use. Short-term occupational individual medical case files are retained under General Records Schedule 2.7, item 061. Destroy 1 year after employee separation or transfer. Individual employee health case files created prior to establishment of the Employee Medical File system in 1986 are retained under General Records Schedule 2.7, item 062. Destroy 60 years after retirement to the NARA records storage facility. Non-

occupational individual medical case files are retained under General Records Schedule 2.7, item 070. Destroy 10 years after the most recent encounter, but longer retention is authorized if needed for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force and entry to each floor is controlled by keycard. Records in the system are maintained in lockable file cabinets with access limited to agency or contractor personnel whose duties require access. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by authorized personnel.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9; and provide their full name, any former name(s), date of birth, and Social Security number.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Employee Fitness Center Records—NRC 44.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Fitness Center, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Office of Chief Human Capital Officer Contracting Officer Representative, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order (E.O.) 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

Maintaining membership for the NRC Fitness Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for membership at the Fitness Center, including current and former members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes applications to participate in NRC's Fitness Center, information on an individual's degree of physical fitness and their fitness activities and goals; and various forms, memoranda, and correspondence related to Fitness Facilities membership and financial/payment matters. Specific information contained in the application for membership includes the employee applicant's name, gender, age, badge id, height, weight, and medical information, including a history of certain medical conditions; the name of the individual's personal physician and any prescription or over-the-counter drugs taken on a regular basis; and the name and address of a person to be notified in case of emergency.

RECORD SOURCE CATEGORIES:

Information in this system of records is principally obtained from the subject individual. Other sources of information include, but are not limited to, the NRC Fitness Center Director, staff physicians retained by the NRC, and the individual's personal physicians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the individual listed as an emergency contact, in the event of an emergency;

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 or 2906;

c. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or

criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is indexed and accessed by an individual's name and/or NRC Badge ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS

Fitness Center records are retained according to the National Archives and Records Administration's General Records Schedule 2.7: Employee Health and Safety Records, item 080, Non-occupational health and wellness program records. Destroy 3 years after the project/activity or transaction is completed or superseded, but longer retention is authorized if needed for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in a building where access is controlled by a security guard force. Access to the Fitness Center is controlled by keycard and bar code verification. Records in paper form are stored alphabetically by individuals' names in lockable file cabinets maintained in the NRC where access to the records is limited to agency and Fitness Center personnel whose duties require access. The records are under visual control during duty hours. Automated records are protected by screen saver. Access to automated data requires use of proper password and user identification codes. Only authorized personnel have access to areas in which information is stored.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures Pursuant to 5 U.S.C. 552a(b)(12): Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)).

SYSTEM NAME AND NUMBER:

Electronic Credentials for Personal Identity Verification—NRC 45.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Office of the Chief Information Officer, NRC, White Flint North Complex, 11555 Rockville Pike, Rockville, Maryland, and current contractor facility.

Duplicate system—Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Part 2.

SYSTEM MANAGER(S):

Director, Solutions Development and Operations Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2165 and 2201(i); 44 U.S.C. 3501, 3504; Electronic Government Act of 2002, 44 U.S.C. chapter 36; Homeland Security Presidential Directive 12 (HSPD-12), Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Executive Order (E.O.) 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

Track and control PIV cards issued to persons entering and exiting the NRC facilities or using NRC systems; and verify that all person entering federal facilities, using Federal information resources, are authorized to do so.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are persons who have applied for the issuance of electronic credentials for signature, encryption, and/or authentication purposes; have had their credentials renewed, replaced, suspended, revoked, or denied; have used their credentials to electronically make contact with, retrieve information from, or submit information to an automated information system; or have corresponded with NRC or its contractor concerning digital services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to establish and verify the identity of users, to maintain the system, and to establish accountability and audit controls. System records may include: (a) applications for the issuance, amendment, renewal, replacement, or revocation of electronic credentials, including evidence provided by applicants or proof of identity and authority, and sources used to verify an applicant's identity and authority; (b) credentials issued; (c) credentials denied, suspended, or revoked, including reasons for denial, suspension, or revocation; (d) a list of currently valid credentials; (e) a list of currently invalid credentials; (f) a record of validation transactions attempted with electronic credentials; and (g) a record of validation transactions completed with electronic credentials.

RECORD SOURCE CATEGORIES:

The sources for information are the individuals who apply for electronic credentials, the NRC and contractors using multiple sources to verify identities, and internal system transactions designed to gather and maintain data needed to manage and evaluate the electronic credentials program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To agency electronic credential program contractors to compile and maintain documentation on applicants for verifying applicants' identity and authority to access information system applications; to establish and maintain

documentation on information sources for verifying applicants' identities; to ensure proper management, data accuracy, and evaluation of the system;

b. To Federal authorities to determine the validity of subscriber digital certificates and other identity attributes;

c. To the National Archives and Records Administration (NARA) for records management purposes;

d. To a public data repository (*only name, email address, organization, and public key*) to facilitate secure communications using digital certificates;

e. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

f. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

g. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

h. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

i. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

j. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a "need-to-know" basis for a purpose within the scope of the pertinent NRC

task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

k. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

l. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored electronically or on paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by an individual's name, email address, certificate status, certificate number or credential number, certificate issuance date, or approval role.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's, General Records Schedule 5.6: Security Records. Application and activation records for personal identification credentials and cards are retained under General Records Schedule 5.6, item 120. Destroy 6 years after the end of an employee or contractor's tenure, but longer retention is authorized if required for business use. Personnel identification cards are retained under General Records Schedule 5.6, item 121. Destroy after

expiration, confiscation, or return. Local facility identification and card access records are retained under General Records Schedule 5.6, item 130. Destroy upon immediate collection once the temporary credential or card is returned for potential reissuance due to nearing expiration or not to exceed 6 months from time of issuance or when individual no longer requires access, whichever is sooner, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Technical, administrative, and personnel security measures are implemented to ensure confidentiality, integrity, and availability of the system data stored, processed, and transmitted. Hard copy documents are maintained in locking file cabinets. Electronic records are, at a minimum, password protected. Access to and use of these records is limited to those individuals whose official duties require access.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMS FOR THE SYSTEM:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure of system records to consumer reporting systems is not permitted.

SYSTEM NAME AND NUMBER:

Health Emergency Records—NRC 46.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Headquarters, 11555 Rockville Pike, Rockville, Maryland. Records may be maintained at all locations at which the NRC, or contractors on behalf of the NRC, operate or at which NRC operations are supported.

SYSTEM MANAGER(S):

Chief Human Capital Officer, Office of the Chief Human Capital Officer, U.S.

Nuclear Regulatory Commission, Washington, DC 20555-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Workforce safety Federal requirements, which include: the Occupational Safety and Health Act of 1970; Executive Order 12196; and 5 U.S.C. 7902, "Safety programs." Federal laws that authorize the NRC to create and maintain Federal records of agency activities, which include: 44 U.S.C. 3101; the Religious Freedom Restoration Act of 1933, 42 U.S.C. chapter 21B; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e; and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.* Authorities addressing the federal government's preparation for, and response to, public health threats, including the PREVENT Pandemics Act, 42 U.S.C. 300hh-3; and Executive Order 13987, "Organizing and Mobilizing the United States Government to Provide a Unified and Effective Response to Combat COVID-19 and to Provide United States Leadership on Global Health and Security."

PURPOSE(S) OF THE SYSTEM:

Maintaining records necessary and relevant to NRC activities responding to and mitigating high-consequence public health threats. Records may include, but are not limited to, those applicable health related records needed to understand the impact of an illness or disease on the NRC workforce or to assist the NRC in protecting its workforce from a declared public health emergency, pandemic, or other high-consequence public health threat, including records submitted by NRC personnel or by the lawful representative of such personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC's employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may include:

A. Full name, NRC employee ID number; telephone number, worksite, email address, supervisor's name, address and contact information.

C. Other information about the individual directly related to the disease or illness (e.g., testing results/information, symptoms, treatments, source of exposure, or other applicable health related information).

D. Appointment scheduling information, including the date, time, and location of a scheduled appointment.

E. Medical screening information, including the individual's name, date of

birth, age, category of employment, current medical status, related medical history, and any relevant medical history.

RECORD SOURCE CATEGORIES:

Records may be obtained from NRC employees or their representative who may provide relevant information on a suspected or confirmed disease or illness, or the prevention of such disease or illness, which is the subject of a high-consequence public health threat.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the other types of disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the persons or entities mentioned herein if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

A. To appropriate medical facilities, or Federal, State, local, Tribal, territorial or foreign government agencies, to the extent permitted by law, for the purpose of protecting the vital interests of individual(s), including to assist the United States Government in responding to or mitigating high-consequence public health threats.

B. To determine eligibility for access to NRC buildings, NRC licensee facilities or sites, or other Federal facilities.

C. To provide licensees information needed for unescorted access or access to the licensee's facility(s).

D. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, territorial, Tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

E. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the NRC determines that the records are arguably relevant to its proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

F. To contractors, grantees, experts, consultants, students, and others

performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an NRC function related to this system of records.

G. A record on an employee from this system of records may be disclosed as a routine use to a Federal, State, local, territorial, Tribal, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of that individual, letting a contract, or issuing a license, grant, or other benefit.

H. A record on an employee from this system of records may be disclosed as a routine use to a Congressional office in response to an inquiry from the Congressional office made at the request of that individual.

I. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

J. To appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that there has been a breach of the system of records, (2) the NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to an individual(s), the NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the NRC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when the NRC determines that information from this system of records is necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

L. To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of the NRC and meeting related reporting requirements.

M. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

N. A record from this system of records may be disclosed as a routine

use to NRC-paid experts or consultants, and those under contract with the NRC on a “need-to-know” basis for purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager.

O. To a Federal agency employee, expert, consultant, or contractor in performing a Federal duty for purposes of authorizing, arranging, and/or claiming reimbursement for official travel, including, but not limited to, traveler profile information.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All records in this system of records are maintained and in compliance with applicable executive orders, statutes, and agency implementing recommendations. Electronic records are stored in databases. Paper records are maintained in a secure, access-controlled room, with access limited to authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records will be retrieved by any of the categories of records, including name, location, date of applicable health information, or work status.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

To the extent applicable, to ensure compliance with Americans with Disabilities Act, the Rehabilitation Act, and the Genetic Information Nondiscrimination Act of 2008, medical information must be “maintained on separate forms and in separate medical files and be treated as a confidential medical record.” 42 U.S.C. 12112(d)(3)(B); 42 U.S.C. sec 2000ff-5(a); 29 CFR 1630.14(b)(1), (c)(1), (d)(4)(i); and 29 CFR 1635.9(a). This means that medical information and documents must be stored separately from other personnel records. As such, the NRC must keep medical records for at least 1 year from creation date. 29 CFR 1602.14. Further, records compiled under this system of records notice will be maintained in accordance with the National Archives and Records Administration General Records Schedule (GRS) 2.7, Employee Health and Safety Records, Items 010, 070, or 080 to the extent applicable.

GRS 2.7 item 010 (DAA-GRS-2017-0010-0001)—Clinic scheduling records. Temporary. Destroy when 3 years old, but longer retention is authorized if needed for business use.

GRS 2.7 item 070 (DAA-GRS-2017-0010-0012)—Non-occupational

individual case files. Temporary. Destroy 10 years after the most recent encounter, but longer retention is authorized if needed for business use.

GRS 2.7 item 080 (DAA-GRS-2017-0010-0013)—Non-occupational health and wellness program records.

Temporary. Destroy 3 years after the project/activity/or transaction is completed or superseded, but longer retention is authorized if needed for business use.

GRS 2.7 item 063 (DAA-GRS-2021-0003-0001)—Vaccination attestations and proof of vaccination records. Federal employees and contractors.

Temporary. Destroy when 3 years old.

GRS 2.7 item 064 (DAA-GRS-2021-0003-0002)—Vaccination attestations and proof of vaccination records.

Visitors. Temporary. Destroy when 30 days old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The NRC safeguards records in this system according to applicable rules and policies, including all applicable NRC automated systems security and access policies. The NRC has imposed controls to minimize the risk of compromising the information that is being stored. Users of individual computers can only gain access to the data by valid user identification and password. Paper records are maintained in a secure, access-controlled room, with access limited to authorized personnel.

RECORDS ACCESS PROCEDURES:

Same as “Notification procedures.”

CONTESTING RECORD PROCEDURES:

Same as “Notification procedures.”

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act Officer or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and comply with procedures contained in NRC’s Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

None.

Addendum I—List of U.S. Nuclear Regulatory Commission Locations

Part 1—NRC Headquarters Offices

1. One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

2. Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

3. Three White Flint North, 11601 Landsdown Street, North Bethesda, MD

Part 2—NRC Regional Offices

1. NRC Region I, 475 Allendale Road, Suite 102, King of Prussia, Pennsylvania.

2. NRC Region II, Marquis One Tower, 245 Peachtree Center Avenue NE, Suite 1200, Atlanta, Georgia.

3. NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, Illinois.

4. NRC Region IV, 1600 East Lamar Boulevard, Arlington, Texas.

5. NRC Technical Training Center, Osborne Office Center, 5746 Marlin Road, Suite 200, Chattanooga, Tennessee.

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NUCLEAR REGULATORY COMMISSION

[NRC-2024-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of July 22, 29, and August 5, 12, 19, 26, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301-287-0745, by videophone at 240-428-3217, or by email at Anne.Silk@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301-415-1969, or by email at Betty.Thweatt@nrc.gov or Samantha.Miklaszewski@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of July 22, 2024

There are no meetings scheduled for the week of July 22, 2024.

Week of July 29, 2024—Tentative

There are no meetings scheduled for the week of July 29, 2024.

Week of August 5, 2024—Tentative

There are no meetings scheduled for the week of August 5, 2024.

Week of August 12, 2024—Tentative

There are no meetings scheduled for the week of August 12, 2024.

Week of August 19, 2024—Tentative

There are no meetings scheduled for the week of August 19, 2024.

Week of August 26, 2024—Tentative

There are no meetings scheduled for the week of August 26, 2024.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Sarah Turner at 301–287–9058 or via email at Sarah.Turner@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: July 17, 2024.

For the Nuclear Regulatory Commission.

Sarah A. Turner,

Information Management Specialist, Office of the Secretary.

[FR Doc. 2024–16088 Filed 7–17–24; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327, 50–328, and 72–034; NRC–2024–0115]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a request dated September 28, 2023, as supplemented by letter dated March 14, 2024, from Tennessee Valley Authority related to the use of a locked door or gate with a monitored alarm at the access control point to radioactive waste that contains category 1 or category 2 quantities of radioactive material at the Sequoyah Nuclear Plant, Units 1 and 2, site.

DATES: The exemption was issued on July 15, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0115 when contacting the NRC about the availability of information regarding this document.

You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2024–0115. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *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.

FOR FURTHER INFORMATION CONTACT:

Kimberly Green, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1627; email: Kimberly.Green@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: July 16, 2024.

For the Nuclear Regulatory Commission.

Kimberly Green,

Senior Project Manager, Licensing Plant Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption**NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50–327, 50–328, and 72–034; NRC–2024–0115]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Exemption**I. Background**

The Tennessee Valley Authority (TVA) is the holder of Renewed Facility

Operating License Nos. DPR–77 and DPR–79, and General License No. 72–034, for operation of the Sequoyah Nuclear Plant, Units 1 and 2, and an independent spent fuel storage installation (Sequoyah or Sequoyah site), respectively, located in Hamilton County, Tennessee. The renewed operating licenses are subject to all applicable provisions of the Atomic Energy Act, and to the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or Commission) now or hereafter in effect.

II. Request/Action

By letter dated September 28, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML23271A063), as supplemented on March 14, 2024 (ML24074A457), TVA requested an exemption from the requirement in Title 10 of the *Code of Federal Regulations* (10 CFR), part 37, paragraph 37.11(c)(2) to use a locked door or gate at the access control point to where radioactive waste that contains category 1 or category 2 quantities of radioactive material is stored.

The provisions of 10 CFR part 37 establish physical security requirements to prevent the theft or diversion of risk-significant radioactive materials (*i.e.*, category 1 and category 2 quantities of radioactive material). As stated in NUREG–2155, Rev. 2, "Implementation Guidance for 10 CFR part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material"" (ML22083A141), 10 CFR 37.11 exempts radioactive wastes that contain category 2 quantities or greater of radioactive material from the security requirements in subparts B, C, and D of 10 CFR part 37. Instead, the radioactive waste is subject to the requirements in 10 CFR 37.11(c)(1) through (c)(4). The regulation at 10 CFR 37.11(c)(2) requires that the licensee secure the radioactive waste by a locked door or gate with monitored alarm at the access control point.

The Sequoyah site includes old steam generator storage facilities (OSGSFs) that are used to store the contaminated old steam generators (OSGs). The OSGs exceed the threshold for a category 2 quantity of radioactivity, as defined in 10 CFR 37.5, but do not contain discrete radioactive sources, ion-exchange resins, or activated materials that weigh less than 2,000 kilograms (4,409 pounds), as described in 10 CFR 37.11(c). As such, the licensee is required by 10 CFR 37.11(c)(2) to have a monitored alarm at the access control

point to the OSGSFs where the OSGs are stored.

TVA describes the OSGSFs as robust structures that are closed with 10 stacked precast concrete panels weighing approximately 17,237 kilograms (38,000 pounds) each. The OSGSFs are located outside the Sequoyah protected area, but within the exclusion area and site boundary. Removal of the concrete panels is the only access point of sufficient size to remove an OSG and requires heavy lifting and rigging equipment that cannot be staged or utilized quickly. Removal of the concrete panels is an evolution that is easily observable over an extended period of time.

TVA has requested a permanent exemption from the requirement in 10 CFR 37.11(c)(2) to address a regulatory noncompliance that has resulted in the issuance of minor violations at the Sequoyah site.

III. Discussion

Pursuant to 10 CFR 37.11(a), the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in 10 CFR part 37 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

A. The Exemption Is Authorized by Law

The exemption would exempt the licensee from the requirement to have a monitored alarm at the access control point to the OSGSFs where the OSGs are stored. As stated previously, 10 CFR 37.11(a) allows the NRC to grant exemptions from the requirements of 10 CFR part 37. The NRC staff has determined that granting of the exemption is permissible under the Atomic Energy Act of 1954, as amended, and other regulatory requirements. Therefore, the exemption is authorized by law.

B. The Exemption Will Not Endanger Life or Property or the Common Defense and Security

The purpose of 10 CFR part 37 is to provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material by protecting these materials from theft or diversion. As required by 10 CFR 37.11, each licensee that possesses radioactive waste that contains category 1 or category 2 quantity of radioactive material shall implement the following requirements to secure the radioactive waste: (1) use continuous physical barriers that allow access to the

radioactive waste only through established access control points; (2) use a locked door or gate with monitored alarm at the access control point; (3) assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and (4) immediately notify the local law enforcement agency (LLEA) and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

After issuance of the final part 37 rule, the NRC issued Enforcement Guidance Memorandum (EGM) 2014–001, “Interim Guidance for Dispositioning 10 CFR part 37 Violations with Respect to Large Components or Robust Structures Containing Category 1 or Category 2 Quantities of Material at Power Reactor Facilities Licensed Under 10 CFR parts 50 and 52” (ML14056A151), on March 13, 2014, to provide guidance to NRC staff for dispositioning violations associated with 10 CFR part 37 with respect to large components containing category 1 and category 2 quantities of radioactive material stored in robust structures at power reactor facilities licensed under 10 CFR parts 50 and 52. The EGM acknowledges that due to their size and weight, these large components are not easily moved without cranes, rigging, and heavy equipment. In addition, these large components are not easily concealed during loading or when they are in motion, and the amount of time required to steal or divert these large components is such that it is reasonable to expect that the licensee would detect these activities.

TVA has a written 10 CFR part 37 security plan for Sequoyah that identifies the OSGs as large components and the OSGSFs as robust structures containing category 1 or category 2 quantities of radioactive material. The plan also identifies the security measures that are adequate to detect, assess, and respond to actual or attempted theft or diversion of stored materials from the OSGSFs. TVA provided a written analysis that considers the time needed to accomplish these activities given the proximity and mobility of the equipment available for the large components and robust structures supporting the 10 CFR part 37 security plan. TVA also provided a written analysis documenting that the measures for the protection of large components

or robust structures containing category 1 or category 2 quantities of material do not decrease the effectiveness of the 10 CFR part 73 security plan.

Because TVA has a security plan that contains measures to control access to the radioactive waste, assess and respond to unauthorized access, and notify and request an armed response by the LLEA, the NRC finds that the exemption will not endanger life or property or the common defense and security.

C. The Exemption Is in the Public Interest

TVA stated that the exemption would preclude the expenditure of resources that provide no additional security and protection for the OSGs. Granting of the exemption would also allow TVA to address a regulatory noncompliance and avoid future violations.

As noted previously, the OSGs are large components that are stored in robust structures that would require the use of heavy lifting and rigging equipment that cannot be staged or utilized quickly. Requiring the use of a locked door or gate with monitored alarm at the access control point is supplanted by the licensee’s security plan which utilizes other means to detect unauthorized access, while the exemption would reduce the regulatory burden on the licensee and the NRC staff. Therefore, the NRC staff concludes that the exemption is in the public interest.

IV. Environmental Considerations

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact regarding this exemption request was published in the **Federal Register** on June 27, 2024 (89 FR 53667). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

V. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 37.11(a), the exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest.

Dated: July 15, 2024.

For the Nuclear Regulatory Commission.

/RA/

Bo Pham,
Director, Division of Operating Reactor
Licensing, Office of Nuclear Reactor
Regulation.

[FR Doc. 2024–15939 Filed 7–18–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0116]

Level 3 Probabilistic Risk Assessment Project Documentation (Volume 7)

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft report; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft report on the Level 3 Probabilistic Risk Assessment (PRA) project; specifically, “Volume 7: Dry Cask Storage PRA.”

DATES: Submit comments by September 17, 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: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2024–0116. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION** **CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Alan Kuritzky, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1552, email: Alan.Kuritzky@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0116 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–2024–0116.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *NRC’s PDR:* 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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2024–0116 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

As directed in SRM–SECY–11–0089, “Options for Proceeding with Future Level 3 Probabilistic Risk Assessment (PRA) Activities,” the staff is conducting a full-scope multi-unit site

Level 3 PRA (Level 3 PRA project) that addresses all internal and external hazards; all plant operating modes; and all reactor units, spent fuel pools, and dry cask storage (DCS). The reference site for this study contains two four-loop Westinghouse pressurized water reactors with large dry containments. The objectives of the Level 3 PRA project are to (1) develop a Level 3 PRA, generally based on current state-of-practice methods, tools, and data, that (a) reflects technical advances since the last NRC-sponsored Level 3 PRAs (NUREG–1150), which were completed over 30 years ago, and (b) addresses scope considerations that were not previously considered (e.g., low-power and shutdown risk, multi-unit risk, other radiological sources); (2) extract new insights to enhance regulatory decision making and to help focus limited NRC resources on issues most directly related to the agency’s mission to protect public health and safety; (3) enhance PRA staff capability and expertise and improve documentation practices to make PRA information more accessible, retrievable, and understandable; and (4) demonstrate technical feasibility and evaluate the realistic cost of developing new Level 3 PRAs.

The work performed under this project is being documented as a multi-volume report. The current Level 3 PRA project report (Volume 7) describes the analyses and results for the DCS PRA. The Level 3 PRA project DCS PRA is a site-specific and cask-specific analysis that consists of the following interrelated technical elements: initiating event analysis, structural analysis, thermal analysis, human reliability analysis, multipurpose canister failure analysis, systems analysis, consequence analysis, and risk results quantification. The study predicted that there would be no prompt fatalities from DCS within 10 miles of the site. Results are reported for several other consequence metrics, including individual latent cancer fatality risk, total latent cancer fatality cases, population dose from 0–50 miles and 0–100 miles, economic cost, and population affected by intermediate phase relocation. Regardless of the consequence metric, the risk from DCS operations was calculated to be very low.

III. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS, as indicated.

Document description	ADAMS accession No.
SRM–SECY–11–0089, “Options for Proceeding with Future Level 3 Probabilistic Risk Assessment (PRA) Activities,” dated September 21, 2011	ML112640419
Level 3 PRA Project, Volume 7: Dry Cask Storage PRA (Draft Report for Comment)	ML24164A010

Dated: July 8, 2024.
For the Nuclear Regulatory Commission.
Jonathan Evans,
*Chief, Probability Risk Assessment Branch,
Division of Risk Analysis, Office of Nuclear
Regulatory Research.*
[FR Doc. 2024–15251 Filed 7–18–24; 8:45 am]
BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–424 and CP2024–431;
MC2024–425 and CP2024–432; MC2024–426
and CP2024–433; MC2024–427 and CP2024–
434]

New Postal Products

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission’s consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 22, 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):* MC2024–424 and CP2024–431; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 158 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 12, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* July 22, 2024.
2. *Docket No(s):* MC2024–425 and CP2024–432; *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 159 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 12, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* July 22, 2024.

3. *Docket No(s):* MC2024–426 and CP2024–433; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 160 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 12, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* July 22, 2024.

4. *Docket No(s):* MC2024–427 and CP2024–434; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 161 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 12, 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:* July 22, 2024.

This Notice will be published in the **Federal Register**.

Jennie Jbara,
Primary Certifying Official.
[FR Doc. 2024–15920 Filed 7–18–24; 8:45 am]
BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35278; 812–15601]

Unified Series Trust and Efficient Capital Management, LLC

July 16, 2024.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).
ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from Section 15(a) of the Act, as well as from certain disclosure requirements in Rule

20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (“Disclosure Requirements”).

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with certain subadvisors without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisors.

APPLICANTS: Unified Series Trust and Efficient Capital Management, LLC.

FILING DATES: The application was filed on July 12, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on August 12, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary.

ADDRESSES: *The Commission:* *Secretarys-Office@sec.gov.* *Applicants:* Elisabeth Dahl, Unified Series Trust, c/o Efficient Capital Management, LLC, 225 Pictoria Drive, Suite 450, Cincinnati, Ohio 45246 and Cassandra W. Borchers, Esq., *Cassandra.Borchers@thompsonhine.com.*

FOR FURTHER INFORMATION CONTACT: Adam Lovell, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ application filed July 12, 2024, which may be obtained via the Commission’s website by searching for the file number at the top of this

document, or for an Applicant using the Company name search field on the SEC’s EDGAR system. The SEC’s EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC’s Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–15944 Filed 7–18–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100538; File No. SR–NASDAQ–2024–038]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Procedures Related to the Suspension and Delisting of Acquisition Companies

July 15, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 8, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange (“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 certain procedures related to the suspension and delisting of Acquisition Companies. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 7, 2024.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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

Nasdaq is proposing to amend certain procedures governing the suspension and delisting process applicable to a company whose business plan is to complete one or more acquisitions, as described in Rule IM–5101–2 (“Acquisition Company”), that fails to (i) complete one or more business combinations satisfying the requirements set forth in Listing Rule IM–5101–2(b) (“Business Combination”) within 36 months of the effectiveness of its IPO registration statement; or (ii) meet the requirements for initial listing following the Business Combination. Nasdaq also proposes to limit the Hearings Panels authority to review the Nasdaq Staff’s decision in these instances to a review for factual error only. Finally, Nasdaq also proposes to amend Listing Rule 5810(c)(1) to clarify it without a substantive change.³

Nasdaq permits the listing of an Acquisition Company only if it meets all applicable initial listing requirements, as well as the special requirements set forth in Listing Rule IM–5101–2 applicable only to Acquisition Companies. Among these special requirements is the requirement set forth in Listing Rule IM–5101–2(b) that an Acquisition Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to

³ The proposed rule change would eliminate certain differences identified by NYSE between Nasdaq’s process and that of the NYSE. See Securities Exchange Act Release No. 99906 (April 4, 2024), 89 FR 25291 (April 10, 2024) (SR–NYSE–2024–18).

enter into the initial combination, within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specifies in its registration statement. Listing Rule IM-5101-2 further provides that following a Business Combination, the company must meet the requirements for initial listing on Nasdaq.

Listing Rule IM-5101-2 provides that if an Acquisition Company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth in Listing Rule IM-5101-2, Nasdaq will issue a Staff Delisting Determination under Listing Rule 5810 to delist the Company's securities. Pursuant to Listing Rule 5810(a), the Staff Delisting Determination informs the company of the factual basis for the determination and provides instructions regarding the Acquisition Company's obligations to disclose the Staff Delisting Determination to the public. In addition, pursuant to Listing Rule 5810(a)(3), the Staff Delisting Determination informs the company: that its securities will be suspended as of a date certain; that it has a right to request review of the Staff Delisting Determination by a Hearings Panel; and that a timely request for review will stay the suspension. While Listing Rule 5815(a)(1)(B) enumerates those instances where a timely request for review does not stay the company's suspension, those instances do not include a Staff Delisting Determination issued when an Acquisition Company fails to comply with the requirements of Listing Rule IM-5101-2, and therefore a timely request for a hearing for non-compliance with the provisions of Listing Rule IM-5101-2 currently stays the suspension and delisting action pending the issuance of a written panel decision.

Furthermore, Listing Rule 5815(c)(1)(A) provides that the Hearings Panel may, where it deems appropriate grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. Accordingly, an Acquisition Company that fails the requirements in Listing Rule IM-5101-2 to complete a business combination within 36 months or to meet the initial listing requirements following a Business Combination may request a review of a Staff Delisting Determination and seek an exception to the requirements from the Hearings Panel, and could remain listed and

trading on Nasdaq pursuant to an exception granted by the Panel.

Nasdaq proposes to amend Rule 5815 to remove the stay provision in the situations described above so that an Acquisition Company's securities will be suspended from trading on Nasdaq during the pendency of the Hearings Panel's review. Specifically, Nasdaq proposes to amend Listing Rule 5815(a)(1)(B)(ii) to provide that notwithstanding the general rule that a timely request for a hearing shall ordinarily stay the suspension and delisting action pending the issuance of a written panel decision, a request for a hearing shall not stay the suspension of the securities from trading where the matter relates to a request made by an Acquisition Company that: (i) failed to complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement; or (ii) failed to meet the initial listing requirements following a Business Combination.⁴ This proposal is consistent with the rules of the NYSE.⁵

In addition, while Hearings Panels currently have the ability to grant an exception to an Acquisition Company that failed to (i) complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement; or (ii) meet the requirements for initial listing following the Business Combination, Nasdaq staff has observed that this allows Acquisition Companies to use the additional time afforded by the administrative process set forth in Listing Rule 5815 to regain compliance with the requirements by either completing a Business Acquisition (in the case of failing to complete a Business Acquisition) or by using the benefits of Nasdaq listing and trading to achieve compliance with the initial listing requirements it did not satisfy. Nasdaq believes it would enhance investor protection to instead provide that the Hearings Panel's review of these issues is limited to the question of whether Nasdaq Staff made a factual error applying the applicable rule. Accordingly, Nasdaq proposes to adopt a new Listing Rule 5815(c)(1)(H) providing that when the Hearings Panel

review is of a Staff Delisting Determination issued for failure to (i) complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) and Listing Rule 5452(a)(3) within 36 months of the effectiveness of its IPO registration statement; or (ii) meet the requirements for initial listing following the Business Combination, the Hearings Panel may only reverse a delisting decision where the Hearings Panel determines that the Staff Delisting Determination letter was in error and that the Acquisition Company never failed to satisfy the requirement. In such cases, the Hearings Panel may not consider facts indicating that the company had regained compliance since the Staff Delisting Determination, nor may the Hearings Panel grant an exception allowing the company additional time to regain compliance. Of course if such a company completes a business combination after receiving a Staff Delisting Determination and/or demonstrates compliance with all applicable initial listing requirements, the combined Company could apply to list pursuant to the normal application review process.

Finally, Listing Rule 5810(c)(1) contains a list of deficiencies that immediately result in a Staff Delisting Determination. Nasdaq proposes to amend Listing Rule 5810(c)(1) to include on this list instances where an Acquisition Company fails to comply with one or more of the requirements set forth in Rule IM-5101-2, including, without limitation, a failure to complete one or more business combinations satisfying the requirements set forth in Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or a failure to meet the requirements for initial listing following a business combination as described in Rule IM-5101-2(d) and (e), are subject to immediate suspension and delisting. This proposed amendment to Listing Rule 5810(c)(1) does not change the deficiency administration process for an Acquisition Company in these circumstances because, as described above, Listing Rule IM-5101-2 already dictates this outcome by requiring an issuance of a Staff Delisting Determination. Nasdaq believes that this proposed rule change provides additional transparency and improves the readability of the rules without changing the substance of the rules.

Nasdaq will make the proposed rule changes described herein operative for Staff Delisting Determination letters based on a failure to satisfy IM-5101-2 issued on or after October 7, 2024. To

⁴ The existing part of the rule that provides that a stay is not available to an Acquisition Company that qualified for listing pursuant to the alternative initial listing requirements in Rule 5406 and that fails to meet the continued listing requirement in Rule 5452(a)(1) would remain and is unchanged by this proposed rule change.

⁵ See Sections 102.06 and 802.01 of the NYSE Listed Company Manual.

that end, Nasdaq proposes to renumber current Listing Rule 5815(a)(1)(B)(ii)c. to Rule 5815(a)(1)(B)(ii)c.1. while providing that this rule applies in the case of a Staff Delisting Determination letter issued before October 7, 2024. New Listing Rule 5815(a)(1)(B)(ii)c.2. implements the changes described above and will provide that it applies in the case of a Staff Delisting Determination letter issued on or after October 7, 2024. This delayed implementation will allow Acquisition Companies time to adjust to the new rules. The delayed implementation will also allow any Acquisition Company that has already received a Staff Delisting Determination letter, or that is expecting one in the near term, to continue under the prior process for which they may have planned.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, Nasdaq believes that the proposal to amend Listing Rule 5815(a)(1)(B)(ii) to provide that a hearing request shall not stay the suspension of the securities from trading when the request is made by an Acquisition Company that (i) failed to complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or (ii) failed to meet the initial listing requirements following a Business Combination is designed to protect investors and the public interest. In particular, this change will prevent continued trading in such company's securities until an independent Hearings Panel reviews the Staff Delisting Determination and determines that continued trading on Nasdaq is appropriate, and will prevent a company from using the benefits of Nasdaq listing and trading to achieve compliance with the requirement to complete a Business Combination or with the initial listing requirements the company did not satisfy following a Business Combination.

Nasdaq also believes that limiting the scope of a Hearings Panel discretion, in

these circumstances, to reverse a delisting decision only where the Hearings Panel determines that the Staff Delisting Determination letter was in error, is appropriate in light of the need to provide transparency and protect prospective investors. The requirement to complete a business combination within 36 months is an investor protection embedded in Listing Rule IM-5101, and the calculation of whether a company complied with that requirement is strictly a factual question. Similarly, the question of whether a Business Combination failed to meet the initial listing requirements is a factual question and limiting the matter before the Hearings Panel to that question, along with the other changes described herein, will prevent a company from using the benefits of Nasdaq listing and trading to achieve compliance with the initial listing requirements it did not satisfy, just like any other previously unlisted company. Moreover, investors in the Acquisition Company and Business Combination continue to be protected because the Business Combination can still submit a new application for initial listing on Nasdaq at any point that it does satisfy all initial listing requirements, notwithstanding the proposed inability of the Panel to grant an exception to allow the company additional time to meet the initial listing requirements.

In addition, Nasdaq believes that the proposed rule change is consistent with Section 6(b)(7) of the Act, which requires, among other things, that the rules of a national securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange, because following the proposed change an Acquisition Company would be able to request a review of the Staff Delisting Determination letter by an independent Hearings Panel and because the Hearings Panel will have the authority to reverse a delisting decision where the Hearings Panel determines that the Staff Delisting Determination letter was in error.

Finally, Nasdaq believes that a proposal to amend Listing Rule 5810(c)(1) to provide that securities of an Acquisition Company that fails to comply with one or more of the requirements set forth in Rule IM-5101-2, including, without limitation, a failure to complete one or more business combinations satisfying the requirements set forth in Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or a failure to meet the

requirements for initial listing following a business combination as described in Rule IM-5101-2(d) and (e), are subject to immediate suspension and delisting, is designed to remove impediments to and perfect the mechanism of a free and open market because this change provides transparency and improves the readability of the rules without changing their substance.

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. The proposed rule would be applied equally to all Acquisition Companies. In addition, the proposed rule change will align the process for suspension and delisting of an Acquisition Company in the circumstances described above with that of the NYSE.⁸

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

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

⁸ See Sections 102.06 and 802.01 of the NYSE Listed Company Manual. See also footnote 3, *supra*.

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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-NASDAQ-2024-038 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-NASDAQ-2024-038. 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-NASDAQ-2024-038 and should be submitted on or before August 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-15907 Filed 7-18-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100535; File No. 4-818]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Nasdaq PHLX LLC

July 15, 2024.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed on July 1, 2024, pursuant to Rule 17d-2 of the Act,² the Financial Industry Regulatory Authority, Inc. ("FINRA") and Nasdaq PHLX LLC ("PHLX") (collectively, "Participating Organizations" or "parties"). This Agreement amends and restates the agreement entered into between FINRA and PHLX approved by the SEC on January 2, 2024, entitled "Agreement between Financial Industry Regulatory Authority, Inc. and Nasdaq PHLX LLC pursuant to Rule 17d-2 under the Securities Exchange Act of 1934," and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory

obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78q(d).

² 15 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

appropriate notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On January 2, 2024, the Commission declared effective the Plan entered into between FINRA and PHLX for allocating regulatory responsibility pursuant to Rule 17d-2.¹¹ The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and PHLX by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every PHLX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to PHLX members that are also members of FINRA and the associated persons therewith (“Certification”).

III. Proposed Amendment to the Plan

On July 1, 2024, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purpose of the Amended Plan is to update the list of Common Rules and to add surveillance and investigation coverage for certain Common Rules specified in Exhibit 1 to the Amended Plan. The text of the proposed Amended Plan is as follows (additions are in italics; deletions are [bracketed]):

* * * * *

Agreement Between Financial Industry Regulatory Authority, Inc. and NASDAQ PHLX LLC Pursuant to Rule 17d-2 Under the Securities Exchange Act of 1934

This Agreement, by and between Financial Industry Regulatory Authority, Inc. (“FINRA”) and Nasdaq PHLX LLC (“PHLX”), is made this [15th] 27th day of [November, 2023] June, 2024 (the “Agreement”), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 17d-2 thereunder, which permits agreements between self-

regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and PHLX may be referred to individually as a “party” and together as the “parties.”

This Agreement amends and restates the agreement entered into between FINRA and PHLX approved by the SEC on January 2, 2024, entitled “Agreement between Financial Industry Regulatory Authority, Inc. and Nasdaq PHLX LLC pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

Whereas, FINRA and PHLX desire to reduce duplication in the examination, surveillance and investigation of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and PHLX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) for its approval.

Now, Therefore, in consideration of the mutual covenants contained hereinafter, FINRA and PHLX hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “*PHLX Rules*” or “*FINRA Rules*” shall mean the rules of PHLX or FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “*Common Rules*” shall mean the PHLX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination, surveillance or investigation for compliance with such provisions and rules would not require FINRA to develop one or more new examination, surveillance or investigation standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member’s activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, PHLX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among Cboe BZX Exchange, Inc., Cboe

BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., Investors’ Exchange LLC and Long-Term Stock Exchange, Inc. approved by the Commission on September 23, 2020, as may be amended from time to time. Common Rules shall not include any provisions regarding: (i) notice, reporting or any other filings made directly to or from PHLX; (ii) incorporation by reference of other PHLX Rules that are not Common Rules; (iii) exercise of discretion in a manner that differs from FINRA’s exercise of discretion including, but not limited to exercise of exemptive authority by PHLX; (iv) prior written approval of PHLX; and (v) payment of fees or fines to PHLX.

(c) “*Dual Members*” shall mean those PHLX members that are also members of FINRA and the associated persons therewith.

(d) “*Effective Date*” shall [have the meaning set forth in paragraph 13] be the date this Agreement is approved by the Commission.

(e) “*Enforcement Responsibilities*” shall mean the conduct of appropriate proceedings, in accordance with the FINRA Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the FINRA Code of Procedure and FINRA’s sanction guidelines.

(f) “*Regulatory Responsibilities*” shall mean the examination, surveillance and investigation responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto. [The term “Regulatory Responsibilities” shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Dual Members with Rule 14e-4 of the Exchange Act (“Rule 14e-4”), with a focus on the standardized call option provision of Rule 14e-4(a)(1)(ii)(D).]

2. Regulatory Responsibilities. FINRA shall assume Regulatory

¹¹ See Securities Exchange Act Release No. 99260 (January 2, 2024), 89 FR 981 (January 8, 2024).

Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, PHLX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA Rules (the "Certification"). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the PHLX Rules or FINRA Rules, PHLX shall submit an updated list of Common Rules to FINRA for review which shall add PHLX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete PHLX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be PHLX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibilities" does not include, and PHLX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the "Retained Responsibilities"):

3.(a) [S]urveillance, examination, investigation and enforcement with respect to trading activities or practices involving PHLX's own marketplaces;

(b) registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) any PHLX Rules that are not Common Rules, except for PHLX Rules for any PHLX member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as an outbound router for PHLX and is a member of FINRA ("Router Member") as provided in paragraph 5. As of the date of this Agreement, Nasdaq Execution Services, LLC is the only Router Member.

4. No Charge. There shall be no charge to PHLX by FINRA for performing the Regulatory Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide PHLX

with ninety (90) days advance written notice in the event FINRA decides to impose any charges to PHLX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, PHLX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. [Reassignment of Regulatory Responsibilities] *Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such [action] *statute, rule or order* is inconsistent with this Agreement, [such action] *the statute, rule or order* shall supersede the provision(s) hereof to the extent necessary for them to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. Notification of Violations.

(a) In the event that FINRA becomes aware of apparent violations of any PHLX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify PHLX of those apparent violations for such response as PHLX deems appropriate. With respect to apparent violations of any PHLX Rules by any Router Member, FINRA shall not make referrals to PHLX pursuant to this paragraph 5. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.

(b) In the event that PHLX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, PHLX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA [as provided] *consistent with the provisions* in this Agreement. [Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.]

(c) Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided herein before; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on PHLX, PHLX may in its discretion

assume concurrent jurisdiction and responsibility.

(d) *Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.*

7. Continued Assistance.

(a) FINRA shall make available to PHLX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish PHLX any information it obtains about Dual Members which reflects adversely on their financial condition. PHLX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

7. Dual Member Applications.

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of partners, officers, registered personnel and any other person required to be approved by the PHLX Rules and FINRA Rules or associated with Dual Members thereof. Upon request, FINRA shall advise PHLX of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the PHLX Rules and FINRA Rules.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 7(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued

applicability of the person to whom such disqualification applies and keep PHLX advised of its actions in this regard for such subsequent proceedings as PHLX may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or an associated person therewith or other persons required to register or qualify by examination meets the PHLX requirements for general membership or for specified categories of membership or participation in PHLX, such as PSX Market Maker, Equities ECN, Order Entry Firm, or any similar type of PHLX membership or participation that is created after this Agreement is executed. FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 7(d), including termination or limitation on activities, of a member or a participant of PHLX, or a person associated with, or requesting association with, a member or participant of PHLX.

8. Branch Office Information. FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise PHLX of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

9. Customer Complaints. PHLX shall forward to FINRA copies of all customer complaints involving Dual Members received by PHLX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. Advertising. FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. No Restrictions on Regulatory Action. *Notwithstanding anything else herein and to the contrary, except for paragraph 5(a), [N]othing contained in this Agreement shall restrict or in any way encumber the right of either FINRA or PHLX [party] to conduct its own independent or concurrent*

investigation, examination or enforcement proceeding of or against Dual Members of the *Common Rules*, as either [party] *FINRA or PHLX*, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by PHLX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 3.

[13. Effective Date. This Agreement shall be effective upon approval of the Commission.]

13[4]. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, PHLX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this paragraph 13[4] shall interfere with a party's right to terminate this Agreement as set forth herein.

14[5]. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

15[6]. Limitation of Liability. Neither FINRA nor PHLX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or PHLX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or PHLX with respect to any

of the responsibilities to be performed by each of them hereunder.

16[7]. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and PHLX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve PHLX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

17[8]. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

18[9]. Separate Agreement. This Agreement is wholly separate from *any other 17d-2 agreement where FINRA and PHLX are parties, including but not limited to*, (1) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among Cboe BZX Exchange, Inc., BOX Exchange, LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, NYSE American LLC, NYSE Arca, Inc., The Nasdaq Stock Market, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Nasdaq GEMX, LLC, Cboe EDGX Exchange, Inc., Nasdaq MRX, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, and MEMX LLC [C]C approved by the Commission on October 18, 2022 *concerning options related sales-practice matters* [involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options, index warrants, currency index warrants and currency warrants or] *and* (2) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The Nasdaq Stock Market LLC, BOX Exchange LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, and

MEMX LLC approved by the Commission on November 23, 2022 involving options-related market surveillance matters and such agreements as may be amended from time to time.

19[20]. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

Exhibit 1

PHLX Certification of Common Rules

PHLX hereby certifies that the requirements contained in the rules listed below for PHLX are identical to, or substantially similar to, the comparable FINRA Rules, *Exchange Act provisions* or SEA[C] Rules identified (“Common Rules”).

Common Rules shall not include provisions regarding (i) notice, reporting

or any other filings made directly to or from PHLX, (ii) incorporations by reference to other PHLX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA’s exercise of discretion including, but not limited to exercise of exemptive authority, by PHLX, (iv) prior written approval of PHLX, and (v) payment of fees or fines to PHLX.

PHLX Rule	FINRA Rule(s), Exchange Act Provision(s), or SEA[C] Rule(s)[ULE]
General 2, Section 11 Contact Information Requirements #	4517. Member Filing and Contact Information Requirements.
General 3, Rule 1002(b) Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction #.	FINRA By-Laws Article III, Sec. 1; FINRA By-Laws Article III, Sec. 3(a) and (b).
General 3, Rule 1002(d). Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction #.	3110(a)(3) Supervision and SM .01 and .02. Supervision * and FINRA By-Laws Article IV, Sec. 8.
General 3, Rule 1012(c)(1). Duty to Ensure the Accuracy, Completeness, and Current Nature of Membership Information Filed with the Exchange #.	1122. Filing of Misleading Information as to Membership or Registration; FINRA By-Laws Article IV, Sec. 1(c).
General 4, Section 1, 1210. Registration Requirements #	1210. Registration Requirements; FINRA By-Laws, Article V, Sec. 1; FINRA By-Laws, Article V, Sec. 2; FINRA By-Laws, Article V, Sec. 3.
General 4, Section 1, 1220. Registration Categories 1#	1220. Registration Categories.
General 4, Section 1, Rule 1230(1)–(2)(D) and Supplementary Material .01. Associated Persons Exempt from Registration #.	1230. Associated Persons Exempt from Registration.
General 4, Section 1, 1240. Continuing Education Requirements 2#	1240. Continuing Education.
General 4, Section 1, 1250. Electronic Filing Requirements for Uniform Forms #.	1010. Electronic Filing Requirements for Uniform Forms.
General 9, Section 1(b). Manipulative Operations and General 9, Section 2(b)(i) Customers’ Securities and Excessive Trading of Members.	2020. Use of Manipulative, Deceptive or Other Fraudulent Devices *; 6140 Other Trading Practices; 5350 Stop Orders; 6130 Transactions Related to Initial Public Offerings.
General 9, Section 1(c)(1). Standards of Commercial Honor and Principles of Trade.	2010. Standards of Commercial Honor and Principles of Trade.*
General 9, Section 1(a). Prohibition Against Trading Ahead of Customer Orders.	5320. Prohibition Against Trading Ahead of Customer Orders.
General 9, Section 1(c)(2). Anti-Intimidation/Coordination	5240. Anti-Intimidation/Coordination.
General 9, Section 1(c)(3). Conduct Inconsistent with Just and Equitable Principles of Trade.	5290. Order Entry and Execution Practices.
General 9, Section 2(a). Customers’ Securities and Excessive Trading of Members.	2150(a). Improper Use of Customers’ Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts.
General 9, Section 11. Best Execution and Interpositioning	5310. Best Execution and Interpositioning.
General 9, Section 19. Discretionary Accounts	3260. Discretionary Accounts.
General 9, Section 20. Supervision	3110. Supervision.
General 9, Section 30. Books and Records	4511. General Requirements.
General 9, Section 35. Nonregistered Foreign Finders	Rule 2040(c). Payments to Unregistered Persons.
General 9, Section 39. Fidelity Bonds	4360. Fidelity Bonds.
General 9, Section 58. Advertisements, Market Letters, Research Reports and Sales Literature.	2210. Communications with the Public.
Options 6E, Section 1(a). Maintenance, Retention and Furnishing of Books, Records and Other Information #.	4511(a). General Requirements.
Options 10, Section 7(g) and (h).# Supervision of Accounts	3120. Supervisory Control System
Options 10, Section 10. Confirmations to Customers	3130. Annual Certification of Compliance and Supervisory Processes.
Options 10, Section 17. Profit Sharing	2232. Customer Confirmations.
General 9, Section 11. Best Execution and Interpositioning	2150(c). Improper Use of Customers’ Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts.
General 9, Section 1(a) Prohibition Against Trading Ahead of Customer Orders.	5310. Best Execution and Interpositioning.**
Equity 2, Section 5(d) Locked and Crossed Markets	5320. Prohibition Against Trading Ahead of Customer Orders.**
	6240. Prohibition from Locking or Crossing Quotations in NMS Stocks.**

¹ FINRA shall only have Regulatory Responsibilities regarding General 4, Section 1, 1200 to the extent that PHLX recognizes the same categories of limited principal and representative registration.

² FINRA Rule 1240.01 allows for other persons to make their election to participate in the continuing education program under Rule 1240(c) either (1) between January 31, 2022, and March 15, 2022; or (2) between March 15, 2023, and December 31, 2023. In contrast, Supplementary Material .02 of Nasdaq PHLX General 4, Section 1, 1240 allows for other persons to make their election to participate in the continuing education program under PHLX General 4, Section 1, 1240(c) either (1) by March 15, 2022, or (2) between July 6, 2023, and December 31, 2023. Therefore, FINRA shall not have Regulatory Responsibilities regarding election, made by other persons under General 4, Section 1, 1240(c) between March 15, 2023, and July 5, 2023.

[In addition, the following provisions shall be part of this 17d–2 Agreement:]

The following provisions are covered by the Agreement between the Parties:

- SEC '34 Act Section 28(e)—on Existing Law
- [SEC '34 Act] SEA Rule 10b-10—Confirmation of Transactions
- SEA Rule 200 of Regulation SHO—Definition of Short Sales and Marking Requirements **
- SEA Rule 201 of Regulation SHO—Circuit Breaker **
- [SEC '34 Act] SEA Rule 203 of Regulation SHO—Borrowing and Delivery Requirements
- SEA Rule 204 of Regulation SHO—Close-Out Requirements **
- SEA Rule 101 of Regulation M—Activities by Distribution Participants **
- SEA Rule 102 of Regulation M—Activities by Issuers and Selling Security Holders During a Distribution **
- SEA Rule 103 of Regulation M—Nasdaq Passive Market Making **
- SEA Rule 104 of Regulation M—Stabilizing and Other Activities in Connection with an Offering **
- SEA Rule 105 of Regulation M—Short Selling in Connection With a Public Offering **
- SEA Rule 604 of Regulation NMS—Display of Customer Limit Orders **
- [SEC '34 Act] SEA Rule 606 of Regulation NMS—Disclosure of Order Routing Information
- [SEC '34 Act] SEA Rule 607 of Regulation NMS Customer Account Statements]
- SEA Rule 610(d) of Regulation NMS—Locking or Crossing Quotations **
- SEA Rule 611 of Regulation NMS—Order Protection Rule
- SEA Rule 10b-5—Employment of Manipulative and Deceptive Devices *
- SEA Rule 17a-3/17a-4—Records to Be Made by Certain Exchange Members, Brokers and Dealers/Records to Be Preserved by Certain Exchange Members, Brokers and Dealers *
- SEA Rule 14e-4—Prohibited Transactions in Connection with Partial Tender Offers [^]
- SEA Rule 14e-4(a)(1)(ii)(D)—Prohibited Transactions in Connection with Partial Tender Offers (with a focus on the standardized call option provision) **

[^] FINRA shall perform surveillance, investigation, and Enforcement Responsibilities for SEA Rule 14e-4(a)(1)(ii)(D).]

** In addition to performing examinations and Enforcement Responsibilities as provided in this Agreement for the double star rules, FINRA shall also perform the surveillance and investigation responsibilities for the double star rules. These rules may be cited by FINRA in both the context of this Agreement and the Regulatory Services Agreement between FINRA and PHLX.

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., MEMX, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange, LLC, NYSE American LLC, NYSE Arca Inc., Investors' Exchange LLC, and the Long-Term Stock Exchange, Inc. as approved by the SEC on September 23, 2020, as may be amended from time to time.

^ FINRA shall perform the surveillance and investigation responsibilities for these rules. The examination responsibility for these rules is covered by a separate 17d-2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and Long-Term Stock Exchange, Inc. as approved by the SEC on June 10, 2020 concerning covered Regulation NMS and Consolidated Audit Trail Rules, as may be amended from time to time.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4-818 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 4-818. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA and PHLX. 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 No. 4-818 and should be submitted on or before August 9, 2024.

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act¹² and Rule 17d-2(c) thereunder¹³ in that the proposed Amended Plan is necessary or appropriate in the public interest and

for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by both FINRA and PHLX. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because PHLX and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, PHLX and FINRA have allocated regulatory responsibility for those PHLX rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan,

¹² 15 U.S.C. 78q(d).

¹³ 17 CFR 240.17d-2(c).

FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, PHLX will review the Certification at least annually, or more frequently if required by changes in either the rules of PHLX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add PHLX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete PHLX rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be PHLX rules that qualify as common rules.¹⁴ FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all PHLX rules that are substantially similar to the rules of FINRA for Common Members of PHLX and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to PHLX rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a PHLX rule to the Certification that is not substantially similar to a FINRA rule; delete a PHLX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a PHLX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.¹⁵

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to update the list of Common Rules and to add surveillance and investigation coverage for certain Common Rules specified in Exhibit 1 to the Amended Plan. By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.¹⁶ Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4-818. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4-818, between the FINRA and PHLX, filed pursuant to Rule 17d-2 under the Act, hereby is approved and declared effective.

It is further ordered that PHLX is relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4-818.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Deputy Secretary.

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responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

¹⁶ See *supra* note 11 (citing to Securities Exchange Act Release No. 99260).

¹⁷ 17 CFR 200.30-3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100531; File No. SR-BX-2024-022]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Equity 7, Section 118(a)

July 15, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 1, 2024, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s pricing schedule at Equity 7, Section 118(a), as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide an additional calculation for purposes of determining

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁴ See paragraph 2 of the Amended Plan.

¹⁵ The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear

whether a member qualifies for discounts to fees set forth in Equity 7, Section 118(f) that pertain to providing liquidity.

The Exchange operates on the “taker-maker” model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. In Equity 7, Section 118(f), the Exchange sets forth its Qualified Market Maker (“QMM”) Program, which provides supplemental incentives to members that meet certain quality standards in acting as market makers for securities on the Exchange. Pursuant to Equity 7, Section 118(f)(2)(i), to the extent that the Exchange designates a member to be a QMM because it quotes at the NBBO at least 10% of the time during Market Hours in an average of at least 325 securities per day during a month and provides add volume of at least 0.07% of total Consolidated Volume during a month, then the Exchange will provide the QMM with a discount of \$0.0001 per share executed with respect to the fees that the QMM otherwise incurs, pursuant to Section 118(a), for entering displayed orders in securities priced at \$1 or more that provide liquidity to the Exchange.

Members may qualify for the discount under the QMM Program based, in part, upon the volume of their activities on the Exchange as a percentage of total “Consolidated Volume.” Pursuant to Equity 7, Section 118(a), the term “Consolidated Volume” means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member’s trading activity, the following are excluded from both total Consolidated Volume and the member’s trading activity: (1) the date of the annual reconstitution of the Russell Investments Indexes; (2) the dates on which stock options, stock index options, and stock index futures expire (*i.e.*, the third Friday of March, June, September, and December); (3) the dates of the rebalance of the MSCI Equities Indexes (*i.e.*, on a quarterly basis); (4) the dates of the rebalance of the S&P 400, S&P 500, and S&P 600 Indexes (*i.e.*, on a quarterly basis); and (5) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes.

Section 118(a) also provides that, for purposes of calculating a member’s qualifications for fees that pertain to providing liquidity set forth in this Section 118(a), 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 increasing the distinct qualifying volume percentage thresholds, as set forth in this Section 118(a), by 10%. The Exchange will then assess which of these two calculations would qualify the member for the most advantageous fees for the month and then it will apply those to the member. With this proposal, the Exchange proposes to extend such calculations of volume and Consolidated Volume for purposes of determining whether a member qualifies for discounts to fees set forth in Equity 7, Section 118(f) that pertain to providing liquidity. To effectuate this change, the Exchange proposes to modify Equity 7, Section 118(a) by adding Section 118(f) in the description of the applicability of such calculations. The revised sentence would state, “For purposes of calculating a member’s qualifications for fees that pertain to providing liquidity set forth in Section 118(a) and Section 118(f), the Exchange will calculate a member’s volume and total Consolidated Volume twice.” In addition, to effectuate the change, the Exchange proposes to remove the reference to Section 118(a) in the following language: “while also increasing the distinct qualifying volume percentage thresholds, as set forth in this Section 118(a), by 10%.” The Exchange proposes to remove such reference to Section 118(a) because the language is no longer only applicable to Section 118(a). The Exchange believes that it is unnecessary to point to the relevant sections for the distinct qualifying volume percentage thresholds as it is implied that the applicable percentage thresholds are in the same sections where the applicable fees or fee discounts are found (*i.e.*, either in Section 118(a) or Section 118(f), as applicable). Lastly, the Exchange proposes to specify that the two calculations would be assessed to determine the most advantageous fees or discounts to fees.

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 “Consolidated Volume” has

been a reasonable baseline for determining tiered incentives for members 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 members’ qualifications for pricing tiers/incentives because such qualifications depend members upon achieving threshold percentages of volumes as a percentage of Consolidated Volume, and an extraordinary rise in sub-dollar volume stands to elevate Consolidated Volume. As a result, members may find it more difficult, if not practically impossible, to qualify for or to continue to qualify for their existing pricing 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 its members that execute significant dollar plus volumes on the Exchange to fail to achieve or to lose their existing pricing incentives for such volumes due to anomalous behavior that is extraneous to them. Therefore, the Exchange wishes to amend its Rules to help avoid extraordinary spikes in sub-dollar volumes from adversely affecting a member’s qualification of pricing incentives for their dollar plus stock executions.

Although the Exchange wishes to avoid extraordinary spikes in sub-dollar volumes from adversely affecting a member’s qualification of pricing incentives for their dollar plus stock executions, the Exchange proposes to include certain limits on the proposal to efficiently allocate the Exchange’s limited resources for pricing tiers/incentives. Specifically, as noted above, the Exchange proposes to apply the calculation excluding sub-dollar volumes to those incentives in Section 118(f) that pertain to providing liquidity. In addition, as noted above, the Exchange proposes to increase the distinct qualifying volume percentage thresholds set forth in Section 118(f) by 10% for purposes of the proposed calculation excluding sub-dollar volumes.³ The Exchange wishes to

³ For example, to the extent that the Exchange designates a member to be a QMM because it quotes at the NBBO at least 10% of the time during Market Hours in an average of at least 325 securities per day during a month and provides add volume of at least 0.07% of total Consolidated Volume during a month, then the Exchange will provide the QMM

impose such limitations in order to limit the cost impact on the Exchange, while still providing some relief to members in months with extraordinary spikes in sub-dollar volumes. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ 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 Exchange's proposed changes to its pricing schedule are reasonable in several respects. 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. The fact that this market is competitive has 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'. . . ."⁶

with a discount of \$0.0001 per share executed with respect to the fees that the QMM otherwise incurs, pursuant to Section 118(a), for entering displayed orders in securities priced at \$1 or more that provide liquidity to the Exchange. See Equity 7, Section 118(f)(2)(i). Under the proposal, in addition to calculating the member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than \$1, the distinct qualifying volume percentage threshold would be increased by 10%. Therefore, for purposes of this example, in order to qualify for the fee discounts using volumes excluding sub-dollar activity, the member would need to provide add volume of at least 0.077% of total Consolidated Volume during a month (*i.e.*, 0.07% + (10%)(0.07%)).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

⁶ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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."⁷

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 and market quality programs to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

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.

The Exchange believes that the proposal is reasonable and equitable because, in its absence, members 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 members 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 provide a means for members that provide liquidity to avoid such a penalty by determining whether calculating member volume and total Consolidated Volume to include or exclude sub-dollar volume⁸ would result in Exchange members qualifying for the most advantageous charges, and then applying the calculations that would result in the incentives for

59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

⁸ As noted above, in considering whether a member meets qualifying incentive criteria using the proposed calculation excluding sub-dollar volumes, the distinct qualifying volume percentage thresholds would be increased by 10%.

providing liquidity that are most advantageous to each member. The Exchange believes it is reasonable to limit the proposal by applying the proposed calculation to incentives that pertain to providing liquidity set forth in Equity 7, Section 118(f) and increasing the distinct qualifying volume percentage thresholds by 10% when using the proposed calculation excluding sub-dollar volumes because the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives. 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 member and the Exchange will apply the proposed calculation to all similarly situated members.

Those participants that are dissatisfied with the changes to the Exchange's pricing schedule are free to shift their order flow to competing venues that provide more favorable fees or generous incentives.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposal to help avoid pricing disadvantages due to anomalous spikes in sub-dollar volumes and is not intended to provide a competitive advantage to any particular member. The Exchange also intends for its proposal to reallocate its limited resources more efficiently and to align them with the Exchange's overall mix of objectives. The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposal is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, 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. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even the largest U.S. equities exchange by volume has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 40% of industry volume.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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 Act.⁹

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-BX-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-BX-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 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-BX-2024-022 and should be submitted on or before August 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matther DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-15911 Filed 7-18-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100536; File No. 4-575]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc., The Nasdaq Stock Market LLC, and Nasdaq BX, Inc.

July 15, 2024.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed on July 1, 2024, pursuant to Rule 17d-2 of the Act,² by the Financial Industry Regulatory Authority, Inc. ("FINRA"), The Nasdaq Stock Market LLC ("Nasdaq"), and Nasdaq BX, Inc. ("BX") (collectively, "Participating Organizations" or "parties"). This Agreement amends and restates the agreement entered into between FINRA, Nasdaq, and BX approved by the SEC on September 23, 2021, entitled "Agreement Among Financial Industry Regulatory Authority, Inc., The Nasdaq Stock Market LLC and Nasdaq BX, Inc. pursuant to Rule 17d-2 under the Securities Exchange Act of 1934," and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules,

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.⁸ Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.¹⁰ Rule 17d–2 permits SROs to propose

joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On January 8, 2009, the Commission declared effective the Plan entered into between FINRA and the Boston Stock Exchange, Incorporated (n/k/a Nasdaq BX, Inc. (“BX”)) for allocating regulatory responsibility pursuant to Rule 17d–2.¹¹ The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and BX by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every BX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to BX members that are also members of FINRA and the associated persons therewith (“Certification”). On September 23, 2021, the Commission declared effective an amendment to the Plan to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act, to reflect the name change of Boston Stock Exchange, Incorporated to Nasdaq BX, Inc., and to add Nasdaq as a Participant to the Plan.¹²

III. Proposed Amendment to the Plan

On July 1, 2024, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purpose of the Amended Plan is to: (i) update the list of Common Rules; (ii) add surveillance and investigation coverage for certain Common Rules specified in Exhibit 1 to the Amended Plan; (iii) to reflect that, for Router

Members, FINRA will retain regulatory responsibility for Nasdaq and BX rules that are not Common Rules; and (iv) to reflect that FINRA will not make referrals to Nasdaq and BX for apparent violations of any Nasdaq or BX Rules by any Router Member. The text of the proposed Amended Plan is as follows (additions are in *italics*; deletions are [bracketed]):

* * * * *

AGREEMENT AMONG FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., THE NASDAQ STOCK MARKET LLC AND NASDAQ BX, INC. PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and among the Financial Industry Regulatory Authority, Inc. (“FINRA”), The Nasdaq Stock Market LLC (“Nasdaq”) and Nasdaq BX, Inc. (“BX”), is made this [30th]1st day of [August, 2021] July, 2024 (the “Agreement”), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 17d–2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA, Nasdaq and BX may be referred to individually as a “party” and together as the “parties.”

This Agreement amends and restates the agreement entered into between FINRA, Nasdaq and BX approved by the SEC on September 23, 2021 [on December 5, 2008], entitled “Agreement [between] among Financial Industry Regulatory Authority, Inc., The Nasdaq Stock Market LLC and [Boston Stock Exchange, Incorporated] Nasdaq BX, Inc. pursuant to Rule 17d–2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter [and the agreement entered into between FINRA and Nasdaq approved by the SEC on July 12, 2006, entitled “Agreement between the National Association of Securities Dealers, Inc. and The Nasdaq Stock Market LLC Pursuant to Section 17(d) and Rule 17d–2,” and any subsequent amendments thereafter].

Whereas, FINRA, Nasdaq and BX desire to reduce duplication in the examination, *surveillance and investigation* of their Common Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA, Nasdaq and BX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the U.S. Securities and Exchange Commission

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹¹ See Securities Exchange Act Release No. 59218 (January 8, 2009), 74 FR 2143 (January 14, 2009).

¹² See Securities Exchange Act Release No. 93114 (September 23, 2021), 86 FR 53996 (September 29, 2021).

(the “SEC” or “Commission”) for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA, Nasdaq and BX hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “*Nasdaq Rules*”, “*BX Rules*” or “*FINRA Rules*” shall mean: (i) the rules of Nasdaq, (ii) the rules of BX, or (iii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “*Common Rules*” shall mean Nasdaq Rules and BX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination, *surveillance or investigation* for compliance with such provisions and rules would not require FINRA to develop one or more new examination, *surveillance or investigation* standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Common Member’s activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, Nasdaq, BX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX, LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., Investors Exchange LLC and Long-Term Stock Exchange, Inc. approved by the Commission on September 23, 2020, *as may be amended from time to time*. Common Rules shall not include any provisions regarding: (i) notice, reporting or any other filings made directly to or from Nasdaq or BX; (ii) incorporation by reference of other Nasdaq or BX Rules that are not Common Rules; (iii) exercise of discretion in a manner that differs from FINRA’s exercise of discretion including, but not limited to exercise of

exemptive authority by Nasdaq or BX; (iv) prior written approval of Nasdaq or BX; and (v) payment of fees or fines to Nasdaq or BX.

(c) “*Common Members*” shall mean those members of FINRA and a member of at least one of Nasdaq or BX and the associated persons therewith.

(d) “*Effective Date*” shall [have the meaning set forth in paragraph 13] *be the date this Agreement is approved by the Commission*.

(e) “*Enforcement Responsibilities*” shall mean the conduct of appropriate proceedings, in accordance with FINRA’s Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA’s Code of Procedure and sanctions guidelines.

(f) “*Regulatory Responsibilities*” shall mean the examination, *surveillance and investigation* responsibilities and Enforcement Responsibilities relating to compliance by the Common Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto. [The term “*Regulatory Responsibilities*” shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Common Members with Rule 14e–4 of the Securities Exchange Act (“*Rule 14e–4*”), with a focus on the standardized call option provision of Rule 14e–4(a)(1)(ii)(D).]

2. Regulatory Responsibilities. FINRA shall assume Regulatory Responsibilities for Common Members. Attached as *Exhibit 1* to this Agreement and made part hereof, Nasdaq and BX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are Nasdaq Rules and BX Rules are substantially similar to the corresponding FINRA Rules (the “*Certification*”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of Nasdaq, BX or FINRA, Nasdaq and BX shall submit an updated list of Common Rules to FINRA for review which shall add Nasdaq Rules and BX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete Nasdaq Rules and BX Rules included in the current

list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be Nasdaq Rules and BX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules, as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “*Regulatory Responsibilities*” does not include, and Nasdaq and BX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the “*Retained Responsibilities*”) the following:

(a) surveillance, examination, investigation and enforcement with respect to trading activities or practices involving Nasdaq’s or BX’s own marketplaces;

(b) registration pursuant to Nasdaq’s or BX’s applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) discharge of Nasdaq’s or BX’s duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any Nasdaq Rules and BX Rules that are not Common Rules, *except for Nasdaq Rules and BX Rules for any Nasdaq member or BX member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as an outbound router for Nasdaq or BX, and is a member of FINRA (“Router Member”) as provided in paragraph 5. As of the date of this Agreement, the only Router Member is Nasdaq Execution Services, LLC.*

3. No Charge. There shall be no charge to Nasdaq and BX by FINRA for performing the Regulatory Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide Nasdaq and BX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to Nasdaq and BX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, Nasdaq and BX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA’s Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

4. [Reassignment of Regulatory Responsibilities] *Applicability of Certain Laws, Rules, Regulations or*

Orders. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission [reassigning Regulatory Responsibilities between self-regulatory organizations]. To the extent such [action] *statute, rule or order* is inconsistent with this Agreement, *the statute, rule or order* [such action] shall supersede the provision(s) hereof to the extent necessary for them to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

5. Notification of Violations.

(a) In the event that FINRA becomes aware of apparent violations of any Nasdaq Rules or BX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify Nasdaq and BX of those apparent violations for such response as Nasdaq and BX deem[s] appropriate. *With respect to apparent violations of any Nasdaq Rules or BX Rules by any Router Member, FINRA shall not make referrals to Nasdaq and BX pursuant to this paragraph 5. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.*

(b) In the event that Nasdaq or BX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, Nasdaq and BX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA [as provided] *consistent with the provisions* in this Agreement. [Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.]

(c) Apparent violations of Common Rules[, FINRA Rules, federal securities laws, and rules and regulations thereunder,] shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Common Member is the subject of an investigation relating to a transaction on Nasdaq or BX, Nasdaq and BX, at each party's discretion, *may* assume concurrent jurisdiction and responsibility.

(d) *Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.*

6. Continued Assistance.

(a) FINRA shall make available to Nasdaq and BX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities

hereunder with respect to the Common Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish Nasdaq and BX any information it obtains about Common Members which reflects adversely on their financial condition. Nasdaq and BX shall make available to FINRA any information coming to their attention that reflects adversely on the financial condition of Common Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

7. Common Member Applications.

(a) Common Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the rules of Nasdaq, BX and FINRA or associated with Common Members thereof. Upon request, FINRA shall advise Nasdaq and BX of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the rules of Nasdaq, BX and FINRA.

(b) Common Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 7(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Common Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep Nasdaq and BX advised of its actions in this regard for such subsequent proceedings as Nasdaq and BX may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership

application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination meets the Nasdaq or BX requirements for general membership or for specified categories of membership or participation in Nasdaq or BX, such as Equities Market Maker, Equities ECN, Order Entry Firm, or any similar type of Nasdaq or BX membership or participation that is created after this Agreement is executed. FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 7(d), including termination or limitation on activities, of a member or a participant of Nasdaq or BX, or a person associated with, or requesting association with, a member or participant of Nasdaq or BX.

8. Branch Office Information. FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Common Members and any other applications required of Common Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise Nasdaq and BX of the opening, address change and termination of branch and main offices of Common Members and the names of such branch office managers.

9. Customer Complaints. Nasdaq and BX shall forward to FINRA copies of all customer complaints involving Common Members received by Nasdaq and BX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. Advertising. FINRA shall assume responsibility to review the advertising of Common Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. No Restrictions on Regulatory Action. *Notwithstanding anything else herein and to the contrary, except for paragraph 5(a), [N]othing* contained in this Agreement shall restrict or in any way encumber the right of either *FINRA, or Nasdaq or BX, [party]* to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Common Members *of the Common Rules*, as either [party] *FINRA, or*

Nasdaq or *BX*, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by Nasdaq, BX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 3.

[13. Effective Date. This Agreement shall be effective upon approval of the Commission.]

13[4]. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, Nasdaq, BX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 1[4]3 shall interfere with a party's right to terminate this Agreement as set forth herein.

14[5]. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

15[6]. Limitation of Liability. None of the parties nor any of their respective directors, governors, officers or employees shall be liable to any other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by any party and caused by the willful misconduct of

another party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by any party hereto with respect to any of the responsibilities to be performed by them hereunder.

16[7]. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA, Nasdaq and BX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve Nasdaq and BX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

17[8]. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

18[9]. Separate Agreement. This Agreement is wholly separate from any other 17d-2 agreement where FINRA, NASDAQ and BX are parties, including but not limited to, (1) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among [NYSE American LLC,] Cboe BZX Exchange, Inc., *BOX Exchange, LLC*, [the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc.,] Cboe Exchange, Inc., *Cboe C2 Exchange, Inc.*, Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., [NYSE Arca, Inc., The Nasdaq Stock Market LLC, BOX Exchange LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC,] Miami International Securities Exchange, LLC, *NYSE American LLC*, *NYSE Arca, Inc.*, *The Nasdaq Stock Market LLC*, *Nasdaq BX, Inc.*, *Nasdaq PHLX LLC*, Nasdaq GEMX, LLC, *Cboe EDGX Exchange, Inc.*, Nasdaq MRX, LLC, MIAx PEARL, LLC, [and] MIAx Emerald, LLC and *MEMX LLC* approved by the Commission on [February 12, 2019] *October 18, 2022 concerning options related sales-practice matters* [involving the allocation of regulatory responsibilities

with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options, index warrants, currency index warrants and currency warrants or] and (2) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The Nasdaq Stock Market LLC, BOX Exchange LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAx PEARL, LLC, [and] MIAx Emerald, LLC, and *MEMX LLC* approved by the Commission on [February 11, 2019] *November 23, 2022* involving options-related market surveillance matters and such agreements as may be amended from time to time.

19[20]. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

Exhibit 1

NASDAQ and BX Rules Certification for 17d-2 Agreement With FINRA

The Nasdaq Stock Market LLC ("Nasdaq") and Nasdaq BX, Inc. ("BX") hereby certify that the requirements contained in the Nasdaq and BX rules listed below are identical to, or substantially similar to, the FINRA [r]ules, *Exchange Act provisions* or *SEA rules identified* ("Common Rules"). [noted below:]

Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from Nasdaq or BX, (ii) incorporation by reference to other Nasdaq or BX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion, including but not limited to exercise of exemptive authority, by Nasdaq or BX, (iv) prior written approval of Nasdaq or BX, and (v) payment of fees or fines to Nasdaq or BX.

BX rule	Nasdaq rule	FINRA rule(s), <i>exchange action provision(s)</i> , or <i>SEA rule(s)</i>
General 2, Section 15. Business Continuity Plans and General 2, <i>Section 16. Emergency Contact Information</i> .*	General 2, Section 15. Business Continuity Plans and General 2, <i>Section 16. Emergency Contact Information</i> .*	4370. Business Continuity Plans and <i>Emergency Contact Information</i> .

BX rule	Nasdaq rule	FINRA rule(s), exchange action provision(s), or SEA rule(s)
General 2, Section 10. Executive Representative; <i>General 2, Section 11. Contact Information Requirements</i> #.	General 2, Section 10. Executive Representative; <i>General 2, Section 11. Contact Information Requirements</i> #.	4517. Member Filing and Contact Information Requirements.
General 3, Rule 1002(b) Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction #.	General 3, Rule 1002(b) Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction #.	FINRA Bylaws Article III, Sec. 1.
General 3, Rule 1002(d). Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction #.	General 3, Rule 1002(d). Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction #.	3110(a)(3) Supervision and SM .01 and .02 Supervision* and FINRA By-Laws Article IV, Sec. 8.
General 3, 1012(c)(1). Duty to Ensure the Accuracy, Completeness, and Current Nature of Membership Information Filed with the Exchange #.	General 3, Rule 1012(c)(1). Duty to Ensure the Accuracy, Completeness, and Current Nature of Membership Information Filed with the Exchange #.	1122. Filing of Misleading Information as to Membership or Registration; FINRA Bylaws Article IV, [s]Sec. 1(c) of the By-Laws.
General 4, Section 1, 1210. Registration Requirements #.	General 4, Section 1, 1210. Registration Requirements #.	1210. Registration Requirements.
General 4, Section 1, 1220. Registration Categories ¹ #.	General 4, Section 1, 1220. Registration Categories ² [1]#.	1220. Registration Categories.
General 4, Section 1, 1220.06. Eliminated Registration Categories ¹ .	General 4, Section 1, 1220.06. Eliminated Registration Categories.	1220.06. Eliminated Registration Categories.
General 4, Section 1, Rule 1230(1)(2)(D) Associated Persons Exempt from Registration #.	General 4, Section 1, Rule 1230(1)–(2)(D) Associated Persons Exempt from Registration #.	1230. Associated Persons Exempt from Registration.
General 4, Section 1, 1240. Continuing Education Requirements.	General 4, Section 1, 1240. Continuing Education Requirements ³ .	1240. Continuing Education Requirements.
General 4, Section 1, 1250. Electronic Filing Requirements for Uniform Forms #.	General 4, Section 1, 1250. Electronic Filing Requirements for Uniform Forms #.	1010. Electronic Filing Requirements for Uniform Forms and FINRA Bylaws Article V, Section 2.
[Equity 5, Section 1. Definitions]	[Equity 5, Section 1. Definitions]	[7410. Definitions].
[Equity 5, Section 2. Applicability]	[Equity 5, Section 2. Applicability]	[7420. Applicability].
[Equity 5, Section 3. Synchronization of Member Business Clocks].	[Equity 5, Section 3. Synchronization of Member Business Clocks].	[7430. Synchronization of Member Business Clocks].
[Equity 5, Section 4. Recording of Order Information].	[Equity 5, Section 4. Recording of Order Information].	[7440. Recording of Order Information].
[Equity 5, Section 5. Order Data Transmission Requirements].	[Equity 5, Section 5. Order Data Transmission Requirements].	[7450. Order Data Transmission Requirements].
[Equity 5, Section 6. Violation of Order Audit Trail System Rules].	[Equity 5, Section 6. Violation of Order Audit Trail System Rules].	[7460. Violation of Order Audit Trail System Rules].
General 9, Section 1(a). Standards of Commercial Honor and Principles of Trade.	General 9, Section 1(a). Standards of Commercial Honor and Principles of Trade.	2010. Standards of Commercial Honor and Principles of Trade.*
General 9, Section 1(b). <i>Prohibition Against Trading Ahead of Customer Orders</i> .	General 9, Section 1(b). <i>Prohibition Against Trading Ahead of Customer Orders</i> .	5320. <i>Prohibition Against Trading Ahead of Customer Orders</i> .**
General 9, Section 1(c). <i>Front Running Policy</i> ..	General 9, Section 1(c). <i>Front Running Policy</i>	5270. <i>Front Running of Block Transactions</i> .**
General 9, Section 1(d). <i>Trading Ahead of Research Reports</i> .	General 9, Section 1(d). <i>Trading Ahead of Research Reports</i> .	5280. <i>Trading Ahead of Research Reports</i> .**
General 9, Section 1(e). <i>Anti-Intimidation/Coordination</i> .	General 9, Section 1(e). <i>Anti-Intimidation/Coordination</i> .	5240. <i>Anti-Intimidation/Coordination</i> .
General 9, Section 1(f). <i>Confirmation of Callable Common Stock</i> .	General 9, Section 1(f). <i>Confirmation of Callable Common Stock</i> .	2232. <i>Customer Confirmations</i> .
General 9, Section 1(g). <i>Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes</i> .	General 9, Section 1(h). <i>Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes</i> .	2140. <i>Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes</i> .
General 9, Section 1(i) (h). <i>Use of Manipulative, Deceptive or Other Fraudulent Devices</i> .	General 9, Section 1(g). <i>Use of Manipulative, Deceptive or Other Fraudulent Devices</i> .	2020. <i>Use of Manipulative, Deceptive or Other Fraudulent Devices</i> .*
General 9, Section 2. <i>Customers' Securities or Funds</i> .	General 9, Section 2. <i>Customers' Securities or Funds</i> .	2150. <i>Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts</i> .
General 9, Section 3. <i>Communications with the Public</i> .	General 9, Section 3. <i>Communications with the Public</i> .	2210. <i>Communications with the Public</i> .
General 9, Section 5. <i>Telemarketing</i>	General 9, Section 5. <i>Telemarketing</i>	3230. <i>Telemarketing</i> .
General 9, Section 6. <i>Forwarding of Proxy and Other Issuer-Related Materials</i> .	General 9, Section 6. <i>Forwarding of Proxy and Other Issuer-Related Materials</i> .	2251. <i>Processing and Forwarding of Proxy and Other Issuer-Related Materials</i> .
General 9, Section 7(a). <i>Disclosure of Financial Condition</i> .	General 9, Section 7(a). <i>Disclosure of Financial Condition</i> .	2261. <i>Disclosure of Financial Condition</i> .
General 9, Section 7(b). <i>Disclosure of Control Relationship with Issuer</i> .	General 9, Section 7(b). <i>Disclosure of Control Relationship with Issuer</i> .	2262. <i>Disclosure of Control Relationship with Issuer</i> .
General 9, Section 7(c). <i>Disclosure of Participation or Interest in Primary or Secondary Distribution</i> .	General 9, Section 7(c). <i>Disclosure of Participation or Interest in Primary or Secondary Distribution</i> .	2269. <i>Disclosure of Participation or Interest in Primary or Secondary Distribution</i> .
General 9, Section 8. <i>SIPC Information</i>	General 9, Section 8. <i>SIPC Information</i>	2266. <i>SIPC Information</i> .
General 9, Section 9. <i>Fairness Opinions</i>	General 9, Section 9. <i>Fairness Opinions</i>	5150. <i>Fairness Opinions</i> .
General 9, Section 10. <i>Recommendations to Customers (Suitability)</i> .	General 9, Section 10. <i>Recommendations to Customers (Suitability)</i> .	2111. <i>Suitability</i> .

BX rule	Nasdaq rule	FINRA rule(s), exchange action provision(s), or SEA rule(s)
General 9, Section 11. Best Execution and Interpositioning.	General 9, Section 11. Best Execution and Interpositioning.	5310. Best Execution and Interpositioning.**
General 9, Section 12. Customer Account Statements.	General 9, Section 12. Customer Account Statements.	2231. Customer Account Statements.
General 9, Section 13. Margin Disclosure Statement.	General 9, Section 13. Margin Disclosure Statement.	2264. Margin Disclosure Statement.
General 9, Section 14. Approval Procedures for Day-Trading Accounts.	General 9, Section 14. Approval Procedures for Day-Trading Accounts.	2130. Approval Procedures for Day-Trading Accounts and Rule 2270 Day-Trading Risk Disclosure Statement.
General 9, Section 15. Borrowing From or Lending to Customers.	General 9, Section 15. Borrowing From or Lending to Customers.	3240. Borrowing From or Lending to Customers.
General 9, Section 16. Charges for Services Performed.	General 9, Section 16. Charges for Services Performed.	2122. Charges for Services Performed.
General 9, Section 18. Payments for Market Making.	General 9, Section 18. Payments for Market Making.	5250. Payments for Market Making.
General 9, Section 19. Discretionary Accounts	General 9, Section 19. Discretionary Accounts	3260. Discretionary Accounts.
General 9, Section 20. Supervision	General 9, Section 20. Supervision	3110. Supervision.
General 9, Section 21(a). Supervisory Control System, Annual Certification of Compliance and Supervisory Processes.	General 9, Section 21(a). Supervisory Control System, Annual Certification of Compliance and Supervisory Processes.	3120. Supervisory Control System.
General 9, Section 21(c). Supervisory Control System, Annual Certification of Compliance and Supervisory Processes.	General 9, Section 21(c). Supervisory Control System, Annual Certification of Compliance and Supervisory Processes.	3130. Annual Certification of Compliance and Supervisory Processes.
General 9, Section 23. Outside Business Activities of an Associated Person.	General 9, Section 23. Outside Business Activities of an Associated Person.	3270. Outside Business Activities of an Associated Person.
General 9, Section 24. Private Securities Transactions of an Associated Person.	General 9, Section 24. Private Securities Transactions of an Associated Person.	3280. Private Securities Transactions of an Associated Person.
General 9, Section 25. Transactions for or by Associated Persons.	General 9, Section 25. Transactions for or by Associated Persons.	3210. Accounts at Other Broker-Dealers and Financial Institutions.
General 9, Section 26. Influencing or Rewarding Employees of Others.	General 9, Section 26. Influencing or Rewarding Employees of Others.	3220. Influencing or Rewarding Employees of Others.
General 9, Section 27. Reporting Requirements #.	General 9, Section 27. Reporting Requirements #.	4530. Reporting Requirements.
General 9, Section 28. Disclosure to Associated Persons When Signing Form U-4.	General 9, Section 28. Disclosure to Associated Persons When Signing Form U-4.	2263. Arbitration Disclosure to Associated Persons When Signing or Acknowledging Form U-4.
General 9, Section 30. Books and Records, Section 43. General Requirements.	General 9, Section 30. Books and Records, Section 43. General Requirements.	4511. General Requirements.
General 9, Section 31. Use of Information Obtained in Fiduciary Capacity.	General 9, Section 31. Use of Information Obtained in Fiduciary Capacity.	2060. Use of Information Obtained in Fiduciary Capacity.
General 9, Section 37. Anti-Money Laundering Compliance Program.	General 9, Section 37. Anti-Money Laundering Compliance Program.	3310. Anti-Money Laundering Compliance Program.
General 9, Section 39. Fidelity Bonds	General 9, Section 39. Fidelity Bonds	4360. Fidelity Bonds.
[General 9, Section 30. Books and Records, (d) Record of Written Complaints; (e) "Complaint" Defined] General 9, Section 44. Records of Written Customer Complaints.	General 9, Section 44. Records of Written Customer Complaints.	4513. Records of Written Customer Complaints.
[General 9, Section 30. Books and Records, (b) Customer Account Information] General 9, Section 45. Customer Account Information.	General 9, Section 45. Customer Account Information.	4512. Customer Account Information.
[General 9, Section 30. Books and Records, (g) Negotiable Instruments Drawn From A Customer's Account] General 9, Section 46. Authorization Records for Negotiable Instruments Drawn From a Customer's Account.	General 9, Section 46. Authorization Records for Negotiable Instruments Drawn From a Customer's Account.	4514. Authorization Records for Negotiable Instruments Drawn From a Customer's Account.
[General 9, Section 30. Books and Records, (j) Changes in Account Name or Designation] General 9, Section 47. Approval and Documentation of Changes in Account Name or Designation.	General 9, Section 47. Approval and Documentation of Changes in Account Name or Designation.	4515. Approval and Documentation of Changes in Account Name or Designation.
General 9, Section 49. Payments Involving Publications that Influence the Market Price of a Security.	General 9, Section 49. Payments Involving Publications that Influence the Market Price of a Security.	5230. Payments Involving Publications that Influence the Market Price of a Security.
General 9, Section 50. Foreign Members #	General 9, Section 50. Foreign Members #	1021. Foreign Members.
General 9, Section 51. Research Analysts	General 9, Section 51. Research Analyst	2241. Research Analysts and Research Reports.
General 9, Section 71. Custodian of Books and Records.	General 9, Section 71. Custodian of Books and Records.	4570. Custodian of Books and Record, (a) Designation of Custodian.
Equity 2, Section 5(e). Locked and Crossed Markets.	Equity 2, Section 5(e). Locked and Crossed Markets.	FINRA Rule 6240. Prohibition from Locking or Crossing Quotations in NMS Stocks.**
Equity 9, Section 1 Adjustment of Open Orders	Equity 9, Section 1. Adjustment of Open Orders.	5330. Adjustment of Orders.

BX rule	Nasdaq rule	FINRA rule(s), exchange action provision(s), or SEA rule(s)
Equity 9, Section 3. Publication of Transactions and Quotations.	Equity 9, Section 3. Publication of Transactions and Quotations.	5210. Publication of Transactions and Quotations.
Equity 9, Section 10. Prompt Receipt and Delivery of Securities.	Equity 9, Section 10. Prompt Receipt and Delivery of Securities.	11860(a)(4)(A). Purchases.
Equity 9, Section 11. Order Entry and Execution Practices [#] .	Equity 9, Section 11. Order Entry and Execution Practices [#] .	5290. Order Entry and Execution Practices.
Equity 10, Section 1. Direct Participation Programs.	Equity 10, Section 1. Direct Participation Programs.	2310. Direct Participation Programs.
Equity 10, Section 2. Investment Company Securities.	Equity 10, Section 2. Investment Company Securities.	2341. Investment Company Securities.
[2841. General] Equity 10, Section 3(a) Trading in Index Warrants, Currency Index Warrants, and Currency Warrants.	Equity 10, Section 3(a). [General] Trading in Index Warrants, Currency Index Warrants, and Currency Warrants.	2351(a). General Provisions Applicable to Trading in Index Warrants, Currency Index Warrants and Currency Warrants.
Equity 10, Section 4 Position Limits; 5 Exercise Limits; and 7 Liquidation of Index Warrant Positions.	Equity 10, Section 4 Position Limits; 5 Exercise Limits; and 7 Liquidation of Index Warrant Positions.	2357. Position and Exercise Limits; Liquidations.
Options 6E, Section 1. Maintenance, Retention and Furnishing of Books, Records and Other Information [#] .	Options 6E, Section 1. Maintenance, Retention and Furnishing of Books, Records and Other Information [#] .	4511(a). General Requirements.
Options 9, Section 9. Prevention of the Misuse of Material Nonpublic Information [#] .	Options 9, Section 9. Prevention of the Misuse of Material Nonpublic Information [#] .	Section 15(g) of the Securities Exchange Act of 1934, and 3110(b)(1), (d). Supervision.
Options 9, Section 10. Disciplinary Action by Other Organizations [#] .	Options 9, Section 10. Disciplinary Action by Other Organizations [#] .	4530(a)(1)(A) and (2). Reporting Requirements; FINRA By-Laws, Article V, Section 2(c); and FINRA By-Laws, Article V, Section 3.
Options 10, Section 12. Statements of Financial Condition to Public Customers.	Options 10, Section 12. Statements of Financial Condition to Public Customers.	SEA Rule 17a-5 [of the Securities Exchange Act of 1934].
Options 10, Section 19. Transfer of Accounts ...	Options 10, Section 19. Transfer of Accounts ...	11870. Customer Account Transfer Contracts.
Options 10 Section 23. Telephone Solicitation ..	Options 10 Section 23. Telephone Solicitation ..	3230. Telemarketing.
Equity 9, Section 15. Suitability	N/A	2353. Suitability.
Equity 9, Section 16. Discretionary Accounts	N/A	2354. Discretionary Accounts.
Equity 9, Section 17. Supervision of Accounts ..	N/A	2355. Supervision of Accounts.
Equity 9, Section 18. Customer Complaints	N/A	2356. Customer Complaints.
Equity 9, Section 19. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants.	N/A	2357. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants and Currency Warrants.
Equity 9, Section 20. Maintenance of Records ..	N/A	2358. Maintenance of Records.

¹ FINRA shall only have Regulatory Responsibilities regarding BX General 4, Section 1220 to the extent that BX recognizes the same categories of limited principal and representative registration as the BX Rule, by incorporating Nasdaq General 4, Section 1220, does not recognize registration related to investment banking, research, government securities, investment company and variable contracts products, direct participation programs, private securities offerings, and operations professional.

² FINRA shall only have Regulatory Responsibilities regarding Nasdaq General 4, Section 1220 to the extent that Nasdaq recognizes the same categories of limited principal and representative registration as Nasdaq General 4, Section 1220, does not recognize registration related to investment banking, research, government securities, investment company and variable contracts products, direct participation programs, private securities offerings, and operations professional.

³ FINRA Rule 1240.01 allows for eligible persons to make their election to participate in the continuing education program under Rule 1240(c) either (1) between January 31, 2022, and March 15, 2022; or (2) between March 15, 2023, and December 31, 2023. In contrast, Supplementary Material .01 of Nasdaq and BX General 4, Section 1, Rule 1240 allows for eligible persons to make their election to participate in the continuing education program under Nasdaq and BX General 4, Section 1(c) either (1) by March 15, 2022, or (2) between July 6, 2023, and December 31, 2023. Therefore, FINRA will not accept Regulatory Responsibilities for elections made under Supplementary Material .01 of Nasdaq or BX General 4, Section 1, Rule 1240 between March 16, 2023, and July 5, 2023.

The following provisions are covered by the Agreement between the Parties:

- SEC '34 Act Section 28(e)—Effect on Existing Law
- [SEC '34 Act] SEA Rule 10b-10—Confirmation of Transactions
- SEA Rule 200 of Regulation SHO—Definition of Short Sales and Marking Requirements**
- SEA Rule 201 of Regulation SHO—Circuit Breaker**
- [SEC '34 Act] SEA Rule 203 of Regulation SHO—Borrowing and Delivery Requirements
- SEA Rule 204 of Regulation SHO—Close-Out Requirements**
- SEA Rule 101 of Regulation M—Activities by Distribution Participants**
- SEA Rule 102 of Regulation M—Activities by Issuers and Selling Security Holders During a Distribution**
- SEA Rule 103 of Regulation M—Nasdaq Passive Market Making**
- SEA Rule 104 of Regulation M—Stabilizing and Other Activities in Connection with an Offering**
- SEA Rule 105 of Regulation M—Short Selling in Connection With a Public Offering**
- SEA Rule 604 of Regulation NMS—Display of Customer Limit Orders**
- [SEC '34 Act] SEA Rule 606 of Regulation NMS—Disclosure of Order Routing Information**
- [SEC '34 Act] Rule 607 of Regulation NMS Customer Account Statements]
- SEA Rule 610(d) of Regulation NMS—Locking or Crossing Quotations**
- SEA Rule 611 of Regulation NMS—Order Protection Rule**
- SEA Rule 10b-5—Employment of Manipulative and Deceptive Devices*
- SEA Rule 17a-3/17a-4—Records to Be Made by Certain Exchange Members, Brokers and Dealers/Records to Be Preserved by Certain Exchange Members, Brokers and Dealers*
- SEA Rule 14e-4—Prohibited Transactions in Connection with Partial Tender Offers[.]
- SEA Rule 14e-4(a)(1)(ii)(D)—Prohibited Transactions in Connection with Partial Tender Offers (with a focus on the standardized call option provision)**

[^ FINRA shall perform surveillance, investigation, and Enforcement Responsibilities for SEA Rule 14e-4(a)(1)(ii)(D).]

***In addition to performing examinations and Enforcement Responsibilities as provided in this Agreement for the double star rules, FINRA shall also perform the surveillance and investigation responsibilities for the double star rules. These rules may be cited by FINRA in both the context of this Agreement and the Regulatory Services Agreement among FINRA, Nasdaq and BX.*

**FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., MEMX, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange, LLC, NYSE American LLC, NYSE Arca Inc., [and] Investors' Exchange LLC and the Long-Term Stock Exchange, Inc. as approved by the SEC on September 23, 2020, as may be amended from time to time.*

^FINRA shall perform the surveillance and investigation responsibilities for these rules. The examination responsibility for these rules is covered by a separate 17d-2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and Long-Term Stock Exchange, Inc. as approved by the SEC on June 10, 2020 concerning covered Regulation NMS and Consolidated Audit Trail Rules, as may be amended from time to time.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4-575 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 4-575. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA, Nasdaq, and BX. 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 No. 4-575 and should be submitted on or before August 9, 2024.

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act¹³ and Rule 17d-2(c) thereunder¹⁴ in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by both FINRA and Nasdaq, and FINRA and BX. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because FINRA, Nasdaq, and BX will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, FINRA, Nasdaq, and BX have allocated regulatory responsibility for those Nasdaq and BX rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for

certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, Nasdaq and BX will review the Certification at least annually, or more frequently if required by changes in either the rules of Nasdaq, BX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add Nasdaq or BX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete Nasdaq or BX rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be Nasdaq and BX rules that qualify as common rules.¹⁵ FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all Nasdaq and BX rules that are substantially similar to the rules of FINRA for Common Members of BX and FINRA, and Nasdaq and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to Nasdaq or BX rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the

¹³ 15 U.S.C. 78q(d).

¹⁴ 17 CFR 240.17d-2(c).

¹⁵ See paragraph 2 of the Amended Plan.

Parties decide to add a Nasdaq or BX rule to the Certification that is not substantially similar to a FINRA rule; delete a Nasdaq or BX rule from the Certification that is substantially similar to a FINRA rule; or leave in the Certification a Nasdaq or BX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.¹⁶

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the Amended Plan is to: (i) update the list of Common Rules; (ii) add surveillance and investigation coverage for certain Common Rules specified in Exhibit 1 to the Amended Plan; (iii) reflect that, for Router Members, FINRA will retain regulatory responsibility for Nasdaq and BX rules that are not Common Rules; and (iv) reflect that FINRA will not make referrals to Nasdaq and BX for apparent violations of any Nasdaq or BX Rules by any Router Member. By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.¹⁷ Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4-575. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4-575, between the FINRA, BX, and Nasdaq, filed pursuant to Rule 17d-2 under the

Act, hereby is approved and declared effective.

It is further ordered that BX and Nasdaq are relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4-575.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-15910 Filed 7-18-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100537; File No. SR-NYSEARCA-2024-05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the COTwo Advisors Physical European Carbon Allowance Trust Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)

July 15, 2024.

On January 10, 2024, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² a proposed rule change to list and trade shares of the COTwo Advisors Physical European Carbon Allowance Trust under NYSE Arca Rule 8.201-E. The proposed rule change was published for comment in the **Federal Register** on January 26, 2024.³

On March 4, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On April 25, 2024, the Commission instituted proceedings pursuant to Section

19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on January 26, 2024. July 24, 2024 is 180 days from that date, and September 22, 2024 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁹ designates September 22, 2024 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSEARCA-2024-05).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-15906 Filed 7-18-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-360, OMB Control No. 3235-0409]

Proposed Collection; Comment Request; Extension: Rule 17Ad-15

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 100029, 89 FR 35289 (May 1, 2024).

⁸ 15 U.S.C. 78s(b)(2).

⁹ *Id.*

¹⁰ 17 CFR 200.30-3(a)(57).

¹⁶ The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

¹⁷ See *supra* note 12 (citing to Securities Exchange Act Release No. 93114).

¹⁸ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99409 (January 22, 2024), 89 FR 5273. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2024-05/srnysearca202405.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99668, 89 FR 16808 (March 8, 2024).

(“Commission”) is soliciting comments on the existing collection of information provided for in Rule 17Ad–15 (17 CFR 240.17Ad–15) (“Rule 17Ad–15”) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (“Exchange Act”). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 17Ad–15 requires every registered transfer agent to establish written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions. Every registered transfer agent is also required to establish procedures, including written guidelines where appropriate, to make certain that the transfer agent uses those standards to determine whether to accept or reject guarantees from eligible guarantor institutions. In implementing these requirements, the Commission aims to ensure that registered transfer agents treat eligible guarantor institutions equitably.

Additionally, Rule 17Ad–15 requires every registered transfer agent to make and maintain records in the event the transfer agent determines to reject signature guarantees from eligible guarantor institutions. Registered transfer agents’ records must include, following the date of rejection, a record of the rejected transfer, along with the reason for rejection, the identification of the guarantor, and an indication whether the guarantor failed to meet the transfer agent’s guarantee standards. Rule 17Ad–15 requires registered transfer agents to maintain these records for a period of three years. The Commission designed these mandatory recordkeeping requirements to assist the Commission and other regulatory agencies with monitoring registered transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

The Commission estimates that approximately 315 registered transfer agents will spend a total of approximately 12,600 burden hours per year complying with recordkeeping requirements of Rules 17Ad–15 (based on approximately 40 burden hours per year per registered transfer agent). The Commission also estimates the aggregate annual internal cost of compliance for the approximately 315 registered transfer agents is approximately \$4,019,400 (based on 40 hours annual burden × \$319 hourly wage × 315 respondents). This reflects a decline in aggregate annual internal cost of compliance of \$650,760 due to the decrease in the number of registered transfer agents from 366 to 315.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 17, 2024.

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

Please direct your written comments to: Austin Gerig, Director/Chief Information Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or send email to: PRA_Mailbox@sec.gov.

Dated: July 15, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–15888 Filed 7–18–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100532; File No. SR–DTC–2024–005]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Guide to the DTC Fee Schedule

July 15, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² notice is hereby given that on July 2, 2024, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act ³ and Rule 19b–4(f)(2) thereunder. ⁴ The Commission is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f)(2).

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Guide to the DTC Fee Schedule (“Fee Guide”) ⁵ to (i) modify the application of a fee (“One-Day Surcharge”) charged to a Participant that submits an eligibility request or required offering documents for a new issue one business day prior to the closing date; ⁶ (ii) eliminate certain Deposit Services fees; and (iii) make a technical change relating to transfer agent “pass-through” charges (“Transfer Agent Charges”), as described in greater detail below. ⁷

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the Fee Guide to (i) modify the application of the One-Day Surcharge; (ii) eliminate certain Deposit Services fees; and (iii) make a technical change relating to Transfer Agent Charges, as described below. ⁸

⁵ Available at www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/DTC-Fee-Schedule.pdf.

⁶ The closing date is the date on which DTC will distribute an issue for book-entry delivery and settlement, to the DTC Account of the Participant serving as underwriter for an issue, upon notification by both the underwriter and the issuer that an issue has closed. See DTC Underwriting Service Guide, available at <https://www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Underwriting-Service-Guide.pdf> at 7.

⁷ Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at www.dtcc.com/legal/rules-and-procedures.

⁸ Pursuant to Rule 2, Section 1, each Participant shall pay to DTC the compensation due it for services rendered to the Participant based on DTC’s fee schedules. See Rule 2, *supra* note 7.

Proposed Rule Changes

Modification of the One-Day Surcharge

Participants that seek to make a Security eligible for DTC services are required to provide an eligibility request for the Security to DTC by the submission of all required issuer and securities data and all required offering documents. Such data and documents must be provided to DTC through the online Securities Origination, Underwriting and Reliable Corporate Action Environment (“UW SOURCE”) or the Underwriting Central (“UWC”) system for the Security to be considered for full-service eligibility at DTC.⁹ In addition to meeting other eligibility requirements set forth in the OA,¹⁰ a Participant that seeks to make a new issue eligible for Deposit at DTC must submit the eligibility request and offering documentation described above through UW SOURCE or UWC at least six business days prior to the closing date.¹¹ If the Participant submits the

eligibility request or the required offering documentation for a new issue one day prior to the closing date, the Participant will be subject to fees, referred to in the Fee Guide as late surcharges.

As outlined in the Fee Guide, the One-Day Surcharge for submission of an eligibility request or the required offering documentation one day prior to the closing date is \$5,000 per issue. After evaluation of the Securities being submitted for eligibility and the move to a T+1 Settlement Cycle, DTC is proposing to change the applicability of the One-Day Surcharge so that it is not charged with respect to new issuances of private Securities (“Private Securities”).¹² Specifically, the One-Day Surcharge is currently levied on eligibility requests for all Securities submitted one day prior to the scheduled closing date, irrespective of whether the Security’s information is publicly available at that time. However, offering information regarding Private

Securities is not intended for public consumption until the day the security is available for secondary market trading. Therefore, DTC proposes to eliminate the One-Day Surcharge for issuances of Private Securities, as the security information is not available in advance of the day prior to closing. DTC would revise the Fee Guide to reflect this change.

Deposit Services—Elimination of Fees

DTC reviewed the current DTC Fee Guide to ensure alignment with current practice and streamline DTC’s fee structure for a better client experience. Following this review, DTC is proposing to eliminate the researching fee under Deposit Services to improve customer billing transparency and provide clearer guidance on when fees are applied. The proposed change would eliminate fees for outdated and non-value-add services. These changes will not have a material impact on the total dollar amount of Deposit Services fees charged to Participants.

The following entries in the Deposit Services section of the Fee Guide would be revised (bold, italicized text indicates additions and bold strikethrough text indicates deletions):

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⁹ See DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (“OA”), available at <http://www.dtcc.com/-/media/Files/Downloads/legal/issueeligibility/eligibility/operationalarrangements.pdf> at 6–7.

¹⁰ See OA, *supra* note 9 at 6–22.

¹¹ See OA, *supra* note 9 at 86.

¹² For purposes of this proposed rule change, Private Securities are identified as (i) issues exempt from SEC registration under rule 144 A or REG S, and (ii) continuously issued structured note programs where the securities are drawn down from a CUSIP block provided by CUSIP Global Services and submitted into DTC as an equity derivative or debt derivative.

FEE NAME	AMOUNT (\$)	CONDITIONS
Custody and Securities Processing		

Deposit Services		

Deposit Automation Management (DAM)		

~~Researching Fee~~	~~100.00~~	~~Per hour or per CUSIP, depending on nature of research~~

New York Window Services (including Envelope Settlement Service, Intercity Envelope Settlement Service, Funds-Only Settlement Service, Dividend Settlement Service)		

Other Services		

Researching Fee	100.00	Per hour or per CUSIP, depending on nature of research

Technical Change—Transfer Agent Charges

The proposed change would move the Transfer Agent Charges to be listed under the “Custody and Securities Processing” subheading rather than at the end of the section. This proposed

change would provide enhanced clarity and transparency related to the pass-through of Transfer Agent Charges. Transfer Agent Charges refers to fees DTC collects from Participants on behalf of transfer agents, and such fees are passed through by DTC for many activity types. Each activity type has a

unique suffix which is included on Participant invoices. In this regard, Custody and Securities Processing Section of the Fee Guide would be revised as follows (bold, italicized text indicates additions and bold strikethrough text indicates deletions):

Custody and Securities Processing		

<i>Transfer Agent Charges</i>	<i>Varies</i>	<i>Chargeback of fees charged by the transfer agent, plus \$1.00 transaction fee; Applies to cancellation and issuance of certificates of certain issues</i>

Securities Processing		

Corporate Actions		

Custody Services		

Deposit Services		

Custody and Securities Processing		
New York Window Services (including Envelope Settlement Service, Intercity Envelope Settlement Service, Funds-Only Settlement Service, Dividend Settlement Service)		

Reorganization Services		

Withdrawal Services		

~~Transfer Agent Charges~~	~~Varies~~	~~Chargeback of fees charged by the transfer agent, plus \$1.00 transaction fee; Applies to cancellation and~~

Custody and Securities Processing		
		issuance of certificates of certain issues

BILLING CODE 8011-01-C**Effective Date**

DTC would implement the proposed changes by September 26, 2024.

2. Statutory Basis

DTC believes this proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes the proposed changes to (i) modify the application of the One-Day Surcharge; (ii) eliminate certain Deposit Services fees; and (iii) make a technical change relating to Transfer Agent Charges, as described above, are consistent with Section 17A(b)(3)(D) of the Act,¹³ for the reasons described below. DTC also believes that the proposed changes to update the Fee Guide are consistent with Rule 17ad-22(e)(23)(ii),¹⁴ as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act requires, *inter alia*, that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among participants.¹⁵ DTC believes the proposed rule change to (i) modify the application of the One-Day Surcharge; (ii) eliminate certain Deposit Services fees; and (iii) make a technical change relating to Transfer Agent Charges, would provide for the equitable allocation of reasonable fees. Because no Participant will be charged the One-Day Surcharge for Private Securities and all Participants will continue to be charged the One-Day Surcharge for publicly trading Securities, and because the research fee will be eliminated for all Participants, DTC believes the fees would continue to be equitably allocated.

DTC also believes its fees will continue to be reasonable under the proposed changes because the One-Day Surcharge will only be charged on

Securities that are publicly trading, as the security information is available in advance of the day prior to closing and the research fee will be eliminated for all Participants. For this reason, DTC believes that this proposed change, as described above, is reasonable and consistent with Section 17A(b)(3)(D) of the Act.¹⁶

Rule 17ad-22(e)(23)(ii) under the Act¹⁷ requires DTC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. The fees under the proposed changes would continue to be clearly and transparently published in the Fee Guide, which is available on a public website,¹⁸ thereby enabling Participants to identify the fees and costs associated with participating in DTC. As such, DTC believes the proposed rule change is consistent with Rule 17ad-22(e)(23)(ii) under the Act.¹⁹

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact on competition, because the elimination of the One-Day Surcharge on privately trading Securities should not have a material effect on (i) a determination by an underwriter on whether to submit an eligibility request for a new issue, or (ii) costs incurred by Participants in using DTC's eligibility services. Further, the research fees would continue to be eliminated for all Participants, as described above.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at* [sec.gov/regulatory-actions/how-to-submit-comments](https://www.sec.gov/regulatory-actions/how-to-submit-comments). General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

DTC reserves the right to not respond to any comments 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)²⁰ of the Act and paragraph (f)²¹ of Rule 19b-4 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

¹³ 15 U.S.C. 78q-1(b)(3)(D).

¹⁴ 17 CFR 17ad-22(e)(23)(ii).

¹⁵ 15 U.S.C. 78q-1(b)(3)(D).

¹⁶ *Id.*

¹⁷ 17 CFR 240.17ad-22(e)(23)(ii).

¹⁸ See *supra* note 5.

¹⁹ 17 CFR 240.17ad-22(e)(23)(ii).

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f).

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-DTC-2024-005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR-DTC-2024-005. 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 DTC and on DTCC's website (dtcc.com/legal/sec-rule-filings). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-DTC-2024-005 and should be submitted on or before August 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-15912 Filed 7-18-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100528; File No. SR-OCC-2024-008]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Options Clearing Corporation Concerning the Modification of Its Margin Methodology, System for Theoretical Analysis and Numerical (STANS), To Conform Its Margin Model to the Contract Specifications for a New Exchange Product

July 15, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 3, 2024, The Options Clearing Corporation ("OCC") 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 OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and paragraph (f) or Rule 19b-4⁴ thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would modify OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations ("STANS"), to conform its margin model to the contract specifications for a new exchange-traded futures contract based on the expected realized variance of an underlying interest (such contracts being "variance futures," and such model being the "Variance Futures Model") that the Cboe Future Exchange ("CFE") intends to list. OCC filed the proposed pursuant to Section

19(b)(3)(A)⁵ of the Act and Rule 19b-4(f)(4)(i)⁶ thereunder so that the proposal was effective upon filing with the Commission.

The proposed changes to the STANS Methodology Description are contained in confidential Exhibit 5 of filing SR-OCC-2024-008. Amendments to the existing text are underlined and material proposed to be deleted is marked by strikethrough text. The proposed changes are described in detail in Item 3 below. Replacement text specific to the proposed input descriptions of the daily settlement price calculation in Section 2.1.6 (Variance Futures), is presented without marking. The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁷

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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

In its capacity as a derivatives clearing organization ("DCO") registered with the Commodity Futures Trading Commission ("CFTC"), OCC clears certain futures products on behalf of CFTC-registered designated contract markets ("DCMs"), including CFE. Such futures products included CFE-listed variance futures based on the realized variance in the S&P 500 Index. To support this product, OCC developed and implemented a Variance Futures Model as part of STANS,⁸ OCC's

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(4)(i).

⁷ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁸ See Exchange Act Release No. 91079 (Feb. 8, 2021), 86 FR 9410, 9411 (Feb. 12, 2021) (File No. SR-OCC-2020-016) (noting the model to price variance futures as among the model components addressed by the STANS Methodology Description). OCC makes its STANS Methodology description available to Clearing Members. An overview of the STANS methodology is on OCC's public website:

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f).

proprietary risk management system for measuring the exposure of portfolios of options and futures cleared by OCC, including variance futures.⁹ OCC most recently updated that model in 2022.¹⁰ CFE delisted its variance futures the same year, with the intent of relisting such futures at a future date.¹¹

CFE now intends to re-list its S&P 500 variance futures product with a different product design.¹² As discussed in more detail below, OCC proposes to amend its STANS Methodology Description to conform the description of the Variance Futures Model with the new product design. Specifically, OCC would simplify the description of the daily settlement of variance futures products to include configurable parameters to reflect changes in CFE's standardized formula for calculating the final settlement value for the new product. OCC does not believe this change would have any impact on Clearing Members because there is no open interest in variance futures currently. Rather, this change would serve to ensure that CFE's new product aligns with OCC's rules related to the clearance and settlement of variance futures.

<https://www.theocc.com/Risk-Management/Margin-Methodology>.

⁹ Pursuant to OCC Rule 601(e)(1), OCC also calculates initial margin requirements for segregated futures accounts on a gross basis using the Standard Portfolio Analysis of Risk Margin Calculation System ("SPAN"). Commodity Futures Trading Commission ("CFTC") Rule 39.13(g)(8), requires, in relevant part, that a derivatives clearing organization ("DCO") collect initial margin for customer segregated futures accounts on a gross basis. While OCC uses SPAN to calculate initial margin requirements for segregated futures accounts on a gross basis, OCC believes that margin requirements calculated on a net basis (*i.e.*, permitting offsets between different customers' positions held by a Clearing Member in a segregated futures account using STANS) affords OCC additional protections at the clearinghouse level against risks associated with liquidating a Clearing Member's segregated futures account. As a result, OCC calculates margin requirements for segregated futures accounts using both SPAN on a gross basis and STANS on a net basis, and if at any time OCC staff observes a segregated futures account where initial margin calculated pursuant to STANS on a net basis exceeds the initial margin calculated pursuant to SPAN on a gross basis, OCC collateralizes this risk exposure by applying an additional margin charge in the amount of such difference to the account. See Exchange Act Release No. 72331 (June 5, 2014), 79 FR 33607 (June 11, 2014) (File No. SR-OCC-2014-13).

¹⁰ See Exchange Act Release No. 95319 (July 19, 2022), 87 FR 44167, 44170 (July 25, 2022) (SR-OCC-2022-001).

¹¹ See Choe, Update—CFE April 2022 Contract Listing Changes (Apr. 14, 2022), https://cdn.cboe.com/resources/product_update/2022/Update-New-CFE-Contracts-Added-in-April-2022.pdf.

¹² See Choe, Variance Futures (last updated Mar. 6, 2024), https://cdn.cboe.com/resources/participant_resources/New_Cboe_Variance_Futures_Product_Overview.pdf.

(1) Purpose

Variance futures are commodity futures for which the underlying interest is a variance.¹³ The underlying variance is calculated using historical daily closing values of the reference variable. When a variance futures contract is listed, it defines the initial variance strike. This initial variance strike represents the estimated future variance at contract expiration. The final settlement value is determined based on a standardized formula for calculating the realized variance of the S&P 500 measured from the time of initial listing until expiration of the contract. At maturity, the buyer of the contract pays the amount of predefined strike to the seller and the seller pays the realized variances. Therefore, the buyer profits if the realized variance at maturity exceeds the predefined variance strike. S&P 500 variance futures are exchange-traded futures contracts based on the realized variance of the S&P 500.

CFE's proposed S&P 500 Variance Futures have a final settlement value that will be determined by a standardized formula for calculating the realized variance of the S&P 500. Compared to the previous variance futures delisted by CFE in April 2022, the proposed contract has a simpler settlement definition:

1. Rather than the previous contract's settlement being based on the difference of the realized variance from a fixed delivery variance strike, the proposed variance future settlement is based only on the realized variance—equivalent to setting the delivery variance strike to 0.

2. Rather than using an interest rate-based factor to discount the variance, the proposed variance future settlement has no scaling—equivalent to scaling by 1.

3. Rather than including a term for the accumulation of interest on daily variation margin, the proposed variance future settlement has no term included—equivalent to setting the term to 0.

¹³ A variance is a statistical measure of the variability of price returns relative to an average (mean) price return. Accordingly, OCC believes that an underlying variance is a "commodity" within the definition of Section 1a(4) of the Commodity Exchange Act ("CEA"), which defines "commodity" to include "all . . . rights, and interests in which contracts for future delivery are presently or in the future dealt in." 7 U.S.C. 1a(9). OCC believes a variance is neither a "security" nor a "narrow-based security index" as defined in Section 3(a)(10) and Section 3(a)(55)(A) of the Exchange Act, respectively, and therefore is within the exclusive jurisdiction of the CFTC. OCC clears this product in its capacity as a DCO registered under Section 5b of the CEA. See Exchange Act Release No. 49925 (June 28, 2004), 69 FR 40447 (July 2, 2004) (File No. SR-OCC-2004-08).

4. Rather than recentering the value around 1000, the proposed variance future settlement does not recenter—equivalent to setting this term to 0.

5. Rather than scale the variance calculation by 10,000, the proposed variance future settlement does not scale the variance—equivalent to scaling by 1.

The current STANS Methodology Description explicitly details the terms and specific values of these parameters based on product specifications for the variance futures that CFE delisted in 2022. OCC proposes to instead define these terms as parameters within the STANS Methodology Description that would be determined by the specifications of the products that the applicable DCM is authorized to list, rather than as set values in the STANS Methodology Description. As amended, the STANS Methodology Description would ensure that OCC's Variance Futures Model is consistent with CFE's new product design. In addition, by setting the values as configurable parameters based on the DCM's contract specifications, OCC would be able to accommodate potential variance futures products that may be listed in the future with different contract specifications. Other than allowing OCC to conform the settlement calculation to the DCM's contract specification, the change would have no effect on OCC's Variance Futures Model, as addressed in detail in the 2022 filing that established OCC's current model approach for such products.¹⁴

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act¹⁵ and the rules and regulations thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act¹⁶ requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions for which it is responsible. As described above, some inputs used in the Variance Futures Model for the calculation of the contract daily settlement were set in the STANS Methodology Description using specific values based on CFE's previous contract specifications for the variance futures it delisted in April 2022. The proposed changes would allow OCC to align those values with the contract

¹⁴ See Exchange Act Release No. 94165 (Feb. 7, 2022), 87 FR 8072, 8077–8078 (Feb. 11, 2022) (SR-OCC-2022-001).

¹⁵ 15 U.S.C. 78q–1.

¹⁶ 15 U.S.C. 78q–1(b)(3)(F).

specifications for CFE's new product, thereby ensuring that OCC may clear and settle the new variance futures CFE intends to list based on the updated contract specifications. Accordingly, OCC believes the changes made to the inputs are designed to promote the prompt and accurate clearance and settlement of variance futures contracts for which OCC is responsible, in accordance with Section 17A(b)(3)(F) of the Exchange Act.¹⁷

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act¹⁸ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would conform OCC's Variance Futures Model to CFE's new contract specification for the S&P 500 variance futures it intends to list. The Variance Futures Model, which is part of OCC's STANS margin methodology, would be used to calculate margin requirements for all Clearing Members. The proposed changes would not inhibit access to OCC's services in any way, would apply to all Clearing Members uniformly, and would not disadvantage or favor any particular user in relationship to another user. Accordingly, OCC does not believe that the proposed rule change would unfairly inhibit access to OCC's services or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed change and none have been received. OCC will notify the Commission of any written comments received by OCC.

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 Act¹⁹ and paragraph (f) of Rule 19b-4²⁰ 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.²¹

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-OCC-2024-008 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-OCC-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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

²¹ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

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-OCC-2024-008 and should be submitted on or before August 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-15905 Filed 7-18-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100530; File No. 4-698]

Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove an Amendment to the National Market System Plan Governing the Consolidated Audit Trail Regarding Cost Savings Measures

July 15, 2024.

I. Introduction

In July 2012, the Securities and Exchange Commission (the "Commission" or "SEC") adopted Rule 613 of Regulation NMS, which required national securities exchanges and national securities associations (the "Participants")¹ to jointly develop and submit to the Commission a national market system ("NMS") plan to create, implement, and maintain a consolidated audit trail (the "CAT").² On November 15, 2016, the Commission approved the NMS plan required by Rule 613 (the "CAT NMS Plan").³ On March 27, 2024,

²² 17 CFR 200.30-3(a)(12).

¹ The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., The Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAx Emerald, LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

² See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012) ("Rule 613 Adopting Release"); 17 CFR 242.613.

³ See Securities Exchange Act Release No. 78318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("CAT NMS Plan Approval Order"). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order.

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ 15 U.S.C. 78q-1(b)(3)(I).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

and pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”) ⁴ and Rule 608 of Regulation NMS thereunder,⁵ the Participants filed with the Commission proposed amendments to the CAT NMS Plan designed to implement certain costs saving measures (the “Proposed Cost Savings Amendments”).⁶ The Proposed Cost Savings Amendments were published for comment in the **Federal Register** on April 16, 2024.⁷

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,⁸ to determine whether to disapprove the Proposed Cost Savings Amendments or to approve the Proposed Cost Savings Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate.

II. Summary of Proposed Cost Savings Amendments⁹

The Participants proposed to implement the following measures: (A) amendments that would change processing, query, and storage requirements for Options Market Maker quotes in Listed Options (“Option Market Maker Quotes”),¹⁰ (B)

amendments that would permit the Plan Processor¹¹ to move raw unprocessed data and interim operational copies of CAT Data¹² older than 15 days to what the Participants described as a more cost-effective storage tier; (C) amendments that would permit the Plan Processor to provide an interim CAT-Order-ID¹³ to regulatory users on an “as requested” basis, rather than on a daily basis; and (D) amendments that would codify and expand exemptive relief recently provided by the Commission related to certain recordkeeping and data retention requirements for industry testing data.¹⁴

The Participants represented that the Proposed Cost Savings Amendments are expected to result in approximately \$23 million in new annual cost savings in the first year with limited impact on the regulatory function of the CAT. The Participants further stated that their cost and savings projections were estimates only and were based on, among other factors: the current state and costs of CAT operations, including the current number of national securities exchanges; current CAT NMS Plan requirements; reporting by Participants, Industry Members¹⁵ and market data providers; observed data rates and volumes; current discounts, reservations, and cost savings plans; and associated cloud fees. According to the Participants, actual future savings could be more or less than their estimates due to changes in any of these variables.

a “Listed Option” as “any option traded on a registered national securities exchange or automated facility of a national securities association.” 17 CFR 242.600(b)(43).

¹¹ The “Plan Processor” is “the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to SEC Rule 613 and Sections 4.3(b)(i) and 6.1, and with regard to the Initial Plan Processor, the Selection Plan, to perform the CAT processing functions required by SEC Rule 613 and set forth in this Agreement.” See CAT NMS Plan, *supra* note 3, at Section 1.1.

¹² “CAT Data” is “data derived from Participant Data, Industry Member Data, SIP Data, and such other data as the Operating Committee may designate as ‘CAT Data’ from time to time.” See *id.*

¹³ The “CAT-Order-ID” is “a unique order identifier or series of unique order identifiers that allows the central repository to efficiently and accurately link all reportable events for an order, and all orders that result from the aggregation or disaggregation of such order.” See 17 CFR 242.613(j)(1); see also CAT NMS Plan, *supra* note 3, at Section 1.1 (“‘CAT-Order-ID’ has the same meaning provided in SEC Rule 613(j)(1).”).

¹⁴ See Securities Exchange Act Release No. 99023 (Nov. 27, 2023), 88 FR 84026 (Dec. 1, 2023) (“Industry Test Data Exemptive Relief Order”).

¹⁵ “Industry Member” means “a member of a national securities exchange or a member of a national securities association.” See CAT NMS Plan, *supra* note 3, at Section 1.1.

A. Processing, Query, and Storage Requirements for Options Market Maker Quotes

Section 6.3(d) of the CAT NMS Plan currently requires each Participant to record and electronically report to the Central Repository details for each Order and each Reportable Event, including all Options Market Maker Quotes and related Reportable Events.¹⁶ With respect to the reporting obligations of an Options Market Maker with regard to its quotes in Listed Options, Section 6.4(d)(iii) of the CAT NMS Plan states that Reportable Events required pursuant to Section 6.3(d)(ii) and (iv) shall be reported to the Central Repository by an Options Exchange in lieu of the reporting of such information by the Options Market Maker.¹⁷ Section 6.4(d)(iii) of the CAT NMS Plan also requires Options Market Makers to report to an Options Exchange the time at which a quote in a Listed Option is sent to the Options Exchange (and, if applicable, any subsequent quote modifications and/or cancellation time when such modification or cancellation is originated by the Options Market Maker), pursuant to compliance rules established by the Options Exchanges.¹⁸ Such time information must be reported to the Central Repository by the Options Exchange in lieu of reporting by the Options Market Maker.¹⁹

The CAT NMS Plan requires all CAT Data reported to the Central Repository to be processed and assembled to create the complete lifecycle of each Reportable Event.²⁰ Appendix D, Section 3 of the CAT NMS Plan states that the Plan Processor must use a “daisy chain approach,” in which “a series of unique order identifiers, assigned to all order events handled by CAT Reporters[,] are linked together by the Central Repository and assigned a single CAT-generated CAT-Order-ID that is associated with each individual order event and used to create the

¹⁶ See Notice, *supra* note 7, at 26985. An Order includes “(i) [a]ny order received by a member of a national securities exchange or national securities association from any person; (ii) [a]ny order originated by a member of a national securities exchange or national securities association; or (iii) [a]ny bid or offer.” See 17 CFR 242.613(j)(8); see also CAT NMS Plan, *supra* note 3, at Section 1.1 (“‘Order’ or ‘order’ has, with respect to Eligible Securities, the meaning set forth in SEC Rule 613(j)(8).”). A “Reportable Event” includes, but is not limited to, “the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order.” See CAT NMS Plan, *supra* note 3, at Section 1.1.

¹⁷ See Notice, *supra* note 7, at 26985.

¹⁸ *Id.*

¹⁹ *Id.*; see also CAT NMS Plan, *supra* note 3, at Section 6.4(d)(iii).

²⁰ See Notice, *supra* note 7, at 26985.

See CAT NMS Plan Approval Order, at 84943–85034. The CAT NMS Plan, which is available at <https://catnmsplan.com/about-cat/cat-nms-plan>, functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (the “Company”). Each Participant is a member of the Company and jointly owns the Company on an equal basis. The Participants submitted to the Commission a proposed amendment to the CAT NMS Plan on August 29, 2019, which they designated as effective on filing. On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company, CAT LLC, which became the Company. See Securities Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

⁴ 15 U.S.C. 78k–1(a)(3).

⁵ 17 CFR 242.608.

⁶ See Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated March 27, 2024, available at <https://catnmsplan.com/sites/default/files/2024-03/03.27.24-Proposed-CAT-NMS-Plan-Amendment-Cost-Savings-Amendment.pdf>.

⁷ See Securities Exchange Act Release No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024) (“Notice”). Comments received in response to the Notice can be found on the Commission’s website at <https://www.sec.gov/comments/4-698/4-698-d.htm>.

⁸ 17 CFR 242.608(b)(2)(i).

⁹ See Notice, *supra* note 7, for a full discussion of the Proposed Cost Savings Amendments.

¹⁰ An “Options Market Maker” is “a broker-dealer registered with an exchange for the purpose of making markets in options contracts on the exchange.” See CAT NMS Plan, *supra* note 3, at Section 1.1. A “Listed Option” is defined as having “the meaning set forth in Rule 600(b)(35) of Regulation NMS.” See *id.* Rule 600(b)(35) has since been redesignated as Rule 600(b)(43), which defines

complete lifecycle of an order.”²¹ Timelines for data processing and data availability are described in Section 6.1 and Section 6.2 of Appendix D of the CAT NMS Plan.²² The CAT NMS Plan further provides that regulators will have access to processed CAT Data through an online targeted query tool and through user-defined direct queries and bulk extract tools described in Section 8.1 and Section 8.2 of Appendix D of the CAT NMS Plan.²³

The Participants proposed to amend certain processing, query, and storage requirements that would otherwise apply to Options Market Maker Quotes. Specifically, proposed Section 3.4 of Appendix D would state that Options Market Maker Quotes in Listed Options would undergo ingestion only and such unlinked data would be made available to regulators by T+1 at 12:00 p.m. Eastern Time.²⁴ Under proposed Section 3.4 of Appendix D, Options Market Maker Quotes would not be subject to any requirement to link and create an order lifecycle and would not undergo any validation, feedback, linkage, or enrichment processing.²⁵ Options Market Maker Quotes in Listed Options would be accessible through BDSQL and Direct Read interfaces only under proposed Section 3.4 of Appendix D and would not be accessible through the online targeted query tool.²⁶ In addition, the Participants proposed to make conforming changes to certain provisions of Appendix D to include cross-references to proposed Section 3.4.²⁷

Under these proposed provisions, the Participants explained that Options Exchanges would continue to report Options Market Maker Quotes in the same manner they do today, but that the Plan Processor would only ingest and store such data.²⁸ The Participants stated that the Plan Processor would no longer be required to create any lifecycle linkages for Options Market Maker Quotes²⁹ and that Options Market Maker Quotes would no longer be subject to Plan Processor enrichments (e.g., next event timestamp, lifecycle sequence number, CAT-Lifecycle-ID).³⁰ However, the Participants represented that, upon request, the Plan Processor would provide regulators with the code required to derive such enrichments

from the unprocessed data.³¹ While unlinked data would remain accessible to regulators by T+1 at 12:00 p.m. Eastern Time, the Participants stated that elimination of linkage and feedback processes would remove Options Market Maker Quotes from Options Market Replay, OLA Viewer, and All-Related Lifecycle Event queries.³² The Participants also stated that Options Market Maker Quotes would no longer be accessible via DIVER, a CAT query tool, but would remain accessible through BDSQL and Direct Read interfaces.³³ According to the Participants, executions that result from Options Market Maker Quotes would identify the “quoteId” of the quote that resulted in an execution, but would appear as orphaned lifecycle events.³⁴

The Participants estimated that the costs related to creating lifecycles for Options Market Maker Quotes were \$30 million in 2023.³⁵ The Participants represented that Options Market Maker Quotes are the single largest data source for the CAT, comprising approximately 98% of all options exchange events and approximately 75% of all transaction volume stored in the CAT.³⁶ However, the Participants explained that creating lifecycles for this data is less compute intensive than other processing tasks; because the vast majority of Options Market Maker Quote lifecycles consist of just two events—the quote and its subsequent cancellation—the number of quotes that result in an execution is extremely low.³⁷

The Participants also stated that they had already begun to implement certain measures to reduce the costs associated with lifecycle linkages for Options Market Maker Quotes, pursuant to exemptive relief issued by the Commission in November 2023.³⁸ The Participants stated that this exemptive relief allows the Plan Processor to create lifecycle linkages for Options Market Maker Quotes only once by T+2 at 8 a.m. Eastern Time (as opposed to requiring both an interim lifecycle by T+1 at 9 p.m. Eastern Time and a final lifecycle by T+5 at 8 a.m. Eastern Time).³⁹ The Participants expected the

above-described “single pass” approach to generating lifecycles for options quotes to result in annual savings of approximately \$5.4 million upon implementation in April 2024.⁴⁰

The Participants estimated that the Proposed Cost Savings Amendment would result in approximately \$20 million in additional annual cost savings in the first year, such that the cost impact of Options Market Maker Quotes on the CAT would be reduced from approximately \$24.4 million (inclusive of anticipated savings resulting from the implementation of the options quotes “single pass” proposal referenced above) to approximately \$4.0 million annually.⁴¹ They stated there would be limited regulatory impact.⁴² The Participants stated that the vast majority of Options Market Maker Quote lifecycles do not involve any execution or allocation and usage data demonstrates that such data is very rarely accessed by regulators. The Participants also stated that regulators would still have access to unlinked Options Market Maker Quotes data by T+1 at 12:00 p.m. Eastern Time under the Proposed Cost Savings Amendments and stated that regulatory users would be able to derive the currently available data enrichments if needed.⁴³

B. Storage for Raw Unprocessed Data and Interim Operational Copies of CAT Data Older Than 15 Days

The CAT NMS Plan requires CAT Data to be “directly available and searchable electronically without manual intervention for at least six years”⁴⁴ and within certain query tool response times.⁴⁵ These requirements apply not only to the final corrected data version that is delivered to regulators by T+5 at 8 a.m. Eastern

lifecycle linkages for Options Market Maker Quotes. *See id.* at 26984.

⁴⁰ *Id.* at 26984.

⁴¹ *See id.* at 26984–85. The Participants stated that their cost savings estimates assumed an approximate 65% reduction in compute runtime associated with options exchange events and an approximate 80% reduction in storage footprint through the elimination of versioned options quote data (e.g., interim, final, DIVER-optimized, OLA copies). *See id.* at 26985 n.19.

⁴² *See id.* at 26984–85.

⁴³ *See id.*

⁴⁴ *See* CAT NMS Plan, *supra* note 3, at Section 6.5(b)(i) and Appendix D, Section 1.4; *see also* Notice, *supra* note 7, at 26986.

⁴⁵ *See, e.g.,* CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.1 and 8.2; *see also* Notice, *supra* note 7, at 26986. The Participants explained that the Commission had granted conditional exemptive relief from certain performance requirements related to the online targeted query tool. *See* Notice, *supra* note 7, at 26986; *see also* November 2023 Exemptive Relief Order, *supra* note 38.

²¹ *See also id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 26984.

²⁹ *Id.* at 26984 n.15.

³⁰ *Id.* at 26984.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *See* Securities Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023) (“November 2023 Exemptive Relief Order”).

³⁹ *See* Notice, *supra* note 7, at 26984 n.15 (citing November 2023 Exemptive Relief Order). To the extent the Proposed Cost Savings Amendments are approved, the Participants stated that Plan Processor would no longer be required to create any

Time, but also to raw unprocessed data and various types of interim operational data, as well as to copies of all submission and feedback files provided to CAT Reporters as part of the correction process (collectively, “Operational Data”).⁴⁶ Specifically, with respect to raw unprocessed data and interim operational copies of data created between T+1 and T+5, Section 6.2 of Appendix D of the CAT NMS Plan provides that, prior to 12:00 p.m. Eastern Time on T+1, raw unprocessed data that has been ingested by the Plan Processor must be available to Participants’ regulatory staff and the SEC, and between 12:00 p.m. Eastern Time on T+1 and T+5, access to all iterations of processed data must be available to Participants’ regulatory staff and the SEC.⁴⁷

Currently, the Participants explained that interim operational data is supplanted in all CAT query tools by the final version of corrected data that is made available at T+5 at 8:00 a.m. Eastern Time.⁴⁸ However, they stated that such data remains available to regulators after T+5 “without manual intervention” via the use of CAT data management APIs.⁴⁹ Because the Participants believed that regulators generally access the latest, corrected version of CAT data, the Participants believed that interim operational data generally does not provide any regulatory value after the final corrected data version is delivered by T+5 at 8 a.m. Eastern Time.⁵⁰

The Participants stated that cost savings could be achieved by archiving Operational Data older than 15 days to a more cost-effective storage tier that is optimized for infrequent access. Specifically, the Participants proposed to add new Section 6.3 to Appendix D of the CAT NMS Plan that would state that certain types of data may be retained in an archive storage tier, in which case they would be made available upon request by Participant regulatory staff or the SEC to the CAT Help Desk.⁵¹ These types of data would include:

- “All raw unprocessed data (*i.e.*, as submitted data) and interim operational data older than 15 days. Interim operational data includes all processed, validated and unlinked data made

available to regulators by T+1 at 12:00 p.m. ET, and all iterations of processed data made available to regulators between T+1 and T+5, but excludes the final version of corrected data that is made available at T+5 at 8:00 a.m. ET.

- All submission and feedback files older than 15 days.”⁵²

Operational Data not older than 15 days, as well as all final, corrected data, would remain accessible “without manual intervention” within required query tool response times.⁵³ In addition, the Participants proposed to add references to proposed Section 6.3 of Appendix D to Section 6.5(d)(i) and Section 1.4 of Appendix D of the CAT NMS Plan.⁵⁴

Under proposed Section 6.3 of Appendix D, archived data would not be directly available and searchable electronically without manual intervention and would not be subject to any query tool performance requirements until restored to an accessible storage tier.⁵⁵ The Participants explained that archived data would be restored generally within several hours or business days of a request to the CAT Help Desk that is maintained pursuant to Section 10.3 of Appendix D of the CAT NMS Plan, depending on the volume and size of the date range of the requested data restore. For example, a request to restore a single day of data may take less than 24 hours, whereas a request to restore a year’s worth of data may take several days.⁵⁶ The Participants further represented that the Plan Processor would develop policies and procedures to ensure the confidentiality of any

regulator requests to obtain Operational Data.⁵⁷

Accordingly, the Participants believed that the anticipated savings associated with optimizing storage costs, which they estimated as approximately \$1 million in annual costs, outweigh the impact on regulatory access to CAT Data.

C. Provision of an Interim CAT-Order-ID on an “As Requested” Basis

Appendix D, Section 6.1 of the CAT NMS Plan states that “Noon Eastern Time T+1 (transaction date + one day)” is the deadline for “initial data validation, lifecycle linkages and communication of errors to CAT Reporters.”⁵⁸ Appendix D, Section 3 of the CAT NMS Plan further requires that the Plan Processor must use a “daisy chain approach,” in which “a series of unique order identifiers, assigned to all order events handled by CAT Reporters[,] are linked together by the Central Repository and assigned a single CAT-generated CAT-Order-ID that is associated with each individual order event and used to create the complete lifecycle of an order.”⁵⁹

The Participants explained that they provide a final CAT-Order-ID at T+5 at 8 a.m. Eastern Time, pursuant to the following timeline:

T+1 @8 a.m. ET: Initial submissions due
T+1 @12 p.m. ET: Initial data validation, communication of errors to CAT Reporters; unlinked data available to regulators
T+1 @9 p.m. ET: Interim CAT-Order-ID available⁶⁰

⁵⁷ *Id.*

⁵⁸ *Id.* at 26987.

⁵⁹ *Id.*

⁶⁰ The Participants further stated that, pursuant to the November 2023 Exemptive Relief Order, the Plan Processor assigns an interim CAT-Order-ID by T+1 at 9 p.m. Eastern Time, rather than by the T+1 at noon Eastern Time deadline set forth in the CAT NMS Plan. See Notice, *supra* note 7, at 26987; see also November 2023 Exemptive Relief Order, *supra* note 38. The Participants stated that the November 2023 Exemptive Relief Order provides that the Plan Processor will no longer be required to provide an interim CAT-Order-ID for Options Quotes once it has developed and implemented the functionality to provide a final CAT-Order-ID and lifecycle linkage for Options Quotes by T+2 at 8 a.m. Eastern Time, including all enrichments currently provided for such order events at T+5 at 8 a.m. Eastern Time. When late or corrected data is received for Options Quotes between T+1 at 8 a.m. Eastern Time and T+4 at 8 a.m. Eastern Time, the Participants stated that the Plan Processor must run, on an ad hoc basis, a second processing cycle such that lifecycle linkage and all enrichments currently provided for such order events are performed by T+5 at 8 a.m. Eastern Time. See Notice, *supra* note 7, at 26987 n.27. To the extent the proposed amendments are approved, the Participants stated that the Plan Processor would no longer be required to create any lifecycle linkages for Options Market Maker Quotes. See *id.*

⁴⁶ See Notice, *supra* note 7, at 26986.

⁴⁷ *Id.*; CAT NMS Plan, *supra* note 3, at Appendix D, Section 6.2.

⁴⁸ See Notice, *supra* note 7, at 26986.

⁴⁹ *Id.*

⁵⁰ *Id.* According to the Participants, after four years of operation, the Plan Processor has not seen any regulatory usage of this interim operational data. *Id.*

⁵¹ *Id.* at 26987.

⁵² *Id.* at 26987. Exhibit A of the Proposed Cost Savings Amendments sets forth a different version of this rule text, which states, in relevant part, that “[a]ll interim raw unprocessed data (*i.e.*, as submitted data) and operational data older than 15. Interim operational data includes all processed, validated and unlinked data and made available to regulators by T+1 at 12:00 p.m. ET, and all iterations of processed data made available to regulators between T+1 and T+5, but excludes the final version of corrected data that is made available at T+5 at 8:00 a.m. ET.” *Id.* at 26996. The Participants do not indicate which version of this rule text is meant to govern.

⁵³ *Id.* at 26986.

⁵⁴ *Id.* at 26987. Although the Participants indicated that this was their intent, they did not add this phrase to Section 6.5(d)(i) in Exhibit A of the Proposed Cost Savings Amendments. *Id.* at 26996. The Participants do not indicate which version of this rule text is meant to govern.

⁵⁵ *Id.* at 26987.

⁵⁶ *Id.* at 26986. The Participants reasoned that, when the Commission adopted the CAT NMS Plan, it noted that “[m]ost current data sources do not provide direct access to most regulators, and data requests can take as long as weeks or even months to process.” See *id.* (citing CAT NMS Plan Approval Order, *supra* note 3, at 84833 and Rule 613 Adopting Release, *supra* note 2, at 45729).

T+3 @8 a.m. ET: Resubmission of corrected data

T+4 @8 a.m. ET: Final lifecycle assembly begins, reprocessing of late submissions and corrections

T+5 @8 a.m. ET: Corrected data available to Participant regulatory staff and the SEC

The Participants proposed to amend Section 6.1 of Appendix D of the CAT NMS Plan to require the Plan Processor to provide an interim CAT-Order-ID on an “as requested” basis, rather than on a regular ongoing basis, where there is an immediate regulatory need (for example, in the case of a major market event), upon request of a senior officer of the Division of Trading and Markets, the Division of Enforcement, or the Division of Examinations to CAT LLC.⁶¹ In such cases, proposed Section 6.1 of Appendix D states that the Plan Processor would be directed to create an interim CAT-Order-ID and make it available to regulators by T+1 at 9 p.m. ET if the request is received prior to T+1 at 8 a.m. ET, or generally within 14 hours of receiving the request if such request was received after T+1 at 8 a.m. ET.⁶² Other conforming changes to Section 6.1 of Appendix D were also proposed.⁶³

The Participants clarified that, subject to the proposed amendments described above with respect to Options Market Maker Quotes, there would be no change to any other aspect of the CAT NMS Plan requirements for the processing of data, error feedback, and final delivery of data to regulators by T+5 at 8 a.m. ET, and no impact to Industry Members. Prior to 12:00 p.m. ET on T+1, regulators would continue to have access to raw unprocessed data that has been ingested by the Plan Processor, and between 12:00 p.m. on T+1 and T+5, regulators would continue to have access to all iterations of unlinked, processed data.⁶⁴ The Participants believed that the Proposed Cost Savings Amendments would preserve the SEC’s ability to obtain an interim CAT-Order-ID on an as needed basis, while avoiding the substantial cost of delivering an interim CAT-Order-ID on a regular ongoing basis.⁶⁵

The Participants therefore stated that the anticipated savings associated with this change would substantially outweigh the minimal regulatory impact.⁶⁶ According to the Participants, the Proposed Cost Savings Amendments

would result in approximately \$2 million in annual compute savings.⁶⁷ They further stated that the estimated cost of an ad hoc interim CAT-Order-ID delivery is approximately \$10,000 to \$12,000 per request, based on current data volumes,⁶⁸ and represented that CAT LLC would add a separate line item to its budget to reflect costs related to any SEC requests to generate an interim CAT-Order-ID.⁶⁹

D. Codification and Expansion of Exemptive Relief Permitting Deletion of Industry Test Data Older Than Three Months

According to the Participants, Industry Members and Participants submit data to the CAT pursuant to required and voluntary testing, feedback files related to such data, and output files that hold the detailed transactions, referred to herein as “Industry Test Data.”⁷⁰ Under Section 1.2 of Appendix D of the CAT NMS Plan, such Industry Test Data must be saved for three months.⁷¹ Separate from this specific three-month retention requirement, Rule 17a–1 under the Exchange Act requires every national securities exchange and national securities association to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity, and to keep all such documents for a period of not less than five years,

⁶⁷ *Id.* The Participants explained that the average typical daily compute costs for interim lifecycle processing is estimated to be approximately \$8,000/day to \$10,000/day for a typical day based on current data volumes (including savings attributable to the daily ODCR and Compute Savings Plans), which totals approximately \$2 million per year based on 252 trading days per year. *Id.* at 26988 n.28.

⁶⁸ According to the Participants, this cost savings estimate was calculated assuming the Plan Processor implements functionality to provide a final CAT-Order-ID and lifecycle linkage for options quotes by T+2 at 8 a.m. Eastern Time (in lieu of T+5 at 8 a.m. Eastern Time), which the Participants stated was expected in April 2024. *Id.* at 26987 n.24.

⁶⁹ *Id.* at 26987. The Participants noted, however, that they were unable to predict the number of authorized ad hoc runs per year that would be requested by the Commission. *Id.* at 26988 n.29.

⁷⁰ Separately, the Participants stated that CAT LLC, through the Plan Processor, also retains “[o]perational metrics associated with industry testing (including but not limited to testing results, firms who participated, and amount of data reported and linked)” for six years, in accordance with the CAT NMS Plan. *See Notice, supra* note 7, at 26988 n.30; *see also* CAT NMS Plan, *supra* note 3, at Appendix D, Section 1.2. The Participants explained that the proposed amendments do not affect such operational metrics. *See Notice, supra* note 7, at 26988 n.30.

⁷¹ *Id.* at 26988.

the first two years in an easily accessible place, subject to the destruction and disposition provisions of Rule 17a–6 under the Exchange Act.⁷² Section 9.1 of the CAT NMS Plan, the general recordkeeping provision for the CAT NMS Plan, also states, in relevant part, that the Company shall maintain complete and accurate books and records of the Company in accordance with SEC Rule 17a–1.⁷³

The Participants explained that, on June 2, 2023, CAT LLC requested exemptive relief from Rule 17a–1 under the Exchange Act and certain provisions of the CAT NMS Plan relating to the retention of Industry Test Data beyond three months.⁷⁴ On November 27, 2023, the Participants stated that the Commission granted the requested relief.⁷⁵ The Participants stated that their request for exemptive relief and the Industry Test Data Exemptive Relief Order apply only to Industry Test Data related to the CAT order and transaction system, not to the customer account and information system (“CAIS”).⁷⁶

The Participants proposed to amend Section 1.2 of Appendix D of the CAT NMS Plan to clarify that test data (whether related to the CAT order and transaction system or to the CAIS may be deleted by the Plan Processor after three months.⁷⁷ Proposed Section 1.2 of Appendix D would continue to state that operational metrics associated with industry testing (including but not limited to testing results, firms who participated, and amount of data reported and linked) must be stored for the same duration as the CAT production data.”⁷⁸

⁷² *See* 17 CFR 240.17a–1(a)–(b) and 17 CFR 240.17a–6; *see also* Notice, *supra* note 7, at 26988. The Participants explained that the CAT is a facility of each of the Participants to the CAT NMS Plan. *See Notice, supra* note 7, at 26988.

⁷³ *See id.* at 26988–89.

⁷⁴ *See Notice, supra* note 7, at 26988; *see also* Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated June 2, 2023, <https://catnmsplan.com/sites/default/files/2023-06/06.02.23-Exemptive-Request-Test-Data-Retention.pdf>. As noted in the exemptive request, CAT LLC does not believe that Industry Test Data constitutes documents covered by Rule 17a–1 under the Exchange Act and adheres to its view that the specific three-month period for Industry Test Data supersedes the more general, longer retention periods in the CAT NMS Plan, but submitted the exemptive request to obtain regulatory clarity in light of the SEC staff’s comments that the longer retention periods set forth in Rule 17a–1 under the Exchange Act and the CAT NMS Plan may apply to Industry Test Data.

⁷⁵ *See Notice, supra* note 7, at 26988; *see also* Industry Test Data Exemptive Relief Order, *supra* note 14.

⁷⁶ *See Notice, supra* note 7, at 26988.

⁷⁷ *Id.* at 26989.

⁷⁸ *See id.*

⁶¹ *See Notice, supra* note 7, at 26988.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 26987.

⁶⁵ *Id.*

⁶⁶ *Id.*

Prior to the issuance of the Industry Test Data Exemptive Relief Order, the Participants explained that the Plan Processor had been retaining Industry Test Data beyond the three-month period prescribed by Appendix D of the CAT NMS Plan; they stated that eliminating Industry Test Data older than three months as permitted by the exemptive order is expected to achieve approximately \$1 million per year in savings. According to the Participants, the Proposed Cost Savings Amendments would not generate additional cost savings beyond those achievable pursuant to the Industry Test Data Exemptive Relief Order.

III. Summary of Comments

The Commission received four comment letters in connection with the Proposed Cost Savings Amendments.⁷⁹ All commenters, CAT LLC, Nasdaq, Inc., the Financial Information Forum (“FIF”) and the Securities Industry and Financial Markets Association (“SIFMA”) supported the Proposed Cost Savings Amendments. CAT LLC and Nasdaq urged the Commission to approve the Proposed Cost Savings Amendments and all commenters stated that further steps should be taken to reduce costs associated with the CAT.

A. Processing, Query, and Storage Requirements for Options Market Maker Quotes

All commenters supported this aspect of the Proposed Cost Savings Amendments. FIF and CAT LLC supported this proposed change because as the Participants had stated in the Proposed Cost Savings Amendments “the vast majority of Options Market Maker Quote lifecycles do not involve any execution or allocation and usage data demonstrates that such data is very rarely accessed by regulators.”⁸⁰ FIF

further supported “eliminating Options Market Maker Quotes from CAT” altogether and requested that the Commission and the Participants “conduct” and make public “a cost-benefit analysis of maintaining Options Market Maker Quotes in CAT vs. removing them from CAT.”⁸¹

CAT LLC stated that eliminating optimizations that are currently required to make Options Market Maker Quotes accessible to regulatory users via DIVER would result in significant savings.⁸² CAT LLC stated that the “Plan Processor estimates that the continued optimization of Options Market Maker Quotes to make them available via DIVER would cost approximately \$2.8 million per year. According to CAT LLC, this estimate consists of approximately (i) \$2.2 million per year in compute costs for producing the DIVER-specific hash partition copy of Options Market Maker Quotes, and (ii) \$600,000 per year in storage costs for one year’s worth of DIVER-specific copies of Options Market Maker Quotes.” CAT LLC further stated that it “does not believe such costs are justified given the multiple additional and less costly alternative means that exist for regulatory users to access such data.”⁸³ CAT LLC stated that although Options Market Maker Quotes would no longer be accessible via DIVER, Options Market Maker Quotes would remain accessible through BDSQL and Direct Read interfaces, which represent more cost-efficient methods of providing access to the data.⁸⁴ CAT LLC also stated that the “regulatory groups of each of the Participants have indicated that they are able to conduct their regulatory programs accessing Options Market Maker Quotations via BDSQL and/or Direct Read.”⁸⁵

Further, CAT LLC stated that the Proposed Cost Savings Amendments will eliminate the following Plan Processor enrichments: “(i) derived next event timestamp; (ii) lifecycle sequence number; and (iii) the CAT Lifecycle ID (collectively, the “Eliminated Enrichments”).”⁸⁶ CAT LLC stated that only one Participant has used any of the three Eliminated Enrichments in connection with Options Market Maker Quotes, but that the Plan Processor will provide the existing code and/or logic required to derive the Eliminated Enrichments to the SEC and Participant

regulators upon request.⁸⁷ This logic would include written technical requirements explaining how regulators can generate the Eliminated Enrichments themselves, and CAT LLC stated that it “believes that regulators have demonstrated the technical ability to integrate this code into their own environments and to process data sets of this size in their regulatory and surveillance activities to date.”⁸⁸ Following approval of the Cost Savings Amendments, CAT LLC stated that the Plan Processor will not maintain the code or logic, but it will maintain a copy of each so that they may be provided to any regulators that might request them in the future.⁸⁹

CAT LLC clarified that only market maker quotes that are reported to CAT as quote events would be affected by the Proposed Cost Savings Amendments, and that market maker quotes reported to CAT as order events will not be impacted by this proposal and will continue to receive all enrichments and be fully available to regulatory users in DIVER.⁹⁰ CAT LLC stated that market maker quotes that are reported as quote events are “primarily responsible for driving CAT operating costs. For example, over the last year, there has been an average of approximately 214 billion market maker quotes reported as quote events each day compared to an average of approximately 13 billion market maker quotes reported as order events each day.”⁹¹ Additionally, CAT LLC stated that (i) quote events are clearly identifiable as quotes while it would be difficult for the Plan Processor to discern which order events represent market maker quotes, and (ii) the Eliminated Enrichments are not required to determine the correct sequence of events for quotes like they are for orders.⁹²

SIFMA also supported this aspect of the Proposed Cost Savings Amendments, stating that the “enormity of this data set . . . has created costs and challenges far beyond those envisioned when CAT was approved.”⁹³ SIFMA explained that the “quote-to-trade ratio in listed options markets is so large that the operational costs of linking quotes to trades is an unreasonable burden” that had not been supported by a cost-benefit analysis.⁹⁴ Moreover, SIFMA noted that “the ratio

⁷⁹ See Letter from Howard Meyerson, Managing Director, Financial Information Forum, to Secretary, Commission, dated May 7, 2024, available at <https://www.sec.gov/comments/4-698/4698-467591-1256394.pdf> (“FIF Letter”); Letter from Ellen Greene, Managing Director, Equities and Options Market Structure, and Joseph Corcoran, Managing Director, Associate General Counsel, The Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, dated May 31, 2024, available at <https://www.sec.gov/comments/4-698/4698-479631-1372454.pdf> (“SIFMA Letter”); Letter from Jeffrey S. Davis, Senior Vice President, Principal Deputy General Counsel, Nasdaq, Inc. to Vanessa Countryman, Secretary, Commission, dated July 1, 2024, available at <https://www.sec.gov/comments/4-698/4698-487351-1391254.pdf> (“Nasdaq Letter”); See Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated July 8, 2024, available at <https://www.sec.gov/comments/4-698/4-698-d.htm> (“SRO Letter”).

⁸⁰ See FIF Letter at 2; SRO Letter at 2 and 5 (citing Notice, *supra* note 7).

⁸¹ FIF Letter at 2.

⁸² See SRO Letter at 5.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See SRO Letter at 6.

⁸⁹ *Id.*

⁹⁰ *Id.* at 7.

⁹¹ *Id.*

⁹² *Id.*

⁹³ SIFMA Letter at 2.

⁹⁴ *Id.* at 2–3.

keeps increasing, with [its] member data showing the most recent peak of 32,000 quotes per trade in the U.S. options market in December 2023,” a ratio that they stated was “nearly 4 times greater than the ratio described” in the CAT NMS Plan Approval Order.⁹⁵ SIFMA further expressed concern that there were no forces to “constrain the increase in this ratio” and stated that “certain SEC market structure initiatives might only accelerate the increase.”⁹⁶ Given the “extremely small number of quotes” with a “corresponding trade,” SIFMA did not believe it was reasonable to spend so much on processing and storage costs for Options Market Maker Quotes, especially if such data would continue to be reported to the CAT and if “the SEC or a Participant can use the quote data as part of its surveillance or investigation patterns, albeit with the need to perform some additional computations.”⁹⁷

Additionally, Nasdaq supported this proposed change and stated that Options Market Maker Quotes “are the single largest data source for the CAT and the cost impact of storing and processing Options Market Maker Quotes remains a significant percentage of overall CAT costs.”⁹⁸ Nasdaq further stated that if the proposed amendment is adopted, CAT is expected to save \$20 million related to options quotes.⁹⁹

CAT LLC reiterated the \$20 million annual savings and stated that “this number is based on an estimated 65 percent reduction in compute runtime associated with Options Exchange events, and an estimated 80 percent reduction in storage footprint through the elimination of versioned quote data (e.g., T+2 8AM version, Final, DIVER, and OLA copies).”¹⁰⁰ CAT LLC further stated that the cost savings estimates reflect the Plan Processor’s knowledge of current conditions and other factors, and that the estimated cost savings could change based on available AWS offerings or other variables.¹⁰¹ Further, CAT LLC clarified that the Plan Processor would continue to perform ingestion validation on Options Market Maker Quotes, but would stop performing linkage validation.¹⁰²

B. Storage for Raw Unprocessed Data and Interim Operational Copies of CAT Data Older Than 15 Days

All commenters supported this aspect of the Proposed Cost Savings Amendments.¹⁰³ SIFMA further stated the Commission should consider “whether its recordkeeping requirements are appropriate” and recommended that the SEC “embark on a more comprehensive undertaking about what other data can be moved to more cost-effective storage solutions.”¹⁰⁴

FIF also stated that “further steps can be taken.”¹⁰⁵ For instance, FIF stated that, “[i]f the Operational Data does not provide any value to CAT Reporters¹⁰⁶ or to regulators after T+5, there is no reason to store this data after T+5.”¹⁰⁷ Conversely, if the Commission and the Participants issued a public report that “explains the regulatory value of maintaining this Operational Data,” FIF stated that it would “agree with the proposal . . . to move the Operational Data to a more cost-effective storage tier.”¹⁰⁸ FIF further requested that the Commission and the Participants “publish an analysis as to whether this data could be stored in tiers within AWS S3, such as Glacier or Glacier Deep Archive, that could be more cost effective than the AWS S3 Intelligent Tier, as proposed in the Participant filing.”¹⁰⁹

In addition, FIF stated that “enhanced transparency regarding the operation of the CAT system is necessary and appropriate” and expressed concern that “there could be other requirements that the Commission is imposing on the . . . Participants that either do not provide regulatory value or are beyond the scope of CAT.”¹¹⁰ FIF requested that the Commission “provide clarification” as to why Industry Members and their customers should be “required to incur costs for storage of data that has no regulatory value.”¹¹¹

With regard to additional information requested on the cost calculations for moving Operational Data older than 15 days to a different storage tier, CAT LLC

explained that their \$1 million per year savings estimate is “based on current storage tier pricing differentials and a 1:1:8 ratio of the data between the three S3 storage tiers. Operational Data older than 15 days is currently stored at the ‘S3–FA’ storage tier. AWS cloud offers three storage tiers that are cheaper than the S3–FA storage tier, including Glacier Deep Archive. Moving Operational Data older than 15 days from S3–FA to Glacier Deep Archive, as contemplated in the Cost Savings Amendments, would result in storage savings of more than 90 percent the cost of continuing to store such data in the S3–FA storage tier, representing cost savings of approximately \$1 million per year.”¹¹² CAT LLC further explained the storage tier pricing ratio of 1:1:8 and stated that specific to storage cost estimates, S3 Intelligent Tier storage fees are allocated at a ratio of 1 (S3 Frequent Access): 1 (S3 Infrequent Access): 8 (S3 Archive Instant Access).¹¹³ CAT LLC stated that “this ratio describes the current percentage distribution of data files between storage tiers, which is driven by regulatory usage.”¹¹⁴ Data files that are either new or that have recently been read by regulatory users are stored in S3 Frequent Access, and less frequently used files are moved to other S3 storage tiers based on usage. The Plan Processor’s storage cost model is based on a 1:1:8 ratio across the S3 storage tiers, in accordance with current observed regulatory usage. If regulatory users begin to read older data files more frequently, then those files would be moved up to S3 Frequent Access, and the 1:1:8 ratio between the S3 storage tiers would change.¹¹⁵ Because each S3 storage tier has its own cost-per-petabyte of data, any change in the 1:1:8 ratio based on regulatory usage would affect storage costs.¹¹⁶

CAT LLC further stated that after moving raw unprocessed data and interim operational data older than 15 days to a more cost-effective storage tier, retrieving such data for regulators would require some “manual intervention” by the Plan Processor.¹¹⁷ CAT LLC noted that the Commission sought clarification on this “manual intervention”, as this data is currently available “without manual intervention” in accordance with the CAT NMS Plan via the use of CAT data

⁹⁵ *Id.* at 2 (citing CAT NMS Plan Approval Order, *supra* note 3, at 84750).

⁹⁶ *Id.* For example, SIFMA explained that the Commission’s recent “tick size proposal has the potential to significantly expand the amount of quoting activity in the equities and listed options markets.” *Id.* at 2 n.7.

⁹⁷ *Id.* at 2–3.

⁹⁸ See Nasdaq Letter at 2.

⁹⁹ *Id.*

¹⁰⁰ See SRO Letter at 3.

¹⁰¹ *Id.*

¹⁰² *Id.* at 4.

¹⁰³ See, e.g., FIF Letter at 3; SIFMA Letter at 3; Nasdaq Letter at 2; SRO Letter at 2–7.

¹⁰⁴ SIFMA Letter at 3.

¹⁰⁵ FIF Letter at 3.

¹⁰⁶ “CAT Reporter” means “each national securities exchange, national securities association and Industry Member that is required to record and report information to the Central Repository pursuant to SEC Rule 613(c).” See CAT NMS Plan, *supra* note 3, at Section 1.1.

¹⁰⁷ FIF Letter at 3.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 3–4.

¹¹¹ *Id.*

¹¹² SRO Letter at 3–4.

¹¹³ See SRO Letter at 3.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ See SRO Letter at 7.

management APIs.¹¹⁸ CAT LLC stated that during the four year operation of the CAT, the Plan Processor had not observed any regulatory usage of the data in question,¹¹⁹ thus CAT LLC reiterated its proposal that upon request to the CAT Help Desk, the Plan Processor would restore archived data to an accessible storage tier so that it is available to and searchable by regulatory users directly.¹²⁰

C. Provision of an Interim CAT-Order-ID on an “As Requested” Basis

All commenters supported this aspect of the Proposed Cost Savings Amendments. Nasdaq stated that this proposal could save “\$2[sic] by changing the availability of the interim CAT-Order-ID from a daily basis to an as requested basis.”¹²¹ CAT LLC stated that by multiplying the “\$8,000 to \$10,000 cost per day by 252 trading days per year,” the “Plan Processor estimates that it costs approximately \$2 million per year to generate an interim CAT-Order-ID on a daily basis.”¹²² The Proposed Cost Savings Amendments would change this from an ongoing daily expense to an “as requested” expense, which the Plan Processor estimates would cost between \$10,000 and \$12,000 per request.¹²³ CAT LLC stated that this estimate is “based on on-demand AWS rates for a typical day with average data volumes, less Options Market Maker Quotes data volume and its associated storage needs.”¹²⁴ CAT LLC noted that the Plan Processor did not estimate the number of requests that it may receive from regulators each year to generate an interim CAT-Order-ID, so the estimated \$2 million in annual savings would decrease depending on number of requests received from regulators.¹²⁵

FIF agreed with the Participants that “the substantial cost of delivering an interim CAT-Order-ID on a continuous basis outweighs any regulatory benefit.”¹²⁶ FIF also requested that the Commission and the Participants “publish a cost-benefit analysis of the current and proposed mandates relating to the assignment of an interim CAT-Order-ID,” including an analysis of why assignment of an interim CAT-Order-ID

would be appropriate even on an “as requested” basis.¹²⁷

SIFMA stated that the Participants had proposed to “provide an interim CAT-Order-ID on an as needed basis and in doing so would realize substantial cost savings.”¹²⁸ SIFMA therefore stated that the proposed changes were “essential and long overdue” and stated that “[d]ecisions made by the SEC years ago about what it thought it needed in terms of the timeliness and availability of interim data must be re-examined by the SEC in light of its real-world experience and its understanding of the incremental costs to provide such data.”¹²⁹

D. Codification and Expansion of Exemptive Relief Permitting Deletion of Industry Test Data Older Than Three Months

Two commenters supported this aspect of the Proposed Cost Savings Amendments. SIFMA stated that it supported this change, “as it incorporates into the [CAT NMS] Plan previously-granted relief as well as applies that relief to test data used in connection with the CAT CAIS.”¹³⁰ FIF stated that it supported this change “because storage of test data in CAT is not relevant for regulatory surveillance.”¹³¹ FIF further stated that it supported “deletion of all test data after one week” and requested that the Commission and the Participants “publish a cost-benefit analysis of any mandate to retain test data beyond one week,” which analysis should “identify any use cases that would involve access to test data beyond one week, including the regulatory purpose.”¹³²

E. Additional Information on the Participants’ Proposed Cost Savings Amendments

In response to the Commission staff’s request for additional details regarding their cost savings calculations, CAT LLC stated that “all cost and savings projections necessarily are good faith estimates based on current information and reflect the current state and costs of CAT operations, including the current number of exchanges.”¹³³ CAT LLC also stated that “it would be unduly burdensome and not necessarily meaningful to require CAT LLC and the Plan Processor to provide separate cost estimates attributable to each interdependent subcomponent of a

particular proposal . . . All of the cost savings estimates for the Cost Savings Amendments are based on, among other factors: current CAT NMS Plan requirements; reporting by Participants, Industry Members, and market data providers; observed data rates and volumes; current storage and compute pricing discounts, compute reservations, and cost savings plans (*i.e.*, including savings attributable to the daily On-Demand Capacity Reservations and Compute Savings Plans); and associated cloud fees. Actual future savings could be more or less than estimated due to changes in any of these variables.”¹³⁴

F. Other Comments

All commenters requested that additional steps be taken to further manage and reduce CAT operating costs.¹³⁵ For instance, SIFMA suggested that the Commission and the Participants should “assess their own CAT usage patterns and needs to identify further cost saving measures.”¹³⁶ SIFMA stated that the CAT “should be operated to meet the reasonable and legitimate needs of regulators, and not as a monolith to address any regulatory use case regardless of the costs.”¹³⁷ SIFMA also stated that the Participants and the Commission could “provide Industry Members with a more meaningful opportunity to contribute their experience and expertise to the CAT’s budget setting and cost savings processes.”¹³⁸ Specifically, SIFMA recommended that the Participants establish a separate working group that includes Industry Members to focus on ways the CAT system can be made more efficient from a cost perspective while still achieving its goals.¹³⁹ “Without more direct involvement by Industry Members in the CAT budgeting process,” SIFMA stated that “there is an insufficient structural framework and incentives to bring CAT costs under control.”¹⁴⁰

FIF expressed similar concerns.¹⁴¹ FIF stated that it was important for the

¹³⁴ *Id.* at 2–3.

¹³⁵ *See, e.g.*, FIF Letter at 2; SIFMA Letter at 1; Nasdaq Letter at 2.

¹³⁶ *See, e.g.*, SIFMA Letter at 2.

¹³⁷ *Id.*

¹³⁸ *See, e.g.*, SIFMA Letter at 1.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ These concerns were also set forth in a previous comment letter to the Commission that was jointly submitted by SIFMA and FIF. *See* FIF Letter, at 5 n.19; *see also* Letter from Joseph Corcoran, Managing Director, Associate General Counsel, and Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, and Howard Meyerson, Managing Director, FIF, to

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *See* Nasdaq Letter at 2.

¹²² *See* SRO Letter at 4.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ FIF Letter at 4 (citing Notice, *supra* note 7); *see also* SIFMA Letter at 4 (“This is yet another illustration of incurring costs without a corresponding regulatory benefit.”).

¹²⁷ FIF Letter at 4.

¹²⁸ SIFMA Letter at 3.

¹²⁹ *Id.* at 3–4.

¹³⁰ *Id.* at 4.

¹³¹ FIF Letter at 5.

¹³² FIF Letter at 5.

¹³³ *See* SRO Letter at 2.

Commission to “provide transparency about any proposed CAT processing changes and the associated costs of those changes.”¹⁴² FIF stated that the Commission “should not impose CAT reporting requirements that are beyond the scope of Commission Rule 613 and the CAT NMS Plan” and that “[p]roposed changes to current CAT processing or reporting requirements that could involve further significant increases in CAT operating costs should be subject to an appropriate cost-benefit analysis that is included as part of a CAT NMS Plan amendment.”¹⁴³

The SRO Letter and Nasdaq Letter reiterated the Participants’ points in the Proposed Cost Savings Amendments regarding the impact on regulatory usage by stating that the proposals would have a minimal impact on regulatory usage and that the Participants believe that the expected savings substantially outweigh the minimal regulatory impact of the proposed changes.¹⁴⁴ Both commenters further stated that they note that SIFMA and FIF are in support of the Proposed Cost Savings Amendments.¹⁴⁵

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Amendment

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,¹⁴⁶ and Rules 700 and 701 of the Commission’s Rules of Practice,¹⁴⁷ to determine whether to disapprove the Proposed Cost Savings Amendments or to approve the Proposed Cost Savings Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Cost Savings Amendments to inform the Commission’s analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission “shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or

amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the [Exchange] Act.”¹⁴⁸ Rule 608(b)(2) further provides that the Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.¹⁴⁹ In the Notice, the Commission sought comment on the Proposed Cost Savings Amendments, including whether the Proposed Cost Savings Amendments are consistent with the Exchange Act.¹⁵⁰ In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,¹⁵¹ the Commission is providing notice of the grounds for disapproval under consideration:

- Whether, consistent with Rule 608 of Regulation NMS, the Participants have demonstrated how the Proposed Cost Savings Amendments are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act;¹⁵²

- Whether the Participants have demonstrated how the Proposed Cost Savings Amendments are consistent with Section 6(b)(5)¹⁵³ and Section 15A(b)(6)¹⁵⁴ of the Exchange Act, which require that the rules of a national securities exchange or national securities association 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”;

- Whether the Participants have demonstrated how the Proposed Cost Savings Amendments are consistent with Section 11A of the Exchange Act,¹⁵⁵ which directs the Commission, “having due regard for the public interest, the protection of investors, and

the maintenance of fair and orderly markets, to use its authority under this chapter to facilitate the establishment of a national market system . . . in accordance with the findings and to carry out the objectives” expressed by Congress, including, among other things, that “[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . (i) economically efficient execution of securities transactions; [and] (ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets,” as well as “to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this chapter in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or on or more facilities thereof”;

- Whether the Participants have demonstrated how the Proposed Cost Savings Amendments are consistent with Section 17 of the Exchange Act¹⁵⁶ and Rules 17a–1 and 17a–4,¹⁵⁷ which set forth requirements for national securities exchanges, national securities associations, brokers, and dealers related to making, keeping, furnishing, and disseminating records;

- Whether and if so how, the Proposed Cost Savings Amendments would affect efficiency, competition, or capital formation, which analysis is required by Rule 613 under the Exchange Act;¹⁵⁸ and

- Whether modifications to the Proposed Cost Savings Amendments, or conditions to its approval, would be necessary or appropriate in the public interest, for the protection of investors and the maintenance of orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the Exchange Act.¹⁵⁹

Under the Commission’s Rules of Practice, the “burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the plan participants that filed the NMS plan filing.”¹⁶⁰ The description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an

Secretary, Commission, dated July 31, 2023, available at <https://www.sec.gov/comments/4-698/4698-238359-498762.pdf>.

¹⁴² FIF Letter at 5.

¹⁴³ *Id.*

¹⁴⁴ See Nasdaq Letter at 2; SRO Letter at 2.

¹⁴⁵ See Nasdaq Letter at 2; SRO Letter at 8.

¹⁴⁶ 17 CFR 242.608(b)(2)(i).

¹⁴⁷ 17 CFR 201.700; 17 CFR 201.701.

¹⁴⁸ 17 CFR 242.608(b)(2).

¹⁴⁹ *Id.*

¹⁵⁰ See Notice, *supra* note 7, at 26997–98.

¹⁵¹ 17 CFR 242.608(b)(2)(i).

¹⁵² 17 CFR 242.608(b)(2).

¹⁵³ 15 U.S.C. 78f(b)(5).

¹⁵⁴ 15 U.S.C. 78o–3(b)(6).

¹⁵⁵ 15 U.S.C. 78k–1.

¹⁵⁶ 15 U.S.C. 78q.

¹⁵⁷ 17 CFR 240.17a–1.

¹⁵⁸ 17 CFR 242.613(a)(5).

¹⁵⁹ 17 CFR 242.608(b)(2).

¹⁶⁰ 17 CFR 201.701(b)(3)(iii).

affirmative Commission finding.¹⁶¹ Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Exchange Act and the applicable rules and regulations thereunder.¹⁶²

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Cost Savings Amendments. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Cost Savings Amendments are consistent with the Exchange Act, the rules and regulations thereunder, or any other provisions of the CAT NMS Plan. The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Cost Savings Amendments, in addition to any other comments they may wish to submit about the proposed rule changes.

To consider the impact of the Proposed Cost Savings Amendments on efficiency, competition, and capital formation,¹⁶³ the Commission requests additional information. In particular:

- To understand the effect of the Proposed Cost Savings Amendments on the operational efficiency of the Central Repository (and the follow-on effects on market efficiency, competition, and capital formation), the Commission requests additional details and underlying calculations used to estimate the cost savings as well as information on the costs to the Plan Processor of implementing each element of each of the proposed amendments (e.g., some amendments would require coding changes, which would impose costs). The Commission also requests more specific information on data processes, such as processes for identifying and tracking linkage-related errors without the use of an interim CAT-Order-ID, that inform on how the Proposed Cost Savings Amendments affect operational efficiency.
- To understand the effect of the Proposed Cost Savings Amendments on regulatory efficiency (and follow-on

effects on investor protection and capital formation), in addition to the three "Eliminated Enhancements" discussed in the SRO Letter,¹⁶⁴ the Commission requests more information on data elements—namely, a list of fields and variables for various event types in current CAT Data—that would no longer be directly available, would only be available indirectly (via notifications or making of requests to the Plan Processor or other entities), or would be available on a delay relative to today. The Commission also requests information on existing substitutes for such data elements (e.g., substitutes for interim CAT-Order-ID), and on how these substitutes could be used by data users to alleviate any reductions in regulatory efficiency.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,¹⁶⁵ any request for an opportunity to make an oral presentation.¹⁶⁶

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Cost Savings Amendments should be approved or disapproved by August 9, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 23, 2024. 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 4–698 (CAT Cost Savings Amendment) 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 4–698 (CAT Cost Savings Amendment). 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 Participants' principal offices. 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 4–698 (CAT Cost Savings Amendment) and should be submitted on or before August 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶⁷

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–15908 Filed 7–18–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 89 FR 57457, July 15, 2024.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, July 18, 2024 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, July 18, 2024, at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

¹⁶⁷ 17 CFR 200.30–3(a)(85).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ The Commission is required to consider the impact of amendments to the CAT NMS Plan on efficiency, competition, and capital formation. See 17 CFR 242.613(a)(5).

¹⁶⁴ See SRO Letter at 5.

¹⁶⁵ 17 CFR 242.608(b)(2)(i).

¹⁶⁶ Rule 700(c)(ii) of the Commission's Rules of Practice provides that "[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views." 17 CFR 201.700(c)(ii).

Dated: July 17, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–16048 Filed 7–17–24; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100539; File No. 10–240]

In the Matter of the Application of MIAX Sapphire, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission

July 15, 2024.

I. Introduction

On September 26, 2023, MIAX Sapphire, LLC (“MIAX Sapphire” or “Exchange”) submitted to the Securities and Exchange Commission (“Commission”) a Form 1 application (“Form 1”) under the Securities Exchange Act of 1934 (“Act”), seeking registration as a national securities exchange under Section 6 of the Act.¹ Notice of the Form 1 was published for comment in the *Federal Register* on October 19, 2023.² On December 21, 2023, MIAX Sapphire consented to an extension of time to March 1, 2024 for Commission consideration of its Form 1.³ The Commission received two comment letters on the Form 1 and two letters from MIAX Sapphire responding to one of the comment letters.⁴ On February 28, 2024, MIAX Sapphire consented to an additional extension of time to July 15, 2024 for Commission consideration of its Form 1.⁵ On May

22, 2024, MIAX Sapphire submitted Amendment No. 1 to the Form 1.⁶

For the reasons set forth below, this order approves MIAX Sapphire’s application, as amended, for registration as a national securities exchange.

II. Statutory Standards

Under Sections 6(b) and 19(a) of the Act,⁷ the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that MIAX Sapphire’s application, as amended, for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of MIAX Sapphire are consistent with Section 6 of the Act in that, among other things, they assure a fair representation of the exchange’s members in the selection of its directors and administration of its affairs and provide that one or more directors will be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer;⁸ and that they are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.⁹ The Commission also finds that the proposed rules of MIAX Sapphire are

consistent with Section 11A of the Act.¹⁰ Finally, the Commission finds that MIAX Sapphire’s proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹¹

III. Discussion

A. Governance of MIAX Sapphire

1. MIAX Sapphire Board of Directors

The board of directors of MIAX Sapphire (“Exchange Board” or “MIAX Sapphire Board”) will be its governing body and will possess all of the powers necessary for the management of its business and affairs, including governance of MIAX Sapphire as a self-regulatory organization (“SRO”).¹²

Under the MIAX Sapphire By-Laws:

- The Exchange Board will be composed of not less than ten Directors;¹³
- One Director will be the Chief Executive Officer of MIAX Sapphire;¹⁴
- The number of Non-Industry Directors,¹⁵ including at least one Director who has no material relationship with MIAX Sapphire or any affiliate of MIAX Sapphire, or any Exchange Member¹⁶ or any affiliate of any such Exchange Member (“Independent Director”),¹⁷ will equal or exceed the sum of the number of

¹⁰ See 15 U.S.C. 78k–1.

¹¹ See 15 U.S.C. 78f(b)(8).

¹² See By-Laws of MIAX Sapphire (“MIAX Sapphire By-Laws”), Article II, Section 2.1. See also Amended and Restated Limited Liability Company Agreement of MIAX Sapphire (“MIAX Sapphire LLC Agreement”), Section 9(a). The MIAX Sapphire By-Laws have been established pursuant to the MIAX Sapphire LLC Agreement.

¹³ See MIAX Sapphire By-Laws, Article II, Section 2.2(a). “Director” means the persons elected or appointed to the Exchange Board from time to time in accordance with the MIAX Sapphire LLC Agreement and MIAX Sapphire By-Laws in their capacity as managers of MIAX Sapphire. See MIAX Sapphire By-Laws, Article I(j).

¹⁴ See MIAX Sapphire By-Laws, Article II, Section 2.2(b).

¹⁵ “Non-Industry Director” means a Director who is an Independent Director or any other individual who would not be an Industry Director. See MIAX Sapphire By-Laws, Article I(aa).

¹⁶ “Exchange Member” means any registered broker or dealer that has been admitted to membership in the national securities exchange operated by MIAX Sapphire. See MIAX Sapphire By-Laws, Article I(n).

¹⁷ See MIAX Sapphire By-Laws, Article I(p). Provided, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of MIAX Sapphire or Miami International Holdings, Inc. (“Miami Holdings”). See id.

¹ 15 U.S.C. 78f.

² See Securities Exchange Act Release No. 34–98746 (Oct. 13, 2023), 88 FR 72116 (“Notice”).

³ See Letter from Thomas P. Gallagher, Chairman of the Board, MIAX Sapphire, dated Dec. 21, 2023, available at: <https://www.sec.gov/comments/10-240/10240-319979-832562.pdf>.

⁴ See Letter from Greg Ferrari, Vice President, U.S. Options, Nasdaq, Inc., dated Nov. 27, 2023 (“Nasdaq Letter”); Letter from Gregory P. Ziegler, Vice President, Senior Counsel, MIAX Sapphire, dated Feb. 5, 2024 (“MIAX Sapphire Letter”); Letter from Gregory P. Ziegler, Vice President, Senior Counsel, MIAX Sapphire, dated Apr. 10, 2024 (“MIAX Sapphire Letter II”); Letter from James J. Angel, Associate Professor of Finance, Georgetown University, dated Apr. 17, 2024 (“Angel Letter”). Comments received on MIAX Sapphire’s Form 1 (File No. 10–240) are available on the Commission’s website at: <https://www.sec.gov/comments/10-240/10-240.htm>.

⁵ See Letter from Thomas P. Gallagher, Chairman of the Board, MIAX Sapphire, dated Feb. 28, 2024, available at: <https://www.sec.gov/comments/10-240/10240-436699-1083602.pdf>.

⁶ See Letter from Thomas P. Gallagher, Chairman of the Board, MIAX Sapphire, dated May 22, 2024, available at: <https://www.sec.gov/files/rules/other/2024/sapphire-form-1-cover-page-amendment-1.pdf>. In Amendment No. 1, MIAX Sapphire submitted an updated Exhibit B (MIAX Sapphire Options Exchange Rules) to its Form 1.

⁷ 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

⁸ See 15 U.S.C. 78f(b)(3).

⁹ See 15 U.S.C. 78f(b)(5).

Industry Directors¹⁸ and Member Representative Directors;¹⁹ and

- At least 20% of the Directors on the Exchange Board will be Member Representative Directors.²⁰

For the interim board (discussed below), and subsequently at the first annual meeting and each annual meeting thereafter, Miami Holdings, as the sole LLC Member of MIAX Sapphire, will elect the MIAX Sapphire Board pursuant to the MIAX Sapphire By-Laws.²¹ In addition, Miami Holdings will appoint the initial Nominating Committee²² and Member Nominating Committee,²³ consistent with each

committee's compositional requirements,²⁴ to nominate candidates for election to the Exchange Board. Each of the Nominating Committee and Member Nominating Committee, after completion of its respective duties for nominating Directors for election to the Board for that year, shall nominate candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable. Additional candidates for the Member Nominating Committee may be nominated and elected by Exchange Members pursuant to a petition process.²⁵

The Nominating Committee will nominate candidates for each Director position, and Miami Holdings, as the sole LLC Member, will elect those Directors. For Member Representative Director positions, the Nominating Committee will nominate those candidates submitted to it, and approved, by the Member Nominating Committee.²⁶ Additional candidates, however, may be nominated for the Member Representative Director positions by Exchange Members pursuant to a petition process.²⁷ If no candidates are nominated pursuant to the petition process, then the initial nominees submitted by the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee. If the petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those nominated by the Member Nominating Committee, will be presented to Exchange Members for a run-off election to determine the final slate of nominees for the vacant Member Representative

Director positions.²⁸ In the event of a contested run-off election, the candidates who receive the most votes will be selected as the nominees for the Member Representative Director positions.²⁹ Miami Holdings, as the sole LLC Member, is obligated to elect the final nominees for the Member Representative Director positions.³⁰

The requirement in the MIAX Sapphire By-Laws that 20% of the Directors be Member Representative Directors and the means by which they will be chosen by Exchange Members provide for the fair representation of members in the selection of Directors and the administration of MIAX Sapphire and therefore is consistent with Section 6(b)(3) of the Act.³¹ As the Commission has previously stated, this requirement helps to ensure that members have a voice in an exchange's self-regulatory program, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.³²

In addition, with respect to the requirement that the number of Non-Industry Directors, including at least one Independent Director, will equal or exceed the sum of the number of Industry Directors and Member Representative Directors, the proposed composition of the Exchange Board satisfies the requirements in Section 6(b)(3) of the Act,³³ which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. The Commission previously has stated that the inclusion of public, non-industry representatives on exchange

¹⁸ An "Industry Director" is, among other things, a Director that is or has served within the prior three years as an officer, director, employee, or owner of a broker or dealer, as well as any Director who has, or has had, a consulting or employment relationship with MIAX Sapphire or any affiliate of MIAX Sapphire within the prior three years. See MIAX Sapphire By-Laws, Article I(r). This definition is consistent with what the Commission has approved for other exchanges. See Securities Exchange Act Release Nos. 84891 (Dec. 20, 2018), 83 FR 67421 (Dec. 28, 2018) (File No. 10-233) (order granting the registration of MIAX EMERALD, LLC ("MIAX Emerald")) ("MIAX Emerald Order"); 79543 (Dec. 13, 2016), 81 FR 92901 (Dec. 20, 2016) (File No. 10-227) (order granting the registration of MIAX PEARL, LLC ("MIAX Pearl")) ("MIAX Pearl Order"); 68341 (Dec. 3, 2012), 77 FR 73065 (Dec. 7, 2012) (File No. 10-207) (order granting the registration of Miami International Securities Exchange, LLC ("MIAX Exchange")) ("MIAX Order"); 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008) (File No. 10-182) (order granting the registration of BATS Exchange, Inc.) ("BATS Order"); and 66871 (Apr. 27, 2012), 77 FR 26323 (May 3, 2012) (File No. 10-206) (order granting the registration of BOX Options Exchange LLC ("BOX")) ("BOX Order").

¹⁹ See MIAX Sapphire By-Laws, Article II, Section 2.2(b)(i). "Member Representative Director" means a Director who has been appointed as such to the initial Exchange Board pursuant to Article II, Section 2.5 of the MIAX Sapphire By-Laws, or elected by Miami Holdings after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the MIAX Sapphire By-Laws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director may, but is not required to, be an officer, director, employee, or agent of an Exchange Member. See MIAX Sapphire By-Laws, Article I(x). See also MIAX Sapphire By-Laws Article II, Section 2.5. "Member Nominating Committee" means the Member Nominating Committee elected pursuant to the MIAX Sapphire By-Laws. See MIAX Sapphire By-Laws, Article I(w).

²⁰ See MIAX Sapphire By-Laws, Article II, Section 2.2(b)(ii).

²¹ See MIAX Sapphire By-Laws, Article II, Sections 2.4 and 2.5. See also MIAX Sapphire LLC Agreement, Section 9(a).

²² The Nominating Committee will be composed of at least three Directors, and the number of Non-Industry members on the Nominating Committee must equal or exceed the number of Industry members. See MIAX Sapphire By-Laws, Article V, Section 5.2. See also MIAX Sapphire By-Laws, Article IV, Section 4.2(a).

²³ The Member Nominating Committee will be composed of at least three Directors, and each member of the Member Nominating Committee shall be a Member Representative member and shall not be required to be a Director of the Exchange.

See MIAX Sapphire By-Laws, Article V, Section 5.3. See also MIAX Sapphire By-Laws, Article IV, Section 4.2(a). Pursuant to MIAX Sapphire By-Laws, Article I(y), a "Member Representative member" is a member of any committee or hearing panel appointed by the Exchange Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the MIAX Sapphire By-Laws and who is an officer, director, employee, or agent of an Exchange Member.

²⁴ See MIAX Sapphire By-Laws, Article V, Section 5.1.

²⁵ See *id.* See also MIAX Sapphire By-Laws, Article II, Section 2.4.

²⁶ The Member Nominating Committee will solicit comments from Exchange Members for the purpose of approving and submitting names of candidates for election to the position of Member Representative Director. See MIAX Sapphire By-Laws, Article II, Section 2.4(b).

²⁷ See MIAX Sapphire By-Laws, Article II, Section 2.4(c). The petition must be signed by executive representatives of 10% or more of the Exchange Members. No Exchange Member, together with its affiliates, may account for more than 50% of the signatures endorsing a particular candidate. See *id.*

²⁸ See MIAX Sapphire By-Laws, Article II, Sections 2.4(e) and (f). Each Exchange Member shall have the right to cast one vote for each available Member Representative Director nomination, provided that any such vote must be cast for a person on the list of candidates and that no Exchange Member, together with its affiliates, may account for more than 20% of the votes cast for a candidate. See MIAX Sapphire By-Laws, Article II, Section 2.4(f).

²⁹ See MIAX Sapphire By-Laws, Article II, Section 2.4(f). Tie votes by the Exchange Members will be decided by the Member Nominating Committee. See *id.*

³⁰ See *id.*

³¹ 15 U.S.C. 78f(b)(3).

³² See, e.g., MIAX Pearl Order, *supra* note 18, at 92903; MIAX Order, *supra* note 18, at 73067; BATS Order, *supra* note 18, at 26325; Securities Exchange Act Release Nos. 76998 (Jan. 29, 2016), 81 FR 6066, 6068 (Feb. 4, 2016) (File No. 10-221) (order granting the exchange registration of ISE Mercury, LLC) ("ISE Mercury Order"); 70050 (July 26, 2013), 78 FR 46622, 46624 (Aug. 1, 2013) (File No. 10-209) (order granting the exchange registration of ISE Gemini, LLC) ("ISE Gemini Order"); and 53128 (Jan. 13, 2006), 71 FR 3550, 3553 (Jan. 23, 2006) (order granting the exchange registration of Nasdaq Stock Market, Inc.) ("Nasdaq Order").

³³ 15 U.S.C. 78f(b)(3).

oversight bodies is an important mechanism to support an exchange's ability to protect the public interest.³⁴ Further, the presence of public, non-industry representatives can help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. Public directors can provide unbiased perspectives, which may enhance the ability of the Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.

2. Interim Exchange Board

Prior to commencing operations, Miami Holdings will appoint an interim Exchange board of directors ("Interim Exchange Board"), which will include interim Member Representative Directors.³⁵ With respect to the selection of the interim Member Representative Directors for the Interim Exchange Board, prior to the commencement of operations as an exchange, Miami Holdings will submit the names of its nominees for the interim Member Representative Directors positions to persons and entities that have begun the process of becoming members in the new Exchange.³⁶ Such persons and entities will be allowed 14 days to submit the names of alternative candidates.³⁷ Voting will occur no sooner than five days after the interim election notice is delivered to confirm the final slate of candidates to become an interim Member Representative Director.³⁸ All other interim Directors, except for the interim Member Representative Directors, will be appointed and elected by Miami Holdings, and must meet the MIAX Sapphire Board composition requirements as set forth in the MIAX

Sapphire By-Laws.³⁹ Once these interim Member Representative Directors are seated on the Interim Exchange Board, then the Interim Exchange Board will meet the board composition requirements set forth in the governing documents of MIAX Sapphire.

The Interim Exchange Board will serve until the first Exchange Board is elected pursuant to the full nomination, petition, and voting process set forth in the MIAX Sapphire By-Laws.⁴⁰ MIAX Sapphire will complete such process within 90 days after its application for registration as a national securities exchange is granted by the Commission.⁴¹

The process for electing the Interim Exchange Board, as proposed, is consistent with the requirements of the Act, including that the rules of the exchange assure fair representation of the exchange's members in the selection of its directors and administration of its affairs.⁴² As noted above, MIAX Sapphire represents that the initial members of MIAX Sapphire will consist substantially of the current group of persons and firms that have begun the membership application process with MIAX Sapphire.⁴³ MIAX Sapphire will engage the persons and firms who have submitted the initial documents for membership in the Exchange and would meet the qualifications for membership in the Interim Exchange Board election process by, prior to the commencement of operations as an exchange, providing each of them with the opportunity to participate in the selection of interim Member Representative Directors consistent with the MIAX Sapphire By-Laws. Further, MIAX Sapphire represents that it will complete the full nomination, petition, and voting process as set forth in the MIAX Sapphire By-Laws, which will provide persons that are approved as members after the effective date of this order with the opportunity to participate in the selection of the Member Representative Directors, within 90 days of when MIAX Sapphire's application for registration as a national securities exchange is

granted.⁴⁴ Therefore, MIAX Sapphire's initial interim board process is consistent with the Act, including Section 6(b)(3), in that it is designed to provide representation among the persons and firms likely to become members when MIAX Sapphire commences operations and is sufficient to allow MIAX Sapphire to commence operations for an interim period prior to going through the process to elect a new Exchange Board pursuant to the full nomination, petition, and voting process set forth in the MIAX Sapphire By-Laws.

In addition, all other interim Directors, except for the interim Member Representative Directors, must meet the MIAX Sapphire Board composition requirements as set forth in the MIAX Sapphire By-Laws, and as such the number of Non-Industry Directors, including at least one Independent Director, will equal or exceed the sum of the number of Industry Directors and Member Representative Directors. Therefore, the proposed composition of MIAX Sapphire's Interim Exchange Board satisfies the requirements in Section 6(b)(3) of the Act,⁴⁵ which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.

3. Exchange Committees

In the MIAX Sapphire By-Laws, the Exchange has proposed to establish several standing committees, which would be divided into two categories: Committees of the Board (composed of MIAX Sapphire Directors) and Committees of the Exchange (composed of a mixture of MIAX Sapphire Directors and persons who are not MIAX Sapphire Directors).⁴⁶ The standing Committees of the Board would be the Audit, Compensation, Appeals, and Regulatory Oversight Committees.⁴⁷ In addition, the Chairman of the Exchange Board ("Exchange Chairman"), with approval of the Exchange Board, may appoint an Executive Committee and a Finance Committee, which also would be Committees of the Board.⁴⁸

The Audit Committee will consist of three or more Directors, a majority of

³⁴ See MIAX Order, *supra* note 18, at 73067; BATS Order, *supra* note 18, at 49501; and Nasdaq Order, *supra* note 32, at 3553.

³⁵ See MIAX Sapphire By-Laws, Article II, Section 2.5.

³⁶ See MIAX Sapphire By-Laws, Article II, Section 2.5(b). Specifically, Miami Holdings will submit the names of its nominees for the interim Member Representative Director positions to persons who have submitted the initial documents for membership in the Exchange who would meet the qualifications for membership based on the information contained in these documents. See MIAX Sapphire By-Laws, Article II, Section 2.5(b). MIAX Sapphire additionally represents that the initial members of MIAX Sapphire will consist substantially of the current group of persons and firms that have begun the membership application process with MIAX Sapphire. See MIAX Sapphire Form 1, Exhibit J.

³⁷ See MIAX Sapphire By-Laws, Article II, Section 2.5(b).

³⁸ See MIAX Sapphire By-Laws, Article II, Section 2.5(d).

³⁹ See MIAX Sapphire By-Laws, Article II, Section 2.5(a).

⁴⁰ See MIAX Sapphire By-Laws, Article II, Sections 2.2(e) and 2.5(a).

⁴¹ See MIAX Sapphire By-Laws, Article II, Section 2.5(a). The 90-day period is consistent with what the Commission approved for MIAX Emerald. See MIAX Emerald Order, *supra* note 18, at 67423 (allowing MIAX Emerald to appoint an initial interim board to enable it to commence operations as a registered exchange). See also MIAX Pearl Order, *supra* note 18, at 92903; MIAX Order, *supra* note 18, at 73067; ISE Mercury Order, *supra* note 32, at 6068; and BOX Order, *supra* note 18, at 26325.

⁴² See 15 U.S.C. 78f(b)(3).

⁴³ See *supra* note 36.

⁴⁴ MIAX Sapphire's proposed timeline for the interim board process follows a process identical to what the Commission approved for MIAX Emerald. See MIAX Emerald Order, *supra* note 18, at 67423.

⁴⁵ 15 U.S.C. 78f(b)(3).

⁴⁶ See MIAX Sapphire By-Laws, Article IV, Section 4.1.

⁴⁷ See MIAX Sapphire By-Laws, Article IV, Section 4.1(a).

⁴⁸ See MIAX Sapphire By-Laws, Article IV, Section 4.5(e) and (f).

whom will be Non-Industry Directors.⁴⁹ Each of the Compensation and Regulatory Oversight Committees will consist of three or more Directors, all of whom will be required to be Non-Industry Directors.⁵⁰ The Appeals Committee will consist of one Independent Director, one Industry Director, and one Member Representative Director.⁵¹ If established, the Finance Committee will consist of at least three Directors, a majority of whom will be Non-Industry Directors.⁵² The Executive Committee, if established, will consist of at least three Directors. Because the Executive Committee will have the powers and authority of the Exchange Board in the management of the business and affairs of the Exchange between meetings of the Exchange Board, its composition requirements are substantially similar to the composition requirements of the Exchange Board. Accordingly, the number of Non-Industry Directors on the Executive Committee must equal or exceed the number of Industry Directors and the percentages of Independent Directors and Member Representative Directors must be at least as great as the corresponding percentages on the Exchange Board as a whole.⁵³

With respect to Committees of the Exchange, the Exchange has proposed to establish a Nominating Committee⁵⁴ and a Member Nominating Committee.⁵⁵ As discussed above, these committees will have responsibility for, among other things, nominating candidates for election to the Exchange Board. On an annual basis, the members of these committees will nominate candidates for the succeeding year's respective committees to be elected by Miami Holdings, as the sole LLC Member.⁵⁶ In addition, MIAX Sapphire has proposed to establish a Quality of Markets Committee, which will provide

advice and guidance to the Exchange Board on issues related to the fairness, integrity, efficiency, and competitiveness of the information, order handling and execution mechanisms of the Exchange from the perspective of individual and institutional investors, retail and market making firms, Exchange listed companies, and other market participants.⁵⁷ The Quality of Markets Committee will include a broad representation of participants in the Exchange, including investors, market makers, integrated retail firms, and order entry firms.⁵⁸ Additionally, at least 20% of the members of the committee will be Member Representative members, and the number of Non-Industry members must equal or exceed the total number of Industry and Member Representative members.⁵⁹ MIAX Sapphire also has proposed to establish a Business Conduct Committee, which shall be appointed by the Exchange Chairman.⁶⁰ Specifically, the Business Conduct Committee will have a minimum of three members and will be composed of a number of individuals as determined by the Exchange Chairman, none of whom shall be Directors of MIAX Sapphire. In addition, at least one member of the Business Conduct Committee and any panel thereof must be an officer, director, or employee of an Exchange Member.⁶¹

The proposed Committees of the Board and Committees of the Exchange, which are similar to the committees maintained by other exchanges,⁶² are designed to help enable MIAX Sapphire to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁶³

B. Regulation of MIAX Sapphire

When MIAX Sapphire commences operations as a national securities exchange, the Exchange will have all the attendant regulatory obligations under the Act. In particular, MIAX Sapphire will be responsible for the operation and regulation of its trading system and the

regulation of its members. Certain provisions in the MIAX Sapphire and Miami Holdings governance documents are designed to facilitate the ability of MIAX Sapphire to fulfill its regulatory obligations and to help facilitate Commission oversight of MIAX Sapphire. The discussion below summarizes some of these key provisions.

1. Ownership Structure: Ownership and Voting Limitations

MIAX Sapphire will be structured as a Delaware limited liability company, which will be wholly owned by the sole member of the LLC, Miami Holdings. The Miami Holdings' Amended and Restated Certificate of Incorporation ("Miami Holdings Certificate") includes restrictions on the ability to own and vote shares of capital stock of Miami Holdings.⁶⁴ These limitations are designed to prevent any Miami Holdings shareholder from exercising undue control over the operation of MIAX Sapphire, and to assure that MIAX Sapphire and the Commission are able to carry out their regulatory obligations under the Act.

In particular, for so long as Miami Holdings (directly or indirectly) controls MIAX Sapphire, no person, either alone or together with its related persons,⁶⁵ will be permitted to beneficially own more than 40% of any class of capital stock of Miami Holdings.⁶⁶ A more conservative restriction will apply to Exchange Members, wherein Exchange Members, either alone or together with their related persons, will be prohibited from beneficially owning more than 20% of shares of any class of capital stock of Miami Holdings.⁶⁷ If any stockholder violates these ownership limits, Miami Holdings will be required to redeem the shares in excess of the applicable ownership limit at their par

⁴⁹ See MIAX Sapphire By-Laws, Article IV, Section 4.5(b). A Non-Industry Director shall serve as Chairman of the Committee. *See id.* See also MIAX Sapphire By-Laws, Article IV, Section 4.2(a) (requiring that each committee be composed of at least three people).

⁵⁰ See MIAX Sapphire By-Laws, Article IV, Sections 4.5(a) and 4.5(c).

⁵¹ See MIAX Sapphire By-Laws, Article IV, Section 4.5(d).

⁵² See MIAX Sapphire By-Laws, Article IV, Section 4.5(f).

⁵³ See MIAX Sapphire By-Laws, Article IV, Section 4.5(e).

⁵⁴ See MIAX Sapphire By-Laws, Article V, Section 5.2, and *supra* note 22.

⁵⁵ See MIAX Sapphire By-Laws, Article V, Section 5.3, and *supra* note 23.

⁵⁶ See MIAX Sapphire By-Laws, Article V, Section 5.1, and *supra* note 25. Additional candidates for the Member Nominating Committee may be nominated and elected by Exchange Members pursuant to a petition process. *See supra* note 25 and accompanying text.

⁵⁷ See MIAX Sapphire By-Laws, Article IV, Section 4.6.

⁵⁸ *See id.*

⁵⁹ *See id.*

⁶⁰ See MIAX Sapphire By-Laws, Article IV, Section 4.7.

⁶¹ *See id.*

⁶² *See, e.g.*, MIAX Emerald Order, MIAX Pearl Order, MIAX Order, and BATS Order, *supra* note 18; and ISE Mercury Order, ISE Gemini Order, Nasdaq Order, *supra* note 32.

⁶³ 15 U.S.C. 78f(b)(1).

⁶⁴ These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. *See, e.g.*, ISE Mercury Order and ISE Gemini Order, *supra* note 32; MIAX Emerald Order, MIAX Pearl Order, MIAX Order, and BATS Order, *supra* note 18. *See also* Securities Exchange Act Release Nos. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222) (order granting the registration of Investors' Exchange, LLC ("IEX")) ("IEX Order"); 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-88) (order approving CBOE demutualization); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR-NSX-2006-03) ("NSX Demutualization Order"); 51149 (Feb. 8, 2005), 70 FR 7531 (Feb. 14, 2005) (SR-CHX-2004-26) ("CHX Demutualization Order"); and 49098 (Jan. 16, 2004), 69 FR 3974 (Jan. 27, 2004) (SR-Phlx-2003-73) (order approving Phlx demutualization).

⁶⁵ See Miami Holdings Certificate, Article NINTH (a)(ii) (defining "related persons").

⁶⁶ See Miami Holdings Certificate, Article NINTH (b)(i)(A).

⁶⁷ See Miami Holdings Certificate, Article NINTH (b)(i)(B).

value.⁶⁸ In addition, no person, alone or together with its related persons, may vote or cause the voting of more than 20% of the voting power of the then issued and outstanding capital stock of Miami Holdings.⁶⁹ Further, no person, either alone or together with its related persons, may enter into any agreement, plan, or other arrangement with any other person, either alone or together with its related persons, under circumstances that would result in the shares of capital stock of Miami Holdings that are subject to such agreement, plan, or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan, or other agreement would be to enable any person, either alone or together with its related persons, to vote, possess the right to vote, or cause the voting of more than 20% of the voting power of the then issued and outstanding capital stock of Miami Holdings.⁷⁰ If any stockholder purports to vote, or cause the voting of, shares that would violate this voting limit, Miami Holdings will not honor such vote in excess of the voting limit.⁷¹

Any person that alone or together with its related persons proposes to own shares of capital stock in excess of the 40% ownership limitation, or vote or grant proxies or consents with respect to shares of capital stock in excess of the 20% voting limitation, must deliver written notice to the Miami Holdings board of directors ("Miami Holdings Board") of its intention.⁷² The notice must be delivered to the Miami Holdings Board not less than 45 days before the proposed ownership of such shares or proposed exercise of such voting rights or the granting of such proxies or consents.⁷³ The Miami Holdings Board may waive the 40% ownership limitation and the 20% voting limitation, pursuant to a

resolution duly adopted by the Miami Holdings Board, if it makes certain findings,⁷⁴ except that the Miami Holdings Board cannot waive the voting and ownership limits above 20% for Exchange Members and their related persons.⁷⁵ Any such waiver would not be effective unless and until approved by the Commission pursuant to Section 19 of the Act.⁷⁶

The Miami Holdings Certificate also contains provisions that are designed to further safeguard the ownership and voting limitations described above or are otherwise related to direct and indirect changes in control. Specifically, any person that, either alone or together with its related persons owns, directly or indirectly (whether by acquisition or by a change in the number of shares outstanding), of record or beneficially, 5% or more of the then-outstanding shares of capital stock of Miami Holdings will be required to immediately notify the Miami Holdings Board in writing upon acquiring knowledge of such ownership.⁷⁷

⁷⁴ See Miami Holdings Certificate, Article NINTH (b)(ii)(B). The required findings include determinations that (A) such waiver will not impair the ability of MIAX Sapphire to carry out its functions and responsibilities as an "exchange" under the Act and the rules and regulations promulgated thereunder; (B) such waiver is otherwise in the best interests of MIAX Sapphire and Miami Holdings; (C) such waiver will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; and (D) in the case of a sale, assignment, or transfer, that the recipient and its related persons are not subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act). See Miami Holdings Certificate, Article NINTH (b)(ii)(B) and (b)(iii). The Commission has previously approved the rules of other exchanges that provide for the ability of the exchange or its holding company to waive the ownership and voting limitations discussed above for non-members of the exchange. See, e.g., ISE Mercury Order and ISE Gemini Order, *supra* note 32; MIAX Emerald Order, MIAX Pearl Order, and MIAX Order, *supra* note 18; and Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010) (File Nos. 10-194 and 10-196) (order approving DirectEdge exchanges) ("DirectEdge Exchanges Order").

⁷⁵ See Miami Holdings Certificate, Article NINTH (b)(ii)(B). These provisions are generally consistent with waiver of ownership and voting limits approved by the Commission for other SROs. See, e.g., ISE Mercury Order, *supra* note 32; MIAX Emerald Order, MIAX Pearl Order, and MIAX Order, *supra* note 18; BATS Order, *supra* note 18; NSX Demutualization Order, *supra* note 64; CHX Demutualization Order, *supra* note 64; and Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR-PCX-2004-08).

⁷⁶ See Miami Holdings Certificate, Article NINTH (b)(ii)(B).

⁷⁷ See Miami Holdings Certificate, Article NINTH(c)(i). The notice will require the person's full legal name; the person's title or status and the date on which such title or status was acquired; the person's (and its related person's) approximate ownership interest in Miami Holdings; and whether the person has power, directly or indirectly, to

Thereafter, such persons will be required to update Miami Holdings Board of any increase or decrease of 1% or more in their previously reported ownership percentage.⁷⁸

The MIAX Sapphire LLC Agreement does not include change of control provisions that are similar to those in the Miami Holdings Certificate; however, the MIAX Sapphire LLC Agreement explicitly provides that Miami Holdings is the sole LLC Member of MIAX Sapphire.⁷⁹ Thus, if Miami Holdings ever proposes to no longer be the sole LLC Member of MIAX Sapphire (and therefore no longer its sole owner), MIAX Sapphire would be required to amend the MIAX Sapphire LLC Agreement and the MIAX Sapphire By-Laws. Any changes to the MIAX Sapphire LLC Agreement or the MIAX Sapphire By-Laws, including any change in the provisions that identify Miami Holdings as the sole owner of MIAX Sapphire, must be filed with, or filed with and approved by, the Commission pursuant to Section 19 of the Act, as the case may be.⁸⁰ Further, pursuant to the MIAX Sapphire By-Laws, Miami Holdings may not transfer or assign, in whole or in part, its ownership interest in MIAX Sapphire, unless such transfer is filed with and approved by the Commission pursuant to Section 19 of the Act.⁸¹

Although Miami Holdings is not directly responsible for regulation, its activities with respect to the operation of MIAX Sapphire must be consistent with, and must not interfere with, the self-regulatory obligations of MIAX

direct the management or policies of Miami Holdings. See *id.*

⁷⁸ See Miami Holdings Certificate, Article NINTH(c)(ii). Changes of less than 1% must also be reported to Miami Holdings Board if they result in such person crossing a 20% or 40% ownership threshold. See *id.* In addition, the MIAX Sapphire rules also impose limits on affiliation between MIAX Sapphire and a member of MIAX Sapphire. See MIAX Sapphire Rule 201(g) ("Without prior Commission approval, the Exchange or any entity with which it is affiliated shall not directly or indirectly through one or more intermediaries acquire or maintain an ownership interest in an Exchange Member. In addition, without prior Commission approval, no Member shall be or become affiliated with (1) the Exchange; or (2) any affiliate of the Exchange. Nothing herein shall prohibit a Member from acquiring or holding an equity interest in (i) Miami International Holdings, Inc. that is permitted by the Certificate of Incorporation of Miami International Holdings, Inc. or (ii) MIAX Sapphire that is permitted by the Amended and Restated Limited Liability Company Agreement of MIAX Sapphire.").

⁷⁹ See MIAX Sapphire LLC Agreement and MIAX Sapphire By-Laws, Article I(v) (both of which define "LLC Member" to mean Miami Holdings, as the sole member of MIAX Sapphire).

⁸⁰ See 15 U.S.C. 78s. See also MIAX Sapphire LLC Agreement, Section 28(b).

⁸¹ See MIAX Sapphire By-Laws, Article III, Section 3.4.

⁶⁸ See Miami Holdings Certificate, Article NINTH (e). Any shares which have been called for redemption will not be deemed outstanding shares for the purpose of voting or determining the total number of shares entitled to vote. Once redeemed by Miami Holdings, such shares will become treasury shares and will no longer be deemed to be outstanding. See *id.* Furthermore, if any redemption results in another stockholder owning shares in violation of the ownership limits described above, Miami Holdings will redeem such shares. See *id.*

⁶⁹ See Miami Holdings Certificate, Article NINTH (b)(i)(C).

⁷⁰ See *id.*

⁷¹ See Miami Holdings Certificate, Article NINTH (d). The Miami Holdings Certificate also prohibits the payment of any stock dividends and conversions that would violate the ownership and voting limitations. See Miami Holdings Certificate, Article FOURTH A.(b) and (e), and D.7.

⁷² See Miami Holdings Certificate, Article NINTH (b)(iv).

⁷³ See *id.*

Sapphire.⁸² As described above, the provisions applicable to direct and indirect changes in control of Miami Holdings and MIAX Sapphire, as well as the voting limitation imposed on owners of Miami Holdings who also are MIAX Sapphire members, are designed to help prevent any owner of Miami Holdings from exercising undue influence or control over the operation of MIAX Sapphire and to help ensure that MIAX Sapphire retains a sufficient degree of independence to effectively carry out its regulatory obligations under the Act.

In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. As the Commission has stated in the past, a member's ownership interest in an entity that controls an exchange could become so large as to cast doubts on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.⁸³ A member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, these requirements are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of MIAX Sapphire to effectively carry out its regulatory oversight responsibilities under the Act.

MIAX Sapphire's and Miami Holding's proposed governance provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁸⁴ In particular, these requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or MIAX Sapphire to

effectively carry out their regulatory oversight responsibilities under the Act.

2. Regulatory Independence and Oversight

Although Miami Holdings will not itself carry out regulatory functions, its activities with respect to the operation of MIAX Sapphire must be consistent with, and must not interfere with, MIAX Sapphire's self-regulatory obligations. In this regard, MIAX Sapphire has proposed to adopt certain provisions in its governing documents, and Miami Holdings has certain provisions in its existing governing documents, that are designed to help maintain the independence of the regulatory functions of MIAX Sapphire. These proposed provisions are substantially similar to those included in the governing documents of other exchanges that have been granted registration.⁸⁵ Specifically:

- The directors, officers, employees, and agents of Miami Holdings must give due regard to the preservation of the independence of the self-regulatory function of MIAX Sapphire and to its obligations to investors and the general public and must not take actions that would interfere with the effectuation of decisions by the MIAX Sapphire Board relating to its regulatory functions (including disciplinary matters) or that would interfere with MIAX Sapphire's ability to carry out its responsibilities under the Act.⁸⁶
- Miami Holdings must comply with federal securities laws and the rules and regulations promulgated thereunder, and agrees to cooperate with the Commission and MIAX Sapphire

pursuant to, and to the extent of, their respective regulatory authority. In addition, Miami Holdings' officers, directors, employees, and agents must comply with federal securities laws and the rules and regulations promulgated thereunder and agree to cooperate with the Commission and MIAX Sapphire in respect of the Commission's oversight responsibilities regarding MIAX Sapphire and the self-regulatory functions and responsibilities of MIAX Sapphire.⁸⁷ Miami Holdings must take reasonable steps necessary to cause its officers, directors, employees, and agents to so cooperate.⁸⁸

- Miami Holdings, and its officers, directors, employees, and agents are deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and MIAX Sapphire, for purposes of any action, suit, or proceeding pursuant to U.S. federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, MIAX Sapphire activities.⁸⁹
- All books and records of MIAX Sapphire reflecting confidential information pertaining to the self-regulatory function of MIAX Sapphire (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained in confidence by MIAX Sapphire and its personnel and will not be used by MIAX Sapphire for any non-regulatory purpose and shall not be made available to persons (including, without limitation, any Exchange Member) other than to personnel of the Commission, and those personnel of MIAX Sapphire, members of committees of MIAX Sapphire, members of the MIAX Sapphire Board, or hearing officers and other agents of MIAX Sapphire, to the extent necessary or appropriate to properly discharge the self-regulatory function of MIAX Sapphire.⁹⁰

⁸⁷ See Miami Holdings By-Laws, Article VII, Section 4.

⁸⁸ See *id.*

⁸⁹ See Miami Holdings By-Laws, Article VII, Section 5.

⁹⁰ See MIAX Sapphire By-Laws, Article X, Section 10.4. The Miami Holdings By-Laws also provide that all books and records of MIAX Sapphire reflecting confidential information pertaining to the self-regulatory function of MIAX Sapphire will be subject to confidentiality restrictions and will not be used for any non-regulatory purposes. See Miami Holdings By-Laws, Article VII, Section 2. The Miami Holdings governing documents acknowledge that the requirements to keep such information confidential shall not limit or impede the rights of the Commission to access and examine such information or limit or impede the ability of officers, directors, employees, or agents of Miami Holdings to disclose such information to the Commission or MIAX Sapphire. See *id.*

⁸² See, e.g., IEX Order, *supra* note 64.

⁸³ See, e.g., ISE Mercury Order, *supra* note 32; MIAX Emerald Order, MIAX Pearl Order, and MIAX Order, *supra* note 18; BATS Order, *supra* note 18; and DirectEdge Exchanges Order, *supra* note 74.

⁸⁴ 15 U.S.C. 78f(b)(1). See also ISE Mercury Order, *supra* note 32; MIAX Emerald Order, MIAX Pearl Order, and MIAX Order, *supra* note 18; and BOX Order, *supra* note 18.

⁸⁵ See, e.g., DirectEdge Exchanges Order, *supra* note 74; and BATS Order, *supra* note 18. See also Securities Exchange Act Release No. 61152 (Dec. 10, 2009), 74 FR 66699 (Dec. 16, 2009) (File No. 10-191) (order approving C2 Options Exchange, Incorporated ("C2")) ("C2 Order").

⁸⁶ See Amended and Restated By-Laws of Miami Holdings ("Miami Holdings By-Laws"), Article VII, Section 1. Similarly, Article II, Section 2.1(d) of the MIAX Sapphire By-Laws requires the MIAX Sapphire Board to, when managing the business and affairs of MIAX Sapphire and evaluating any proposal, consider the requirements of Section 6(b) of the Act. Section 2.1(e) of the MIAX Sapphire By-Laws also requires the MIAX Sapphire Board, when evaluating any proposal to take into account (among other things and to the extent relevant), the potential impact on the integrity, continuity, and stability of the national securities exchange operated by MIAX Sapphire and the other operations of MIAX Sapphire, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public; and whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanism for a free and open market and a national market system.

- The books and records of MIAX Sapphire and Miami Holdings must be maintained in the United States⁹¹ and, to the extent they are related to the operation or administration of MIAX Sapphire, Miami Holdings books and records will be subject at all times to inspection and copying by the Commission and MIAX Sapphire.⁹²

- Furthermore, to the extent they relate to the activities of MIAX Sapphire, the books, records, premises, officers, directors, employees, and agents of Miami Holdings will be deemed to be the books, records, premises, officers, directors, employees, and agents of MIAX Sapphire, for purposes of, and subject to oversight pursuant to, the Act.⁹³

- Miami Holdings will take reasonable steps necessary to cause its officers, directors, employees, and agents, prior to accepting a position as an officer, director, employee, or agent (as applicable) of Miami Holdings to consent in writing to the applicability of provisions regarding books and records, confidentiality, jurisdiction, and regulatory obligations, with respect to their activities related to MIAX Sapphire.⁹⁴

- The Miami Holdings Certificate and By-Laws require that, so long as Miami Holdings controls MIAX Sapphire, any changes to those documents be submitted to the MIAX Sapphire Board, and, if such change is required to be filed with the Commission pursuant to Section 19(b) of the Act and the rules and regulations thereunder, such change shall not be effective until filed with, or filed with and approved by, the Commission.⁹⁵

The provisions discussed in this section, which are designed to help ensure the independence of MIAX Sapphire's regulatory function and facilitate the ability of MIAX Sapphire to carry out its regulatory responsibilities and operate in a manner consistent with the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁹⁶

⁹¹ See MIAX Sapphire By-Laws, Article X, Section 10.4; Miami Holdings By-Laws, Article VII, Section 3.

⁹² See Miami Holdings By-Laws, Article VII, Section 3.

⁹³ See *id.*

⁹⁴ See Miami Holdings By-Laws, Article VII, Section 6.

⁹⁵ See Miami Holdings Certificate, Article EIGHTH; Miami Holdings By-Laws, Article XII, Section 1.

⁹⁶ 15 U.S.C. 78f(b)(1).

Further, Section 19(h)(1) of the Act⁹⁷ provides the Commission with the authority “to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of the Act, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance” with any such provision by its members (including associated persons thereof).⁹⁸ If the Commission were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Act, including without limitation Sections 6(b)(1) and 19(g)(1),⁹⁹ these matters could provide the basis for a disciplinary proceeding under Section 19(h)(1) of the Act.

Even in the absence of the governance provisions described above, under Section 20(a) of the Act, any person with a controlling interest in MIAX Sapphire would be jointly and severally liable with and to the same extent that MIAX Sapphire is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.¹⁰⁰ In addition, Section 20(e) of the Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder.¹⁰¹ Further, Section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.¹⁰² These provisions are applicable to all entities’ dealings with MIAX Sapphire, including Miami Holdings.

3. Regulatory Oversight Committee

The regulatory operations of MIAX Sapphire will be monitored by the Regulatory Oversight Committee of the Exchange Board. The Regulatory Oversight Committee will consist of at least three Directors, all of whom will be Non-Industry Directors. The Regulatory

⁹⁷ See 15 U.S.C. 78s(h)(1).

⁹⁸ See *id.*

⁹⁹ 15 U.S.C. 78f(b)(1); 15 U.S.C. 78s(g)(1).

¹⁰⁰ 15 U.S.C. 78t(a).

¹⁰¹ 15 U.S.C. 78t(e).

¹⁰² 15 U.S.C. 78u–3.

Oversight Committee will be responsible for overseeing the adequacy and effectiveness of MIAX Sapphire's regulatory and SRO responsibilities, assessing MIAX Sapphire's regulatory performance, and assisting the Exchange Board (and committees of the Exchange Board) in reviewing MIAX Sapphire's regulatory plan and the overall effectiveness of MIAX Sapphire's regulatory functions.¹⁰³

Further, a CRO of MIAX Sapphire will have general supervision over MIAX Sapphire's regulatory operations, including responsibility for overseeing MIAX Sapphire's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which MIAX Sapphire is a party.¹⁰⁴ The Regulatory Oversight Committee also will be responsible for recommending compensation and personnel actions involving the CRO and senior regulatory personnel to the Compensation Committee of MIAX Sapphire for action.¹⁰⁵ The CRO will report to the Regulatory Oversight Committee.¹⁰⁶

4. Regulatory Funding and Services

As a prerequisite to the Commission's granting of an exchange's application for registration, an exchange must be so organized and have the capacity to carry out the purposes of the Act.¹⁰⁷ Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the Act and the rules and regulations thereunder and the rules of the exchange.¹⁰⁸ The discussion below summarizes how MIAX Sapphire has proposed to structure and conduct its regulatory operations.

a. Regulatory Funding

To help ensure that MIAX Sapphire has and will continue to have adequate funding to be able to meet its responsibilities under the Act, MIAX Sapphire represents that, prior to beginning operations as a national securities exchange, Miami Holdings will allocate sufficient assets to the Exchange to enable its operation.¹⁰⁹

¹⁰³ See MIAX Sapphire By-Laws, Article IV, Section 4.5(c). The Regulatory Oversight Committee is responsible for reviewing MIAX Sapphire's regulatory budget, and also will meet regularly with the Chief Regulatory Officer (“CRO”). See *id.*

¹⁰⁴ See MIAX Sapphire By-Laws, Article VI, Section 6.10.

¹⁰⁵ See MIAX Sapphire By-Laws, Article IV, Section 4.5(c).

¹⁰⁶ See MIAX Sapphire By-Laws, Article VI, Section 6.10.

¹⁰⁷ See 15 U.S.C. 78f(b)(1).

¹⁰⁸ See *id.* See also 15 U.S.C. 78s(g).

¹⁰⁹ See MIAX Sapphire Form 1, Exhibit I.

Specifically, MIAX Sapphire represents that prior to launching operations, Miami Holdings will make a cash contribution to the Exchange of \$5,000,000, “in addition to any previously-provided in-kind contributions, such as legal, regulatory, and infrastructure-related services.”¹¹⁰ MIAX Sapphire represents that such cash and in-kind contributions by Miami Holdings will be adequate to operate the Exchange, including the regulation of the Exchange.

Miami Holdings will be required to provide adequate funding for MIAX Sapphire’s ongoing operations, including the regulation of MIAX Sapphire, pursuant to a written agreement (“Funding Agreement”) between MIAX Sapphire and Miami Holdings. This Funding Agreement provides that MIAX Sapphire will receive all fees, including regulatory fees and trading fees, payable by MIAX Sapphire’s members, as well as any funds received from any applicable market data fees and Options Price Reporting Authority tape revenue. The Funding Agreement further provides that Miami Holdings will reimburse MIAX Sapphire for its costs and expenses to operate the Exchange and to carry out its SRO obligations.¹¹¹

Further, any “Regulatory Funds” received by MIAX Sapphire will not be used for non-regulatory purposes or distributed to Miami Holdings, but rather, will be applied to fund the legal and regulatory operations of MIAX Sapphire, or, as applicable, used to pay restitution and disgorgement of funds intended for customers.¹¹² Any excess non-regulatory funds, as determined by MIAX Sapphire, will be remitted to Miami Holdings.¹¹³

b. Regulatory Contract With FINRA

Although MIAX Sapphire will be an SRO with all of the attendant regulatory obligations under the Act, Financial Industry Regulatory Authority, Inc. (“FINRA”) will serve as a regulatory services provider and perform certain regulatory functions on behalf of MIAX Sapphire pursuant to a Regulatory Services Agreement (“RSA”).¹¹⁴ Specifically, such services will include assisting MIAX Sapphire with member registration and related administrative support services; certain cross-market surveillance services; certain options trading examinations; at MIAX Sapphire’s request, investigating potential violations of enumerated MIAX Sapphire market rules, as well as federal securities laws, and rules and regulations thereunder, related to MIAX Sapphire market activity; performing examinations related to options, including routine and for cause examinations of Exchange Members under certain MIAX Sapphire rules and federal securities laws; bringing formal disciplinary actions, including hearing officer services; and providing arbitration, mediation, and other dispute resolution services to Exchange Member firms.¹¹⁵

Notwithstanding the RSA, MIAX Sapphire will retain legal responsibility for the regulation of its Members and its market and the performance of FINRA as its regulatory services provider. Because MIAX Sapphire has entered into an RSA with FINRA, it has not made provisions to fulfill the regulatory services that will be undertaken by FINRA. Accordingly, the Commission is conditioning the operation of MIAX Sapphire on a final RSA with FINRA that specifies the services that will be provided to MIAX Sapphire.

It is consistent with the Act for MIAX Sapphire to contract with FINRA to perform certain examination, enforcement, and disciplinary functions.¹¹⁶ These functions are fundamental elements of a regulatory program and constitute core self-regulatory functions. The Commission believes that FINRA has the expertise and experience to perform these functions for MIAX Sapphire.¹¹⁷

However, MIAX Sapphire, unless relieved by the Commission of its responsibility, bears the self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on MIAX Sapphire’s behalf.¹¹⁸ In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of MIAX Sapphire to perform its regulatory functions.¹¹⁹ Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for MIAX Sapphire, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws or rules thereunder by MIAX Sapphire.

c. Rule 17d–2 Plans

Section 19(g)(1) of the Act, among other things, requires every SRO registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO’s own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members.¹²⁰ Section 17(d) of the Act and Rule 17d–2 thereunder permit SROs to propose joint plans to allocate regulatory responsibilities amongst themselves for their common rules with respect to their common members.¹²¹ These plans, which must be filed with and declared effective by the Commission, generally

(File No. 4–747) (“LTSE Order”); IEX Order, *supra* note 64; DirectEdge Exchanges Order, *supra* note 74; and Nasdaq Order, *supra* note 32. The Commission is not approving the RSA or any of its specific terms.

¹¹⁰ See 15 U.S.C. 78s(g)(1).

¹¹¹ For example, if failings by FINRA have the effect of leaving MIAX Sapphire in violation of any aspect of MIAX Sapphire’s self-regulatory obligations, MIAX Sapphire would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. See, e.g., Nasdaq Order, *supra* note 32; BATS Order, *supra* note 18; and Securities Exchange Act Release No. 42455 (Feb. 24, 2000), 65 FR 11388 (Mar. 2, 2000) (File No. 10–127) (approval of registration of International Securities Exchange Act, LLC (“ISE”) as a national securities exchange).

¹¹² 15 U.S.C. 78s(g)(1).

¹¹³ See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO (“common members”). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

¹¹⁰ *Id.*

¹¹¹ See *id.* Based on the various financial statements for 2022 that MIAX Sapphire has filed as part of its Form 1 for itself, its affiliates, and Miami Holdings, the Commission believes that the Funding Agreement appropriately will facilitate the ability of MIAX Sapphire to commence and continue operations.

¹¹² See MIAX Sapphire By-Laws, Article IX, Section 9.4. See also MIAX Sapphire LLC Agreement, Section 16. MIAX Sapphire By-Laws, Article 1(gg) defines “Regulatory Funds” as “fees, fines, or penalties derived from the regulatory operations of [MIAX Sapphire],” but such term does not include “revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of [MIAX Sapphire], even if a portion of such revenues are used to pay costs associated with the regulatory operations of [MIAX Sapphire].” This definition is consistent with the rules of other SROs. See, e.g., By-Laws of MIAX Pearl, Article 1(gg); By-Laws of MIAX Emerald, Article 1(gg); By-Laws of MIAX Exchange, Article I(II).

¹¹³ See MIAX Sapphire Form 1, Exhibit I.

¹¹⁴ See MIAX Sapphire Form 1, Exhibit L.

¹¹⁵ See *id.*

¹¹⁶ For example, MIAX Emerald, MIAX Pearl, MIAX Exchange, Long Term Stock Exchange, Inc. (“LTSE”), IEX, Nasdaq MRX, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe BZX Exchange, Inc. (“Cboe BZX”) have all entered into 17d–2 plans and RSAs with FINRA. See *infra* section III.B.4.c for further discussion of Rule 17d–2 plans.

¹¹⁷ See, e.g., Securities Exchange Act Release No. 86587 (Aug. 7, 2019), 84 FR 39883 (Aug. 12, 2019)

cover areas where each SRO's rules substantively overlap, including such regulatory functions as personnel registration and sales practices. For example, in 2019 the Commission declared effective a plan to allocate regulatory responsibilities between FINRA and LTSE pursuant to which FINRA assumes examination and enforcement responsibility for broker-dealers that are members of both FINRA and LTSE with respect to the rules of LTSE that are substantially similar to the applicable rules of FINRA, as well as certain specified provisions of the federal securities laws.¹²²

A 17d-2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.¹²³ MIAX Sapphire has represented to the Commission that it intends to become a party to the existing multiparty options Rule 17d-2 plans concerning sales practice regulation and market surveillance.¹²⁴ MIAX Sapphire has also represented that it will enter into a bi-lateral 17d-2 plan to allocate regulatory responsibility to FINRA for common rules of dual members between MIAX Sapphire and FINRA.¹²⁵ Under these plans, the examining SROs will examine firms that are common members of MIAX Sapphire and the particular examining SRO for compliance with certain provisions of

the Act, certain rules and regulations adopted thereunder, and certain MIAX Sapphire rules. In addition, the Commission is conditioning operation of MIAX Sapphire as an exchange on MIAX Sapphire first joining the applicable multilateral Rule 17d-2 plans.

Because MIAX Sapphire anticipates entering into these Rule 17d-2 plans, it has not made provision to fulfill the regulatory obligations that will be undertaken by FINRA and other SROs under these plans with respect to common members.¹²⁶ Accordingly, the Commission is conditioning the operation of MIAX Sapphire on approval by the Commission of a Rule 17d-2 plan that allocates the above-specified matters to FINRA, and the approval of an amendment to the existing multi-party Rule 17d-2 plans specified above to add MIAX Sapphire as a party.

C. Trading System and Trading Floor

MIAX Sapphire will operate both a fully automated electronic options trading platform and a physical trading floor for the trading of listed options.¹²⁷ As described below, the electronic trading platform will operate with a continuous, automated matching function.¹²⁸ The physical trading floor of the Exchange will be located in Miami, Florida.¹²⁹ On the trading floor, as described below, floor brokers will announce to the trading crowd either single-sided or two-sided orders, thereby exposing the orders to competition from the crowd, before submitting any matched contracts to the Exchange's system for execution.¹³⁰

1. Access to MIAX Sapphire

Access to MIAX Sapphire's System¹³¹ will be granted to individuals or organizations who are approved to become Members.¹³² Approved

Members will be issued Trading Permits that grant the Member the ability to transact on MIAX Sapphire.¹³³ Trading Permits will not convey upon Members any ownership interest in MIAX Sapphire, and they will not be transferable except in cases where a Member experiences a change in control or corporate reorganization.¹³⁴ Membership will be open to any broker-dealer that: (1) is registered under Section 15 of the Act;¹³⁵ and (2) has and maintains membership in another registered national securities exchange (other than MIAX Exchange, MIAX PEARL, or MIAX Emerald) or FINRA.¹³⁶ There will be no limit to the number of Trading Permits that MIAX Sapphire may issue, although MIAX Sapphire will have the authority to limit or decrease the number of Trading Permits issued in the future.¹³⁷ Members of

¹³³ See MIAX Sapphire Rule 200(a). A "Trading Permit" means a permit issued by the Exchange that confers the ability to transact on the Exchange. See MIAX Sapphire Rule 100. MIAX Sapphire represents that it has designed its systems to allow its Members to individually determine the best method for accessing the Exchange, whether by using customized front-end software using protocols determined by the Exchange or through third-party vendors who route orders to MIAX Sapphire through a front-end or service bureau configuration. See MIAX Sapphire Form 1, Exhibit E. MIAX Sapphire will not accept telephone orders. See *id.* As discussed below, before participating on the physical trading floor, a Member will need to submit an application to the Exchange and comply with additional requirements that are specific to the trading floor. See *infra* notes 148–151 and accompanying text.

¹³⁴ See MIAX Sapphire Rule 200(e).

¹³⁵ See MIAX Sapphire Rule 200(b).

¹³⁶ See MIAX Sapphire Rule 200(d). If such other registered national securities exchange has not been designated by the Commission to examine Members for compliance with financial responsibility rules pursuant to Rule 17d-1 under the Act, then the broker-dealer must have and maintain a membership in FINRA. See *id.*

¹³⁷ See MIAX Sapphire Rule 200(a). MIAX Sapphire would announce in advance any limitation or decrease it plans to impose pursuant to Rule 200(a). See *id.* In the event that MIAX Sapphire imposes a limitation or decrease, MIAX Sapphire, in doing so, may not eliminate the ability of an existing Member to trade on the Exchange unless the Exchange is permitted to do so pursuant to a rule filing submitted to the Commission under Section 19(b) of the Act. See *id.* In addition, MIAX Sapphire's exercise of authority under MIAX Sapphire Rule 200 would be subject to the provisions of Section 6(c)(4) of the Act. See *id.* See also MIAX Pearl Rule 200(a) (concerning limiting or reducing the number of trading permits). Further, MIAX Sapphire's exercise of authority under MIAX Sapphire Rule 200 would be subject to the provisions of Section 6(b)(2) of the Act, which requires the rules of an exchange to provide that any registered broker or dealer or any natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof. See 15 U.S.C. 78f(b)(2).

¹²² See LTSE Order. See also, e.g., Securities Exchange Act Release Nos. 84997 (Jan. 29, 2019), 84 FR 1252 (Feb. 1, 2019) (FINRA/MIAX Emerald); 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018) (FINRA/MIAX Pearl); 77321 (Mar. 8, 2016), 81 FR 13434 (Mar. 14, 2016) (File No. 4-697) (FINRA/ISE Mercury, LLC); 73641 (Nov. 19, 2014), 79 FR 70230 (Nov. 25, 2014) (File No. 4-678) (FINRA/MIAX Exchange); 70053 (July 26, 2013), 78 FR 46656 (Aug. 1, 2013) (File No. 4-663) (FINRA/ISE Gemini, LLC); 59218 (Jan. 8, 2009), 74 FR 2143 (Jan. 14, 2009) (File No. 4-575) (FINRA/Boston Stock Exchange, Inc.); 58818 (Oct. 20, 2008), 73 FR 63752 (Oct. 27, 2008) (File No. 4-569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28087 (May 18, 2007) (File No. 4-536) (National Association of Securities Dealers, Inc. ("NASD") (n/k/a FINRA) and Chicago Board of Options Exchange, Inc. concerning the CBOE Stock Exchange, LLC); 55367 (Feb. 27, 2007), 72 FR 9983 (Mar. 6, 2007) (File No. 4-529) (NASD/International Securities Exchange, LLC); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517) (NASD/The Nasdaq Stock Market LLC ("Nasdaq")).

¹²³ See *supra* notes 121–122 and accompanying text.

¹²⁴ See MIAX Sapphire Form 1, Exhibit L. See also Securities Exchange Act Release No. 68363 (Dec. 5, 2012), 77 FR 73711 (Dec. 11, 2012) (File No. S7-966) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d-2 plan concerning options-related sales practice matters); and 68362 (Dec. 5, 2012), 77 FR 73719 (Dec. 11, 2012) (File No. 4-551) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d-2 plan concerning options-related market surveillance).

¹²⁵ See MIAX Sapphire Form 1, Exhibit L.

¹²⁶ For common members, the regulatory obligations will be covered by the Rule 17d-2 plans, and for MIAX Sapphire members that are not also members of FINRA, the regulatory obligations will be covered by the RSA.

¹²⁷ See MIAX Sapphire Form 1, Exhibit E at 44.

¹²⁸ See *id.* at 44, 53; MIAX Sapphire Rule 514(b).

¹²⁹ See MIAX Sapphire Form 1, Exhibit E at 44.

¹³⁰ See *id.* at 69; MIAX Sapphire Rule 2030(e)(2).

¹³¹ "System" means the automated trading system used by the Exchange for the trading of securities. See MIAX Sapphire Rule 100.

¹³² "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of the MIAX Sapphire Rules for purposes of trading on the Exchange as an Electronic Exchange Member ("EEM") or Market Maker. MIAX Sapphire Members are deemed "members" under the Act. See MIAX Sapphire Rule 100. See *infra* notes 138–139 and accompanying text for a description of EEMs and Market Makers.

MIAX Sapphire may be Market Makers¹³⁸ or EEMs.¹³⁹

A holder of a MIAX Exchange, MIAX Pearl, or MIAX Emerald trading permit in good standing will be eligible to receive one MIAX Sapphire Trading Permit.¹⁴⁰ A holder of a MIAX Exchange, MIAX Pearl, or MIAX Emerald trading permit who wishes to apply to the Exchange will not be required to submit a full application for membership on MIAX Sapphire, but rather will only need to complete selected MIAX Sapphire forms concerning their election to trade on MIAX Sapphire, consent to MIAX Sapphire's jurisdiction, and other operational matters.¹⁴¹ This waive-in application process is similar to arrangements in place at other exchanges.¹⁴²

Applicants that do not hold a MIAX Exchange, MIAX Pearl, or MIAX Emerald trading permit and seek to become members of MIAX Sapphire will need to submit a full application in accordance with procedures established by the Exchange.¹⁴³ Individuals and entities that become Members, and their associated persons, will be required to meet and maintain certain qualification and registration criteria similar to what is required by other options exchanges.¹⁴⁴ In addition, MIAX Sapphire will impose further requirements on Members that seek to do business with the public.¹⁴⁵ Applicants who are denied membership may appeal MIAX Sapphire's decision pursuant to MIAX Sapphire's rules

governing hearings, review, and arbitration.¹⁴⁶ Every Member will be subject to MIAX Sapphire's regulatory jurisdiction, including MIAX Sapphire's disciplinary jurisdiction.¹⁴⁷

MIAX Sapphire will operate a physical trading floor of the Exchange located in Miami, Florida ("Trading Floor" or "Floor"), consisting of one "crowd area" or "pit" where Floor Participants will be located and options contracts will be traded.¹⁴⁸ "Floor Participants" may be Floor Brokers or Floor Market Makers.¹⁴⁹ Floor Brokers will be required to submit a written application to be reviewed by the Exchange, which will consider an applicant's ability as demonstrated by their passing a Floor Broker's examination and such other factors as the Exchange deems appropriate.¹⁵⁰ No employee of a Floor Participant will be admitted to the Trading Floor unless that person is registered with and approved by the Exchange, which may at any time in its discretion withdraw its approval.¹⁵¹

The Commission finds that MIAX Sapphire's proposed membership rules are consistent with the Act, including Section 6(b)(2) of the Act, which requires the rules of an exchange to provide that any registered broker or dealer or natural person associated with a broker or dealer may become a member of such exchange or associated with a member thereof.¹⁵² MIAX Sapphire's proposed rules with respect to exchange membership are substantially similar to the rules of other exchanges.¹⁵³

¹³⁸ "Market Maker" means a Member registered with the Exchange for the purposes of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the MIAX Sapphire Rules. See MIAX Sapphire Rule 100. For further discussion of Market Maker registration, see *infra* section III.C.3.

¹³⁹ "Electronic Exchange Member" or "EEM" means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. See MIAX Sapphire Rule 100. For definitions of "Public Customer Order" and "Non-Customer Order," see MIAX Sapphire Rule 100.

¹⁴⁰ See MIAX Sapphire Rule 200(c)(1).

¹⁴¹ See *id.*

¹⁴² See, e.g., C2 Rule 3.1(c)(1) (containing similar expedited waive-in membership process for members of Cboe) and MIAX Emerald Rule 200(c)(1) (containing a similar expedited waive-in membership process for members of MIAX Exchange and MIAX Pearl).

¹⁴³ See MIAX Sapphire Rule 200(c)(2).

¹⁴⁴ See MIAX Sapphire Rules Chapter II. Such criteria include, but are not limited to, capital maintenance requirements. See, e.g., MIAX Exchange Rule 200 Series and C2 Rules 3.1 and 3.2 (containing similar criteria).

¹⁴⁵ See MIAX Sapphire Rules Chapter XIII (incorporating by reference Chapter XIII of the MIAX Exchange Rules).

¹⁴⁶ See MIAX Sapphire Rules Chapter XI (incorporating by reference Chapter XI of the MIAX Exchange Rules).

¹⁴⁷ See MIAX Sapphire Rule 200(g). For MIAX Sapphire's rules concerning discipline, see MIAX Sapphire Rules Chapter X.

¹⁴⁸ See MIAX Sapphire Rule 100.

¹⁴⁹ "Floor Participant" means Floor Brokers as defined in MIAX Sapphire Rule 2015 and Floor Market Makers as defined in MIAX Sapphire Rule 2105(b). See MIAX Sapphire Rule 100. "Floor Broker" means an individual who is registered with the Exchange for the purpose, while on the Trading Floor, of accepting and handling orders, and a Floor Broker must be registered as a Floor Participant prior to registering as a Floor Broker. See MIAX Sapphire Rule 2015. "Floor Market Maker" means a Floor Participant of the Exchange located on the Trading Floor who has received permission from the Exchange to trade in options for his own account. See MIAX Sapphire Rule 2105(b).

¹⁵⁰ See MIAX Sapphire Rule 2020.

¹⁵¹ See MIAX Sapphire Rule 2010. In exercising Exchange discretion in withdrawing approval, the Exchange will follow applicable disciplinary rules and procedures, including the ability to appeal such Exchange determination. See *id.*

¹⁵² 15 U.S.C. 78f(b)(2).

¹⁵³ See, e.g., MIAX Emerald Rules Chapter II; MIAX Pearl Rules Chapter II.

The Commission notes that pursuant to Section 6(c) of the Act,¹⁵⁴ an exchange must deny membership to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As a registered exchange, MIAX Sapphire must independently determine if an applicant satisfies the standards set forth in the Act, regardless of whether an applicant is a member of another SRO.¹⁵⁵

In addition, Members may enter into arrangements with other parties, including non-Members and other Members, to provide "Sponsored Access" to trading on MIAX Sapphire.¹⁵⁶ Members who provide such Sponsored Access will be responsible for all trading conducted pursuant to the access agreement, and to the same extent as if the Member were trading directly.¹⁵⁷ Accordingly, Members that provide Sponsored Access must maintain and implement policies and procedures to supervise and monitor sponsored trading activity.¹⁵⁸ Additionally, non-Members who seek to trade on MIAX Sapphire through Sponsored Access agreements will need to agree to comply with all applicable federal securities laws and rules and Exchange rules.¹⁵⁹ MIAX Sapphire's rules governing Sponsored Access arrangements are similar to the rules of other exchanges.¹⁶⁰

2. Linkage

MIAX Sapphire intends to become a participant in the Plan Relating to Options Order Protection and Locked/Crossed Markets or any successor plan ("Linkage Plan").¹⁶¹ If admitted as a

¹⁵⁴ 15 U.S.C. 78f(c).

¹⁵⁵ See, e.g., MIAX Pearl Order, *supra* note 18, at 92910; ISE Mercury Order, *supra* note 32, at 6076; ISE Gemini Order, *supra* note 32, at 46633; MIAX Order, *supra* note 18, at 73074; BOX Order, *supra* note 18, at 26337; BATS Order, *supra* note 18, at 49502; and Nasdaq Order, *supra* note 32, at 3555.

¹⁵⁶ See MIAX Sapphire Rule 210.

¹⁵⁷ See MIAX Sapphire Rule 210(b).

¹⁵⁸ See MIAX Sapphire Rule 210(b)-(c).

¹⁵⁹ See MIAX Sapphire Rule 210(b). See also, e.g., 17 CFR 240.15c3-5.

¹⁶⁰ See, e.g., MIAX Pearl Rule 210; MIAX Exchange Rule 210; Nasdaq Rule 4611(d).

¹⁶¹ See MIAX Sapphire Form 1, Exhibit E at 48. See also Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (Aug. 6, 2009) (File No. 4-546) (order approving the national market system Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, ISE, Nasdaq, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.).

participant to the Linkage Plan, other plan participants would be able to send orders to MIAX Sapphire in accordance with the terms of the plan as applied to the Exchange. The MIAX Sapphire Rules include relevant definitions, establish the conditions pursuant to which Members may enter orders in accordance with the Linkage Plan, impose obligations on the Exchange regarding how it must process incoming orders, establish a general standard that Members and MIAX Sapphire should avoid trade-throughs, establish potential regulatory liability for Members that engage in a pattern or practice of trading through other exchanges, and establish obligations with respect to locked and crossed markets.¹⁶²

MIAX Sapphire has proposed rules that are designed to comply with the requirements of the Linkage Plan. Further, as provided below, before MIAX Sapphire can commence operations as a national securities exchange, it must become a participant in the Linkage Plan.

3. Market Makers

a. Registration of Market Makers

MIAX Sapphire Members may register as Market Makers for the purpose of making markets in options contracts traded on the Exchange, electronically or on the Trading Floor.¹⁶³ Market Makers are entitled to receive certain benefits and privileges in exchange for fulfilling certain affirmative and negative market-making obligations. To begin the process of registering as a Market Maker, a Member will be required to file a written application with MIAX Sapphire.¹⁶⁴ MIAX Sapphire will consider an applicant's market making ability and other factors it deems appropriate in determining whether to approve an applicant's registration.¹⁶⁵ All Market Makers will be designated as specialists and dealers on MIAX Sapphire for all purposes under the Act and rules thereunder.¹⁶⁶ In addition, all MIAX Exchange, MIAX Pearl, and MIAX Emerald market makers in good standing will be eligible to receive a MIAX Sapphire Trading Permit in the same membership

category in which they operate on MIAX Exchange, MIAX Pearl, or MIAX Emerald.¹⁶⁷ For example, a Market Maker in good standing on MIAX Exchange will be eligible to become a Market Maker on MIAX Sapphire, through the completion of the necessary forms.¹⁶⁸ The good standing of a Market Maker may be suspended, terminated, or otherwise withdrawn if the conditions for approval cease to be maintained or the Market Maker violates any of its agreements with MIAX Sapphire or any provisions of the MIAX Sapphire Rules.¹⁶⁹

A Member that has qualified as a Market Maker may register to make markets in individual series of options.¹⁷⁰ A Market Maker may become registered in a series by either: (i) entering a registration request via the MEO Interface¹⁷¹ prior to 9:00 a.m. Eastern Time of the current trading day, which registration request will need to be submitted for every requested trading day; or (ii) entering a registration request via an Exchange approved electronic interface submitted prior to 6:00 p.m. Eastern Time of the business day immediately preceding the next trading day, which registration request will persist until it is withdrawn.¹⁷²

No Participant can act as a Floor Market Maker in any option unless such Participant is already registered as a Floor Market Maker in such option by the Exchange pursuant to MIAX Sapphire Rule 600.¹⁷³ Floor Market Makers will be subject to a set of obligations and restrictions that are specific to Floor Market Makers.¹⁷⁴ The registration of a Floor Participant as a Floor Market Maker may be suspended or terminated by the Exchange upon a determination that such Floor Participant has failed to properly perform as a Floor Market Maker.¹⁷⁵

The Commission finds that the MIAX Sapphire qualification requirements for Market Makers are consistent with the Act. MIAX Sapphire's rules provide an objective process by which a Member

could become a Market Maker on MIAX Sapphire. The Commission notes that MIAX Sapphire's proposed Market Maker qualification requirements are substantially similar to those of other options exchanges.¹⁷⁶

b. Market Maker Obligations

Pursuant to MIAX Sapphire rules, all Market Makers, including Floor Market Makers, will be subject to a number of general obligations. In particular, the transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.¹⁷⁷ Among other things, a Market Maker must: (1) during trading hours, maintain a two-sided market in those option series in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity, and competitiveness of the market; (2) engage in dealings for its own account when there is a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of the price relationships between option contracts of the same series; (3) compete with other Market Makers; (4) make markets that will be honored for the number of contracts entered into the Exchange's System; (5) update quotations in response to changed market conditions; and (6) maintain active markets.¹⁷⁸ In addition, Market Makers must maintain minimum net capital in accordance with the federal securities laws.¹⁷⁹

On a daily basis, a Market Maker must provide continuous two-sided quotes for 90% of the time on a given trading day, or such higher percentage as MIAX Sapphire may announce in advance, in at least 75% of the options series in which the Market Maker is registered.¹⁸⁰ Further, a Market Maker may be called upon by MIAX Sapphire to submit a single bid or offer or maintain continuous bid and offers in one or more series to which the Market Maker is registered whenever, in the judgment of the Exchange, it is necessary to do so in the interest of fair and orderly markets.¹⁸¹

¹⁶² See Chapter XIV of the MIAX Sapphire Rules (incorporating by reference Chapter XIV of the MIAX Exchange Rules).

¹⁶³ See MIAX Sapphire Rule 100; MIAX Sapphire Rule 600.

¹⁶⁴ See MIAX Sapphire Rule 600(a).

¹⁶⁵ See *id.* The provision permitting MIAX Sapphire to consider "such other factors as [it] deems appropriate" must be applied in a manner that is consistent with the Act, including provisions that prohibit an exchange from acting in an unfairly discriminatory manner. See 15 U.S.C. 78f(b)(5); see also C2 Order, *supra* note 85.

¹⁶⁶ See MIAX Sapphire Rules 600 and 600(i).

¹⁶⁷ See MIAX Sapphire Rule 200(c)(1).

¹⁶⁸ See *id.*

¹⁶⁹ See MIAX Sapphire Rule 603(b).

¹⁷⁰ See MIAX Sapphire Rule 602(a).

¹⁷¹ "MEO Interface" means a binary order interface used for submitting certain order types to the MIAX Sapphire System. See MIAX Sapphire Rule 100.

¹⁷² See MIAX Sapphire Rule 602(b).

¹⁷³ See MIAX Sapphire Rule 2100(a).

"Participant" means a firm or organization that is registered with the Exchange pursuant to Chapter II of the MIAX Sapphire Rules for purposes of participating in trading on a facility of the Exchange that includes a Floor Participant. See MIAX Sapphire Rule 100.

¹⁷⁴ See MIAX Sapphire Rule 2105.

¹⁷⁵ See MIAX Sapphire Rule 2100(b).

¹⁷⁶ See, e.g., Cboe BZX Rules 22.2, 22.3 and 22.4; Nasdaq Rules, Options 2.

¹⁷⁷ See MIAX Sapphire Rule 604(a).

¹⁷⁸ See *id.*

¹⁷⁹ See MIAX Sapphire Rule 608.

¹⁸⁰ See MIAX Sapphire Rule 605(d)(1) and (d)(3). Immediate-or-Cancel Orders from Market Makers will not be counted for the continuous quoting obligations of Market Makers. See MIAX Sapphire Rule 605, Interpretations and Policies .01.

¹⁸¹ See MIAX Sapphire Rule 605(d)(2).

On the Trading Floor, in response to any request for quote by a Floor Broker or Options Exchange Official,¹⁸² a Floor Market Maker must provide a two-sided market complying with quote spread parameter requirements contained in MIAX Sapphire Rule 2105(d)(1) and with a size of not less than 10 contracts.¹⁸³ With respect to classes of options to which a Floor Market Maker is assigned, whenever a Floor Market Maker is called upon by an Options Exchange Official or a Floor Broker to make a market, the Floor Market Maker is expected to engage in dealing for its own account when there is a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.¹⁸⁴ Further, in the course of maintaining a fair and orderly market, a Floor Market Maker is expected to provide quotations that comply with the quote spread parameters (bid/ask differentials) in MIAX Sapphire Rule 2105(d)(1), unless the Exchange establishes otherwise for one or more series of options classes, and to bid no more than \$1 lower (or offer no more than \$1 higher) than the last preceding transaction price for the particular option contract.¹⁸⁵

In options classes other than those in which a Market Maker is registered, the total number of contracts executed by the Market Maker may not exceed 25% of the total number of all contracts executed by the Market Maker in any

calendar quarter.¹⁸⁶ On the Trading Floor, with respect to classes of options other than those to which a Floor Broker's assignment extends, a Floor Market Maker, whenever he enters the trading crowd or is called upon by an Options Exchange Official or a Floor Broker to make a market, will be subject to the obligations in MIAX Sapphire Rule 2105(d).¹⁸⁷ The registration of any Member as a Market Maker may be subject to suspension or termination by the Exchange upon a determination that the Member has failed to properly perform as a Market Maker.¹⁸⁸

Market Makers will receive certain benefits in return for satisfying their responsibilities.¹⁸⁹ For example, a broker-dealer or other lender may extend "good faith" credit to a member of a national securities exchange or registered broker-dealer to finance its activities as a market maker or specialist.¹⁹⁰ In addition, market makers are excepted from the prohibition in Section 11(a) of the Act.¹⁹¹ Market Makers on MIAX Sapphire will not receive special trading allocations or similar rights vis-à-vis other Members.¹⁹²

A market maker must be subject to sufficient and commensurate affirmative obligations, including the obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis, to justify favorable treatment.¹⁹³ The rules of all U.S. options markets need not provide the same standards for market maker participation, so long as they impose affirmative obligations that are consistent with the Act.¹⁹⁴ Nevertheless, MIAX Sapphire's proposed Market Maker obligations are substantially similar to those of another options exchange.¹⁹⁵ MIAX Sapphire's Market Maker participation requirements impose affirmative obligations on MIAX Sapphire's Market Makers that balance

the benefits afforded to such participants and, accordingly, are consistent with the Act.

Finally, MIAX Sapphire's proposed continuous quoting obligations for Market Makers on MIAX Sapphire's electronic market and open outcry quoting obligation for Floor Market Makers on the Trading Floor are appropriate under the Act and consistent with a Market Maker's obligation to contribute to the maintenance of a fair and orderly market.

4. Order Display, Execution, and Priority

On MIAX Sapphire's electronic options marketplace, liquidity will be derived from quotes as well as orders to buy and orders to sell submitted to MIAX Sapphire electronically by Members from remote locations.¹⁹⁶ On the Trading Floor, liquidity will be provided by Floor Participants, including Floor Market Makers. After a Floor Broker announces and exposes a single-sided or two-sided order to the trading crowd on the Floor, a Floor Broker submits any resulting matched two-sided order to the Exchange (referred to as a "Qualified Floor Order") for execution.¹⁹⁷

Options traded on the Exchange will be subject to Minimum Price Variations ("MPV") that will begin at \$0.05 for option contracts trading at less than \$3.00 per option, and \$0.10 for option contracts trading at \$3.00 per option or higher.¹⁹⁸ In addition, MIAX Sapphire will implement a "Penny Interval Program" pursuant to which it will permit certain options in the most actively traded multiply listed options classes to be quoted and traded in increments as low as \$0.01, options contracts included in the program that are trading at less than \$3 to be quoted and traded in increments as low as \$0.01, and all other option contracts included in the program that are trading at or above \$3 to be quoted and traded in increments as low as \$0.05.¹⁹⁹

Orders submitted to the Exchange will be displayed unless the order is a contingent order, such as an immediate-

¹⁸² See MIAX Sapphire Rule 2080, Interpretations & Policies .02 (stating that Exchange employees or officials designated as an Options Exchange Official will from time to time as provided in the MIAX Sapphire Rules have the ability to recommend and enforce rules and regulations relating to trading access, order, decorum, health, safety, and welfare on the Exchange).

¹⁸³ See MIAX Sapphire Rule 2100(c)(1). In classes of options contracts to which a Floor Market Maker is assigned, a Floor Market Maker is expected to provide bids and offers so as to create differences of no more than \$0.25 between the bid and offer for each option contract for which the prevailing bid is less than \$2; no more than \$0.40 where the prevailing bid is \$2 or more but less than \$5; no more than \$0.50 where the prevailing bid is \$5 or more but less than \$10; no more than \$0.80 where the prevailing bid is \$10 or more but less than \$20; and no more than \$1 where the prevailing bid is \$20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. See MIAX Sapphire Rule 2100(d)(1).

¹⁸⁴ See MIAX Sapphire Rule 2105(d).

¹⁸⁵ See MIAX Sapphire Rule 2105(d)(1) and (2). The maximum option price change standard will not ordinarily apply if the price per share of the underlying stock or exchange-traded fund share has changed by more than \$1 since the last preceding transaction for the particular option contract. See MIAX Sapphire Rule 2105(d)(2).

¹⁸⁶ See MIAX Sapphire Rule 605(e). See also Nasdaq Rules, Options 2, Section 6(b).

¹⁸⁷ See MIAX Sapphire Rule 2105(e). See *supra* note 185 and accompanying text for a discussion of the requirements of MIAX Sapphire Rule 2105(d).

¹⁸⁸ See MIAX Sapphire Rule 600(b).

¹⁸⁹ See, e.g., Securities Exchange Act Release No. 57478 (Mar. 12, 2008), 73 FR 14521 (Mar. 18, 2008) (SR-NASDAQ-2007-004) ("NOM Approval Order"), at 14526; BATS Order, *supra* note 18, at 5159 (discussing the benefits and obligations of market makers).

¹⁹⁰ See 12 CFR 221.5 and 12 CFR 220.7; see also 17 CFR 240.15c3-1(a)(6) (capital requirements for market makers).

¹⁹¹ 15 U.S.C. 78k(a). See also *infra* section III.C.5.

¹⁹² See MIAX Sapphire Rule 514. See also MIAX Sapphire Form 1, Exhibit E at 2.

¹⁹³ See NOM Approval Order, *supra* note 189, at 14526; and BATS Order, *supra* note 18, at 5159.

¹⁹⁴ See *id.*

¹⁹⁵ See, e.g., BOX Rule 8500.

¹⁹⁶ See MIAX Sapphire Form 1, Exhibit E at 44. The definition of "quote" or "quotation" means a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any. An order entered by the Market Maker in the options series to which such Market Maker is registered shall, as applicable, constitute a quote or quotation on MIAX Sapphire. See MIAX Sapphire Rule 100.

¹⁹⁷ See MIAX Sapphire Form 1, Exhibit E at 44; MIAX Sapphire Rule 2040. See *infra* notes 223-233 for further discussion of "Qualified Floor Orders."

¹⁹⁸ See MIAX Sapphire Rule 510(a).

¹⁹⁹ See MIAX Sapphire Rule 510(a)(3).

or-cancel order.²⁰⁰ Displayed orders and quotes will be displayed on an anonymous basis at a specified price.²⁰¹ Non-displayed orders will not be displayed to any Members and will not have time priority over displayed orders.²⁰² On MIAX Sapphire's Trading Floor, a Floor Broker must announce an agency order that the Floor Broker is representing to the trading crowd ("open outcry") before submitting the order to the Exchange's System for execution, whether the Floor Broker is representing a single-sided order and soliciting contra-side interest, or the Floor Broker has sufficient interest to match against the agency order already.²⁰³ Contemporaneously upon receipt of an order and prior to the announcement of such an order in the trading crowd, a Floor Broker or its employees must record all options orders represented by such Floor Broker onto the Floor Broker's order entry mechanism.²⁰⁴ A Participant shall not utilize the Trading Floor to effect any transaction for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion by relying on an exemption under Section 11(a)(1)(G) of the Act ("G Exemption").²⁰⁵

Members may electronically submit the following types of orders: Market; Limit; Marketable Limit; Cancel-Replacement; Immediate-or-Cancel; Intermarket Sweep; Do Not Route; Day Limit; Customer Cross; Qualified Contingent Cross; Route to Floor; Complex Market; Complex Limit; Complex Day Limit; Complex Immediate-or-Cancel; Complex Customer Cross; and Complex Qualified Contingent Cross Orders.²⁰⁶ On the

Trading Floor, only Floor Brokers may submit two-sided Qualified Floor Orders to the Exchange's System for execution after the "open outcry" process described in greater detail below.²⁰⁷ All of these order types are based on similar order types available on other options exchanges.²⁰⁸ These order types are substantially similar to order types approved by the Commission on other exchanges and thus raise no novel regulatory issues.

After the opening, trades will execute on MIAX Sapphire when a buy order and a sell order match one another on the MIAX Sapphire order book ("MIAX Sapphire Book" or "Book").²⁰⁹ The System will continuously and automatically match orders pursuant to price-time priority. The highest bid and lowest offer will have priority on the Exchange. Within each price level, if there are two or more orders at the best price, trading interest will be executed in time priority.²¹⁰

MIAX Sapphire has proposed to make available order processing and matching features, which are based on those features available on MIAX Pearl. MIAX Sapphire's System will automatically execute incoming orders that are executable against orders in its System, provided that such incoming orders will not be executed at prices inferior to the

time period when the order type is not valid, the System will reject the order. Further, not all order types will be available for use on each of the MEO Interface and the FIX Interface, and the Exchange will issue a Regulatory Circular listing which order types, among the order types listed above, will be available for delivery via the MEO Interface and which will be available for delivery via the FIX Interface. See MIAX Sapphire Rule 516. "FIX Interface" means the Financial Information Exchange interface used for submitting certain order types to the MIAX Sapphire System. See MIAX Sapphire Rule 100.

²⁰⁷ See MIAX Sapphire Rule 2040(a). A Qualified Floor Order will have an initiating side, which is the side of the order which must be filled in its entirety, and a contra-side, which must guarantee the full size of the initiating side of the Qualified Floor Order and may provide a maximum surrender size, as described below. See MIAX Sapphire Rule 2040(a)(1).

²⁰⁸ See, e.g., Nasdaq Rules, Options 3, Section 7(a)(7) (Intermarket Sweep Order) and (a)(1) (Cancel-replacement Order); MIAX Exchange Rule 515(h) (Customer Cross Orders, Qualified Contingent Cross Orders, Complex Customer Cross Orders, Complex Qualified Contingent Cross Orders); NASDAQ ISE, LLC Rules, Options 3, Section 7(l) (Day Order) and (m) (Do-Not-Route Order); BOX Rule 7600 (Qualified Open Outcry Order, similar to MIAX Sapphire's proposed Qualified Floor Order).

²⁰⁹ See MIAX Sapphire Form 1, Exhibit E at 53. MIAX Sapphire will open for trading with an opening process that is substantially identical to the opening process on MIAX Pearl. See MIAX Sapphire Rule 503 and MIAX Pearl Rule 503.

²¹⁰ See MIAX Sapphire Rule 514(a) and (b). As noted above, non-displayed orders will not be displayed to any Members and will not have time priority over displayed orders. See *supra* note 202 and accompanying text.

national best bid and offer ("NBBO").²¹¹ MIAX Sapphire Rule 515 sets forth how MIAX Sapphire's System will handle incoming orders that cannot be executed in part or in full. In particular, MIAX Sapphire Rule 515 specifies a "price protection process" and a "managed interest process."

The MIAX Sapphire System offers a "price protection" process for all orders that prevents an order from being executed beyond the price designated in the order's price protection instructions ("the price protection limit").²¹² When triggered, price protection will cancel an order or the remaining contracts of an order. The System will not execute such orders at prices inferior to the current NBBO.²¹³ The MIAX Sapphire price protection process is substantially similar to that adopted by MIAX Pearl and can benefit all market participants.²¹⁴

The Exchange's rules also provide for a process that applies to non-routable orders²¹⁵ that would either lock or cross the current opposite side NBBO where the SBBO is inferior to the NBBO (the "Managed Interest Process").²¹⁶ The System will not execute such orders at prices inferior to the current NBBO.²¹⁷ The managed order would be displayed at one MPV away from the current opposite side NBBO and placed on the MIAX Sapphire Book at a price equal to the opposite side NBBO.²¹⁸ Should the NBBO price change to an inferior price level, the order's displayed price will continue to re-price so that it is displayed one MPV away from the new NBBO, and the order's Book price will continuously reprice to lock the new NBBO.²¹⁹ Such re-pricing will continue until the managed order is fully executed, reaches its limit price, reaches

²¹¹ See MIAX Sapphire Rule 515(a) and (b).

²¹² See MIAX Sapphire Rule 515(c). The price protection limit is expressed in units of MPV away from the NBBO at the time of the order's receipt, or the best bid and offer on MIAX Sapphire's regular Book ("SBBO") if the best bid or offer on away markets ("ABBO") is crossing the SBBO. See *id.* The Exchange will publish a Regulatory Circular setting a minimum and maximum number of MPVs away from the NBBO (or SBBO if the ABBO is crossing the SBBO) that a market participant may designate for its price protection limit. The Exchange will also set, and announce by Regulatory Circular, a default price protection limit within 1 to 5 MPVs away from the NBBO (or SBBO if the ABBO is crossing the SBBO). See *id.*

²¹³ See MIAX Sapphire Rule 515(c).

²¹⁴ See MIAX Pearl Rule 515(c).

²¹⁵ Non-routable orders would include, for example, orders marked "Do Not Route." See MIAX Sapphire Rule 515(d)(2)(i).

²¹⁶ See MIAX Sapphire Rule 515(d)(2).

²¹⁷ See *id.*

²¹⁸ See MIAX Sapphire Rule 515(d)(2)(ii). See also MIAX Pearl Rule 515(c)(1)(ii) (providing for the same Managed Interest Process on MIAX Pearl).

²¹⁹ See MIAX Sapphire Rule 515(d)(2)(ii).

²⁰⁰ See MIAX Sapphire Form 1, Exhibit E at 51.

²⁰¹ See *id.*

²⁰² See *id.*

²⁰³ See MIAX Sapphire Rules 2030(e)(2) and 2040(b). In addition, a Floor Broker must ascertain that at least one Floor Market Maker is present in the crowd area prior to announcing an order for execution and an Options Exchange Official will certify that the Floor Broker adequately announced the Qualified Floor Order to the trading crowd. See MIAX Sapphire Rules 2030(a) and 2040(b).

²⁰⁴ See MIAX Sapphire Rule 2030(e).

²⁰⁵ See MIAX Sapphire Rule 2040, Interpretations and Policies .05. Therefore, pursuant to MIAX Sapphire Rule 2040, Interpretations and Policies .05, Floor Participants utilizing the Trading Floor to effect transactions in covered accounts cannot rely on the G Exemption and must rely on other available exemptions to the prohibition in Section 11(a)(1) of the Act. See *infra* note 265 and accompanying text (describing the Section 11(a)(1) prohibition and defining "covered accounts").

²⁰⁶ See MIAX Sapphire Rules 516 and 518 for a description of each of these order types. Some of these order types will be valid only during certain portions of the trading day (e.g., after the opening, and if a Member submits an order type during a

its price protection limit, or is cancelled.²²⁰ During the Managed Interest Process, if the Exchange receives a new order or quote on the opposite side of the market from the managed order that could be executed, the System will immediately execute the remaining contracts to the extent possible at the initiating order's current booked bid or offer price, provided that it does not trade through the current NBBO.²²¹ MIAX Sapphire's Managed Interest Process is consistent with the managed interest process that the Commission approved for MIAX Pearl.²²²

On the Trading Floor, as described above, all Qualified Floor Orders will be subject to an open outcry process prior to submission to the System for execution. During this process, the Floor Broker must provide Floor Participants a reasonable amount of time to respond with interest in trading against the order held by the Floor Broker.²²³ Then the Floor Broker must submit the Qualified Floor Order to the System without undue delay.²²⁴ The execution price must be equal to or better than the NBBO, with certain exceptions, and may not trade through any equal priced or better priced Priority Customer bids or offers on the Book or trade through any better priced interest.²²⁵ The highest bid (or lowest offer) will have priority, but where two or more bids (or offers) represent the highest (or lowest) price, priority will be afforded to such bids (or offers) in the sequence in which they are made.²²⁶ The Floor Broker will be responsible for handling all orders in accordance with the Exchange's priority and trade-through rules and for

determining the sequence in which bids or offers are vocalized on the Trading Floor in response to the Floor Broker's bid, offer, or call for a market.²²⁷ If Floor Participants provide a collective response to a Floor Broker's request for a market in order to fill a large order and the size of the trading crowd's market exceeds the size of the order to be filled, that order will be allocated on a size pro rata basis.²²⁸

When a Floor Broker holds an order of the eligible size or greater, the Floor Broker is entitled to cross a certain percentage of the order with other orders that he is holding.²²⁹ Specifically, a Floor Broker is entitled to cross 40% of the remaining contracts in the order, after all equal or better priced Priority Customer bids or offers on the Electronic Book and any better priced interest is filled.²³⁰ In addition, a Floor Broker may, but is not required to, provide a maximum surrender size, which is the number of contracts, if any, of the initiating side of the Qualified Floor Order that the Floor Broker is willing to relinquish to orders and quotes on the Book that have priority pursuant to MIAX Sapphire Rule 2040(c).²³¹ If the number of contracts on the Book that have priority over the contra-side order is greater than the maximum surrender size, then the Qualified Floor Order will be rejected.²³² If a Floor Broker announces a Qualified Floor Order to the trading crowd and Floor Participants respond with interest to the initiating side and the Floor Broker provides sufficient interest to match against the initiating side, the Floor Broker will allocate the initiating side of the order pursuant to an allocation process.²³³

The exposure, execution, and priority rules relating to Qualified Floor Orders are substantially similar to the exposure, execution, and priority rules of BOX's trading floor's Qualified Open Outcry Order.²³⁴

A commenter states that MIAX Sapphire's proposed Rule 2045, which describes the role of a Floor Broker on the Trading Floor and priority in a trading crowd, "does not promote just and equitable principles of trade" and "hinders competition."²³⁵ The commenter states that MIAX Sapphire Rule 2045 would permit a Floor Broker to determine the sequence in which bids or offers "would be vocalized" on the Trading Floor and the order in which Floor Market Makers "would be allocated."²³⁶ The commenter further states that "[a]llowing a Floor Broker to determine the sequence in which a Floor Market Maker may vocalize liquidity in response to its Floor Broker's bid or offer and receive an allocation vests unnecessary power with the market participant and presents a conflict of interest."²³⁷ The commenter explains that, "unlike an Options Exchange Official, a Floor Broker has a vested interest in the trade as a party to the transaction" such that "without providing any guidance on the manner in which a Floor Broker must act in ranking Floor Market Makers" the rule does not promote just and equitable principles of trade.²³⁸ In response, the Exchange states that proposed MIAX Sapphire Rule 2045(d)(1) is "substantively identical" to BOX Rule 7610(d)(1),²³⁹ and that it "disagrees with the assertion that there is some inherent conflict of interest that will impede upon just and equitable principles of trade."²⁴⁰ The Exchange further states that proposed MIAX Sapphire Rule 2045(a) and (b) requires the Floor Broker to give priority to the highest bid and lowest offer respectively, and proposed MIAX Sapphire Rule 2045(c) provides that if

²²⁰ See *id.*

²²¹ See MIAX Sapphire Rule 515(d)(2)(iii)(A). See also MIAX Pearl Rule 515(c)(1)(ii).

²²² See MIAX Pearl Rule 515(c)(1)(ii).

²²³ See MIAX Sapphire Rule 2040, Interpretations and Policies .09. A Floor Participant must verbalize that he is "in" after a Floor Broker announces an order, even if a valid quote has been provided by the Floor Participant prior to the announcement of the order by a Floor Broker. See *id.*

²²⁴ See MIAX Sapphire Rule 2040(c).

²²⁵ See *id.* "Priority Customer" is defined as a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts. See MIAX Sapphire Rule 100.

²²⁶ See MIAX Sapphire Rule 2045(a) and (b). If the bids (or offers) of two or more Floor Participants are made simultaneously, or if it is impossible to determine clearly the order of time in which they are made, such bids (or offers) will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis. See MIAX Sapphire Rule 2045(c). MIAX Sapphire's rules also provide split-price priority to a Floor Participant that buys (sells) one or more contracts at one price with respect to buying (selling) the same number of contracts at the next lower (higher) price. See MIAX Sapphire Rule 2040(i).

²²⁷ See MIAX Sapphire Rules 2040(a) and 2045(d)(1).

²²⁸ See MIAX Sapphire Rule 2045(d)(5). In such circumstances, the size of the order to be allocated will be multiplied by the size of an individual Floor Participant's quote divided by the aggregate size of all Floor Participants' quotes. See MIAX Sapphire Rule 2045(d)(5)(ii).

²²⁹ See MIAX Sapphire Rule 2040(f)(1). The Exchange may determine, on an option by option basis, the eligible size, which may not be less than 50 contracts, for an order that may be transacted pursuant to this guarantee and will communicate any changes to the eligible order size to Participants via circular. See MIAX Sapphire Rule 2040(f)(2).

²³⁰ See MIAX Sapphire Rule 2040(f)(3).

²³¹ See MIAX Sapphire Rule 2040(h).

²³² See *id.*

²³³ See MIAX Sapphire Rule 2040(a)(1) and (d).

²³⁴ See BOX Rule 7600.

²³⁵ Nasdaq Letter at 1. In response, the Exchange states that approximately 6% of total equity option contract volume is executed on physical trading floors and that "four exchange groups (Nasdaq, NYSE, Cboe, and BOX) have physical options trading floors, whereas [Miami International Holdings, LLC] does not, and is therefore unable to compete for this volume." MIAX Sapphire Letter at 2.

²³⁶ Nasdaq Letter at 2.

²³⁷ *Id.*

²³⁸ *Id.* The commenter states that the rule does not "provide[e] any guidance on the manner in which a Floor Broker must act in ranking Floor Market Makers." *Id.* The Exchange states that it "disagrees with the Nasdaq assessment that there is no guidance for Floor Brokers in ranking bids or offers" and states that the Exchange's Rule 2045(a) and (b) discusses the priority of bids and offers. See MIAX Sapphire Letter at 2.

²³⁹ MIAX Sapphire Letter II at 3. A separate commenter states that the objection concerned "one minor rule" that "was identical to an existing rule on another options exchange," and calls for the Commission to quickly approve the Form 1. See Angel Letter at 1-2.

²⁴⁰ MIAX Sapphire Letter at 3.

multiple bids or offers are made simultaneously, such bids (or offers) will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis.²⁴¹ According to the Exchange, “MIAX Sapphire does in fact employ the use of Options Exchange Officials to ensure that just and equitable principles of trade are upheld.”²⁴² The Exchange states that the Options Exchange Officials will have the responsibility under proposed MIAX Sapphire Rule 2045(d)(1) to resolve any disputes regarding a Floor Broker’s determination of time priority sequence, and under proposed MIAX Sapphire Rule 2040(b) an Options Exchange Official will certify that the Floor Broker has adequately announced the Qualified Floor Order to the trading crowd.²⁴³

The proposed rule does not allow a Floor Broker to “determine the sequence in which a Floor Market Maker *may* vocalize liquidity in response to [the] Floor Broker’s bid or offer” (emphasis added) as the commenter describes, but rather MIAX Sapphire Rule 2045 provides for price-time priority unless “the bids (or offers) of two or more Floor Participants are made simultaneously, or if it is impossible to determine clearly the order of time in which they are made,” in which case they are “deemed to be on parity.”²⁴⁴ Thus, a Floor Broker cannot prospectively determine the order in which participants in the trading crowd “may” respond, but rather everyone in the trading crowd is free to respond and the Floor Broker determines the order in which each Floor Participant did, in fact, so respond. Paragraph (d) of the rule addresses the determination of time priority sequence, noting that the Floor Broker determines “who was first, second, third, and so forth.”²⁴⁵ If there is any dispute over the Floor Broker’s determination of time priority sequence for the bids/offers the Floor Broker heard, an Options Exchange Official would resolve the dispute and the rule provides that the Options Exchange Official’s determination of time priority sequence follows the same process used by the Floor Broker.²⁴⁶ Accordingly,

MIAX Sapphire Rule 2045 does not allow a Floor Broker to constrain the ability of a trading crowd to compete for orders and provides a reasonable process to settle any disputes in determining the time sequence order in which Floor Participants, in fact, vocalized their bids and offers, and as such this process does not raise concerns about just and equitable principles of trade or competition.

The commenter also states that the Exchange’s Rule 2045(d)(2), which would allow the Floor Participant with first priority to trade against all available contracts, “would disincentivize participation in the trading crowd by allowing a Floor Market Maker to block other liquidity providers from participating in the trade.”²⁴⁷ The commenter further states that, “[a]s a result, Sapphire’s trading floor would attract less Floor Market Makers because the ability to participate in trades would be constrained,” and “Floor Market Maker participation in trading crowds is important for price discovery, liquidity, and competition.”²⁴⁸ According to the commenter, the rule would result in a trading floor environment that “does not serve to remove impediments to and perfect the mechanism of a free and open market and a national market system.”²⁴⁹ In response, the Exchange states that the priority rule that the commenter describes “is the de facto definition of a price-time allocation model” and such a model “is not a new or novel concept in the options industry.”²⁵⁰ The Exchange also states that, in addition to the Exchange’s rule being “substantively identical” to BOX Rule 7610(d)(2), the price-time allocation model is in use on a number of other electronic options exchanges, including Nasdaq BX, NYSE Arca, and Cboe BZX.²⁵¹ In addition, the Exchange states that “a price-time allocation model would serve to incentivize market participants to always provide their best price and greatest size which may result in better execution rates and execution prices for all market participants.”²⁵² The Exchange further states that because the proposed rules of MIAX Sapphire provide Floor Brokers

with latitude over disclosing the size of the order, similar to other options trading floors, all Floor Participants are incentivized to vocalize their best bid or offer price, as the size of the Floor Broker’s order may be unknown, and the size that other Floor Participants will transact may be similarly unknown.²⁵³

The Commission agrees that Floor Market Maker participation in trading crowds is important for price discovery, liquidity, and competition. Unlike liquidity provided in an electronic trading system where the interest has a visible stated price and quantity, a response from a member of the trading crowd might not have an express verbalized quantity.²⁵⁴ Nevertheless, Floor Participants are incentivized to compete by offering improved prices and responding promptly. Accordingly, the proposed rule by itself would not constrain the ability of Floor Market Makers to provide price improvement and compete for orders and thus does not raise a concern that the rule would not serve to remove impediments to and perfect the mechanism of a free and open market and a national market system. Further, as discussed above, the price-time allocation model will provide an objective methodology for allocating trades and the Options Exchange Official will resolve any disputes about the time priority sequence, thereby alleviating concerns that a Floor Broker may be prioritizing an allocation to a particular Floor Market Maker for reasons including a financial arrangement. The Commission agrees with the Exchange that MIAX Sapphire Rule 2045 “does not present any new or novel issues not already considered by the Commission”²⁵⁵ because the MIAX Sapphire Rule is not substantively different than BOX Rule 7610.²⁵⁶

MIAX Sapphire will permit the trading of complex orders on the Exchange, including on the Trading Floor.²⁵⁷ The proposed rules define the types of complex orders and quotes, and also describe the priority, execution, and allocation of complex orders and quotes, including a managed interest process for complex orders.²⁵⁸ MIAX Sapphire also has proposed price and

²⁴¹ See MIAX Sapphire Letter II at 2–3.

²⁴² MIAX Sapphire Letter at 3 (stating that the Exchange’s Rule 2045(d) provides that the Options Exchange Official will resolve any disputes regarding a Floor Broker’s determination of time priority sequence and may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of Exchange rules).

²⁴³ See MIAX Sapphire Letter II at 3.

²⁴⁴ See MIAX Sapphire Rule 2045(a), (b), and (c).

²⁴⁵ See MIAX Sapphire Rule 2045(d)(1).

²⁴⁶ See MIAX Sapphire Rule 2045(d)(1) and (3). In addition, MIAX Sapphire Rule 2040(b) requires an Options Exchange Official to certify that a Floor

Broker adequately announced the Qualified Floor Order to the trading crowd.

²⁴⁷ Nasdaq Letter at 2.

²⁴⁸ *Id.*

²⁴⁹ *Id.* The commenter also states that “if a Floor Broker had a financial arrangement with a Floor Market Maker, the Floor Broker could utilize this rule to favor a certain Floor Market Maker in terms of allocation by prioritizing that Floor Market Maker.” *Id.*

²⁵⁰ MIAX Sapphire Letter at 3.

²⁵¹ See *id.* at 3–4.

²⁵² *Id.* at 4.

²⁵³ See MIAX Sapphire Letter II at 4–5.

²⁵⁴ Floor Market Maker quotations have a minimum size of 10 contracts. See MIAX Sapphire Rule 2105(c)(1).

²⁵⁵ MIAX Sapphire Letter at 4.

²⁵⁶ See *supra* note 234 and accompanying text. See also MIAX Sapphire Letter at 1 (“proposed Rule 2045 is substantively identical to BOX Rule 7610, which became effective on Aug. 2, 2017, is currently operative, and has never been amended”).

²⁵⁷ See MIAX Sapphire Rules 518 and 2040.

²⁵⁸ See MIAX Sapphire Rules 515, 518, and 2040.

order protection features for complex orders.²⁵⁹ MIAX Sapphire's rules governing the trading of complex orders and quotes are consistent with the complex order rules that the Commission approved for MIAX Exchange and, with respect to the rules governing the trading of complex Qualified Floor Orders, BOX.²⁶⁰

MIAX Sapphire's proposed display, execution, and priority rules discussed above in this section are consistent with the Act. In particular, the Commission finds that the proposed rules are consistent with Section 6(b)(5) of the Act,²⁶¹ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 to not permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rules are consistent with Section 6(b)(8) of the Act,²⁶² which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The trading rules of MIAX Sapphire are substantially similar to the current trading rules of MIAX Exchange, MIAX Pearl, MIAX Emerald, and other exchanges, as noted above, which were filed with and approved by the Commission (or otherwise became effective) pursuant to Section 19(b) of the Act.²⁶³ With respect to the rules pertaining to the Trading Floor, the floor trading rules of MIAX Sapphire are substantially similar to the current floor trading rules of BOX, which were filed and approved by the Commission pursuant to Section 19(b) of the Act.²⁶⁴ Therefore, these rules raise no novel regulatory issues and, as with the substantially similar rules of other

exchanges, the Commission finds that they are consistent with the Act.

5. Section 11(a) of the Act

Section 11(a)(1) of the Act²⁶⁵ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, "covered accounts"), unless an exception applies. Sections 11(a)(1)(A)–(I)²⁶⁶ of the Act and the rules thereunder provide certain exemptions from this general prohibition, including the exemption set forth in Rule 11a2–2(T) under the Act.²⁶⁷ The Exchange has represented that it has analyzed its rules proposed hereunder, and believes that they are consistent with Section 11(a) of the Act and rules thereunder.²⁶⁸

As described above,²⁶⁹ MIAX Sapphire Rule 2040, Interpretations and Policies .05 states that a Participant shall not utilize the Trading Floor to effect any transaction for a covered account by relying on the G Exemption.²⁷⁰ Because no covered account transactions utilizing the Trading Floor may rely on the G Exemption, Participants utilizing the Trading Floor to effect transactions for covered accounts may only rely upon other exemptions to the Section 11(a)(1) prohibition.²⁷¹

²⁶⁵ 15 U.S.C. 78k(a)(1).

²⁶⁶ 15 U.S.C. 78k(a)(1)(A)–(I).

²⁶⁷ 17 CFR 240.11a2–2(T).

²⁶⁸ See Letter from Gregory P. Ziegler, Vice President, Senior Counsel, MIAX Sapphire, dated Mar. 19, 2024 ("MIAX Sapphire 11(a) Request Letter").

²⁶⁹ See *supra* note 205 and accompanying text.

²⁷⁰ 15 U.S.C. 78k(a)(1)(G). Section 11(a)(1)(G) of the Act provides an exemption from the general prohibition in Section 11(a)(1) of the Act for any transaction for a member's own account, provided that: (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities; and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange. See also 17 CFR 240.11a1–1(T) (setting forth requirements for relying on the G Exemption).

²⁷¹ Section 11(a) of the Act and the rules thereunder provide other exemptions to the Section 11(a)(1) prohibition, including, for example, the "effect versus execute" exemption (as discussed below), the exemption for transactions by a dealer acting in the capacity of a market maker, and the exemption for transactions to offset a transaction made in error.

In addition to statutory exemptions, Rule 11a2–2(T) under the Act,²⁷² known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) may not be associated with the executing member; (ii) must transmit the order from off the exchange floor; (iii) may not participate in the execution of the transaction once the order has been transmitted to the member performing the execution;²⁷³ and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor an associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.

In a letter to the Commission,²⁷⁴ MIAX Sapphire requests that the Commission concur with its conclusion that Exchange Members that enter orders into the MIAX Sapphire trading system satisfy the requirements of Rule 11a2–2(T). For the reasons set forth below, Exchange Members entering orders into the MIAX Sapphire trading system, including Participants utilizing the Trading Floor, may comply with the conditions of Rule 11a2–2(T) under the Act.

First, Rule 11a2–2(T) requires that orders for covered accounts be transmitted from off the exchange floor. The Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.²⁷⁵

²⁷² 17 CFR 240.11a2–2(T).

²⁷³ This prohibition also applies to associated persons. See 15 U.S.C. 78f(b)(8). The member may, however, participate in clearing and settling the transaction. See Securities Exchange Act Release No. 14563 (Mar. 14, 1978), 43 FR 11542 (Mar. 17, 1978) (regarding the NYSE's Designated Order Turnaround System) ("1978 Release").

²⁷⁴ See MIAX Sapphire 11(a) Request Letter, *supra* note 268.

²⁷⁵ See, e.g., Securities Exchange Act Release Nos. 59154 (Dec. 23, 2008), 73 FR 80468 (Dec. 31, 2008) (SR–BSE–2008–48) (order approving proposed rules of BX); 49068 (Jan. 13, 2004), 69 FR 2775 (Jan. 20, 2004) (establishing, among other things, BOX as an options trading facility of BSE); 44983 (Oct. 25, 2001), 66 FR 55225 (Nov. 1, 2001) (approving the PCX's use of the Archipelago Exchange as its equity trading facility); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility). See 1978 Release, *supra* note 273. See also Securities Exchange Act Release No. 15533 (Jan. 29, 1979), 44 FR 6084 (Jan. 31, 1979).

²⁵⁹ See MIAX Sapphire Rule 518, Interpretations and Policies .03.

²⁶⁰ See, e.g., MIAX Exchange Rule 518; BOX Rule 7600.

²⁶¹ 15 U.S.C. 78f(b)(5).

²⁶² 15 U.S.C. 78f(b)(8).

²⁶³ Many of MIAX Exchange's rules were approved at the time that MIAX Exchange's registration as a national securities exchange was granted. See MIAX Order, *supra* note 18.

²⁶⁴ See Securities Exchange Act Release No. 81292 (Aug. 2, 2017), 82 FR 37144 (Aug. 8, 2017) (SR–BOX–2016–48) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).

Floor Brokers will receive orders from members electronically through the use of a variety of systems.²⁷⁶ The Exchange states that, in order to rely on the “effect versus execute” exemption, a Participant would submit an order for a covered account from off the Trading Floor to an unaffiliated Floor Broker.²⁷⁷ Accordingly, Participants utilizing the Trading Floor and relying on the “effect versus execute” exemption may satisfy the off-floor transmission requirement. Further, with respect to orders submitted from remote locations directly to the MIAX Sapphire System, the MIAX Sapphire System satisfies this off-floor transmission condition.

Second, Rule 11a2-2(T) requires that neither the initiating exchange member nor an associated person of the initiating exchange member participate in the execution of the transaction any time after the order for the transaction has been transmitted. MIAX Sapphire has represented that at no time following the submission of an order into the System will the submitting Exchange Member or any associated person of such member acquire control or influence over the result or timing of an order’s execution.²⁷⁸ In addition, the Exchange states that once a Floor Broker submits an order to the Exchange’s system for execution, neither the Floor Broker nor anyone else may alter the terms of the order.²⁷⁹ Moreover, the execution of an Exchange Member’s order will be in accordance with MIAX Sapphire rules and based on market conditions present in the MIAX Sapphire System at the time the Exchange Member submits the order.²⁸⁰

(regarding the American Stock Exchange (“Amex”) Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System) (“1979 Release”).

²⁷⁶ See *supra* note 133.

²⁷⁷ See MIAX Sapphire 11(a) Request Letter, *supra* note 268.

²⁷⁸ See *id.* Exchange Members may change or cancel an order or quote at any time before the order is executed on the Exchange. See MIAX Sapphire Form 1, Exhibit E. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. See 1978 Release, *supra* note 273 (stating that the “non-participation requirement does not prevent initiating members from canceling of modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor”).

²⁷⁹ See MIAX Sapphire 11(a) Request Letter, *supra* note 268.

²⁸⁰ See *id.*

Accordingly, an Exchange Member and its associated persons would not participate in the execution of its order submitted for execution to the MIAX Sapphire System.

Third, Rule 11a2-2(T) requires that the order be executed by an exchange member that is not associated with the exchange member initiating the order. To rely on the exemption in Rule 11a2-2(T), a Participant could submit an order for a covered account from off the Trading Floor to an unaffiliated Floor Broker. A Participant relying on Rule 11a2-2(T) could not submit an order for a covered account to its “house” Floor Broker on the Trading Floor for execution. If a Participant sends its order from off the floor to an affiliated Participant that is on the Trading Floor, who then directs the order into the MIAX Sapphire System for execution, the off-floor Participant may not rely on the exemption in Rule 11a2-2(T). Further, with respect to orders submitted from remote locations directly to the MIAX Sapphire System, the Commission has stated that the requirement is satisfied when automated exchange facilities, such as the MIAX Sapphire System, are used, as long as the design of these systems ensures that Exchange Members do not possess any special or unique trading advantages over non-members in handling their orders after transmitting them to the Exchange.²⁸¹ MIAX Sapphire has represented that the design of its System ensures that no member has any special or unique trading advantage over non-members in the handling of its orders after transmitting its orders to MIAX Sapphire.²⁸² Therefore, the MIAX Sapphire System satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the

²⁸¹ In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, *supra* note 275.

²⁸² See MIAX Sapphire 11(a) Request Letter, *supra* note 268.

person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.²⁸³ Exchange Members and their associated persons trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule’s exemption.²⁸⁴

D. Discipline and Oversight of Members

One prerequisite for the Commission’s grant of an exchange’s application for registration is that a proposed exchange must be so organized and have the capacity to be able to carry out the purposes of the Act.²⁸⁵ Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with the Act and the rules and regulations thereunder and the rules of the exchange.²⁸⁶

MIAX Sapphire’s rules codify MIAX Sapphire’s disciplinary jurisdiction over its Members, thereby facilitating its ability to enforce its Members’ compliance with its rules and the federal securities laws.²⁸⁷ MIAX Sapphire’s rules permit it to sanction Members for violations of its rules and violations of the federal securities laws and rules, by, among other things, expelling or suspending Members; limiting Members’ activities, functions, or operations; fining or censuring Members; suspending or barring a person from being associated with a Member; or any other fitting sanction in accordance with MIAX Sapphire rules.²⁸⁸

MIAX Sapphire’s disciplinary and oversight functions will be administered in accordance with Chapter X of the MIAX Sapphire Rules, which governs

²⁸³ 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, *supra* note 273 (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

²⁸⁴ See MIAX Sapphire 11(a) Request Letter, *supra* note 268.

²⁸⁵ See 15 U.S.C. 78f(b)(1).

²⁸⁶ See *id.*

²⁸⁷ See MIAX Sapphire Rule 1000.

²⁸⁸ See *id.* See also MIAX Exchange Rule 1000 and MIAX Pearl Rule 1000 (containing similar provisions).

disciplinary actions. Unless delegated to another SRO pursuant to the terms of any effective 17d–2 plan,²⁸⁹ MIAX Sapphire’s regulatory staff (including regulatory staff of another SRO that may be acting on MIAX Sapphire’s behalf pursuant to an RSA) will, among other things, investigate potential securities laws violations and initiate charges pursuant to MIAX Sapphire rules.²⁹⁰

Upon a finding of probable cause of a violation within the disciplinary jurisdiction of MIAX Sapphire and where further proceedings are warranted,²⁹¹ MIAX Sapphire will conduct a hearing on disciplinary matters before a professional hearing officer²⁹² and two members of the Business Conduct Committee²⁹³ (the “Panel”).²⁹⁴ The MIAX Sapphire Member (or their associated person) or the MIAX Sapphire regulatory staff may petition for review of the decision of the Panel by the MIAX Sapphire Board.²⁹⁵ Any review would be conducted by the MIAX Sapphire Board or a committee thereof composed of at least three Directors of the MIAX Sapphire Board²⁹⁶ (whose decision must be ratified by the MIAX Sapphire Board) and such decision will be final.²⁹⁷ In addition, the MIAX Sapphire Board on its own motion may order review of a disciplinary decision.²⁹⁸

Appeals from any determination that impacts access to MIAX Sapphire, such as termination or suspension of membership, will be instituted under, and governed by, the provisions in the Chapter XI of the MIAX Sapphire Rules,

which incorporates by reference Chapter XI of the MIAX Exchange Rules. MIAX Sapphire’s Chapter XI applies to persons economically aggrieved by Exchange action including, but not limited to: (a) denial of an application to become a Member; (b) barring a person from becoming associated with a Member; or (c) limiting or prohibiting services provided by MIAX Sapphire or services of any Exchange Member.²⁹⁹

Any person aggrieved by an action of MIAX Sapphire within the scope of Chapter XI may file a written application to be heard within thirty days³⁰⁰ after such action has been taken.³⁰¹ Applications for hearing and review will be referred to the Business Conduct Committee, which will appoint a hearing panel of no less than three members of such Committee.³⁰² The decision of the hearing panel made pursuant to Chapter XI of the MIAX Sapphire Rules is subject to review by the MIAX Sapphire Board, either on its own motion within thirty days after issuance of the decision, or upon written request submitted by the applicant or the President of MIAX Sapphire, within 15 days after issuance of the decision.³⁰³ The review would be conducted by the MIAX Sapphire Board

or a committee of the MIAX Sapphire Board composed of at least three Directors.³⁰⁴

The Commission finds that MIAX Sapphire’s proposed disciplinary and oversight rules and structure, as well as its proposed process for persons economically aggrieved by certain MIAX Sapphire actions, are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Act³⁰⁵ in that they provide that members and persons associated with members shall be appropriately disciplined for violation of the rules of the exchange and provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the proposed MIAX Sapphire Rules are designed to provide MIAX Sapphire with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of MIAX Sapphire.³⁰⁶ The Commission notes that MIAX Sapphire’s proposed disciplinary and oversight rules and structures are similar to the rules of other exchanges.³⁰⁷

E. Listing Requirements

MIAX Sapphire does not intend to initially list or trade common stock or non-option securities of operating companies but rather intends to initially only trade option contracts that meet the options listing standards of the Exchange.³⁰⁸ MIAX Sapphire’s listing rules, including the criteria for the underlying securities of the options to be traded, are substantially similar to the listing rules of MIAX Exchange.³⁰⁹

²⁸⁹ See *supra* section III.B.4.c (concerning the 17d–2 plans to which MIAX Sapphire has committed to join).

²⁹⁰ See MIAX Sapphire Rules 1002 and 1004. As stated above, MIAX Sapphire will enter into an RSA with FINRA under which FINRA will perform certain regulatory functions on behalf of MIAX Sapphire. See MIAX Sapphire Rule 1015.

²⁹¹ See MIAX Sapphire Rule 1004.

²⁹² See MIAX Sapphire Rule 1015, Interpretation and Policy .01.

²⁹³ See MIAX Sapphire By-Laws, Article IV, Section 4.7.

²⁹⁴ See MIAX Sapphire Rule 1006.

²⁹⁵ See MIAX Sapphire Rule 1010(a).

²⁹⁶ Specifically, the Exchange Chairman, with the approval of the Board, will appoint an Appeals Committee to preside over all appeals related to disciplinary and adverse action determinations. See *supra* note 51 and accompanying text (detailing the composition of the Appeals Committee). If the Independent Director serving on the Appeals Committee recuses himself or herself from an appeal, due to a conflict of interest or otherwise, the Independent Director may be replaced by a Non-Industry Director for purposes of the applicable appeal if there is no other Independent Director able to serve as the replacement. See MIAX Sapphire By-Laws, Article IV, Section 4.5(d). See also MIAX Exchange Amended and Restated By-Laws, Article IV, Section 4.5(d).

²⁹⁷ See MIAX Sapphire Rule 1010(b).

²⁹⁸ See *id.*

²⁹⁹ See MIAX Sapphire Rule 1100 (which incorporates by reference MIAX Exchange Rule 1100). As stated above, MIAX Sapphire will enter into an RSA with FINRA under which FINRA will perform certain regulatory functions on behalf of MIAX Sapphire. MIAX Sapphire may perform some or all of the functions specified in the Chapter XI of the MIAX Sapphire Rules, which incorporates by reference Chapter XI of the MIAX Exchange Rules. See *supra* note 114 and accompanying text. See also MIAX Sapphire Rule 1106 (which incorporates by reference MIAX Exchange Rule 1106).

³⁰⁰ An applicant may file for an extension of time as allowed by the Chairman of the Business Conduct Committee within thirty days of MIAX Sapphire’s action. An application for an extension will be ruled upon by the Chairman of the Business Conduct Committee and his ruling will be given in writing. Rulings on applications for extensions of time are not subject to appeal. See MIAX Sapphire Rule 1101(b) (which incorporates by reference MIAX Exchange Rule 1101(b)).

³⁰¹ See MIAX Sapphire Rule 1101(a) (which incorporates by reference MIAX Exchange Rule 1101(a)). The application must include: (1) the action for which review is sought; (2) the specific reasons for the applicant’s exception to such action; (3) the relief sought; and (4) whether the applicant intends to submit any documents, statements, arguments, or other material in support of the application, with a description of any such materials. See *id.*

³⁰² See MIAX Sapphire Rule 1102(a) (which incorporates by reference MIAX Exchange Rule 1102(a)). The decision of the hearing panel will be made in writing and sent to the parties to the proceedings. See MIAX Sapphire Rule 1103(d) (which incorporates by reference MIAX Exchange Rule 1103(d)).

³⁰³ See MIAX Sapphire Rule 1104(a) (which incorporates by reference MIAX Exchange Rule 1104(a)). The MIAX Sapphire Board, or a committee of the MIAX Sapphire Board, will have sole discretion to grant or deny either request. See *id.*

³⁰⁴ See MIAX Sapphire Rule 1104(b) (which incorporates by reference MIAX Exchange Rule 1104(b)). The MIAX Sapphire Board or its designated committee may affirm, reverse, or modify in whole or in part, the decision of the hearing panel. The decision of the MIAX Sapphire Board or its designated committee will be final, will be in writing, and will be sent to the parties to the proceeding. See MIAX Sapphire Rule 1104(c) (which incorporates by reference MIAX Exchange Rule 1104(c)).

³⁰⁵ 15 U.S.C. 78f(b)(6) and (b)(7), respectively.

³⁰⁶ See 15 U.S.C. 78f(b)(1).

³⁰⁷ See, e.g., ISE Mercury Order, *supra* note 32; ISE Gemini Order, *supra* note 32; and MIAX Order, *supra* note 18.

³⁰⁸ See MIAX Sapphire Form 1, Exhibit H.

³⁰⁹ See MIAX Sapphire Rules Chapter IV (Option Contracts Traded on the Exchange); MIAX Exchange Rules Chapter IV; and MIAX Sapphire Rules Chapter XVIII (Index Options) (which incorporates by reference MIAX Exchange Rules Chapter XVIII). After the submission of the Form 1, MIAX Exchange adopted a “Low Priced Stock Strike Price Interval Program” and a “Monthly Options Series Program” that are not in the MIAX Sapphire Rules as proposed. See MIAX Exchange Rule 404, Interpretations and Policies .12 and .13.

The Commission finds that MIA X Sapphire's proposed initial and continued listing rules are consistent with the Act, including Section 6(b)(5),³¹⁰ in that they are designed to protect investors and the public interest, prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade. Before beginning operation, MIA X Sapphire will need to become a participant in the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("OLPP").³¹¹ In addition, before beginning operation, MIA X Sapphire will need to become a participant in the Options Clearing Corporation.

IV. Exemption From Section 19(b) of the Act With Regard to MIA X Exchange, Cboe, New York Stock Exchange ("NYSE"), and FINRA Rules Incorporated by Reference

MIA X Sapphire has proposed to incorporate by reference certain MIA X Exchange, Cboe, NYSE and FINRA rules.³¹² Thus, for certain MIA X Sapphire rules, Exchange Members will comply with a MIA X Sapphire rule by complying with the referenced MIA X Exchange, Cboe, NYSE, and FINRA rules.

In connection with the proposal to incorporate MIA X Exchange, Cboe, NYSE and FINRA rules by reference, MIA X Sapphire requests, pursuant to Rule 240.0-12 under the Act,³¹³ an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to the MIA X Sapphire rules that are effected solely by virtue of a change to a cross-referenced MIA X Exchange,

Cboe, NYSE, or FINRA rule.³¹⁴ MIA X Sapphire has proposed to incorporate by reference categories of rules, rather than individual rules within a category, that are not trading rules. In addition, MIA X Sapphire agrees to provide written notice to its members whenever MIA X Exchange, Cboe, NYSE, or FINRA proposes a change to a cross-referenced rule³¹⁵ and whenever any such proposed changes are approved by the Commission or otherwise become effective.³¹⁶

Using the authority under Section 36 of the Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.³¹⁷ The Commission is hereby granting MIA X Sapphire's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that MIA X Sapphire has proposed to incorporate by reference. The exemption is conditioned upon MIA X Sapphire providing written notice to MIA X Sapphire members whenever MIA X Exchange, Cboe, NYSE, or FINRA proposes to change an incorporated by reference rule and whenever any such proposed changes are approved by the Commission or otherwise become effective. The exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of the Commission's and SROs' resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought to be implemented by more than one SRO.

V. Conclusion

It is ordered that the application, as amended, of MIA X Sapphire for registration as a national securities exchange be, and it hereby is, granted.

It is further ordered that operation of MIA X Sapphire is conditioned on the satisfaction of the requirements below:

a. Participation in National Market System Plans Relating to Options

³¹⁴ See Letter from Gregory P. Ziegler, Senior Counsel, Miami Holdings, dated Oct. 25, 2023.

³¹⁵ See *id.*

³¹⁶ MIA X Sapphire will provide such notice through a posting on the same website location where MIA X Sapphire posts its own rule filings pursuant to Rule 19b-4 under the Act, within the required time frame. The website posting will include a link to the location on the MIA X Exchange, Cboe, NYSE, or FINRA website where MIA X Exchange, Cboe, NYSE, or FINRA's proposed rule change is posted. See *id.*

³¹⁷ See, e.g., MIA X Emerald, MIA X Pearl, MIA X Order, and BATs Order, *supra* note 18; Mercury Order, *supra* note 32; C2 Order, *supra* note 85; Nasdaq Order, *supra* note 32; and NOM Approval Order, *supra* note 189.

Trading. MIA X Sapphire must join: (1) the Plan for the Reporting of Consolidated Options Last Sale Reports and Quotation Information (Options Price Reporting Authority); (2) the OLPP; (3) the Linkage Plan; (4) the Plan of the Options Regulatory Surveillance Authority; and (5) the Plan Governing the Consolidated Audit Trail.

b. *Bi-lateral Rule 17d-2 Plan.* A plan pursuant to Rule 17d-2³¹⁸ that allocates regulatory responsibility for those matters specified above³¹⁹ must be declared effective by the Commission, or MIA X Sapphire must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

c. *Participation in Multiparty Rule 17d-2 Plans.* MIA X Sapphire must become a party to the multiparty Rule 17d-2 plans concerning options sales practice regulation and market surveillance, and covered Regulation NMS rules.

d. *RSA.* MIA X Sapphire must have entered into an RSA with its regulatory service provider, as described above, that specifies the MIA X Sapphire and Commission rules for which the regulatory services provider will provide certain regulatory functions, or MIA X Sapphire must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

e. *Participation in the Options Clearing Corporation.* MIA X Sapphire must become an Options Clearing Corporation participant exchange.

f. *Participation in the Intermarket Surveillance Group.* MIA X Sapphire must join the Intermarket Surveillance Group.

It is further ordered, pursuant to Section 36 of the Act,³²⁰ that MIA X Sapphire shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the MIA X Exchange, Cboe, NYSE, and FINRA rules that MIA X Sapphire proposes to incorporate by reference, subject to the conditions specified in this order that MIA X Sapphire provide written notice to MIA X Sapphire members whenever MIA X Exchange, Cboe, NYSE, or FINRA proposes to change an incorporated by reference rule and whenever any such proposed changes are approved by the Commission or otherwise become effective.

By the Commission.

J. Matthew DeLesDernier,
Deputy Secretary.

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BILLING CODE 8011-01-P

³¹⁸ 17 CFR 240.17d-2.

³¹⁹ See *supra* notes 125-126 and accompanying text.

³²⁰ 15 U.S.C. 78mm.

³¹⁰ 15 U.S.C. 78f(b)(5).

³¹¹ 15 U.S.C. 78k-1(a)(3)(B).

³¹² Specifically, MIA X Sapphire has proposed to incorporate by reference the following MIA X Exchange Rules: Chapter III (Business Conduct), Chapter VII (Exercises and Deliveries), Chapter VIII (Records, Reports and Audits), Chapter IX (Summary Suspension), Chapter XI (Hearings, Review and Arbitration), Chapter XIII (Doing Business With the Public), Chapter XIV (Order Protection, Locked and Crossed Markets), Chapter XV (Margins), Chapter XVI (Net Capital Requirements), Chapter XVII (Consolidated Audit Trail Compliance Rule), and Chapter XVIII (Index Options). The following rules are cross-referenced in the MIA X Exchange Rules: MIA X Exchange Rule 1107 (Arbitration) incorporates by reference the Rule 12000 Series and Rule 13000 Series of the FINRA Manual and FINRA Rule 2268; MIA X Exchange Rule 1321 (Transfer of Accounts) cross-references FINRA Rule 11870; MIA X Exchange Rule 1502 (Margin Requirements) cross-references the Cboe and NYSE rules concerning initial and maintenance margin requirements that may be in effect from time to time.

³¹³ 17 CFR 240.0-12.

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20427 and #20428; ILLINOIS Disaster Number IL-20005]

Administrative Declaration of a Disaster for the State of Illinois

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Illinois dated 07/15/2024.

Incident: Orion Parkview Apartment Fire.

Incident Period: 06/17/2024.

DATES: Issued on 07/15/2024.

Physical Loan Application Deadline Date: 09/13/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 04/15/2025.

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 Administrator's disaster declaration, 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: Cook

Contiguous Counties:

Illinois: DuPage, Kane, Lake,

McHenry, Will

Indiana: Lake

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

	Percent
<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 204275 and for economic injury is 204280.

The States which received an EIDL Declaration are Illinois, Indiana.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2024-15962 Filed 7-18-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20445 and #20446; TEXAS Disaster Number TX-20016]

Presidential Declaration of a Major Disaster for the State of Texas

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-4798-DR), dated 07/12/2024.

Incident: Hurricane Beryl.

Incident Period: 07/05/2024 through 07/09/2024.

DATES: Issued on 07/12/2024.

Physical Loan Application Deadline Date: 09/10/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 04/14/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/12/2024, 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): Brazoria, Chambers, Galveston, Harris, Jackson, Jasper, Jefferson, Liberty, Matagorda, Montgomery, Orange, Polk, San Jacinto, Walker, Wharton.

Contiguous Counties/Parishes

(Economic Injury Loans Only):

Texas: Angelina, Austin, Calhoun, Colorado, Fort Bend, Grimes, Hardin, Houston, Lavaca, Madison, Newton, Sabine, San Augustine, Trinity, Tyler, Victoria, Waller
Louisiana: Cameron, Calcasieu

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 204458 and for economic injury is 204460.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-15881 Filed 7-18-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20434 and #20435; MINNESOTA Disaster Number MN-20003]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Minnesota

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA-4797-DR), dated 06/28/2024.

Incident: Severe Storms and Flooding.
Incident Period: 06/16/2024 through 07/04/2024.

DATES: Issued on 07/11/2024.

Physical Loan Application Deadline Date: 08/27/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 03/28/2025.

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 MINNESOTA, dated 06/28/2024 is hereby amended to update the incident period for this disaster as beginning 06/16/2024 and continuing through 07/04/2024.

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. 2024–15878 Filed 7–18–24; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2024–0012]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Department of Homeland Security (DHS). This matching program sets forth the terms, conditions, and safeguards under which DHS will disclose information to SSA in order to identify noncitizens who leave the United States voluntarily and noncitizens who are removed from the United States.

DATES: Submit comments on the proposed matching program no later than August 19, 2024. The matching program will be applicable on January 19, 2025, or once a minimum of 30 days after publication of this notice have elapsed, whichever is later. The

matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2024–0012 so that we may associate your comments with the correct regulation. **CAUTION:** You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers (SSN) or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function to find docket number SSA–2024–0012 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–0869.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing Matthew.Ramsey@ssa.gov. Comments are also available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Cynthia Scott, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore MD 21235–6401, at telephone: (410) 965–1416, or send an email to Cynthia.Scott@ssa.gov.

SUPPLEMENTARY INFORMATION: For functions of this matching program, “noncitizen” is synonymous with “noncitizen” as defined in section 1101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)),

meaning “any person not a citizen or national of the United States.”

Matthew Ramsey,
Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies

SSA and DHS.

Authority for Conducting the Matching Program

This Agreement is executed under the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act (CMPPA) of 1988, Public Law (Pub. L.) 100–503, 102 Stat. 2507 (1988), as amended, and the Computer Matching and Privacy Protection Amendments of 1990, and the regulations and guidance promulgated thereunder.

The CMPPA applies when computerized comparisons of Privacy Act-protected records contained within a Federal agency's databases and the records of another organization are made in order to determine an individual's eligibility to receive a Federal benefit. The CMPPA requires the parties participating in a matching program to execute a written agreement specifying the terms and conditions under which the matching program will be conducted.

Legal authorities for the disclosures under this Agreement are covered by various sections of the Social Security Act (Act).

- Section 202(n)(1) of the Act [42 U.S.C. 402(n)] requires the Secretary of Homeland Security to notify the Commissioner of Social Security when certain individuals are removed from the United States under sections 212(a)(6)(A) and 237(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(6)(A) or 1227(a);

- Section 1611(a)(1) of the Act [42 U.S.C. 1382c(a)(1)] concerns the definition of eligible individuals;

- 8 U.S.C. 1611 mandates that non-qualified noncitizens (as defined in 8 U.S.C. 1641) do not receive Federal public benefits;

- 8 U.S.C. 1612 also places some limits on qualified noncitizens' ability to receive public benefits;

- Section 1631(e)(1)(B) of the Act [42 U.S.C. 1383(e)(1)(B)] requires SSA to verify declarations of applicants for and recipients of Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount;

- Section 1631(f) of the Act [42 U.S.C. 1383(f)] requires Federal agencies to provide SSA with information necessary to verify SSI eligibility or benefit

amounts or to verify other information related to these determinations.

A. Noncitizens Who Leave the United States, Without Regard to Immigration Proceedings

Resident noncitizens eligible for SSI may receive payments for any month in which they reside in the United States. For purposes of SSI, the United States means, geographically, the 50 States, the District of Columbia, and the Northern Mariana Islands. 20 CFR 416.1603(c). Under section 1611(f) of the Act, an individual is ineligible for SSI benefits for any month during all of which he or she is outside the United States. Section 1611(f) of the Act further states that if an individual is absent from the United States for 30 consecutive days, SSA will treat the individual as remaining outside the United States until he or she has been in the United States for a period of 30 consecutive days. See 42 U.S.C. 1382(f) and 20 CFR 416.1327.

B. Noncitizens Who Are Removed, Voluntarily Depart, or Voluntarily Return to Their Home Country From the United States

The Social Security Protection Act of 2004, Public Law 108–203, amended the Act to expand the number of individuals who are subject to nonpayment of Social Security benefits. Thus, section 202(n)(1)(A) of the Act (42 U.S.C. 402(n)(1)(A)) prohibits payment of retirement or disability insurance benefits to number holders (NH) who have been removed from the United States on certain grounds specified under section 237(a) or section 212(a)(6)(A) of the INA (8 U.S.C. 1182(a)(6)(A), 1227(a)). SSA will not pay monthly retirement or disability benefits to such NHs for the month after the month in which the Secretary of Homeland Security notifies SSA of the NH's removal or before the month in which the NH is subsequently lawfully admitted to the United States for permanent residence.

Section 202(n)(1)(B) of the Act (42 U.S.C. 402(n)(1)(B)) prohibits payment of auxiliary or survivors benefits to certain individuals who are entitled to such benefits on the record of a NH who has been removed from the United States on certain grounds as specified in the above paragraph. Nonpayment of benefits is applicable for any month such auxiliary or survivor beneficiary is not a citizen of the United States and is outside the United States for any part of the month. Benefits cannot be initiated (or resumed) to such auxiliary or survivor beneficiaries who are otherwise subject to nonpayment under these provisions until the removed NH has

been subsequently lawfully admitted for permanent residence to the United States.

In addition, certain individuals may be subject to suspension of their SSI payments under section 1614(a)(1)(B)(i) of the Act (42 U.S.C. 1382c(a)(1)(B)(i)), which provides, in part, that an SSI recipient must be a resident of the United States.

Purpose(s)

This matching program establishes the conditions under which DHS will disclose information to SSA in order to identify noncitizens who leave the United States voluntarily and noncitizens who are removed from the United States. These noncitizens may be subject to suspension of payments or nonpayment of benefits or both, and recovery of overpayments. SSA will use DHS data to determine if suspension of payments, nonpayment of benefits, and/or recovery of overpayments, is applicable.

Categories of Individuals

The individuals whose information is involved in this matching program are:

1. Noncitizens who leave the United States voluntarily and are subject to suspension or non-payment of SSI.
2. Noncitizens who are removed from the United States, voluntarily depart, or voluntarily return to their home country from the United States, and are subject to nonpayment of retirement or disability insurance benefits (RSDI). In addition, certain individuals may be subject to suspension of their SSI payments if they are not residents of the United States. If an SSI recipient is not a qualified noncitizen within the statutory definitions, they are ineligible for SSI benefits. A qualified noncitizen may have limited eligibility.

Categories of Records

1. Noncitizens Who Leave the United States Voluntarily

The data elements furnished by the DHS/U.S. Citizenship and Immigration Service's (USCIS) Benefits Information System (BIS) are the noncitizen's name, SSN, date of birth (DOB), Noncitizen Registration Number ("A" number), date of departure, and expected length of stay. To verify the SSN, SSA will match BIS data against the names, DOB, and SSNs in SSA's Enumeration System. SSA will store and match verified SSNs against the same elements in the Supplemental Security Income Record and Special Veteran Benefit (SSR) files.

2. Noncitizens Who Are Removed From the United States

The data elements furnished from DHS/U.S. Immigration and Customs Enforcement's (ICE) Enforcement Integrated Database (EID) are the individual's name and alias (if any), SSN (if available), DOB, country of birth, country to which removed, date of removal, the final removal charge code, and DHS' "A" number.

To verify the SSN, SSA will match EID data against records in its Enumeration System. SSA matches the verified SSNs against the existing Master Beneficiary Record (MBR) and SSR records to locate removals (and their dependents or survivors, if any) who have already claimed and are currently receiving RSDI, SSI benefits, or both. SSA will retain the data verified through this matching program on the MBR and SSR, to be associated with future claims activity.

System(s) of Records

1. Noncitizens Who Leave the United States Voluntarily (SSI)

DHS will disclose to SSA information from the DHS/USCIS–007 Benefits Information System, 84 FR 54622 (November 12, 2019). DHS will electronically format the BIS data for transmission to SSA. BIS data is comprised of data collected from USCIS immigration systems. USCIS data used to accomplish this matching agreement currently comes from the CLAIMS 3 database.

SSA will match the DHS information with SSA's systems of records: Master Files of SSN Holders and SSN Applications (Enumeration System), 60–0058, last fully published at 87 FR 263 (January 4, 2022);

In addition, SSA will match the DHS information with the SSR (60–0103) last fully published at 71 FR 1830 (January 11, 2006) and modified at 72 FR 69723 (December 10, 2007), 83 FR 31250–31251 (July 3, 2018), 83 FR 54969 (November 1, 2018), 89 FR 825 (January 5, 2024), and 89 FR 14554 (February 27, 2024).

2. Noncitizens Who Are Removed From the United States

DHS will retrieve information on removed noncitizens from the DHS/ICE EID database and electronically format it for transmission to SSA, and as covered by DHS/ICE–011-Criminal Arrest Records and Immigration Enforcement Records (CARIER), published at 81 FR 72080 (October 19, 2016), to the extent that those records pertain to individuals under the Privacy Act or covered

persons under the Judicial Redress Act of 2015 (5 U.S.C. 552a, note).

The SSA systems of records used in the match program are include:

- Master Files of SSN Holders and SSN Applications (60–0058), last fully published at 87 FR 263 (January 4, 2022);
- SSR (60–0103), last fully published at 71 FR 1830 (January 11, 2006) and modified at 72 FR 69723 (December 10, 2007), 83 FR 31250–31251 (July 3, 2018), 83 FR 54969 (November 1, 2018), 89 FR 825 (January 5, 2024), and 89 FR 14554 (February 27, 2024);
- MBR (60–0090), last fully published at 71 FR 1826 (January 11, 2006) and modified at 72 FR 69723 (December 10, 2007), 78 FR 40542 (July 5, 2013), 83 FR 31250–31251 (July 3, 2018), 83 FR 54969 (November 1, 2018), 89 FR 825 (January 5, 2024), and 89 FR 14554 (February 27, 2024); and
- Prisoner Update Processing System (PUPS) (60–0269), last fully published at 64 FR 11076 (March 8, 1999), and modified at 72 FR 69723 (December 10, 2007), 78 FR 40542 (July 5, 2013), and 83 FR 54969 (November 1, 2018).

The Unverified Prisoner System (UPS) is a subsystem of PUPS. UPS users perform a manual search of fallout cases where the Enumeration and Verification System is unable to locate an SSN for a noncitizen who has been removed.

The systems of records involved in this computer matching program have routine uses permitting the disclosures needed to conduct this match.

[FR Doc. 2024–15918 Filed 7–18–24; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12463]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Ultra-Violet: New Light on Van Gogh’s Irises” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition “Ultra-Violet: New Light on Van Gogh’s Irises” at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered

that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/DPD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–15902 Filed 7–18–24; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21116]

Essex Equity Partners MJT, LLC, Lawrence Boyce, and Terry Stapp—Acquisition of Control—Xplore KY LLC and MJT Nashville LLC

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On June 20, 2024, Essex Equity Partners MJT, LLC (Essex MJT), Lawrence Boyce (Boyce), and Terry Stapp (Stapp) (collectively, Applicants), all noncarriers, filed an application for after-the-fact authority to acquire indirect control of two interstate passenger motor carriers, Xplore KY LLC (Xplore) and MJT Nashville LLC (Nashville) (collectively, Carriers). Pursuant to the completed transaction, Applicants acquired direct control of the outstanding equity membership in MJT Holdings, LLC (MJT Holdings), a noncarrier entity that holds all the outstanding membership interests in Carriers, from Sean Higgins and Lisa Higgins (collectively, Sellers). The Board is tentatively approving and granting after-the-fact authorization of the transaction, and, if no opposing

comments are timely filed, this notice will be the final Board action.

DATES: Comments may be filed by September 3, 2024. If any comments are filed, Applicants may file a reply by September 17, 2024. If no opposing comments are filed by September 3, 2024, this notice shall be effective on September 4, 2024.

ADDRESSES: Comments may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, send one copy of comments to Applicants’ representative: Kiefer A. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Brian O’Boyle at (202) 245–0364. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: According to the application, Essex MJT is a Kentucky limited liability company located in Kentucky,¹ Boyce is an individual resident of Kentucky, and Stapp is an individual resident of Indiana. (Appl. 2.) None of the Applicants are federally regulated passenger motor carriers. (*Id.* at 3.) Other than Carriers, which Applicants acquired indirect control of when the transaction was completed on April 23, 2024,² none of the entities or persons having direct or indirect interests in Applicants control any federally regulated interstate passenger motor carrier. (Appl. 3.)

As a result of the transaction, Applicants acquired from Sellers direct control of the outstanding equity membership in MJT Holdings, a noncarrier entity that holds all the outstanding membership interests in Carriers.³ (Appl. 2.) Prior to the transaction, Sellers and MJT Holdings did not control any federally regulated

¹ Further information about Essex MJT’s corporate structure and ownership can be found in the application. (See Appl. 2–3 & Ex. A.)

² According to the application, neither Applicants nor Sellers were aware until recently that the transaction was subject to the Board’s jurisdiction and approval. (Appl. 1, 5.) Applicants now request that the Board approve the transaction after the fact. (See *id.*) The Board has permitted parties to obtain after-the-fact licensing authority for a transaction when the failure to seek approval was without malice and by mistake. See, e.g., *McCarthy—Acquis. of Control—Trombly Motor Coach Serv., Inc.*, MCF 21094, slip op. at 2 n.2 (STB served Aug. 6, 2021) (citing *Winthrop Sargent—Acquis. of Control—Plymouth & Brockton St. Ry.*, MCF 21089, slip op. at 2 (STB served Jan. 3, 2020)).

³ Exhibit A to the application depicts the organizational structure of Carriers following the closing of the transaction. (See Appl. Ex. A.)

passenger motor carrier other than Carriers. (*Id.* at 3.)

Applicants describe Carriers as follows:

- Xplore is a Kentucky limited liability company, headquartered in Kentucky, that holds interstate carrier operating authority under FMCSA Docket No. MC-666448 and has a safety rating of “Satisfactory” from the U.S. Department of Transportation (USDOT). (*Id.* at 3–4.) Xplore provides charter transportation services for activities and events such as guided tours, group excursions, and recreational and entertainments events. (*Id.* at 4.) Xplore provides these services from its terminal facilities located in Louisville, Ky., and utilizes approximately 16 passenger vans, 14 minibuses, and 46 drivers. (*Id.*)
- Nashville is a Tennessee limited liability company, headquartered in Tennessee, that holds interstate carrier operating authority under FMCSA Docket No. MC-79453. (*Id.* at 3–4.) Applicants state that Nashville has no safety rating. (*Id.* at 4.) Nashville, like Xplore, provides charter transportation services for activities and events such as guided tours, group excursions, and recreational and entertainments events. (*Id.* at 5.) Nashville provides these services from its terminal facilities located in Nashville, Tenn., and utilizes approximately three passenger vans, five minibuses, and 14 drivers. (*Id.*)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges that result from the proposed transaction, and (3) the interest of affected carrier employees. Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the transaction is consistent with the public interest under 49 U.S.C. 14303(b), *see* 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of the involved carriers exceeded \$2 million during the 12-month period immediately preceding the filing of the application, *see* 49 CFR 1182.2(a)(5). (*See* Appl. 5–9.)

Applicants assert that the transaction will not have a material, detrimental impact on the adequacy of transportation services available for the public. (*Id.* at 6.) Applicants state that although Carriers now operate within the holdings of Applicants, Xplore and Nashville continue to operate under the same names and provide services from

the same locations used before the transaction. (*Id.*)

Applicants further assert that the transaction will have, at most, a minimal impact on the regulated motor carrier industry, and neither competition nor the public interest will be adversely affected. (*Id.* at 6, 8.) According to Applicants, there is no net gain in market power resulting from the transaction because Applicants do not have ownership interests in or control of other passenger motor carriers. (*Id.* at 8.) Applicants also represent that there will be no overlap in the service areas or customer bases of Carriers and Applicants, as Applicants do not currently operate any motor carrier service. (*Id.*) Applicants state that they will seek to grow Carriers’ business by contracting with new customers and expanding services for existing customers. (*Id.*)

Additionally, although the transaction will increase fixed charges in the form of interest expenses because Applicants borrowed funds to finance the transaction, Applicants state that such increase will not impact the provision of transportation services to the public. (*Id.* at 6–7.) Applicants also assert that because they have continued, and intend to continue, the existing operations of Carriers, employees and labor conditions are not materially impacted. (*Id.* at 7.) Applicants further submit they do not anticipate any measurable reduction in force or changes in compensation levels or benefits at Carriers. (*Id.*)

The Board finds that the acquisition as described in the application is consistent with the public interest and should be tentatively approved and authorized after the fact. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6. If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action in this proceeding.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at www.stb.gov.

It is ordered:

1. The transaction is approved and authorized after-the-fact, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective September 4, 2024, unless opposing comments are filed by September 3, 2024. If any comments are filed, Applicants may file a reply by September 17, 2024.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

5. This notice will be published in the **Federal Register**.

Decided: July 14, 2024.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

Stefan Rice,
Clearance Clerk.

[FR Doc. 2024–15874 Filed 7–18–24; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1340X]

CG Railway, LLC—Discontinuance of Service Exemption—in New Orleans, La.

On July 1, 2024, CG Railway, LLC (CGR), a Class III rail carrier, filed a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over approximately 3.4 miles of rail line in New Orleans, La., consisting of the North Yard of the Port of New Orleans (Port), including track numbers 1, 2, 3, 4, 5, 6, and 7, and the Elaine Street Lead between milepost G1.2 and milepost G2.4 (the Line). CGR states that the Line traverses U.S. Postal Service Zip Codes 70126 and/or 70127 and that, to the best of its knowledge, no stations exist on the Line.

CGR states that it leased the Line from the Port.¹ (Pet. 2.) According to CGR, rail service on the Line—which enabled interchange with CSX Transportation, Inc.—was commercially dependent on the use of the Mississippi River Gulf Outlet being navigable for deep draft vessels. (*Id.* at 1–2.) The petition states that damage caused by Hurricane Katrina to the Mississippi River Gulf Outlet rendered the Line unsuitable and uneconomic for CGR’s transportation purposes, and the Port and CGR

¹ *See* CG Ry.—Lease & Operation Exemption—Port of New Orleans, La., FD 34710 (STB served July 1, 2005).

terminated the lease by mutual agreement in August 2007. (*Id.* at 2.) CGR states that, since that date, it has not used the Line to provide common carrier service. (*Id.*) CGR explains that it is seeking discontinuance authority to clear the record and confirm that it does not have a residual common carrier obligation over the Line. (*Id.*)

CGR asserts that, because this proceeding would involve the discontinuance of common carrier service and not abandonment of the Line, the question of whether the Line contains any federally granted rights-of-way is inapplicable. (*Id.* at 1–2.) CGR states that any documentation related to federally granted rights-of-way pertaining to this petition in CGR's possession will be made promptly available to those requesting it. (*Id.* at 2.)

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 18, 2024.

Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during any subsequent abandonment, this discontinuance does not require an environmental review. See 49 CFR 1105.6(c)(5), 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner.² Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by July 29, 2024, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. See 49 CFR 1152.27(c)(1)(i).

All filings in response to this notice must refer to Docket No. AB 1340X and must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must

be served on CGR's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004. Replies to the petition are due on or before August 8, 2024.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245–0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

Board decisions and notices are available at www.stb.gov.

Decided: July 16, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Raina White,

Clearance Clerk.

[FR Doc. 2024–15973 Filed 7–18–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Final Programmatic Environmental Assessment and Mitigated Finding of No Significant Impact and Record of Decision for Drone Package Delivery in North Carolina

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of the Final Programmatic Environmental Assessment (PEA) and Mitigated Finding of No Significant Impact and Record of Decision (FONSI/ROD) for Drone Package Delivery in North Carolina.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Nicholas Baker, Environmental Protection Specialist, Unmanned Aircraft Systems Integration Office, Safety & Integration Division, Strategic Programs Branch, AUS–430; telephone 1–202–267–4714; email 9-FAA-Drone-Environmental@faa.gov.

SUPPLEMENTARY INFORMATION: The Final PEA evaluates the potential environmental impacts of Unmanned Aircraft Systems (UAS) package

delivery operations in the state of North Carolina. The proposed action analyzed in the PEA is UAS operators conducting commercial drone package deliveries under 14 Code of Federal Regulations (CFR) part 135 in North Carolina. The North Carolina Department of Transportation is the project proponent.

The Draft PEA was submitted for review pursuant to the National Environmental Policy Act (NEPA) (42 United States Code [U.S.C.] 4321 *et seq.*), the Council on Environmental Quality NEPA Implementing Regulations (40 CFR parts 1500–1508), FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Section 4(f) of the Department of Transportation Act (49 U.S.C. 303), and section 106 of the National Historic Preservation Act (16 U.S.C. 470) on April 30, 2024. The FAA held a virtual public meeting for the Draft PEA on May 21, 2024. The comment period for the Draft PEA closed on May 30, 2024. The Final PEA includes public comments received during the public comment period and the FAA's responses.

The Final PEA and Mitigated FONSI/ROD are available to view and download electronically at https://www.faa.gov/uas/advanced_operations/nepa_and_drones/. The documentation is available from any internet access, including from computers freely available at public libraries.

Based on the analysis in the Final PEA, including mitigation measures that may be used to prevent significant noise impacts, the FAA has determined there will not be significant impacts to the human environment. As a result, an Environmental Impact Statement has not been initiated. The FAA intends for this PEA to create efficiencies by establishing a framework that can be used for “tiering,” when appropriate, to project-specific actions that require additional analysis. As decisions on specific applications are made, to the extent additional NEPA analysis is required, environmental review will be conducted to supplement the analysis set forth in this PEA.

Issued in Washington, DC, on July 16, 2024.

Derek W. Hufty,

Manager, General Aviation and Commercial Branch, Emerging Technologies Division, Office of Safety Standards, Flight Standards Service.

[FR Doc. 2024–15948 Filed 7–18–24; 8:45 am]

BILLING CODE 4910–13–P

² The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[Docket No. 2013–0259]****Agency Information Collection****Activities: Requests for Comments;
Clearance of Renewed Approval of
Information Collection: Advisory
Circular: Reporting of Laser
Illumination of Aircraft****AGENCY:** Federal Aviation
Administration (FAA), DOT.**ACTION:** Notice and request for
comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval renew information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 17, 2023. The collection involves information to be collected will be used to and/or is necessary because Advisory Circular 70–2B provides guidance to civilian air crews on the reporting of laser illumination incidents and recommended mitigation actions to be taken in order to ensure continued safe and orderly flight operations.

DATES: Written comments should be submitted by August 19, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket:
www.regulations.gov (Enter docket number into search field).

By mail: Nicholas Torgerson, Federal Aviation Administration, AJR–223, 800 Independence Ave. SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:

Nicholas Torgerson, by email at: Nicholas.d.torgerson@faa.gov; phone: 202–322–4157.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0698.

Title: Advisory Circular (AC):
Reporting of Laser Illumination of
Aircraft.

Form Numbers: Advisory Circular 70–
2B, Reporting of Laser Illumination of
Aircraft.

Type of Review: Renewal of an
information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 17, 2023 (88 FR 58633). Advisory Circular 70–2B provides guidance to civilian air crews on the reporting of laser illumination incidents and recommended mitigation actions to be taken in order to ensure continued safe and orderly flight operations. Information is collected from pilots and aircrews that are affected by an unauthorized illumination by lasers. The requested reporting involves an immediate broadcast notification to Air Traffic Control (ATC) when the incident occurs, as well as a broadcast warning of the incident if the aircrew is flying in uncontrolled airspace. In addition, the AC requests that the aircrew supply a written report of the incident and send it by fax or email to the Washington Operations Control Complex (WOCC) as soon as possible.

Respondents: Approximately 2339
pilots and crewmembers.

Frequency: Information is collected
on occasion.

Estimated Average Burden per

Response: 10 minutes.

Estimated Total Annual Burden: 220
hours.

Issued in Washington, DC on July 16, 2024.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2024–15928 Filed 7–18–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****[Docket No. FHWA–2024–0051]****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 has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to approve a new information collection. We are required to publish this notice

in the **Federal Register** by the
Paperwork Reduction Act of 1995.

DATES: Please submit comments by
August 19, 2024.

ADDRESSES: You may submit comments
identified by DOT Docket ID Number
0051 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://](http://www.regulations.gov)
www.regulations.gov.

Follow the online instructions for
submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility,
U.S. Department of Transportation,
West Building Ground Floor, Room
W12–140, 1200 New Jersey Avenue SE,
Washington, DC 20590–0001.

Hand Delivery or Courier: U.S.
Department of Transportation, West
Building Ground Floor, Room W12–140,
1200 New Jersey Avenue SE,
Washington, DC 20590, between 9 a.m.
and 5 p.m. ET, Monday through Friday,
except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Aimee Zhang, (202) 366–6537, Office of
Safety Technologies, Federal Highway
Administration, 1200 New Jersey
Avenue SE, Washington, DC 20590.
Office hours are from 7:30 a.m. to 4
p.m., Monday through Friday, except
Federal holidays.

SUPPLEMENTARY INFORMATION: We
published a **Federal Register** Notice
with a 60-day public comment period
on this information collection on March
22, 2024, at [89 FR 20529]. The
comments and FHWA's responses are
below:

Four comments were received, as
shown below.

Comment received from Louisiana
Department of Transportation and
Development (LADOTD) on April 26,
2024. LADOTD requests that FHWA
continue the service of issuance of
Federal-aid eligibility letters. LADOTD
expressed that it does not have staff and
experience to determine MASH
crashworthiness for roadside safety
hardware and relies on the FHWA
letters in order to decide of
crashworthiness. LADOTD states that if
states were to be solely responsible for
determination of crashworthiness, it
would be ideal to implement an online
forum/message-board for the states to
share data regarding crash tests reports,
so that state subject matter experts could
assist and or provide comments/
concerns regarding a particular device.
FHWA acknowledge receiving the
comment and will not respond to this
comment because there is not contact
information left.

Comment received from Virginia Department of Transportation (VDOT) on May 2, 2024. VDOT strongly appreciate FHWA's current practice and role relating to issuing issuance of Federal-aid eligibility letters for roadside safety hardware. VDOT believes the information collection is necessary for FHWA to continue the service to states of issuance of eligibility letters, and there is no other organization can take over the FHWA's role of evaluator of crashworthiness. VDOT does not have recommendation in terms of technology improvement to minimize burden of data collection. VDOT is willing to attest the usefulness and value of the eligibility letters issued by FHWA. FHWA acknowledge receiving the comment and will not respond to this comment because there is not contact information left.

Comment received from Glenn Kowalske on May 13, 2024. The comment does not apply to this notice. No action from FHWA.

Comment received from American Traffic Safety Services Association (ATSSA), 2024, received May 7, 2024. FHWA—Office of Safety has drafted a response letter to ATSSA and will send the response to ATSSA.

Title: Request for Federal Aid Reimbursement Eligibility of Safety Hardware Devices.

Background: The FHWA's longstanding policy is that all roadside safety hardware installed on the National Highway System (NHS) be crashworthy. To support this policy, the AASHTO/FHWA Joint Implementation Agreement for the Manual for Assessing Safety Hardware (MASH) was adopted. This agreement implemented AASHTO MASH as the criteria for determining crashworthiness of roadside safety hardware.

FHWA provides a service to States and industry by reviewing tests for roadside hardware, ensuring that they have been tested in accordance with MASH criterion, and issuing a federal aid eligibility letter for roadside hardware that meet review standards. An eligibility letter is not a requirement for roadside safety hardware to be determined eligible for Federal funding. Roadside safety hardware is eligible for Federal funding if it has been determined to be crash worthy by the user agency.

To issue eligibility letters for roadside safety hardware, the FHWA needs to collect and review crash test results and hardware information from the submitters.

Respondents: Approximately 50 submissions are received annually.

Frequency: Annually.

Estimated Average Burden per Response: Averages 2 hours per submission.

Estimated Total Annual Burden Hours: Approximately 100 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 16, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–15921 Filed 7–18–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0055]

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 has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to approve a new information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 19, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0055 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:

Adam Larsen, (360) 619–2601, Adam.Larsen@dot.gov, Office of Tribal Transportation, Office of Federal Lands Highway, Federal Highway Administration, Department of Transportation, 610 E 5th Street, Vancouver, WA 98661. Office hours are from 7 a.m. to 4 p.m. Pacific Daylight Time, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We published a **Federal Register** Notice with a 60-day public comment period on this information collection on May 9, 2024, at [89 FR 42571]. The comments and FHWA's responses are below:

There were no comments received.

Title: Tribal Transportation Program Safety Fund (TTPSF).

Background: The TTPSF is authorized within the Tribal Transportation Program (TTP) under section 202(e) of title 23, United States Code (U.S.C.) which reads “to be allocated based on an identification and analysis of highway safety issues and opportunities on tribal land, as determined by the Secretary, on application of the Indian tribal governments”. The Federal Highway Administration has developed an application process which is described in a Notice of Funding Opportunity (NOFO). The current NOFO was published on June 7, 2022.

Respondents: Eligible applicants to the TTPSF are the 574 Federally Recognized Indian Tribes as described in 89 FR 944 or future updates published in the **Federal Register**.

Frequency: Applications are accepted on an annual basis during a 60–90 day application intake period.

Estimated Average Burden per Response: A complete application consists of a completed application form and project narrative 3–7 pages in length, on average. An average of 130 applications are received annually from an average of 95 eligible applicants. Each application is estimated to take an average of 2.25 hours to complete.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 293 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: July 16, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024-15941 Filed 7-18-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0195]

Hours of Service of Drivers: Reiman Corp.; Denial of Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its denial of Reiman Corp.'s (Reiman) request for an exemption from certain hours-of-service (HOS) regulations. Reiman's drivers transport latex embedded cement for use at highway construction sites. Reiman requests that it be allowed to operate under the same HOS exemption provided for "specially trained drivers of commercial motor vehicles that are specially constructed to service oil wells." FMCSA analyzed the application and public comment and determined that Reiman did not demonstrate how the commercial motor vehicle (CMV) operations under such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved in the absence of the exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Pearl Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; FMCSA; 202-366-4225; pearlie.robinson@dot.gov. If you have questions on viewing or submitting

material to the docket, contact Dockets Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number "FMCSA-2023-0195" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "View Related Comments."

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number "FMCSA-2023-0195" in the keyword box, click "Search," and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations at U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The HOS regulations in 49 CFR part 395 limit the time CMV drivers may drive and require certain off-duty periods to ensure that individuals stay awake and alert while driving. Generally, a driver may not record time as "off-duty" unless he or she has been relieved of all duty and responsibility for the care and custody of the CMV, its accessories, and its cargo, and is free to pursue activities of his or her own choosing. Thus, drivers who are waiting, whether at a loading dock or at a natural gas or oil well site, are generally considered to be "on duty." Section 395.3(a)(2) provides that "a driver may not drive after a period of 14 consecutive hours after coming on-duty following 10 consecutive hours off-duty." However, the FMCSRs provide an exception to the 14-hour rule for the waiting time of a specific classification of driver. Section 395.1(d)(2) provides, "In case of specially trained drivers of CMVs that are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site. Such waiting time shall be recorded as 'off-duty' for purposes of §§ 395.8 and 395.15." Section 395.1(d)(2) also provides that the waiting time of these drivers "shall not be included in calculating the 14-hour period in § 395.3(a)(2)." Furthermore, specially trained drivers of such CMVs are not eligible to use the short-haul operations exemption in § 395.1(e)(1).

Applicant's Request

Reiman indicated that it is involved in the construction of highway roads and bridges and not in support of oilfield operations. Reiman requests an exemption for nine of its drivers from certain HOS regulations because it considers its operations similar to the oilfield operations exempted in 49 CFR 395.1(d)(2), including that these drivers are specially trained to operate vehicles that are specially designed to transport specific products with vehicle-mounted equipment. The requested exemption would allow these drivers who transport latex embedded cement to record waiting time at construction sites as "off-duty" for purposes of 49 CFR 395.8 and 395.15. Further, Reiman would not include waiting time in calculating the 14-hour period in 49 CFR 395.3(a)(2), and the drivers would not be eligible to use the short-haul operations provision in § 395.1(e)(1).

Applicant's Method To Ensure an Equivalent or Greater Level of Safety

According to Reiman:

The company is aware of the risks inherent with the extended hours of operations and will ensure the driver is not operating the CMV while fatigued. This will be accomplished by the managers and on-site project supervisors attending "Distracted Driving and Fatigue Awareness" training, as well as through face-to-face interactions with the driver(s), the intent being increased awareness of the drivers mental and physical state.

IV. Public Comments

On November 16, 2023, FMCSA published Reiman's application and requested public comment (88 FR 11504). The Agency received one response, a joint comment filed by Advocates for Highway and Auto Safety and the Truck Safety Coalition in opposition to the requested exemption. These organizations commented that, "The basis for seeking the exemption is no more than the normal daily logistical issues presented by the Petitioner's daily operations." The commenters also stated that "Permitting an exemption for any industry or group of drivers that face waiting times would render the HOS limitations meaningless at a time when driver fatigue remains a serious safety issue."

V. FMCSA Safety Analysis and Decision

FMCSA has evaluated Reiman's application and the public comment and denies the exemption request. The Agency continues to rely on the substantial body of HOS research that supported the adoption of the 14-hour rule (68 FR 22473, April 28, 2003). Fatigue during the workday represents a significant safety risk if this exemption were granted because drivers would operate their CMVs after the 14th hour of coming on duty. The risk of fatigue increases significantly after the 14th hour of coming on duty, despite miscellaneous off-duty periods during the work shift.

The applicant did not include alternatives to compliance with the 14-hour rule, such as some other fixed driving window within which all driving must be completed. The proposed relief from the 14-hour rule would enable miscellaneous off-duty periods at the construction sites to be excluded when determining whether the drivers may operate the CMV during the latter part of the workday. This would create the potential for fatigued drivers, subject to long workdays and without consideration of whether the driver had accumulated 14 hours of on-duty time before completing their driving tasks for the day. The applicant has not demonstrated that granting the

exemption would achieve an equivalent level of safety to the existing regulation.

For the above reasons, FMCSA denies Reiman's exemption application.

Sue Lawless,

Acting Deputy Administrator.

[FR Doc. 2024-15879 Filed 7-18-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0025; Notice 2]

Daimler Trucks North America, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Daimler Trucks North America LLC (DTNA) has determined that certain model year (MY) 2019-2022 Thomas Built Bus school buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 217, *Bus Emergency Exits and Window Retention and Release*. DTNA filed an original noncompliance report dated February 9, 2022, and amended the report on April 13, 2022. DTNA petitioned NHTSA (the "Agency") on March 1, 2022, and later amended the petition on April 13, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of DTNA's petition.

FOR FURTHER INFORMATION CONTACT: Daniel Lind, Safety Compliance Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-7235.

SUPPLEMENTARY INFORMATION:

I. Overview: On November 20, 2020, NHTSA requested information from DTNA regarding a test failure with S5.5.3(a) of FMVSS No. 217, *Emergency Exit Identification and Labeling*, in a 2019 Thomas Saf-T-Liner school bus. NHTSA received DTNA's response on December 18, 2020, and on January 26, 2022, NHTSA requested that DTNA provide additional information or file a noncompliance report, if it determines that there is a noncompliance.

As a result, DTNA determined that certain MY 2019-2022 Thomas Built Bus school buses do not fully comply with paragraph S5.5.3(a) of FMVSS No. 217, *Bus Emergency Exits and Window Retention and Release* (49 CFR 571.217).

DTNA filed an original noncompliance report dated February 9, 2022, and amended the report on April 13, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. DTNA petitioned NHTSA on March 1, 2022, and amended the petition on April 13, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of DTNA's petition was published with a 30-day public comment period on August 30, 2022, in the **Federal Register** (87 FR 53044). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2022-0025."

II. Vehicles Involved: Approximately 28,814 MY 2019-2022 Thomas Built Saf-T-Liner HDX, EFX, C2, and Minotour school buses, manufactured between September 28, 2018, and February 23, 2021, are potentially involved.

III. Noncompliance: DTNA explains that the subject school buses are equipped with "Emergency Exit" and "Emergency Door" labels that do not meet the letter height requirements, as required by paragraph S5.5.3(a) of FMVSS No. 217. Specifically, some of the letters are 4.9 cm instead of the required minimum 5 cm letter height.

IV. Rule Requirements: Paragraph S5.5.3(a) of FMVSS No. 217 includes the requirements relevant to this petition. Each school bus emergency exit provided in accordance with S5.2.3.1 of FMVSS No. 217 is required to have the designation "Emergency Door" or "Emergency Exit," as appropriate, in letters that are at least 5 centimeters high and in a color that contrasts with the background of the letters.

V. Background: In March 2020, NHTSA notified DTNA of a potential noncompliance regarding the emergency exit identification labeling in its subject school buses. In April 2020, DTNA responded to NHTSA and stated its belief that the label "should be considered compliant" because "with standard rounding, the label-letters met the requirements." In its response, DTNA also contended that NHTSA had previously audited the labels in 2014

and found them to be compliant. Then in November 2020, DTNA stated that it received an information request from the Agency, to which DTNA responded by explaining that “1) the labels meet the requirements of FMVSS [No.] 217 following the agency’s rules of rounding and precision and 2) were the exact same labels had previously been reviewed by the OVSC and found to be compliant during OVSC compliance testing.” On January 31, 2022, DTNA received another letter from the Agency requesting that DTNA submit additional information or file a supporting noncompliance report. DTNA stated that it decided to file the noncompliance report “in order to avoid a protracted dispute with the agency.”

VI. Summary of DTNA’s Petition: The following views and arguments presented in this section, “VI. Summary of DTNA’s Petition,” are the views and arguments provided by DTNA. They do not reflect the views of the Agency. DTNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

DTNA says “[t]he relevant labels were designed with letters at least 5 cm and reasonably believed at all relevant times that they complied with FMVSS [No.] 217 under applicable law, including NHTSA’s public statements regarding numerical rounding.”

DTNA contends that NHTSA has granted the following petitions in which the letters did not meet the minimum letter height requirement:

- Kia Motors America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 69 FR 41332 (July 8, 2004);
- General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (July 9, 2004); and
- Hyundai Motor Co., Grant of Petition for Decision of Inconsequential Noncompliance, 69 FR 41568 (July 9, 2004).

DTNA also states that NHTSA has previously granted two inconsequentiality petitions that “could lead to crowding of passengers trying to flee an exit.” In the first case,¹ “buses were manufactured with only one emergency exit instead of two,” and in the second case,² “emergency exits were mounted under the same post and roof bow panel space.”

¹ See New Flyer of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 63 FR 32694 (June 15, 1998).

² See IC Corporation, Grant of Petition for Decision of Inconsequential Noncompliance, 70 FR 24464 (May 9, 2005).

DTNA states its belief that although the letter height is 0.1 cm less than the FMVSS requirement, the letters “are sufficiently large as to aid passengers fleeing an emergency” and that the labels meet all other applicable FMVSSs. DTNA believes that because some of the letters exceed the 5 cm minimum requirement, “the reasonable aggregate perception of a viewer is that the letters are 5 cm or more.” DTNA further states its belief that the 0.1 cm difference does not obscure the labels or the purpose of the label since the labels are in bold letters that contrast against the background of the labels.

DTNA claims that it is not aware of any complaint, accident, injury, or death resulting from the subject noncompliance.

DTNA contends that “there is a substantial question whether or not there is fair notice as to how a manufacturer is to comply with FMVSS [No.] 217 (and potential scores of other FMVSSs) given the agency’s past statements on numerical rounding.” DTNA believes that NHTSA’s statements with respect to the rounding method it uses³ and the rounding method provided in the FMVSS No. 111 test procedure are contradicted by a 1990 NHTSA interpretation,⁴ which states that an FMVSS will specify when rounding is appropriate. DTNA claims that NHTSA’s “procedures for comparing numbers to a standard is ambiguous,” therefore, DTNA states that it lacked “fair notice as to which of the above procedures, rounding or not, apply.”

DTNA concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VII. NHTSA’s Analysis: In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.⁵ In general, NHTSA does not

³ See Consumer Information; New Car Assessment Program, 79 FR 28594 (May 16, 2014).

⁴ See Paul Jackson Rice, Chief Counsel, NHTSA, to David G. Dick Acts Testing Labs, Inc. (September 10, 1990).

⁵ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential*

consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.⁶

A. General Principles

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act) with the express purpose of reducing motor vehicle accidents, deaths, injuries, and property damage. See 49 U.S.C. 30101. To this end, the Safety Act empowers the Secretary of Transportation to establish and enforce mandatory Federal Motor Vehicle Safety Standards (FMVSS). See 49 U.S.C. 30111. The Secretary has delegated this authority to NHTSA. See 49 CFR 1.95.

NHTSA adopts a FMVSS only after the Agency has determined that the requirements are objective and practicable and meet the need for motor vehicle safety. See 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with a FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with a FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a free remedy. See 49 U.S.C. 30118–30120. However, Congress has recognized that, under some limited circumstances, a noncompliance could be “inconsequential” to motor vehicle safety. It therefore established a procedure under which NHTSA may consider whether it is appropriate to exempt a manufacturer from its notification and remedy (*i.e.*, recall) obligations. See 49 U.S.C. 30118(d), 30120(h). The Agency’s regulations governing the filing and consideration of petitions for inconsequentiality

Noncompliance, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

⁶ See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it “results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future”).

exemptions are set forth at 49 CFR part 556.

Under the Safety Act and Part 556, inconsequentiality exemptions may be granted only in response to a petition from a manufacturer, and then only after notice in the **Federal Register** and an opportunity for interested members of the public to present information, views, and arguments on the petition. In addition to considering public comments, the Agency will draw upon its own understanding of safety-related systems and its experience in deciding the merits of a petition. An absence of opposing argument and data from the public does not require NHTSA to grant a manufacturer's petition.

Neither the Safety Act nor part 556 define the term "inconsequential." Rather, the Agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based upon the specific facts before it in a particular petition. An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.⁷ NHTSA also does not consider the absence of complaints or injuries when determining whether a noncompliance is inconsequential to safety. The Safety Act is preventive, and manufacturers cannot and should not wait for deaths or injuries to occur in their vehicles before they carry out a recall. *See, e.g., United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977). Indeed, the very purpose of a recall is to protect individuals from risk. *See id.* "Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future."⁸ "[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work."⁹ Rather, the issue to consider

is the consequence to an occupant who is exposed to the consequence of that noncompliance.¹⁰

B. Response to DTNA's Arguments

NHTSA reviewed DTNA's arguments that the subject noncompliance is inconsequential to motor vehicle safety. DTNA contends that the noncompliance with the letter height requirements that are set forth in paragraph S5.5.3(a) of FMVSS No. 217, poses little, if any, risk to motor vehicle safety. NHTSA does not agree.

DTNA's first argument is that the "relevant labels were designed with letters at least 5 cm and reasonably believed at all relevant times that they complied with FMVSS [No.] 217 under applicable law." DTNA's belief that the labels were compliant, which might be relevant if the issue here was its basis for certification, has no bearing on whether this noncompliance is inconsequential. DTNA may have designed the labels with letters that were supposed to have at least 5 cm of letter height, however, the letter heights when measured by both NHTSA and DTNA, were less than 5 cm. This could be due to a variety of reasons. For example, the noncompliance could be caused by a variation in DTNA's production and quality processes, which allowed for smaller letter heights to be printed on labels. It could also be caused by insufficient tolerancing applied to the design of the labels (a process that is meant to ensure that even with the highest degree of variation, the minimum letter height of 5 cm would still be attained on the labels). With a robust surveillance program, this type of anomaly may have been discovered early in the production process, but no such surveillance data was provided by DTNA. DTNA did not provide any additional details regarding the design of the labels in its petition, therefore no additional context or evidence was provided by DTNA in support of this claim. Consequently, NHTSA is not persuaded by DTNA's argument that the design of the labels mitigates the noncompliance for the letter height requirement, as no evidence was provided in support of this claim. In any event, NHTSA disagrees with DTNA's argument that a noncompliant label can

unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

¹⁰ *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco, Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

be considered compliant or inconsequential if the design of the label meets the applicable FMVSS—but the actual manufactured label does not.

Regarding the readability of the labels, NHTSA does not agree with DTNA that the readability of the labels is unaffected by the noncompliance with the letter height requirement. DTNA did not provide any additional context, evidence or data to support its claims that (1) the labels "are sufficiently large as to aid passengers fleeing an emergency," (2) "the reasonable aggregate perception of a viewer is that the letters are 5 cm or more," or (3) the letter height difference does not obscure the labels or the purpose of the labels. As such, NHTSA is not persuaded by DTNA's argument that the readability of the labels is unaffected by the noncompliance with the letter height requirement, as no evidence or data was provided in support of this claim.

Insofar as conspicuity of the operating instructions is concerned, NHTSA agrees with DTNA that the letters on the labels "are in bold letters that contrast against the background of the labels," but NHTSA does not agree with DTNA that compliance with the conspicuity requirements negates a failure to comply with school bus emergency exit label letter minimum height requirements. As such, NHTSA rejects DTNA's argument that meeting the conspicuity requirements for the labels mitigates the noncompliance with the letter minimum height requirement, particularly in the absence of data or evidence supporting this claim.

DTNA further submits that numerical rounding employed by NHTSA in other contexts establishes that DTNA's noncompliance is inconsequential to safety. DTNA's argument is not compelling. One of the numerical rounding methods referenced by DTNA¹¹ is not part of the Federal Motor Vehicle Safety Standards, but is instead part of the voluntary consumer information New Car Assessment Program (NCAP). That rounding methodology is not applicable to the requirements of FMVSS No. 217 and cannot be used to determine whether a label is compliant.

DTNA also quotes a 1990 NHTSA interpretation letter but subsequently disagrees with the conclusion in NHTSA's interpretation letter. NHTSA reaffirms the statement in the 1990 interpretation letter that: "Rounding is generally not used in the safety standards. The standards expressly specify when rounding is

⁷ *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osrarn Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

⁸ *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

⁹ *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an

¹¹ *See* 79 FR 28594.

appropriate.”¹² DTNA has not identified anything in FMVSS No. 217 or specific to that standard that allow for rounding. NHTSA does not agree with DTNA that rounding is permitted in the present case or that FMVSS No. 217 presents an ambiguity regarding rounding. In fact, the 1990 interpretation goes on to state that “. . . any value less than the minimum required value is a noncompliance.”

Finally, DTNA’s reference to the rounding methodology in the FMVSS No. 111 test procedure is also not applicable, since the rounding methodology refers to the conversion from English to metric units when direct measurement in metric units is not available—which is not the case with DTNA’s subject noncompliance.

DTNA asserted that five inconsequential noncompliance petitions that NHTSA had previously granted support DTNA’s subject petition. However, NHTSA disagrees because all of the five cited petitions are unrelated to school bus emergency exit identification. Furthermore, NHTSA emphasizes that the Agency examines every inconsequential noncompliance petition on its own merits. The Agency’s decisions are necessarily highly fact dependent and limited to a particular and often narrow context. NHTSA therefore believes that prior determinations—that are not specific to the identification of school bus emergency exit labels—do not warrant granting this petition.

The first petition,¹³ from Kia Motors America, Inc., and Kia Motors Corp. (collectively, “Kia”), involved passenger vehicles which did not meet the letter height requirements for brake system warning lights, specifically for the abbreviation “ABS” and in some cases the word “brake,” as required by FMVSS No. 101, 105, and 135. In this case, these passenger vehicles did not meet the minimum letter height requirement of 3.2 mm. The Agency decided that “due to the positioning, color, use of the ISO symbol, and combined size of both the lettering and symbols, it is very unlikely that a vehicle user would either fail to see or fail to understand the meaning of the brake or ABS warning light in the affected vehicles” and granted the petition. NHTSA does not agree that granting this prior petition supports granting DTNA’s petition here for the following reasons: (1) compliance with FMVSS No. 217 was not at issue; (2)

emergency exit identification within the vehicle was not at issue; (3) the warning lights in Kia’s petition both “illuminated in red (brake warning light) or yellow (ABS light)” and also “include[d] an International Standards Organization (ISO) symbol combined with the word ‘brake’ or the abbreviation ‘ABS,’” which are two features distinctly different from the emergency exit labels at issue here (which do not illuminate or contain any symbol); and (4) the warning lights in Kia’s petition were related to the driver’s attention, whereas the emergency exit labels in DTNA’s petition are for school bus children to use in the event of an emergency.

The second petition,¹⁴ from General Motors, LLC (GM), involved passenger vehicles which did not meet the letter height requirements for the park brake telltale (identified by the word “PARK”), as required by FMVSS No. 101 and 135. In this case, these passenger vehicles did not meet the minimum letter height requirement of 3.2 mm for the word “PARK.” The Agency decided that “[i]llumination of both the ‘PARK’ indicator combined with the information center statement ‘Park Brake Set’ provides ample communication to the driver that the parking brake has been applied,” and granted the petition. NHTSA does not agree that granting this prior petition supports granting DTNA’s petition here for the following reasons: (1) compliance with FMVSS No. 217 was not at issue; (2) emergency exit identification within the vehicle was not at issue; (3) the park brake telltale lights in GM’s petition “illuminated,” which is a feature distinctly different from the emergency exit labels at issue here (which do not illuminate); (4) activation of the park brake telltale light in GM’s petition would simultaneously activate a second illuminated message, which is a feature distinctly different from the emergency exit labels at issue here (which do not activate a second message); and (5) the park brake telltale lights in GM’s petition were related to the driver’s attention, whereas the emergency exit labels in DTNA’s petition are for school bus children to use in the event of an emergency.

The third petition,¹⁵ from Hyundai Motor Company (Hyundai), involved passenger vehicles which did not meet the letter height requirements for the abbreviation “ABS” and in other cases the word “brake,” as required by FMVSS No. 105 and 135. In this case, the passenger vehicles did not meet the

minimum letter height requirement of 3.2 mm. The Agency decided that “[d]ue to the positioning, color, use of the ISO symbol, and combined size of both the lettering and symbols, it is very unlikely that a vehicle user would either fail to see or fail to understand the meaning of the brake or ABS warning light in the affected vehicles,” and granted the petition. However, NHTSA does not agree that granting this prior petition supports granting DTNA’s petition here for the following reasons: (1) compliance with FMVSS No. 217 was not at issue; (2) emergency exit identification within the vehicle was not at issue; (3) the warning lights in Hyundai’s petition both “illuminated” and also included an “International Standards Organization (ISO) symbol for the ABS,” which are two features distinctly different from the emergency exit labels at issue here (which do not illuminate or contain any symbol); and (4) the warning lights in Hyundai’s petition were related to the driver’s attention, whereas the emergency exit labels in DTNA’s petition are for school bus children to use in the event of an emergency.

The fourth petition,¹⁶ from New Flyer of America, Inc., involved transit buses that had only one emergency exit on the right side of the bus instead of two, as required by FMVSS No. 217. In this case, these buses had 3.28 times the required exit area, with two emergency exit windows on the left side, one emergency exit window on the right side and two roof exits. Thus, the buses had the minimum number of emergency exits required by FMVSS No. 217. However, these exits were not distributed properly. Instead of a second emergency exit on the right side, these buses had an additional roof exit. The Agency decided that the additional roof exit provided for an additional level of safety during a rollover event and granted the petition. However, NHTSA does not agree that the granting of this prior petition supports granting DTNA’s subject petition because emergency exit identification within the vehicle was not at issue.

The fifth petition,¹⁷ from IC Corporation (IC), involved school buses where two side emergency exit doors were located opposite each other within the same post and roof bow panel space. IC argued that the requirement prohibiting two exit doors from being located in this manner appeared to be related to the structural integrity of a bus body with this configuration. IC indicated that it had no reports of any

¹² See Paul Jackson Rice, Chief Counsel, NHTSA, to David G. Dick Acts Testing Labs, Inc. (September 10, 1990).

¹³ See 69 FR 41332.

¹⁴ See 81 FR 92963.

¹⁵ See 69 FR 41568.

¹⁶ See 63 FR 32694.

¹⁷ See 70 FR 24464.

structural failures in the area around the emergency doors but stated that it would extend to owners of the noncompliant vehicles a 15-year warranty for any structural or panel failures related to the location of the doors. NHTSA agreed with IC that, in this case, the noncompliance did not compromise safety in terms of emergency exit capability in proportion to maximum occupant capacity, access to side emergency doors, visibility of the exits, or the ability of bus occupants to exit after an accident. However, NHTSA does not agree that the granting of this prior petition supports granting DTNA's petition here because emergency exit identification within the vehicle was not at issue.

None of the above-discussed five petitions that DTNA provided in support of its subject petition are related to labeling for emergency egress of school buses. Emergency egress occurs under states of emergency, which may include fire, smoke, panicked children, etc. As such, the dilution of these emergency egress marking requirements in school buses is consequential to motor vehicle safety.

VIII. NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that DTNA has not met its burden of persuasion that the subject FMVSS No. 217 noncompliance is inconsequential to motor vehicle safety. Accordingly, DTNA's petition is hereby denied and DTNA is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120; 49 CFR part 556; delegations of authority at 49 CFR 1.95 and 501.8).

Eileen Sullivan,

Associate Administrator for Enforcement.

[FR Doc. 2024-15903 Filed 7-18-24; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2024-0037]

Minimum Performance Measures for the State Highway Safety Grant Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notification of public meeting; request for comments (RFC).

SUMMARY: NHTSA is initiating a process to update minimum performance

measures for the State Highway Safety Grant Program. In order to ensure that the broadest possible cross-section of stakeholders is engaged from the onset of this process, NHTSA is publishing this RFC and announcing a public meeting to be held prior to issuing the updated highway safety performance measurement framework.

DATES: The public meeting will be held virtually on Wednesday, August 21, 2024. The meeting will convene at 2:00 p.m. Eastern time and will conclude when the last pre-registered speaker has provided oral comments but no later than 5:30 p.m. Eastern time. All attendees, including those who do not intend to provide oral remarks, should preregister by August 16, 2024. The link to register will be available at [NHTSA.gov/Events](https://www.regulations.gov/Events).

Upon registration, participants will identify whether they choose to provide oral comments at the meeting (see **SUPPLEMENTARY INFORMATION** below for additional details). The public will also have the opportunity to submit written comments to the Docket concerning matters addressed in this notification. Written comments should be submitted no later than August 26, 2024.

ADDRESSES: The public meeting will be held virtually via Zoom for Government. The meeting's online link and a detailed agenda will be provided upon registration. You may send written comments, identified by the docket number listed at the beginning of this document by any of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for sending comments.

Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

Hand Delivery/Courier: 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays. To be sure someone is there to help you, please call 202-366-9826 before coming.

Instructions: All written submissions must include the agency name and docket number NHTSA-2024-0037. All comments received will be posted without change at <https://www.regulations.gov/> including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the

SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket, go to <https://www.regulations.gov> at any time or to 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. If coming in person, please call 202-366-9826 to be sure someone is there to help you.

FOR FURTHER INFORMATION CONTACT: Amy Schick, Acting Director, Office of Grants Management and Operations, Regional Operations and Program Delivery, National Highway Traffic Safety Administration; Telephone number: (202) 366-2121; email: nhtsaropdprogramquestions@dot.gov.

SUPPLEMENTARY INFORMATION: Performance management is a strategic and outcome-based approach that provides a framework to support improved policy and investment decisions. Performance management accentuates objective data and evidence-based project selection. It enhances communication and transparency between decision-makers, stakeholders, and the traveling public. Furthermore, performance measures are a valuable planning tool that emphasizes integrating data, planning, and action.

The performance measures currently required for NHTSA's State Highway Safety Grant Program were first developed for voluntary use in 2008.¹ The MAP-21 surface transportation authorization, enacted in 2012, codified into law a requirement for a standardized set of performance measures that guide investments in programs to achieve State performance targets.² That requirement, which remains in the current grant program authorization under the Bipartisan Infrastructure Law,³ requires the Secretary, in consultation with the Governors Highway Safety Association (GHSA), to "develop minimum performance measures" that State Highway Safety Offices (SHSO) use to guide their triennial Highway Safety Plan (3HSP).

Presently, SHSOs submit targets for 15 pre-defined measures and targets to NHTSA. The current minimum performance measures are:

- **Outcome Measures**

States set safety targets and report progress on the following eleven outcome measures:

¹ Traffic Safety Performance Measures for States and Federal Agencies" (DOT HS 811 025).

² Public Law 112-141, Section 31102.

³ Public Law 117-58, Section 24102. See also, 23 U.S.C. 402(k)(5).

- (C-1) Number of traffic fatalities (Fatality Analysis and Reporting System (FARS))
- (C-2) Number of serious injuries in traffic crashes (State crash data files)
- (C-3) Fatalities/VMT (FARS, FHWA-Highway Performance Management System (HPMS))
- (C-4) Number of unrestrained passenger vehicle occupant fatalities, all seat positions (FARS)
- (C-5) Number of fatalities in crashes involving a driver or motorcycle operator with a BAC of .08 and above (FARS)
- (C-6) Number of speeding-related fatalities (FARS)
- (C-7) Number of motorcyclist fatalities (FARS)
- (C-8) Number of unhelmeted motorcyclist fatalities (FARS)
- (C-9) Number of drivers age 20 or younger involved in fatal crashes (FARS)
- (C-10) Number of pedestrian fatalities (FARS)
- (C-11) Number of bicyclist fatalities (FARS)

- Behavior Measure

States set a safety target and report progress on one behavior measure:

- (B-1) Observed seat belt use for passenger vehicles, front seat outboard occupants (individual State survey)

- Activity Measures

States report on the following three activity measures:

- (A-1) Number of seat belt citations issued during grant-funded enforcement activities (grant activity reporting)
- (A-2) Number of impaired driving citations issued during grant-funded enforcement activities (grant activity reporting)
- (A-3) Number of speeding citations issued during grant-funded enforcement activities (grant activity reporting)

Collectively, these performance measures contribute to progress toward achieving NHTSA's highway safety mission that centers on saving lives, preventing injuries, and reducing economic costs due to traffic crashes. The minimum performance measures developed by NHTSA and GHSA in 2008 address core highway safety areas, but do not address all of the possible highway safety problem areas that States address. While significant progress has been made since 2012, work remains to increase safety for people on the Nation's roadways.

Pursuant to the requirement in 23 U.S.C. 402(k)(5), NHTSA, in

consultation with GHSA, seeks to update the performance management framework in order to provide States with improved tools to strengthen highway safety programs, resulting in a diversified set of countermeasures among a broader portfolio of subrecipients to further reach communities overrepresented in the data and underrepresented in the programming and funding decisions.

To ensure that the broadest possible cross-section of stakeholders is engaged from the start of the process, NHTSA publishes this RFC and announces one public meeting before issuing the updated highway safety performance measurement framework for State Highway Safety Offices. NHTSA and GHSA will utilize lessons learned over the past 16 years, as well as comments received from the public in response to this Request for Comment and during the public meeting to refine the minimum required performance measures for the State Highway Safety Grant Program.

All interested parties are invited to participate in this opportunity.

Public Participation

Registration: Registration is required for all attendees. There is no cost to register. Attendees should register online using the links below by August 16. Please provide your name, affiliation, email address, and indicate whether you wish to speak during the public meeting.

Register at: [NHTSA.gov/Events](https://www.nhtsa.gov/Events).

Registration will close on Friday, August 16th at 5:00 p.m. Eastern Time. Speaker registration will be on a first-come, first-served basis. As described later in this notification, NHTSA wants to hear perspectives on what data-driven performance measures State Highway Safety Offices must submit within their triennial Highway Safety Plan to NHTSA.

- **To register to speak at the virtual meeting:** Register at [NHTSA.gov/Events](https://www.nhtsa.gov/Events) and indicate YES on the registration page that you would like to provide comments. Within 24 hours of registering, you will be emailed your link to join. Additionally, you will receive an email with your approximate time to provide oral comments, and additional information about how to turn on your audio and camera to comment. We recommend you join via a computer, but if you are unable to do so, an option to join via phone will also be provided in that email. The last day to pre-register to speak at the meeting will be August 16, 2024. All speakers will receive a unique link not less than 24-hours prior to the meeting start time.

- **To watch the meeting (without providing oral comments):** Register at [NHTSA.gov/Events](https://www.nhtsa.gov/Events) and indicate NO on the registration page that you do not wish to provide oral comments. Within 24 hours of registering, you will be emailed your link to join.

If you do not receive your confirmation email(s), or have further questions about this hearing, please email NHTSA.Communication@dot.gov.

Each speaker will have a maximum 6 minutes to offer oral comments to ensure that all interested presenters are allowed to present their views during the day of the meeting. Speakers are asked to respond to the six Guiding Questions provided below. When called upon to provide comments, speakers will be asked to turn on their cameras and state their name and organizations/affiliation. Speakers have the option to use visual aids such as PowerPoint presentations. NHTSA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. NHTSA may adjust time schedule on a running basis during the meeting if the meeting is running ahead of schedule.

NHTSA recommends submitting the text of your oral comments as written comments to the rulemaking docket, as appropriate. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public meeting. If identical comments are submitted by the same commenter more than once to the docket, NHTSA does not consider those comments to carry more weight than if they had been submitted only once.

Please note that any updates made to any aspects of the public meeting logistics, including any change to the date or a potential additional session will be posted on the registration page. Should it become necessary to cancel or reschedule the meeting due to an unforeseen circumstance, NHTSA will take all available measures to notify registered participants as soon as possible.

NHTSA is committed to providing equal access for all participants. Persons with disabilities who require an accommodation and persons with limited English proficiency who require language access services should contact NHTSA's Grants Management Office at nhtsaropdprogramquestions@dot.gov no later than August 5, 2024 to request a reasonable accommodation and/or language access services.

Written Comments: Comments may be submitted electronically or in hard copy

during the 30-day comment period. Please submit all comments no later than 30 days after the publication of this public notification, using any of the methods listed earlier in this document. Written comments should refer to the docket number above and be submitted by one of the following methods:

- **Federal Rulemaking Portal:** www.regulations.gov. Follow the online instructions for submitting comments.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery:** 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays. To be sure someone is there to help you, please call 202-366-9826 before coming.

Instructions: All written comment submissions must include the agency name and docket number. All comments received will be posted without change to <https://www.regulations.gov/privacy.html>, including any personal information provided. Please see the Privacy Act discussion below.

Docket: For access to the Docket, go to <https://www.regulations.gov> at any time or to 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. If coming in person, please call 202-366-9826 to be sure someone is there to help you.

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.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78), or visit <https://www.regulations.gov/privacy.html>.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information to the Chief Counsel, NHTSA, at 1200 New Jersey Avenue SE, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send

a comment containing information claimed to be confidential business information, you should submit a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Specific Guiding Questions

Question 1

Are the existing traffic safety performance measures effectively informing the State's highway safety programming decisions and encouraging the adoption of the Safe System Approach? If not, how can the measures be adapted to better support a comprehensive approach to roadway safety that results in impactful programming and funding decisions?

Question 2

Should performance measures be added, removed, or updated? If yes, which one(s) and why?

Question 3

How can performance management help States develop more robust programs to engage communities that have members killed and/or seriously injured at higher rates than others but are underrepresented in the State's programming and funding investments?

Question 4

As part of the Bipartisan Infrastructure Law, Congress directed NHTSA in section 24102 to, "provide for a comprehensive, data-driven traffic safety program that results from meaningful public participation and engagement from affected communities, particularly those most significantly impacted by traffic crashes resulting in injuries and fatalities."

How can performance management help assess community input and engagement, and what are your thoughts on adding a measure to evaluate the degree to which State Highway Safety Offices (SHSO) are diversifying their grantees who represent communities overrepresented in fatality data and underrepresented in the State's programming?

Question 5

Currently, the Federal Highway Administration requires 5 safety performance measures for State DOTs:

- Number of traffic fatalities (Fatality Analysis and Reporting System (FARS))
- Number of serious injuries in traffic crashes (State crash data files)
- Fatalities/VMT (FARS, FHWA-Highway Performance Management System (HPMS))

- Rate of Serious Injuries per 100 million VMT
- Number of Non-motorized Fatalities and Non-motorized Serious Injuries

NHTSA requires States to report on the number of fatalities, serious injuries, and the rate of fatalities per 100 million VMT. NHTSA does not require SHSOs to report on the rate of serious injuries per 100 million VMT nor the number of non-motorized fatalities and non-motorized serious injuries.

Should the serious injuries per 100 million VMT and non-motorized fatalities and serious injuries measures be included in NHTSA's Core Performance Measures? Please share the reasons for your perspective.

Question 6

The current performance management model requires SHSOs to submit 15 pre-identified core, behavioral and activity performance measures.

Are there other SHSO performance management approaches NHTSA should consider? For example, what are your thoughts on an approach that would require 3-5 pre-identified overall fatality and serious injury targets that apply to all SHSOs universally in addition to a set of targeted performance measures for specific highway safety program areas that would be required for any State that includes that program area in its triennial Highway Safety Plan?

Issued in Washington, DC.

Under authority delegated in 49 CFR 1.95 and 501.8(i).

Barbara Sauers,

Associate Administrator, Regional Operations and Program Delivery.

[FR Doc. 2024-15963 Filed 7-18-24; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0017]

Agency Information Collection Activity: VA Fiduciary's Account, Court Appointed Fiduciary's Account, Certificate of Balance on Deposit and Authorization To Disclose Financial Records

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain

information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before September 17, 2024.

ADDRESSES: Comments must be submitted through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Nancy Kessinger, 202-632-8924, nancy.kessinger@va.gov.

VA PRA information: Maribel Aponte, 202-461-8900, vacpaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites

comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Fiduciary's Account (21P-4706b), Court Appointed Fiduciary's Account (21P-4706c), Certificate of Balance on Deposit and Authorization to Disclose Financial Records (21P-4718a).

OMB Control Number: 2900-0017
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Revision of a previously approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA),

administers an integrated program of benefits and services established by law for Veterans, service personnel and their survivors. Information is requested by VA Forms 21P-4706b and VA Form 21P-2706c for fiduciaries to submit their annual accountings. VA currently uses VA Form 21P-4718a, as evidence and disclosure to support the accountings submitted by fiduciaries. Regulatory authority is found in 38 U.S.C. 5502 and Public Law: Public Law 108-454, sec 502-504.

Affected Public: Individuals and households.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 30,000.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024-15886 Filed 7-18-24; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

Vol. 89

Friday,

No. 139

July 19, 2024

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 31, and 54

Required Minimum Distributions; Final Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1, 31, and 54**

[TD 10001]

RIN 1545-BP82

Required Minimum Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations relating to required minimum distributions from qualified plans; section 403(b) annuity contracts, custodial accounts, and retirement income accounts; individual retirement accounts and annuities; and certain eligible deferred compensation plans. These regulations affect administrators of, and participants in, those plans; owners of individual retirement accounts and annuities; employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts; and beneficiaries of those plans, contracts, accounts, and annuities.

DATES:

Effective date: These regulations are effective on September 17, 2024.

Applicability date: Amended §§ 1.401(a)(9)–1 through 1.401(a)(9)–9, 1.403(b)–6(e), and 1.408–8 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. Amended § 1.402(c)–2 applies for distributions on or after January 1, 2025. Amended § 54.4974–1 applies for taxable years beginning on or after January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

Brandon M. Ford at (202) 317–6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document sets forth amendments to the Income Tax Regulations (26 CFR part 1) under section 401(a)(9) of the Internal Revenue Code of 1986 (Code). These regulations address the required minimum distribution requirements for plans qualified under section 401(a) and update the regulations to reflect the amendments made to section 401(a)(9) by sections 114 and 401 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020, Public Law 116–94, 133 Stat. 2534 (2019) and by

various sections of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459 (2022).

The rules of section 401(a)(9) are adopted by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and individual retirement annuities (collectively, IRAs); section 403(b)(10) for annuity contracts, custodial accounts, and retirement income accounts described in section 403(b) (section 403(b) plans); and section 457(d)(2) for eligible deferred compensation plans. The determination of the required minimum distribution is also relevant for purposes of the related excise tax under section 4974 and the definition of eligible rollover distribution in section 402(c). Accordingly, this document also sets forth conforming amendments to the Income Tax Regulations (26 CFR part 1) under sections 402(c), 403(b), 408, and 457, and to the Pension Excise Tax Regulations (26 CFR part 54) under section 4974.

Section 401(a)(9)—Required Minimum Distributions

Section 401(a)(9) provides rules for distributions from a qualified plan during the life of the employee in section 401(a)(9)(A) and after the death of the employee in section 401(a)(9)(B). The rules set forth a required beginning date for distributions and identify the period over which the employee's entire interest must be distributed.

Specifically, section 401(a)(9)(A)(ii) provides that the entire interest of an employee in a qualified plan must be distributed, beginning not later than the employee's required beginning date, in accordance with regulations, over the life of the employee or over the lives of the employee and a designated beneficiary (or over a period not extending beyond the life expectancy of the employee and a designated beneficiary). Section 401(a)(9)(B)(i) provides that, if the employee dies after distributions have begun, the employee's remaining interest must be distributed at least as rapidly as under the distribution method used by the employee as of the date of the employee's death (referred to in this preamble as the “at least as rapidly” rule).

Section 401(a)(9)(B)(ii) and (iii) provides that, if the employee dies before required minimum distributions have begun, the employee's interest must either be: (1) distributed within 5 years after the death of the employee; or (2) distributed (in accordance with

regulations) over the life or life expectancy of the designated beneficiary with the distributions generally beginning not later than 1 year after the date of the employee's death.

However, under section 401(a)(9)(B)(iv) (as amended by section 327 of the SECURE 2.0 Act), a surviving spouse may elect to: (1) be treated as if the surviving spouse were the employee for purposes of section 401(a)(9)(B)(iii)(II); (2) wait until the date the employee would have attained the applicable age (as defined in section 401(a)(9)(C)(v)) to begin taking required minimum distributions; and (3) have the beneficiaries of the surviving spouse be treated as beneficiaries of the employee if the surviving spouse dies before distributions to the spouse begin.

Section 401(a)(9)(C)(i) (as amended by section 114 of the SECURE Act and further amended by section 107 of the SECURE 2.0 Act) defines the required beginning date for an employee (other than a 5-percent owner or IRA owner) as April 1 of the calendar year following the later of the calendar year in which the employee attains the applicable age or the calendar year in which the employee retires. Section 401(a)(9)(C)(v)(I) provides that in the case of an individual who attains age 72 after December 31, 2022, and age 73 before January 1, 2033, the applicable age is 73. Section 401(a)(9)(C)(v)(II) provides that in the case of an individual who attains age 74 after December 31, 2032, the applicable age is 75. For a 5-percent owner or an IRA owner, the required beginning date is April 1 of the calendar year following the calendar year in which the individual attains the applicable age, even if the individual has not retired.

Section 401(a)(9)(C)(iii) provides that certain employees who commence benefits under a defined benefit plan after the year in which they attain age 70½ must receive an actuarial increase. However, section 401(a)(9)(C)(iv) provides that the actuarial increase requirement does not apply for a governmental plan or for a church plan (as defined in section 401(a)(9)(C)(iv)).

Section 401(a)(9)(D) provides that (except in the case of a life annuity) the life expectancy of an employee and the employee's spouse (used to measure the period over which payments must be made) may be redetermined, but not more frequently than annually.

Section 401(a)(9)(E)(i) defines the term *designated beneficiary* as any individual designated as a beneficiary by the employee. Section 401(a)(9)(E)(ii) (which was added to the Code as part of section 401 of the SECURE Act) defines the term *eligible designated*

beneficiary, with respect to any employee, as any designated beneficiary who, as of the date of the employee's death, is: (1) the surviving spouse of the employee; (2) a child of the employee who has not reached the age of majority (within the meaning of section 401(a)(9)(F)); (3) disabled (within the meaning of section 72(m)(7)); (4) a chronically ill individual (within the meaning of section 7702B(c)(2), subject to certain exceptions); or (5) an individual not described elsewhere in section 401(a)(9)(E)(ii) who is not more than 10 years younger than the employee.

Section 401(a)(9)(E)(iii) provides that, subject to the rule in section 401(a)(9)(F), the treatment of an employee's child as an eligible designated beneficiary ends when the child attains the age of majority and that any remaining interest must be distributed within 10 years of that date. Section 401(a)(9)(F) provides that, under regulations, any amount paid to a child is treated as if it had been paid to the surviving spouse if it will become payable to the surviving spouse upon that child reaching the age of majority (or other designated event permitted under regulations).

Section 401(a)(9)(G) provides that any distribution required to satisfy the incidental death benefit requirement of section 401(a) is treated as a required minimum distribution.

Section 401(a)(9)(H) (which was added to the Code as part of section 401 of the SECURE Act) provides special rules that generally apply to the distribution of an employee's remaining interest in a defined contribution plan after the death of that employee. Specifically, section 401(a)(9)(H)(i) provides that, except in the case of a beneficiary who is not a designated beneficiary, section 401(a)(9)(B)(ii): (1) is applied by substituting 10 years for 5 years; and (2) applies whether or not distributions of the employee's interest have begun in accordance with section 401(a)(9)(A). Section 401(a)(9)(H)(ii) provides that section 401(a)(9)(B)(iii) (permitting payments over the life or life expectancy of the designated beneficiary as an alternative to the 10-year rule) applies only in the case of an eligible designated beneficiary. Section 401(a)(9)(H)(iii) provides that if an eligible designated beneficiary dies before that individual's portion of the employee's interest in the plan has been entirely distributed, then section 401(a)(9)(H)(ii) does not apply to the beneficiary of the eligible designated beneficiary, and the remainder of that portion must be distributed within 10

years after the death of the eligible designated beneficiary.

Section 401(a)(9)(H)(iv) provides that in the case of an applicable multi-beneficiary trust, if, under the terms of the trust, it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary, then section 401(a)(9)(H)(ii) is applied separately with respect to the portion of the employee's interest that is payable to any disabled or chronically ill eligible designated beneficiary. Section 401(a)(9)(H)(iv) (as amended by section 337 of the SECURE 2.0 Act) also provides that in the case of an applicable multi-beneficiary trust, if, under the terms of the trust, no beneficiary (other than an eligible designated beneficiary who is disabled or chronically ill) has any right to the employee's interest in the plan until the death of all of those disabled or chronically ill eligible designated beneficiaries with respect to the trust, then: (1) section 401(a)(9)(B)(iii) (permitting payments over the life expectancy of a beneficiary) will apply to the distribution of the employee's interest; and (2) any beneficiary who is not disabled or chronically ill will be treated as a beneficiary of the eligible designated beneficiary who is disabled or chronically ill upon the death of that eligible designated beneficiary.

Section 401(a)(9)(H)(v) (as amended by section 337 of the SECURE 2.0 Act) defines the term *applicable multi-beneficiary trust* as a trust: (1) that has more than one beneficiary; (2) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to section 401(a)(9); and (3) at least one of the beneficiaries of which is an eligible designated beneficiary who is either disabled or chronically ill. Section 401(a)(9)(H)(v) also provides that, for purposes of that definition, in the case of a trust described in section 401(a)(9)(H)(iv)(II), any beneficiary which is an organization described in section 408(d)(8)(B)(i) is treated as a designated beneficiary.

Section 401(a)(9)(H)(vi) provides that, for purposes of applying section 401(a)(9)(H), an eligible retirement plan defined in section 402(c)(8)(B) (other than a defined benefit plan described in section 402(c)(8)(B)(iv) or (v))¹ or a qualified trust that is a part of a defined

benefit plan) is treated as a defined contribution plan.

Section 401(a)(9)(J) (which was added to the Code by section 201 of the SECURE 2.0 Act) provides that a commercial annuity (within the meaning of section 3405(e)(6)) that is issued in connection with any eligible retirement plan (within the meaning of section 402(c)(8)(B), other than a defined benefit plan) is not prohibited from making any of the following types of payments: (1) annuity payments that increase by a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year; (2) certain lump sum payments;² (3) an amount which is in the nature of a dividend or similar distribution, provided that the issuer of the contract determines the amount using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract, when calculating the initial annuity payments and the issuer's experience with respect to those factors; or (4) a final payment upon death that does not exceed the excess of the total amount of the consideration paid for the annuity payments, less the aggregate amount of prior distributions or payments from or under the contract.

Effective Date of SECURE Act Section 401

Generally, under section 401(b)(1) of the SECURE Act, the amendments made by section 401 of the SECURE Act to section 401(a)(9)(E) and (H) of the Code apply to distributions with respect to employees who die after December 31, 2019.

Section 401(b)(2) of the SECURE Act provides that in the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before December 20, 2019, the amendments to section 401(a)(9)(E) and (H) of the Code apply to distributions with respect to employees who die in calendar years beginning after December 31, 2021, or if earlier, the later of: (1) December 31, 2019; and (2) the date on which the last

² Section 401(a)(9)(J)(ii) provides that the lump sum payment must either: (1) result in a shortening of the payment period with respect to an annuity or a full or partial commutation of the future annuity payments, provided that such lump sum is determined using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract; or (2) accelerate the receipt of annuity payments that are scheduled to be received within the ensuing 12 months, regardless of whether the acceleration shortens the payment period with respect to the annuity, reduces the dollar amount of benefits to be paid under the contract, or results in a suspension of annuity payments during the period being accelerated.

¹ The eligible retirement plans described in sections 402(c)(8)(B)(iv) and (v) are an annuity plan described in section 403(a) and an eligible deferred compensation plan described in section 457(b) that is maintained by an eligible employer described in section 457(e)(1)(A), respectively.

of the collective bargaining agreements terminated, without regard to any extension agreed to on or after the date of enactment of the SECURE Act (December 20, 2019).

Section 401(b)(3) of the SECURE Act provides that, in the case of a governmental plan (as defined in section 414(d) of the Code), the amendments to section 401(a)(9)(E) and (H) apply to distributions with respect to employees who die after December 31, 2021.

Section 401(b)(4) of the SECURE Act provides that the amendments made to section 401(a)(9)(E) and (H) of the Code do not apply to a qualified annuity that is a binding annuity contract in effect on the date of enactment of the SECURE Act (December 20, 2019) and at all times thereafter.³

Section 401(b)(5) of the SECURE Act provides that if an employee dies before the effective date of section 401(a)(9)(H) of the Code for a plan, then, in applying the amendments made to section 401(a)(9)(E) and (H) to the employee's designated beneficiary who dies on or after the effective date, (1) the amendments apply to any beneficiary of the designated beneficiary, and (2) the designated beneficiary is treated as an eligible designated beneficiary for purposes of section 401(a)(9)(H)(ii).

SECURE 2.0 Act Provisions

Prior to amendment by section 107 of the SECURE 2.0 Act, section 401(a)(9)(C) of the Code defined the required beginning date by reference to the calendar year in which the employee attains age 72. Section 107 of the SECURE 2.0 Act changes the age by

reference to which the required beginning date is determined from 72 to either 73 or 75 (depending on an employee's date of birth). Section 107(e) of the SECURE 2.0 Act provides that the amendments made by section 107 of the SECURE 2.0 Act apply to distributions required to be made after December 31, 2022, with respect to individuals who attain age 72 after that date.

Section 202 of the SECURE 2.0 Act instructs the Secretary of the Treasury (or that person's delegate) to make certain amendments to § 1.401(a)(9)–6. Those amendments are: (1) to eliminate the requirement that premiums for an individual's qualifying longevity annuity contracts (QLACs) be limited to 25-percent of an individual's account balance; (2) to increase the dollar limitation on premiums for an individual's QLACs from \$125,000 to \$200,000 (adjusted for inflation); (3) to provide that, in the case of a QLAC purchased with joint and survivor annuity benefits for an individual and the individual's spouse, a divorce occurring after the original purchase and before the date that the annuity payments commence under the contract will not affect the permissibility of the joint and survivor benefits if certain conditions related to an associated qualified domestic relations order (or, if applicable, a divorce or separation agreement) are met; and (4) to provide that a QLAC may include a provision under which an employee may rescind the purchase of the contract within a period not exceeding 90 days from the date of purchase.

Section 204 of the SECURE 2.0 Act instructs the Secretary of the Treasury (or that person's delegate) to amend the section 401(a)(9) regulations to provide that if an employee's benefit is in the form of an individual account under a defined contribution plan, then the plan may allow the employee to elect to have the amount required to be distributed for a calendar year from that account to be calculated as the excess of the total required amount for that year over the annuity amount for that year. For this purpose, section 204(b)(1) of the SECURE 2.0 Act defines the total required amount with respect to a calendar year as the amount that would be required to be distributed under § 1.401(a)(9)–5 by including in the balance of that account the value of all annuity contracts that were purchased with a portion of that account. Section 204(b)(2) of the SECURE 2.0 Act defines the annuity amount with respect to a calendar year as the total amount distributed in that year from all annuity contracts purchased with a portion of the employee's account under the plan.

Section 204(c) of the SECURE 2.0 Act instructs the Secretary of the Treasury (or that person's delegate) to make conforming amendments to the regulations that apply to individual retirement plans (as defined in section 7701(a)(37) of the Code), section 403(b) plans, and section 457(b) eligible deferred compensation plans.

Section 325 of the SECURE 2.0 Act amended section 402A of the Code (relating to designated Roth accounts) to add a new paragraph (d)(5) providing that the rules requiring minimum distributions to be paid during the employee's lifetime do not apply to a designated Roth account. Section 325(b)(1) of the SECURE 2.0 Act provides that this amendment applies to taxable years beginning after December 31, 2023. However, section 325(b)(2) of the SECURE 2.0 Act provides that the amendment does not apply to a required minimum distribution for a year beginning before January 1, 2024, that is permitted to be paid by April 1, 2024.

Section 402(c)—Rollovers

Section 402(c) of the Code provides rules related to the rollover of a distribution from a qualified plan to another eligible retirement plan. Prior to being amended by section 641 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16, 115 Stat. 38 (2001) (EGTRRA), section 402(c)(2) of the Code limited the portion of a distribution that could be rolled over to the amount that would have been includible in income in the absence of the rollover. Section 641 of EGTRRA and section 411(q) of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147, 116 Stat. 21 (2002), expanded the rollover rules to permit a rollover to an IRA of the portion of the distribution that would have been excluded from gross income in the absence of the rollover (that is, the portion of the amount distributed that consists of the employee's investment in the contract). In addition, that portion may be transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) of the Code, but only if the trust or annuity contract separately accounts for the amount that consists of the employee's investment in the contract. If only a portion of an eligible rollover distribution is rolled over or transferred, then the amount rolled over or transferred is treated as consisting first of the portion of the distribution that is not allocable to the employee's investment in the contract.

Under section 402(c), any amount distributed from a qualified plan generally will be excluded from income

³ Section 401(b)(4)(B) of the SECURE Act provides that the term *qualified annuity* means, with respect to an employee, an annuity—

(i) which is a commercial annuity (as defined in section 3405(e)(6) of the Internal Revenue Code of 1986);

(ii) under which the annuity payments are made over the life of the employee or over the joint lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the joint life expectancy of such employee and a designated beneficiary) in accordance with the regulations described in section 401(a)(9)(A)(ii) of such Code (as in effect before such amendments) and which meets the other requirements of section 401(a)(9) of such Code (as so in effect) with respect to such payments; and

(iii) with respect to which—

(I) annuity payments to the employee have begun before the date of enactment of the SECURE Act, and the employee has made an irrevocable election before such date as to the method and amount of the annuity payments to the employee or any designated beneficiaries; or

(II) if subclause (I) does not apply, the employee has made an irrevocable election before the date of enactment of the SECURE Act as to the method and amount of the annuity payments to the employee or any designated beneficiaries.

if it is transferred to an eligible retirement plan no later than the 60th day following the day the distribution is received. Section 402(c)(3)(B) was added to the Code by section 644 of EGTRRA to provide that the Secretary may waive the 60-day rollover requirement in certain circumstances. Section 402(c)(3)(C) was added to the Code by section 13613 of the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054 (2017) (TCJA), to provide an extended rollover deadline for qualified plan loan offset (QPLO) amounts.⁴ Specifically, the deadline for rollover of any portion of a QPLO amount is extended so that it ends no earlier than the distributee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

Subject to certain exclusions, section 402(c)(4) provides that an eligible rollover distribution means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified plan. Section 402(c)(4)(A) excludes from the definition of an eligible rollover distribution any distribution that is one of a series of substantially equal periodic payments payable for the life (or life expectancy) of the employee (or the employee and the employee's designated beneficiary), or for a specified period of 10 years or more. Section 402(c)(4)(B) provides that any distribution that is required under section 401(a)(9) is excluded from the definition of an eligible rollover distribution. Section 402(c)(4)(C), which was added to the Code by section 636(b)(1) of EGTRRA, excludes hardship distributions from the definition of an eligible rollover distribution.

Prior to being amended by section 641 of EGTRRA, section 402(c)(8)(B) of the Code provided that the only type of eligible retirement plan permitted to receive a rollover from a qualified plan was another qualified plan or an IRA. Section 641 of EGTRRA amended section 402(c)(8)(B) of the Code to expand the list of retirement plans eligible to receive rollovers to include an annuity contract described in section 403(b), and an eligible deferred compensation plan described in section 457(b) that is maintained by an eligible employer described in section 457(e)(1)(A). Section 617(c) of EGTRRA amended section 402(c)(8)(B) of the

Code to provide that if any portion of an eligible rollover distribution is attributable to distributions from a designated Roth account (as defined in section 402A), that portion may be rolled over only to another designated Roth account or a Roth IRA (as described in section 408A). Section 641 of EGTRRA also added section 402(c)(10) to the Code to provide that an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer described in section 457(e)(1)(A) may accept rollovers from a different type of eligible retirement plan only if it separately accounts for the amounts rolled into the plan.

Section 402(c)(9) provides that, if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, then section 402(c) applies to that distribution in the same manner as if the spouse were the employee. At the time section 402(c)(9) was enacted, a surviving spouse was permitted to roll over an eligible rollover distribution only to an IRA. However, section 641 of EGTRRA amended section 402(c)(9) of the Code to expand the type of eligible retirement plan permitted to receive a spousal rollover to include not just an IRA, but also any other eligible retirement plan.

Section 402(c)(11) was added to the Code by section 829 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (2006) (PPA), to provide that an individual who is not the surviving spouse of the employee and who is a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) may elect to have any portion of a distribution made in the form of a direct trustee-to-trustee transfer to an IRA established for the purpose of receiving that distribution. If a direct trustee-to-trustee transfer is made pursuant to section 402(c)(11), then the required minimum distribution rules applicable to distributions after the employee's death in section 401(a)(9)(B) (other than section 401(a)(9)(B)(iv)) will apply to the IRA. Section 402(c)(11)(B) provides that the Secretary may prescribe rules under which a trust for the benefit of one or more designated beneficiaries may be treated as a designated beneficiary for purposes of section 402(c)(11).

The rollover rules of section 402(c) also apply to a distribution from a section 403(a) qualified annuity plan, a section 403(b) plan, and an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer described in section 457(e)(1)(A). See sections 403(a)(4)(B),

403(b)(8)(B), and 457(e)(16)(B), respectively.

Sections 403(a), 403(b), 408, and 457—Other Arrangements Subject to Section 401(a)(9)

Under section 403(a)(1), a qualified annuity plan under section 403(a) must meet the requirements of section 404(a)(2) (which provides that an annuity plan must satisfy the required minimum distribution rules under section 401(a)(9)). Sections 403(b)(10), 408(a)(6), and 408(b)(3) provide that a section 403(b) plan, an individual retirement account, and an individual retirement annuity, respectively, must satisfy rules similar to the requirements of section 401(a)(9) and the incidental death benefit requirements of section 401(a). Under section 457(b)(5) and (d)(2), a plan is an eligible deferred compensation plan described in section 457(b) only if it satisfies the minimum distribution requirements of section 401(a)(9).

Section 4974—Excise Tax on Failure To Satisfy Section 401(a)(9)

Section 4974(a) (as amended by section 302(a) of the SECURE 2.0 Act) provides that if the amount distributed during the taxable year of a payee under any qualified retirement plan (as defined in section 4974(c)) or any eligible deferred compensation plan (as defined in section 457(b)) is less than that taxable year's minimum required distribution (as defined in section 4974(b)), then an excise tax is imposed on the payee equal to 25 percent of the amount by which the minimum required distribution for the taxable year exceeds the amount actually distributed in that taxable year.

Section 4974(d) provides that if the taxpayer establishes to the satisfaction of the Secretary that the failure to distribute the entire amount required in a taxable year was due to reasonable error and reasonable steps are being taken to remedy that shortfall, then the Secretary may waive the excise tax imposed in section 4974(a) for that taxable year.

Section 4974(e) (as added to the Code by section 302(b) of the SECURE 2.0 Act) provides that in the case of a taxpayer who, by the last day of the correction window: (1) receives a distribution from the qualified retirement plan or eligible deferred compensation plan of the amount by which the required minimum distribution exceeds the actual amount distributed during the calendar year from that plan (the shortfall); and (2) submits a return reflecting that tax (as modified by section 4974(e)), then the

⁴ A QPLO amount is defined in section 402(c)(3)(C)(ii) as a plan loan offset amount that is distributed from a qualified employer plan to a participant or beneficiary solely by reason of (1) the termination of the qualified employer plan, or (2) the failure to meet the repayment terms of the loan from the plan because of the severance from employment of the participant.

tax imposed under section 4974(a) is 10 percent of the shortfall (in lieu of 25 percent). For this purpose, the correction window ends on the earliest of: (1) the date a notice of deficiency under section 6212 with respect to the tax imposed by section 4974(a) is mailed; (2) the date on which the tax imposed by section 4974(a) is assessed; or (3) the last day of the second taxable year that begins after the end of the taxable year in which the tax under section 4974(a) is imposed.

Good Faith Compliance Standard for Governmental Plans

Section 823 of PPA provides that a governmental plan (as defined in section 414(d) of the Code) is treated as having complied with section 401(a)(9) if the plan complies with a reasonable, good faith interpretation of section 401(a)(9).

2002 Final Regulations and Other Published Guidance

Final regulations relating to required minimum distributions from a qualified plan, an IRA, and a section 403(b) plan have been subject to a series of amendments and additions since they were published in the **Federal Register** on April 17, 2002 (67 FR 18834) (referred to in this preamble as the “2002 final regulations”). Final regulations relating to required minimum distributions from defined benefit plans and annuity contracts were published in the **Federal Register** on June 15, 2004 (69 FR 63288) (referred to in this preamble as the “2004 final regulations”). Final regulations published in the **Federal Register** on September 8, 2009 (74 FR 45993) updated the rules to permit a governmental plan to comply with the required minimum distribution rules using a reasonable, good faith interpretation of section 401(a)(9). Final regulations relating to qualifying longevity annuity contracts were published in the **Federal Register** on July 2, 2014 (79 FR 37633). Final regulations published in the **Federal Register** on November 12, 2020 (85 FR 72472) updated the life expectancy and distribution period tables for distribution calendar years that begin on or after January 1, 2022.

Final regulations relating to section 402(c) and eligible rollover distributions were published in the **Federal Register** on September 22, 1995 (60 FR 49199). Since those regulations were issued, section 402(c) has been amended several times, and guidance related to those amendments has generally been issued in the Internal Revenue Bulletin rather than through the issuance of new

regulations. For example, Notice 2007–7, 2007–1 CB 395, provided guidance related to the amendments to section 402(c) made by PPA. However, final regulations related to the extended period of time to roll over a QPLO amount under section 402(c)(3)(C) were published in the **Federal Register** on January 6, 2021 (86 FR 464). See § 1.402(c)–3.

Proposed Regulations and Enactment of SECURE 2.0 Act

Proposed regulations under section 401(a)(9) and related statutory provisions were published in the **Federal Register** on February 24, 2022 (87 FR 10504).⁵ Comments were received on the proposed regulations, and a public hearing was held on June 15, 2022. After the close of the comment period, the SECURE 2.0 Act, which affected many of the provisions included in the proposed regulations was enacted.

After consideration of the comments and taking into account the enactment of the SECURE 2.0 Act, the proposed regulations are adopted by this Treasury decision with certain changes described in the section of this preamble entitled “Summary of Comments and Explanation of Revisions.” Some of the rules in these final regulations that reflect provisions of the SECURE 2.0 Act are a clear application of statutory language for which it is unnecessary to solicit comments (see 5 U.S.C. 553(b)). Other rules in these final regulations are the logical outgrowth of rules in the proposed regulations that take into account both the comments received on those proposed rules and the subsequent enactment of the SECURE 2.0 Act. A notice of proposed rulemaking (REG–103529–23) in the Proposed Rules section of this issue of the **Federal Register** sets forth proposed rules that reflect other provisions of the SECURE 2.0 Act relating to section 401(a)(9) of the Code.

Summary of Comments and Explanation of Revisions

These regulations update several existing regulations under sections 401(a)(9), 402(c), 403(b), 457, and 4974 to reflect statutory amendments that have been made since those regulations were last issued and to clarify certain issues that have been raised in public comments and private letter ruling requests. These regulations also replace the question-and-answer format of the existing regulations under sections

401(a)(9), 402(c), 408, and 4974 with a standard format. Rules under the 2002 final regulations and the 2004 final regulations that were proposed to be retained in the updated regulations generally were not discussed in the Explanation of Provisions that accompanied the proposed regulations. Similarly, rules under the proposed regulations that are included in these final regulations without change generally are not discussed in this Summary of Comments and Explanation of Revisions.

I. Section 401(a)(9) Regulations

A. Section 1.401(a)(9)–1—Minimum Distribution Requirement in General

1. Statutory Effective Date of the Limitation on Beneficiary Life Expectancy Distributions

Section 1.401(a)(9)–1 provides general rules that apply for all of the regulations under section 401(a)(9), including rules addressing application of the effective date of section 401(a)(9)(H), which was added to the Code by section 401 of the SECURE Act to limit which beneficiaries may take distributions over their life expectancies. Generally, the amendments made by section 401 of the SECURE Act apply to distributions with respect to an employee who dies on or after January 1, 2020 (with a later effective date for certain collectively bargained plans or governmental plans). In addition, if an employee in a plan died before the section 401(a)(9)(H) effective date for that plan, the employee had only one designated beneficiary, and the employee’s designated beneficiary dies on or after that effective date, then the amendments made by section 401 of the SECURE Act apply to any beneficiary of the designated beneficiary. In this situation, the designated beneficiary is treated as an eligible designated beneficiary for purposes of the 10-year payout required by section 401(a)(9)(H)(iii). Accordingly, the death of the designated beneficiary triggers a requirement to complete payment by the end of the calendar year that includes the tenth anniversary of the date of the death of that designated beneficiary. In contrast, if that designated beneficiary died before that effective date, then the amendments made by section 401 of the SECURE Act do not apply with respect to the employee’s interest under the plan.

Under the proposed regulations, if an employee in a plan who died before the section 401(a)(9)(H) effective date for that plan had more than one designated beneficiary, whether the amendments made by section 401 of the SECURE Act apply depends on when the oldest of

⁵ Correction notices were published in the **Federal Register** with respect to the proposed regulations on March 21, 2022 (87 FR 15907), and May 20, 2022 (87 FR 39845).

those beneficiaries dies. Thus, for example, if an employee who died before January 1, 2020, named a see-through trust as the sole beneficiary of the employee's interest in the plan, and the trust has three beneficiaries who are all individuals, then the amendments made by section 401 of the SECURE Act will apply with respect to distributions to the trust upon the death of the oldest trust beneficiary, but only if that beneficiary dies on or after the section 401(a)(9)(H) effective date for that plan. However, if the oldest of the trust beneficiaries died before that effective date, then the amendments made by section 401 of the SECURE Act do not apply with respect to distributions to the trust. Some commenters asked how these effective date rules apply if the beneficiaries were using the separate account alternative (under which section 401(a)(9) is applied separately to the separate accounts for each beneficiary). In that case, the separate application of section 401(a)(9) with respect to the separate account for a beneficiary is used to determine whether section 401(a)(9)(H) applies to that beneficiary.

The proposed regulations reflected the exception for a qualified annuity (that is, an annuity contract for which an employee made an irrevocable election as to the method and the amount of the annuity payments before December 20, 2019) described in section 401(b)(4) of the SECURE Act. One commenter raised questions regarding whether the requirements for an irrevocable election as to the method and amount of annuity payments under the contract meant that the contract loses its exception from the application of section 401(a)(9)(H) merely because the contract permits additional premiums to be paid or permits the annuitant to select when distributions under the contract commence. The final regulations do not change the requirement that, in order for the contract to be excepted from the application of section 401(a)(9)(H), the method and amount of annuity payments under the contract be irrevocably selected before December 20, 2019. For this purpose, the mere ability to pay an additional premium or change the commencement date of benefits under the contract after December 20, 2019, does not cause the contract to lose its exception from the application of section 401(a)(9)(H). However, if an individual paid an additional premium or changed the commencement date of benefits under the contract after that date, then the contract would lose its exception.

Commenters also requested that the final regulations apply the qualified annuity exception to the situation in which the employee had died and, after the employee's death, the beneficiary had made an irrevocable election as to the method and the amount of the annuity payments before December 20, 2019. These final regulations make that change.

2. Applicability Date of Final Regulations Under Section 401(a)(9)

A number of commentators requested that the applicability date of the final regulations be delayed from the proposed applicability date of distribution calendar years beginning on or after January 1, 2022, in order to provide adequate time for plan administrators and IRA providers to familiarize themselves with the new rules and to update administrative systems to implement necessary changes. In response to these comments, the final regulations under section 401(a)(9) apply for distribution calendar years beginning on or after January 1, 2025. For earlier distribution calendar years, taxpayers must apply the 2002 final regulations and 2004 final regulations, but taking into account a reasonable, good faith interpretation of the amendments made by sections 114 and 401 of the SECURE Act.⁶ For the 2023 and 2024 distribution calendar years, taxpayers must also take into account a reasonable, good faith interpretation of the amendments made by sections 107, 201, 202, 204, and 337 of the SECURE 2.0 Act.

B. Section 1.401(a)(9)-2—Distributions Commencing During an Employee's Lifetime

Section 1.401(a)(9)-2 provides rules for determining the required beginning date for distributions and whether distributions are treated as having begun during an employee's lifetime. These rules are based on the rules in the 2002 final regulations, except that the rules have been updated to reflect the amendments to the required beginning date made by section 114 of the SECURE Act and section 107 of the SECURE 2.0 Act.

Specifically, these regulations generally provide that the required beginning date is April 1 of the calendar year following the later of (1) the calendar year in which the employee reaches the applicable age, and (2) the calendar year in which the employee

retires from employment with the employer maintaining the plan. These regulations provide that the applicable age is determined based on an employee's date of birth, as follows: (1) for employees born before July 1, 1949, the applicable age is 70½; (2) for employees born on or after July 1, 1949, but before January 1, 1951, the applicable age is 72; (3) for employees born on or after January 1, 1951, but before January 1, 1959, the applicable age is 73; and (4) for employees born on or after January 1, 1960, the applicable age is 75.⁷ The final regulations make conforming changes by replacing references to age 72 in the proposed regulations (when referring to the age for determining the required beginning date) with references to the applicable age. The Summary of Comments and Explanation of Revisions section of this preamble generally does not describe those changes.

One commenter asked whether a plan could provide a uniform required beginning date of April 1 of the calendar year following the year an employee attains age 70½ that would apply to all employees in the plan regardless of the employee's date of birth. While the final regulations do not provide for such an option, the Department of the Treasury (Treasury Department) and the IRS note that, subject to the requirements of section 411(a)(11), a plan could require benefits to commence by that date. In addition, in the case of a defined benefit plan, § 1.401(a)(9)-6(k) provides that if distributions start prior to the required beginning date in a distribution form that is an annuity under which distributions are made in accordance with the requirements of that section, then the annuity starting date will generally be treated as the required beginning date for purposes of applying the rules of section 401(a)(9).

Another commenter asked whether an employee who is not a 5-percent owner, has benefits under a plan maintained by more than one employer, and retires from employment from any of the employers participating in the plan is treated as having retired for purposes of section 401(a)(9)(C) if that employee is employed by a different employer participating in the same plan. The final regulations add language clarifying that the employee is not treated as having

⁶ The preamble to the proposed regulations provided that compliance with the proposed regulations will be treated as a reasonable, good faith interpretation of the amendments made by sections 114 and 401 of the SECURE Act.

⁷ Section 107 of the SECURE 2.0 Act includes an ambiguity relating to the definition of applicable age for employees born in 1959 (section 401(a)(9)(C)(v) provides that the applicable age for those employees is both 73 and 75). Accordingly, these regulations reserve a paragraph that defines the applicable age for employees born in 1959, and that issue is addressed in a notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the **Federal Register**.

retired for purposes of section 401(a)(9)(C)(i)(III) in this situation.

C. Section 1.401(a)(9)–3—Death Before Required Beginning Date

Section 1.401(a)(9)–3 provides rules for distributions if an employee dies before the employee's required beginning date. These rules are based on the rules in the 2002 final regulations but are updated to reflect new section 401(a)(9)(H). For example, the option for a designated beneficiary of an employee who participates in a defined contribution plan to elect to receive distributions over the designated beneficiary's life expectancy is limited to an eligible designated beneficiary. These regulations are also updated to reflect the amendment to section 402A(d) made by section 325 of the SECURE 2.0 Act and provide that if an employee's entire interest under a defined contribution plan is in a designated Roth account, then no distributions are required to be made to the employee during the employee's lifetime. Thus, upon the employee's death, that employee is treated as having died before his or her required beginning date.

The proposed regulations described satisfaction of the life expectancy rule for an eligible designated beneficiary of an employee in a defined contribution plan by reference to the rules in § 1.401(a)(9)–5. The final regulations clarify that the requirement to take an annual distribution in accordance with the preceding sentence continues to apply for all subsequent calendar years until the employee's interest is fully distributed. Thus, a required minimum distribution is due for the calendar year of the eligible designated beneficiary's death, and that amount must be distributed during that calendar year to any beneficiary of the deceased eligible designated beneficiary to the extent it has not already been distributed to the eligible designated beneficiary.

Under the proposed regulations, if the employee has a designated beneficiary (who is an eligible designated beneficiary in the case of a defined contribution plan), the plan may: (1) provide that the 5-year rule (in the case of a defined benefit plan) or 10-year rule (in the case of a defined contribution plan) applies; (2) provide that the life expectancy rule applies; or (3) permit the employee or the designated beneficiary to elect between the applicable 5-year or 10-year rule or the life expectancy rule.⁸ The proposed

regulations also provided that, if a plan permits an employee or designated beneficiary to elect between the applicable 5-year or 10-year rule and the life expectancy rule, then the plan must specify the default that would apply when the employee or designated beneficiary has not made an election. Consistent with requests made by commenters, the final regulations provide that the requirement to specify a default applies only if the plan is intended to be operated using a default different than the default that would apply under the regulations if the employee or designated beneficiary did not make an affirmative election. Thus, for example, if the intended operation in the absence of an election is that a surviving spouse who is the sole beneficiary is to wait to begin distributions until the employee would have reached the applicable age, then the plan is not required to provide for a default (because that is the rule that would apply under the regulations if the surviving spouse did not make an affirmative election).

In addition, consistent with requests made by commenters, the final regulations clarify that a defined contribution plan may provide that a particular distribution method will apply to certain categories of eligible designated beneficiaries or that an election as to which distribution method applies is available only for certain categories of eligible designated beneficiaries. Thus, for example, a plan may provide that only an employee's surviving spouse may elect between the 10-year rule and life expectancy payments.

D. Section 1.401(a)(9)–4—Determination of the Designated Beneficiary

Section 1.401(a)(9)–4 provides rules addressing the determination of the employee's beneficiary for purposes of section 401(a)(9), including the definition of eligible designated beneficiary in section 401(a)(9)(E)(ii). Section 1.401(a)(9)–4 also provides rules addressing the treatment of trust beneficiaries as designated beneficiaries when a trust is named as the beneficiary of an employee's interest in a plan.

1. Eligible Designated Beneficiaries

Under section 401(a)(9)(E)(ii), an eligible designated beneficiary is a designated beneficiary who, as of the date of the employee's death, is (1) the surviving spouse of the employee, (2) a child of the employee who has not yet

reached the age of majority, (3) disabled, (4) chronically ill, or (5) not more than 10 years younger than the employee.

a. Definition of Child

Under section 401(a)(9)(E)(ii)(III), one of the categories of eligible designated beneficiary is a child of the employee who has not yet reached the age of majority. Consistent with requests made by commenters, the final regulations clarify that the definition of child in section 152(f)(1) applies for this purpose (so that the definition includes a stepchild, an adopted child, and an eligible foster child).

b. Definition of Disability

The regulations provide rules for the determination of whether an individual is disabled for purposes of section 401(a)(9). Section 401(a)(9)(E)(ii)(III) applies the definition of disability under section 72(m)(7) for purposes of section 401(a)(9). Section 72(m)(7) provides a standard of disability based on whether an individual is unable to engage in substantial gainful activity. However, that standard may be difficult to apply for individuals under age 18. Accordingly, if, as of the date of the employee's death, a beneficiary is younger than age 18, then the regulations apply a comparable standard that requires the beneficiary to have a medically determinable physical or mental impairment that results in marked and severe functional limitations, and that can be expected to result in death or to be of long-continued and indefinite duration.

These regulations also provide a safe harbor for the determination of whether a beneficiary is disabled. Specifically, if, as of the date of the employee's death, the Commissioner of Social Security has determined that the individual is disabled within the meaning of 42 U.S.C. 1382c(a)(3), then that individual will be deemed to be disabled for purposes of section 401(a)(9) of the Code. The final regulations clarify that this alternative is merely a safe harbor and that a beneficiary who does not have a Social Security determination of disability can apply the general standards described in the preceding paragraph.

Several commenters asked for additional safe harbors for the determination of whether a beneficiary is disabled. For example, one commenter requested that the final regulations include a safe harbor under which a beneficiary is considered to be a disabled individual if a State court has determined that the beneficiary is incapacitated for purposes of State guardianship proceedings. Another

⁸ If a defined contribution plan does not include either the provision that applies the 10-year rule or the provision under which a beneficiary can elect

between the 10-year rule and the life expectancy rule, then the plan must provide that the life expectancy rule applies for an eligible designated beneficiary.

commentor asked for a safe harbor under which an individual is treated as disabled or chronically ill if that individual is an eligible individual with respect to an ABL account as described in section 529A(e)(1). The regulations do not provide for those safe harbors because the standards required for a State law guardianship proceeding or to be an eligible individual with respect to an ABL account could be broader than the definition of disability in section 72(m)(7).

c. Documentation Requirements for Disabled or Chronically Ill Status

The regulations provide that, with respect to a beneficiary who is disabled or chronically ill as of the date of the employee's death, documentation of the disability or chronic illness must be provided to the plan administrator no later than October 31 of the calendar year following the calendar year of the employee's death. If the designated beneficiary is chronically ill under any of the definitions in section 7702B(c)(2)(A) as of the date of the employee's death, the documentation must include a certification by a licensed health care practitioner (as defined in section 7702B(c)(4)) that the designated beneficiary is chronically ill. Additionally, in accordance with section 401(a)(9)(E)(ii)(IV), if the beneficiary is chronically ill under the definition in section 7702B(c)(2)(A)(i), then the documentation also must include a certification from a licensed health care practitioner that, as of the date of the certification, the individual is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living and the period of that inability is an indefinite one that is reasonably expected to be lengthy in nature.

For a designated beneficiary who is an eligible designated beneficiary because, at the time of the employee's death, the designated beneficiary is the employee's minor child and that child also is disabled or chronically ill within the meaning of the regulations, the designated beneficiary will continue to be treated as an eligible designated beneficiary after reaching the age of majority (on account of being disabled or chronically ill) only if these documentation requirements are timely met with respect to that designated beneficiary. Similarly, if the employee's designated beneficiary is the employee's surviving spouse and that spouse also is disabled or chronically ill at the time of the employee's death, then the surviving spouse will be treated as disabled or chronically ill for purposes of the applicable multi-beneficiary trust rules

only if the documentation requirements are timely met with respect to the surviving spouse.

One commenter requested that the final regulations replace the October 31 deadline for providing documentation reflecting a designated beneficiary's disability or chronic illness and instead provide that the deadline be before a full distribution would be required if the beneficiary was not disabled. The regulations do not make that change because of the need for a medical assessment of the designated beneficiary's disability or chronic illness as of the date of the employee's death. Allowing a 10-year delay before making this medical assessment (or an even further delay in the case of a child of the employee who had not reached the age of majority as of the date of the employee's death) could result in a less reliable assessment that the beneficiary was disabled or chronically ill as of the date of the employee's death than an assessment made within a short period after that date.

Several commenters requested that plan administrators be permitted to rely on self-certifications from a designated beneficiary (or, in the case of a see-through trust, the trustee of that trust) that the beneficiary is disabled or chronically ill within the meaning of § 1.401(a)(9)-4(d). The commenters argued that plan administrators and IRA custodians should not be required to review personal health records or similar documents to determine whether a beneficiary is disabled or chronically ill and that the self-certification process has already been established for other areas of plan administration, including in the case of coronavirus-related distributions pursuant to Notice 2020-50, 2020-28 IRB 35.

The Treasury Department and the IRS generally disagree with the commenters' request that plan administrators should be able to rely on a beneficiary's self-certification of disability or chronic illness. This documentation requirement is different than that of coronavirus-related distributions because there is the potential for a delay of distributions of the employee's account for long periods if the beneficiary meets the disabled or chronically ill standard in the Code. As a result, plans should require documentation from a licensed health care practitioner (rather than rely on a certification by the beneficiary).

While the final regulations do not eliminate the deadline to provide documentation to a plan administrator, an example illustrating this rule has been modified to show that the required

documentation need not be overly detailed. Under the example, the licensed health care practitioner merely certifies that, as of a specified date, the designated beneficiary is unable to engage in any substantial gainful activity by reason of a physical impairment that can be expected to be of long-continued and indefinite duration. In addition, the regulations include a transition rule for the documentation deadline in the case of an employee who died in 2020, 2021, 2022, or 2023. In that case, the documentation of the designated beneficiary's disability or chronic illness does not need to be furnished to the plan administrator until October 31, 2025. Finally, as described in section IV of this Summary of Comments and Explanation of Revisions, the final regulations provide that there is no requirement to provide documentation of a designated beneficiary's disability or chronic illness to an IRA custodian.

2. Trust as Beneficiary

The final regulations retain the see-through trust concept in the 2002 final regulations under which certain beneficiaries of a trust are treated as beneficiaries of the employee if the trust meets specified requirements. Specifically, to be a see-through trust, the trust must meet the following requirements: (1) the trust is valid under State law or would be valid but for the fact that there is no corpus; (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee; (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable; and (4) the specified documentation requirements are satisfied.

a. Determining Which See-Through Trust Beneficiaries Are Treated as Beneficiaries of the Employee

1. See-Through Trust Beneficiaries Taken Into Account

Generally, the regulations provide that a beneficiary of a see-through trust is treated as a beneficiary of the employee if the beneficiary could receive amounts in the trust representing the employee's interest in the plan that are neither contingent upon nor delayed until the death of another trust beneficiary who does not predecease (and who is not treated as having predeceased)⁹ the employee. A

⁹For purposes of this rule, a beneficiary is treated as having predeceased the employee if the beneficiary is treated as predeceasing the employee pursuant to a simultaneous death provision under

beneficiary described in the preceding sentence is referred to as a primary beneficiary in this Summary of Comments and Explanation of Revisions. One commenter requested that the final regulations provide a uniform simultaneous death provision for determining whether one beneficiary predeceases another beneficiary. The final regulations do not adopt this request because the disposition of property interests is governed by State law rather than by these regulations.

Whether any other see-through trust beneficiary also is treated as a beneficiary of the employee depends upon whether the see-through trust is a conduit trust or an accumulation trust. A conduit trust is defined in the regulations as a see-through trust, the terms of which provide that all plan distributions will, upon receipt by the trustee, be paid directly to, or for the benefit of, primary beneficiaries during their lifetimes. For example, if an employee names a see-through trust as the beneficiary of the employee's interest in a plan and the trust terms provide that all distributions from the plan to the trust during the surviving spouse's life will, upon receipt by the trustee, be paid directly to that surviving spouse, then the trust is a conduit trust and the surviving spouse is treated as a beneficiary of the employee because the surviving spouse could receive amounts in the trust with respect to the deceased employee's interest in the plan that are neither contingent upon nor delayed until the death of another trust beneficiary. In this case, any beneficiary who could receive distributions from the trust with respect to the deceased employee's interest in the plan after the surviving spouse's death is not treated as a beneficiary of the employee.

An accumulation trust is any see-through trust that is not a conduit trust, and under an accumulation trust, there are potentially more beneficiaries. A beneficiary of an accumulation trust is treated as a beneficiary of the employee if that beneficiary could receive amounts accumulated in the trust representing the employee's interest in the plan that were not distributed to other beneficiaries during their lifetimes (unless that beneficiary is disregarded pursuant to the rules described in section II.D.2.a.2 of this Summary of Comments and Explanation of Revisions). A beneficiary described in the preceding sentence is referred to as a residual beneficiary in this Summary

of Comments and Explanation of Revisions.

As an illustration of the rule in the preceding paragraph, assume an employee designates a see-through trust as the sole beneficiary of the employee's interest in the plan. The terms of the see-through trust provide that the trustee is to pay specified amounts from the trust to the employee's surviving spouse, but do not provide that all plan distributions made to the trust will, upon receipt by the trustee, be paid directly to, or for the benefit of, the spouse. Upon the spouse's death, the see-through trust will terminate and the amounts remaining in the trust will be paid to the employee's brother. The surviving spouse is treated as a beneficiary of the employee (because the surviving spouse could receive amounts in the see-through trust representing the deceased employee's interest in the plan that are neither contingent upon nor delayed until the death of another trust beneficiary). Moreover, because not all distributions from the plan to the see-through trust are required, upon receipt by the trustee, to be paid directly to, or for the benefit of, a trust beneficiary, the trust is an accumulation trust. As a result, the employee's brother is treated as a beneficiary of the employee because he is the residual beneficiary of an accumulation trust (unless the employee's brother is disregarded pursuant to the rules described in section II.D.2.a.2 of this Summary of Comments and Explanation of Revisions).

One commenter requested that the final regulations provide that a see-through trust can still be a conduit trust if it includes certain trust terms. Specifically, the commenter requested that final regulations provide that a see-through trust will not fail to be treated as a conduit trust merely because that trust does not provide that, with respect to the deceased employee's interest in the plan, all distributions will, upon receipt by the trustee, be paid directly to a specified beneficiary provided that the beneficiary has a unilateral withdrawal right with respect to those amounts. The final regulations do not include this change because the Treasury Department and the IRS are concerned that if a trust merely provides a beneficiary with this type of unilateral withdrawal right (rather than providing that any distribution from the plan, upon receipt by the trustee, be paid directly to that beneficiary), then there could be an accumulation within the trust of amounts representing the employee's interest in the plan that could be paid to a different trust beneficiary. In those cases, the trust

beneficiaries who could benefit from that accumulation should also be treated as beneficiaries of the employee for purposes of section 401(a)(9) (without regard to the taxability of the distribution).

Commenters requested that the regulations clarify the see-through trust rules in the case of payments that are not made directly to the trust beneficiary but are made indirectly for the benefit of the trust beneficiary (such as payments to a custodial account for the benefit of a minor child). In response to those comments, these regulations provide that a trust beneficiary will be treated as if that beneficiary could receive amounts in the trust representing the employee's interest in the plan regardless of whether those amounts could be paid directly to that beneficiary or indirectly for the benefit of that beneficiary.

2. Disregarded Beneficiaries of See-Through Trusts

The regulations provide for certain beneficiaries of a see-through trust to be disregarded as beneficiaries of the employee for purposes of section 401(a)(9). Specifically, a beneficiary of a see-through trust is not treated as a beneficiary of the employee if that trust beneficiary could receive payments from the trust that represent the employee's interest in the plan only after the death of another trust beneficiary who is a residual beneficiary (and is not also a primary beneficiary) who did not predecease (and is not treated as having predeceased) the employee.

One commenter requested that the disregard described in the preceding paragraph should not be affected by a trustee's ability to make sprinkling distributions to a residual beneficiary (that is, distributions for the health, support, or maintenance of that residual beneficiary) during the lifetime of a primary beneficiary. The Treasury Department and the IRS disagree with this request because of the potential for the primary beneficiary to be entitled to only a nominal amount (so that the residual beneficiary entitled to sprinkling distributions is effectively the primary beneficiary). In that case, the beneficiary who is entitled to amounts representing the employee's interest in the plan after the death of the residual beneficiary has a significant interest in amounts accumulated in the trust representing the employee's interest in the plan and should be treated as a beneficiary of the employee.

The regulations provide another exception under which a see-through trust beneficiary with a residual interest

applicable State law or a qualified disclaimer satisfying section 2518 that applies to the entire interest to which the beneficiary is entitled.

is disregarded as a beneficiary of the employee. Specifically, the regulations provide that if the see-through trust terms require a full distribution of amounts in the trust representing the employee's interest in the plan to a specified trust beneficiary by the later of: (1) the calendar year following the calendar year of the employee's death; and (2) the end of the calendar year that includes the tenth anniversary of the date the designated beneficiary reaches the age of majority, then any other beneficiary whose sole entitlement to distributions is conditioned on the specified trust beneficiary's death before the full distribution is required is disregarded as a beneficiary of the employee.

One commenter requested that the final regulations also disregard beneficiaries who have a contingent interest in the employee's benefit under the plan if the likelihood of that contingency occurring is remote (for example, the probability of that contingency occurring is less than 5 percent). The final regulations do not adopt this broad disregard because it is too difficult to determine the likelihood of a stated event occurring prior to a specified date in cases other than an individual reaching a particular age or a residual beneficiary predeceasing another designated beneficiary entitled to amounts in the trust.

b. Documentation Requirements for See-Through Trusts

The proposed regulations adopted the see-through trust documentation requirements described in the 2002 final regulations. The documentation requirements in the proposed regulations generally provided that the plan administrator must timely receive either (1) a copy of the actual trust instrument, or (2) a list of all the trust beneficiaries, including contingent beneficiaries, with a description of the conditions on their entitlement sufficient to establish who are the beneficiaries.

Commenters noted that plan administrators and IRA custodians are not experts in the intricacies of various State trust laws and thus, are not qualified to read through complex trust instruments to determine who the beneficiaries are for purposes of section 401(a)(9). The commenters requested that final regulations allow for a certification from the trustee of the trust as to the beneficiaries who are to be treated as beneficiaries of the employee for purposes of section 401(a)(9). The final regulations do not permit a trustee to certify to a plan administrator the list of beneficiaries to be treated as

beneficiaries of the employee because plan administrators are better suited to determine how section 401(a)(9) applies with respect to an employee.

As an alternative to allowing a plan administrator to rely on the trustee's certification of the trust beneficiaries who are to be treated as the employee's beneficiaries for purposes of section 401(a)(9), the commenters requested that final regulations allow for a plan administrator to specify that a list of the trust beneficiaries with a description of the conditions on their entitlement must be provided (rather than the actual trust document). The final regulations clarify that a plan administrator may choose which of the two alternatives will be accepted. Thus, the plan administrator may require the trustee to provide a list of trust beneficiaries with a description of the conditions on their entitlement in lieu of the actual trust document. In addition, as described in section IV of this Summary of Comments and Explanation of Revisions, the regulations provide that a trustee of a see-through trust is not required to provide the trust documentation to an IRA custodian, trustee, or issuer.

c. Applicable Multi-Beneficiary Trusts

The proposed regulations provided guidance on a particular type of see-through trust defined in section 401(a)(9)(H)(v) as an applicable multi-beneficiary trust. Specifically, the proposed regulations defined two types of applicable multi-beneficiary trusts. A type I applicable multi-beneficiary trust is a trust with at least one beneficiary who is disabled or chronically ill, the terms of which provide that the trust is to be divided immediately upon the death of the employee into separate trusts for each beneficiary (as described in section 401(a)(9)(H)(iv)(I)). A type II applicable multi-beneficiary trust is an applicable multi-beneficiary trust, the terms of which provide that no individual other than a disabled or chronically ill eligible designated beneficiary has any right to the employee's interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust (as described in section 401(a)(9)(H)(iv)(II)).

The proposed regulations permitted section 401(a)(9) to be applied separately with respect to the separate interests of the beneficiaries reflected in the separate trusts of a type I applicable multi-beneficiary trust. However, the final regulations do not include a definition of a type I applicable multi-beneficiary trust. This is because, as described in section I.H of this Summary of Comments and Explanation of Revisions, the final regulations

include a broader rule that permits separate application of section 401(a)(9) with respect to the separate interests of the beneficiaries reflected in a trust if that trust is to be divided immediately upon the death of the employee into separate trusts for each beneficiary, without regard to whether any of the beneficiaries are disabled or chronically ill.

With respect to the definition of a type II applicable multi-beneficiary trust, one commenter requested that the final regulations provide that the trust be permitted to include beneficiaries that are not individuals (such as a charity) that are entitled to distributions after the death of the disabled or chronically ill beneficiary. Section 337(b) of the SECURE 2.0 Act amended section 401(a)(9)(H)(v) of the Code to provide a modified version of that request. Accordingly, these regulations adopt a modified version of the definition of a type II applicable multi-beneficiary trust from the proposed regulations. Under that modification, certain organizations described in section 170(b)(1)(A) to which charitable contributions may be made are treated as designated beneficiaries.¹⁰

In addition, one commenter requested clarification in the case of a trust that provides for a disabled or chronically ill eligible designated beneficiary's interest in the trust to be terminated if necessary to preserve eligibility for certain public benefits. These regulations continue to require that no trust beneficiary other than the disabled or chronically ill beneficiary may receive payments from the trust prior to the death of that beneficiary in order for the trust to be treated as an applicable multi-beneficiary trust. However, if the trust provides that the other trust beneficiaries cannot receive any amounts from the trust until the death of the disabled or chronically ill beneficiary notwithstanding whether that beneficiary's interest in the trust is terminated, then the termination provision will not cause the trust to fail to be treated as an applicable multi-beneficiary trust. In this case, if the disabled or chronically ill beneficiary's interest is terminated pursuant to that trust provision after September 30 of the calendar year following the calendar year of the employee's death, then the trust is treated as having been modified

¹⁰ The final regulations also reflect the change to section 401(a)(9)(H)(iv)(II) of the Code made by section 337 of the SECURE 2.0 Act. Under this change, the restriction on payments from a type II applicable multi-beneficiary trust prior to the death of the disabled or chronically ill individual applies to any other beneficiary (rather than applying to any other individual).

to add those other beneficiaries as of the date the termination occurred.

E. Section 1.401(a)(9)–5—Required Minimum Distributions From Defined Contribution Plans

1. In General

Like the proposed regulations, these final regulations retain the general method in the 2002 final regulations by which a required minimum distribution from a defined contribution plan is calculated in any calendar year when an employee dies on or after the required beginning date or when an employee's eligible designated beneficiary is taking annual life expectancy payments after an employee dies before the required beginning date. Specifically, the required minimum distribution for a calendar year is determined by dividing the employee's account balance as of the end of the prior calendar year by the applicable denominator. In addition to the requirement to take annual required minimum distributions, the regulations implement the amendments made by section 401 of the SECURE Act by requiring that a full distribution of the employee's remaining interest be taken in certain circumstances.

2. Purchase of Annuity Contract With Portion of Employee's Individual Account

The 2002 final regulations provided a special bifurcation rule in the case of an employee with an individual account who used a portion of that account to purchase an annuity contract. In that case, those regulations provided that payments from the annuity contract were required to satisfy the rules of § 1.401(a)(9)–6 and payments of the remaining account balance were required to satisfy the rules of § 1.401(a)(9)–5. In addition, because the required minimum distribution for a calendar year is determined based on the account balance as of the end of the previous calendar year, the 2002 final regulations provided that, for the calendar year in which the annuity contract is purchased, payments made under the contract are treated as distributions from the individual account for purposes of determining whether section 401(a)(9) has been satisfied with respect to that account. The proposed regulations generally retained these rules.

In accordance with section 204 of the SECURE 2.0 Act, these regulations provide that a plan may allow the employee to elect to have the amount required to be distributed for a calendar year from an individual account to be calculated as the excess of the total

required amount (as defined in section 204(b)(1) of the SECURE 2.0 Act) for that year over the annuity amount (as defined in section 204(b)(2) of the SECURE 2.0 Act) for that year. Accordingly, these final regulations provide an alternative to the bifurcation rule described in the preceding paragraph. Under this rule, in lieu of satisfying section 401(a)(9) separately with respect to the annuity contract and the remaining account balance, a plan may permit an employee to elect to satisfy section 401(a)(9) for the annuity contract and that account balance in the aggregate by adding the fair market value of the contract to the remaining account balance and treating payments under the annuity contract as distributions from the individual account. These regulations reserve a paragraph for rules of operation with respect to this alternative, including guidance related to the determination of the fair market value of the annuity contract. These rules are included in a notice of proposed rulemaking (REG–103529–23) in the Proposed Rules section of this issue of the **Federal Register**.

3. Distributions After the Employee's Death

a. Requirement To Satisfy Both Section 401(a)(9)(B)(i) and (ii) in the Case of an Employee Who Dies On or After the Required Beginning Date

Section 401(a)(9)(B)(i) provides rules that apply if an employee dies after benefits have commenced. While the 5-year rule under section 401(a)(9)(B)(ii) generally applies if an employee dies before the employee's required beginning date, section 401(a)(9)(H)(i) provides that section 401(a)(9)(B)(ii) applies in certain cases by substituting 10 years for 5 years and applies whether or not the employee dies before or after the employee's required beginning date. Accordingly, if an employee dies after the required beginning date, distributions to the employee's beneficiary for calendar years after the calendar year in which the employee died must satisfy section 401(a)(9)(B)(i) as well as section 401(a)(9)(B)(ii). In order to satisfy both of these requirements, the regulations provide for the same calculation of the annual required minimum distribution that was adopted in the 2002 final regulations but with an additional requirement that a full distribution of the employee's entire interest in the plan be made upon the occurrence of certain designated events (discussed in section I.E.3.c of this Summary of Comments and Explanation of Revisions).

Several commenters requested that the final regulations eliminate the requirement for continued annual distributions if an employee dies on or after the employee's required beginning date. The commenters set forth an interpretation of section 401(a)(9)(H) under which, if an employee dies on or after the employee's required beginning date, the 10-year rule described in section 401(a)(9)(B)(ii) (as modified by section 401(a)(9)(H)(i)) applies in lieu of the "at least as rapidly" rule described in section 401(a)(9)(B)(i). Commenters also asserted that requiring continued annual distributions adds complexity to the regulations (in that the beneficiary would have to know whether the employee died before or after the employee's required beginning date to apply this rule).

The final regulations do not eliminate the requirement for continued annual distributions if an employee dies on or after the employee's required beginning date. The Treasury Department and the IRS do not think that the commenters' interpretation is consistent with a plain reading of the statute. Instead, the Treasury Department and the IRS have determined that section 401(a)(9)(B)(i) and (ii) both apply if an employee dies after the employee's required beginning date (unless the designated beneficiary is an eligible designated beneficiary taking life expectancy payments under section 401(a)(9)(B)(iii)). Read together, those provisions generally require annual distributions to continue while also requiring full distribution of the employee's interest in the plan by the end of the calendar year that includes the tenth anniversary of the date of the employee's death.

The Treasury Department and the IRS have also concluded that the overarching policy of section 401(a)(9) and the amendments made by section 401 of the SECURE Act support the interpretation in these regulations. Since it was first added to the Code, section 401(a)(9) has always included the concept of a required beginning date, under which, once required minimum distributions began to either an employee or designated beneficiary, they were required to continue until the employee's entire interest under the plan was fully distributed, and these regulations retain this requirement. There is little indication in section 401 of the SECURE Act to suggest that Congress intended to allow distributions of an employee's account to temporarily cease for up to 9 years once annual required minimum distributions have begun. Moreover, the requirement to continue annual distributions does not increase complexity (in that this

requirement merely retains the rules that were in place before the addition of section 401(a)(9)(H), but subject to the full distribution requirement described in section I.E.3.c of this Summary of Comments and Explanation of Revisions).

The proposed regulations provided a similar requirement to continue annual distributions for 10 years if an eligible designated beneficiary who was taking life expectancy payments dies or if an eligible designated beneficiary who is a minor child of the employee and who was taking life expectancy payments reaches the age of majority. Commenters raised similar concerns regarding this requirement. For the reasons described in the preceding paragraph, these regulations retain this requirement for continued annual distributions for up to 10 years after: (1) the death of an eligible designated beneficiary who was taking life expectancy payments; or (2) the attainment of the age of majority (in the case of an eligible designated beneficiary who was a minor child of the employee taking life expectancy payments).

While the final regulations do not eliminate the annual distribution requirement in cases in which annual life expectancy payments have begun, the Treasury Department and the IRS issued Notice 2022–53, 2022–45 IRB 437, Notice 2023–54, 2023–31 IRB 382, and Notice 2024–35, 2024–19 IRB 1051, in response to comments requesting transition relief for this requirement. Under those notices, if a distribution would have been required to be made to certain beneficiaries under these regulations had they applied before January 1, 2025, then: (1) a plan will not fail to be qualified for failing to make that distribution in 2021, 2022, 2023, or 2024; and (2) the taxpayer who failed to take the distribution will not be assessed an excise tax for failing to do so.¹¹ This relief applies with respect to a beneficiary who is a designated beneficiary of an employee who died in 2020, 2021, 2022, or 2023, and after the employee's required beginning date, provided that the beneficiary was not an eligible designated beneficiary who used the lifetime or life expectancy payments exception under section 401(a)(9)(B)(iii). Those notices also

provided comparable relief for the case in which an eligible designated beneficiary who was taking annual life expectancy payments died in 2020, 2021, 2022, or 2023, and that beneficiary's successor beneficiary failed to take a distribution in 2021, 2022, 2023, or 2024.

b. Determination of Applicable Denominator

If an employee died on or after the required beginning date (or the employee died before the required beginning date and the employee's eligible designated beneficiary is taking life expectancy distributions in accordance with section 401(a)(9)(B)(iii) and these regulations), then for calendar years after the calendar year in which the employee died, the applicable denominator generally is the remaining life expectancy of the designated beneficiary.¹² The beneficiary's remaining life expectancy generally is calculated using the age of the beneficiary in the year following the calendar year of the employee's death, reduced by one for each subsequent calendar year.

However, as an exception to these general rules, if the employee's spouse is the employee's sole beneficiary, then the applicable denominator during the spouse's lifetime is the spouse's life expectancy (which reflects an annual recalculation in accordance with section 401(a)(9)(D)). The final regulations clarify that in this case, for calendar years after the calendar year in which the spouse died, in determining the required minimum distribution to the spouse's beneficiary, the applicable denominator is the spouse's life expectancy calculated using the spouse's age as of the spouse's birthday in the calendar year in which the spouse died, reduced by one for each subsequent calendar year.

The final regulations reflect the amendments made to section 401(a)(9)(B)(iv) by section 327 of the SECURE 2.0 Act under which a surviving spouse who is the sole beneficiary of the employee may elect to be treated as the employee for certain purposes. However, the rules relating to this election are reserved in these final regulations and included in a notice of proposed rulemaking (REG–103529–23) in the Proposed Rules section of this issue of the **Federal Register**.

¹² In the case of an employee who died on or after the employee's required beginning date, the designated beneficiary may use the employee's remaining life expectancy if it is longer than the beneficiary's remaining life expectancy.

c. Full Distribution Required in Certain Circumstances

Under the proposed regulations, if an employee's interest is in a defined contribution plan to which section 401(a)(9)(H) applies, in order to satisfy the 5-year rule of section 401(a)(9)(B)(ii) (or, if applicable, the exception to that rule in section 401(a)(9)(B)(iii), taking into account section 401(a)(9)(E)(iii) and (H)), then the employee's entire interest in the plan must be distributed by the earliest of the following dates:

(1) The end of the tenth calendar year following the calendar year in which the employee died if the employee's designated beneficiary is not an eligible designated beneficiary;

(2) The end of the tenth calendar year following the calendar year in which the designated beneficiary died if the employee's designated beneficiary was an eligible designated beneficiary;

(3) The end of the tenth calendar year following the calendar year in which the beneficiary reaches the age of majority if the employee's designated beneficiary is the child of the employee who had not yet reached the age of majority as of the date of the employee's death; or

(4) The end of the calendar year in which the applicable denominator would have been less than or equal to one if it were determined using the beneficiary's remaining life expectancy, if the employee's designated beneficiary is an eligible designated beneficiary, and if the applicable denominator is determined using the employee's remaining life expectancy.

The final regulations generally retain these full distribution requirements (with minor language changes clarifying those requirements). However, consistent with requests made by commenters, the regulations remove the requirement for a full distribution by the end of the calendar year in which the applicable denominator would have been less than or equal to one if it were determined using the beneficiary's remaining life expectancy (which would have applied in the case of a designated beneficiary who was older than the employee). Accordingly, in the case of an eligible designated beneficiary who was born before the employee, if that beneficiary is taking distributions over the employee's remaining life expectancy, then a full distribution is not required until the calendar year in which the applicable denominator is less than or equal to one.

d. Multiple Designated Beneficiaries

The proposed regulations provided that if the employee has more than one designated beneficiary then the

¹¹ This relief does not require taxpayers to make up missed required minimum distributions nor does it permit taxpayers to extend the 10-year deadline by which a full distribution is required to be made. For example, if an employee died in 2020, then in 2025, there are six years remaining in the 10-year period without regard to whether the designated beneficiary took distributions in 2021, 2022, 2023, or 2024. In 2030, the designated beneficiary must take a distribution of the remaining account balance.

applicable denominator is determined using the life expectancy of the oldest designated beneficiary. Under the proposed regulations, whether a full distribution is required also generally is determined using the oldest of the designated beneficiaries.

The proposed regulations provided certain exceptions to these general rules for multiple designated beneficiaries. Under one exception, if the employee's beneficiary is an applicable multi-beneficiary trust, then only the disabled and chronically ill beneficiaries of the trust are taken into account in determining the oldest designated beneficiary. Under a second exception, if any of the employee's designated beneficiaries was a child of the employee who had not yet reached the age of majority as of the date of the employee's death, then, in applying the requirement to make a full distribution by the tenth year following the death of the oldest eligible designated beneficiary, only the employee's children who are designated beneficiaries and who are under the age of majority as of the employee's date of death were taken into account. Thus, in a situation involving one or more designated beneficiaries who are children of the employee under the age of majority as of the date of the employee's death and one or more older designated beneficiaries, the death of an older designated beneficiary would not result in a requirement to pay a full distribution before the oldest of those children attains the age of majority plus 10 years.¹³

One commenter raised the concern that, if two of the employee's children are eligible designated beneficiaries, the rules in the proposed regulations would result in a requirement to pay the balance of the employee's account upon the attainment of the age of majority plus 10 years by the older of those children. To address this situation, the final regulations provide that, in the case described in this paragraph, a full distribution is not required until ten years after the youngest of the employee's children who are designated beneficiaries attains the age of majority

(or, if earlier, ten years after the last of those minor children dies).

4. Treatment of Designated Roth Accounts

These final regulations provide that, in accordance with section 325 of the SECURE 2.0 Act, when determining the account balance subject to section 401(a)(9) of the Code for distribution calendar years up to and including the calendar year including the employee's date of death, amounts held by the employee in a designated Roth account (as described in section 402A(b)(2)) are not taken into account. These regulations reserve a paragraph for rules regarding how distributions from a designated Roth account are treated for purposes of section 401(a)(9) that are included in a notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the **Federal Register**.

5. Disregard of Certain Distributions

The proposed regulations updated the list of amounts of distributions and deemed distributions that are not taken into account in determining whether the required minimum distribution has been made for a calendar year. Under the proposed regulations, that list was implemented by a cross-reference to a list of amounts in proposed § 1.402(c)-2(c)(3) (relating to amounts that are not treated as eligible rollover distributions). The effect of the new cross-reference was to add the following items to the list of amounts that are disregarded for purposes of determining whether the required minimum distribution has been made from a defined contribution plan: prohibited allocations that are treated as deemed distributions pursuant to section 409(p); distributions of premiums for health and accident insurance under § 1.402(a)-1(e)(1)(i); amounts treated as distributed with respect to collectibles pursuant to section 408(m); and distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of section 414(w).

These exclusions are reflected in the final regulations with minor language changes. However, consistent with requests made by commenters, the final regulations clarify that the disregard for a distribution of premiums for health and accident insurance does not include a distribution described in section 402(l) (that is, certain distributions with respect to eligible retired public safety officers from governmental plans that are used to pay qualified health insurance premiums).

The final regulations reserve a paragraph for the treatment of a corrective distribution under section 4974(e) (that is, a distribution of a prior year's missed required minimum distribution within the statutory correction window that results in a reduction in the excise tax rate for the missed required minimum distribution) or § 54.4974-1(g)(2) (relating to the automatic waiver of the excise tax for a missed required minimum distribution for the year of an individual's death). These rules are included in a notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the **Federal Register**.

F. Section 1.401(a)(9)-6—Required Minimum Distributions From Defined Benefit Plans and Annuity Contracts

Section 1.401(a)(9)-6 provides rules for required minimum distributions from defined benefit plans and from annuity contracts (including annuity contracts that are used to pay benefits under a defined contribution plan). These rules are based on the 2004 final regulations and are updated to reflect the amendments to section 401(a)(9) of the Code made by various provisions of the SECURE 2.0 Act.

1. Rules Applicable to Defined Benefit Plans

The proposed regulations, like the 2004 final regulations, reflected the exceptions from the requirements of section 401(a)(9)(C)(ii) and (iii) provided under section 401(a)(9)(C)(iv) for governmental plans and church plans. Section 401(a)(9)(C)(iv) specifies that for purposes of these exceptions, a church plan is a plan maintained by a church for church employees, and the term *church* means any church as defined in section 3121(w)(3)(A) or any qualified church-controlled organization as defined in section 3121(w)(3)(B). The proposed regulations provided that, for this purpose, the determination of whether an employee is a church employee is made without regard to section 414(e)(3)(B).

One commenter requested that the final regulations provide that the rules under section 414(e)(3)(B) that treat certain individuals as employees of a church apply generally for the purposes of determining whether a plan is maintained for church employees under section 401(a)(9)(C)(iv). The Treasury Department and the IRS determined that such a rule would yield an inappropriate result in the case of a plan for employees of a tax-exempt organization that is associated with a church unless the organization is a qualified church-controlled

¹³ This rule works in conjunction with the rule in § 1.401(a)(9)-4(e)(2)(ii), which provides that if any of the employee's designated beneficiaries is an eligible designated beneficiary because the beneficiary is the child of the employee who had not reached the age of majority at the time of the employee's death, then the employee is treated as having an eligible designated beneficiary even if the employee has other designated beneficiaries who are not eligible designated beneficiaries. Thus, if the employee has both an eligible designated beneficiary who is a minor child of the employee and an older designated beneficiary, annual distributions may continue until the minor child reaches the age of majority plus 10 years.

organization. However, it would be appropriate to treat a plan for self-employed individuals who are licensed ministers of a church as a plan maintained by a church for employees of a church. Accordingly, these regulations provide that the determination of whether an individual is an employee of a church or qualified church-controlled organization is made in accordance with the rules of section 414(e)(3)(B) other than section 414(e)(3)(B)(ii). Thus, a licensed minister who is self-employed but is treated as an employee of a church under section 414(e)(3)(B)(i) is considered an employee of a church for purposes of section 401(a)(9)(C)(iv).

The commenter also requested that the exception apply to a multiple employer plan covering employees of a church or a qualified church-controlled organization that also covers other employees. These regulations do not adopt that rule. Instead, they provide that a plan is excepted from the actuarial increase requirement only if at least 85 percent of the individuals covered by the plan are employees of a church or a qualified church-controlled organization. Thus, if the employees in the plan who are not employees of a church or a qualified church-controlled organization constitute more than 15 percent of the covered employees, then the plan is not treated as a church plan that is exempted from the requirement under section 401(a)(9)(C)(iii) to provide an actuarial increase. However, these regulations provide that this actuarial increase requirement does not apply to benefits accrued by an individual that are attributable to service the individual performs as an employee of a church or a qualified church-controlled organization (including service performed as an employee described in section 414(e)(3)(B)(i)).

Another commenter asked whether the requirement to apply an actuarial increase applies to benefits that are not vested. These regulations provide that the actuarial increase applies to benefits that are accrued but treat benefits that are not vested as accruing when they become vested. Accordingly, benefits that are not vested are not required to be actuarially increased until they become vested.

2. Applicability of Section 401(a)(9)(H) to Annuity Contracts

One commentator noted that the language in § 1.401(a)(9)–5(a)(5) of the proposed regulations requiring that an annuity contract purchased under a defined contribution plan satisfy the requirements of § 1.401(a)(9)–5(e) (implementing the requirements of

section 401(a)(9)(E)(iii), (H)(ii) and (iii) that the employee's entire interest be distributed by the end of a specified calendar year) was not clear (in that the rule in § 1.401(a)(9)–5(e) of the proposed regulations referred to the situation in which an employee's benefit is in the form of an individual account). The final regulations clarify that, if an annuity contract is purchased under a defined contribution plan, or the annuity contract is otherwise subject to section 401(a)(9)(H), then payments under that annuity contract are not permitted to extend past the calendar year described in § 1.401(a)(9)–5(e).¹⁴

Several commenters observed that, as of the annuity starting date, a participant may have elected to receive a joint and survivor annuity benefit under an annuity contract with the spouse as survivor annuitant, and that the participant and spouse may divorce after the annuity starting date. Commenters asserted that, in such a case, there should be no change in the terms of the annuity contract on account of the divorce (as would have been required under the proposed regulations if the former spouse were no longer considered to be a spouse and were not an alternate payee under a qualified domestic relations order (QDRO) issued in accordance with section 414(p) specifying that the former spouse is to be treated as the surviving spouse for purposes of the annuity contract). Consistent with these comments, the final regulations provide that, for a designated beneficiary who is a contingent annuitant under an annuity contract, the determination of whether that beneficiary is an eligible designated beneficiary is made as of the annuity starting date. Thus, if the employee elects a joint and survivor annuity with the employee's spouse as the contingent annuitant, and they divorce after the annuity starting date, then the former spouse who is a designated beneficiary and the contingent annuitant under the contract is treated as an eligible designated beneficiary without regard to whether there is a QDRO. This approach is consistent with the requirements of rules of sections 401(a)(11) and 417, and § 1.401(a)–20, Q&A–25(b)(3), under which the spouse as of the annuity starting date continues to be entitled to a qualified joint and survivor annuity elected under the plan if the participant

and the spouse divorce after the annuity starting date.

3. Increasing Payments

Similar to the 2004 final regulations, the proposed regulations provided that all payments under a defined benefit plan or annuity contract must be nonincreasing, subject to a number of exceptions. The proposed regulations retained the exceptions in the 2004 final regulations and added further exceptions under which annuity payments under a defined benefit plan or annuity contract may increase. Under the proposed regulations, the permitted increases in annuity payments were different for defined benefit plans and annuity contracts issued by insurance carriers. In the case of an annuity contract, certain of the exceptions to the nonincreasing rule in the proposed regulations applied only if the total future expected payments under the contract exceed the total value being annuitized (that is, the value of the employee's entire interest being annuitized).

One commenter requested that each of the annuity payment increases permitted under a defined benefit plan (such as a fixed percentage increase in annuity payments that is less than 5 percent) be permitted for annuity contracts without regard to the condition that the total future expected payments exceed the total value being annuitized. Consistent with this comment, and in accordance with section 401(a)(9)(J)(i) (as added to the Code by section 201 of the SECURE 2.0 Act), these regulations provide that the permitted increases in annuity payments under a defined benefit plan generally are also available under an annuity contract and eliminate the condition on increases under an annuity contract that the total future expected payments under the contract exceed the total value being annuitized. Thus, the permitted increases in annuity payments under an annuity contract are expanded under the regulations to include increases by a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year. However, consistent with the simplification of the permitted annuity increases under section 401(a)(9)(J), an increase of 5 percent or more per year is not permitted for an annuity contract under the final regulations, even if the annuity payments could have met the condition for that increase under the 2004 regulations.

These regulations also include modifications to the permitted increases for annuity contracts to reflect the

¹⁴ One commenter asked for clarification of whether section 401(a)(9)(H) applies in the case of an annuity provided under a defined benefit plan that is attributable to a direct rollover from a defined contribution plan (as described in Rev. Rul. 2012–4, 2012–8 IRB 386). In that case, because the annuity is provided under a defined benefit plan, it is not subject to section 401(a)(9)(H).

addition of section 401(a)(9)(J)(ii) through (iv) to the Code. Thus, the following increases in annuity payments are permitted: (1) an increase as a result of the shortening of the payment period with respect to the annuity or a full or partial commutation of the future annuity payments, provided that the amount of the payment pursuant to the commutation is determined using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract;¹⁵ (2) a payment of an amount that is in the nature of a dividend, provided that the issuer of the contract uses reasonable actuarial methods and assumptions, as determined in good faith, when calculating the initial annuity payments, the issuer's experience with respect to those factors, and the amount of the dividend or similar payment; and (3) a final payment upon death that does not exceed the amount by which the total consideration paid for the contract exceeds the aggregate amount of prior distributions under the contract.

In addition, these regulations provide rules that apply if the annuity contract purchased under a defined benefit plan is merely providing the same benefits that would have been payable under the defined benefit plan if an annuity contract had not been purchased.¹⁶ In that case, the annuity contract is permitted to have the same increases in annuity payments as under the qualified defined benefit rules. This could occur, for example, if an annuity contract is purchased under a terminating defined benefit plan.

One commenter requested additional guidance as to whether section 401(a)(9) prohibits a plan from offering a period of time during which a participant or beneficiary may elect to receive a lump sum payment instead of future annuity payments. These regulations do not address this issue. As described in Notice 2019–18, 2019–13 IRB 915, the Treasury Department and the IRS will continue to study the issue of retiree lump sum windows. This study will take into account the enactment of section 342 of the SECURE 2.0 Act.

¹⁵ This commutation may be needed to comply with the requirement that, if the employee's designated beneficiary is not an eligible designated beneficiary, then payments under the annuity contract may not extend beyond the calendar year that includes the tenth anniversary of the date of the employee's death.

¹⁶ The final regulations also make a change to § 1.401(a)(9)–6(d) to broaden the applicability of the annuity rules by removing the requirement that an annuity be purchased with the employee's benefit under the plan.

4. Qualifying Longevity Annuity Contracts

In 2014, the Treasury Department and the IRS amended the regulations under section 401(a)(9) to provide special rules that apply if a deferred annuity that commences annuity payments at an advanced age is purchased with a portion of the employee's interest under a defined contribution plan. See 79 FR 37633. Under those rules, if the annuity contract satisfies certain requirements, then the contract is a QLAC and the value of that QLAC is excluded from the account balance under the plan. Those requirements include that: (1) distributions commence not later than age 85; (2) the premiums paid with respect to all contracts intended to be QLACs not exceed an inflation-adjusted \$125,000 (dollar limitation) or 25 percent of the employee's account balance (percentage limitation); and (3) the contract not make available any commutation benefit, cash surrender value, or other similar feature.

The proposed regulations retained these premium limitations for QLAC status. However, in accordance with section 202(a)(1) and (2) of the SECURE 2.0 Act, the final regulations eliminate the percentage limitation and increase the initial amount of the inflation-adjusted dollar limitation from \$125,000 to \$200,000. These higher limits apply to an annuity contract that was purchased before December 29, 2022, and that satisfied the requirements to be a QLAC as of that date. Thus, the contract need not be exchanged for another annuity contract on or after that date in order for the employee to take advantage of the higher premium limits under section 202(a)(1) and (2) of the SECURE 2.0 Act.

The proposed regulations included an exception to the requirement that the contract not include any commutation benefit, cash surrender value, or similar feature by permitting such a feature before the required beginning date. This change was proposed so that if a plan's investment options include a series of target date funds to which the relief under Notice 2014–66, 2014–46 IRB 820, applies,¹⁷ those target date funds could include QLACs among their assets. Commenters observed that some State laws prohibit the purchase of an annuity contract that does not provide for a right to rescind the contract within a specified short period of time and

¹⁷ Notice 2014–66 provides relief under section 401(a)(4) of the Code to enable plans to provide lifetime income by offering, as investment options, a series of target date funds that include deferred annuities among their assets, even if some of the target date funds within the series are available only to older participants.

requested that such a rescission right be accommodated for a QLAC. Consistent with this comment and as instructed by section 202(a)(4) of the SECURE 2.0 Act, the final regulations add an exception under which the contract may provide a right to rescind the contract within a period not exceeding 90 days after purchase.

One commenter asked how an issuer of a QLAC should report that a taxpayer utilized the option to commute a contract before the required beginning date. The final regulations do not modify the reporting required under § 1.6047–2 and do not provide for a reversal of any premiums previously paid for a contract that is commuted prior to the required beginning date or rescinded within a short period after purchase. This is because the purpose of these exceptions is to accommodate the possibility that the contract will permit the commutation or rescission and not to accommodate an employee who chooses to commute or rescind the contract and later decides to purchase another QLAC.

The proposed regulations provided that, for purposes of applying the limitation on premiums used to purchase a QLAC, if another insurance contract is exchanged for a QLAC then the fair market value of the exchanged contract will be treated as a premium paid for the QLAC. One commenter suggested that if an insurance contract is surrendered for its cash surrender value, the surrender extinguishes all benefits and other characteristics of the contract, and the cash is used to purchase a QLAC, then only the cash from the surrendered contract should be treated as a premium paid for the QLAC. These regulations include that modification to the rule.

One commenter asked for continued treatment of a former spouse as a spouse if the participant and spouse divorce after the QLAC is purchased but before the annuity starting date in the absence of a QDRO providing for this treatment. Consistent with this comment and as instructed in section 202(a)(3) of the SECURE 2.0 Act, these final regulations provide that the payment of survivor benefits to the employee's former spouse under an annuity contract will not cause the contract to fail to satisfy the requirements to be treated as a QLAC merely because the divorce between the employee and that former spouse occurred after the contract is purchased, provided that a QDRO satisfying certain requirements has been issued in connection with the divorce.

Specifically, the QDRO must: (1) provide that the former spouse is entitled to the survivor benefits under the contract; (2) provide that the former

spouse is treated as a surviving spouse for purposes of the contract; (3) not modify the treatment of the former spouse as the beneficiary under the contract who is entitled to the survivor benefits; or (4) not modify the treatment of the former spouse as the measuring life for the survivor benefits under the contract.¹⁸

Section 202(a)(3) of the SECURE 2.0 Act provides for a comparable rule in the case of a plan not subject to the QDRO rules of section 414(p) of the Code or section 206(d) of the Employee Retirement Income Security Act of 1974, Public Law 93–406, 88 Stat. 829, as amended (ERISA). These regulations reserve a paragraph for this comparable rule, which is included in a notice of proposed rulemaking (REG–103529–23) in the Proposed Rules section of this issue of the **Federal Register**.

G. Section 1.401(a)(9)–7—Rollovers and Transfers

As was the case for the proposed regulations, § 1.401(a)(9)–7 retains the rollover and transfer rules that are in the 2002 final regulations.

H. Section 1.401(a)(9)–8—Special Rules

Section 1.401(a)(9)–8 provides special rules applicable to satisfying the minimum distribution requirement.

The proposed regulations retained the rules from the 2002 final regulations under which section 401(a)(9) may be applied separately with respect to the separate interests of each of the employee's beneficiaries under a plan. The final regulations clarify that the separate application of section 401(a)(9) only applies for calendar years after the death of the employee (and thus, does not apply for the calendar year of the employee's death) and adds expenses to the list of items that must be allocated in a reasonable and consistent manner among the separate accounts.

The final regulations also restore flexibility from § 1.401(a)(9)–5 in the 2002 final regulations relating to the required minimum distribution for the calendar year of the employee's death by providing that a required minimum distribution must be paid to “any beneficiary” in the year of death rather than to “the beneficiary.” Thus, for example, if an employee who is required to take a distribution in a calendar year dies before taking that

distribution and has named more than one designated beneficiary, then any of those beneficiaries can satisfy the employee's requirement to take a distribution in that calendar year (as opposed to each of the beneficiaries being required to take a proportional share of the unpaid amount).

The proposed regulations generally retained the separate account rules applicable to beneficiaries after the death of the employee that were adopted in the 2002 final regulations, including the rule that prohibits separate application of section 401(a)(9) to separate interests in a trust. However, in light of the enactment of special rules that apply to an applicable multi-beneficiary trust described in section 401(a)(9)(H)(iv)(I) (a trust with at least one disabled or chronically ill beneficiary that provides that it is to be immediately divided upon the death of the employee into separate trusts for each beneficiary), the proposed regulations provided an exception to that prohibition that would permit separate application of section 401(a)(9) to those separate trusts.

Consistent with requests made by commenters, the final regulations expand the exception in the proposed regulations to permit separate application of section 401(a)(9) to the separate interests of beneficiaries of a see-through trust if certain requirements are met. This exception applies to the separate interests of beneficiaries of a see-through trust if the terms of that trust provide that it is to be divided immediately upon the death of the employee into separate shares for one or more trust beneficiaries (without regard to whether any of the beneficiaries are disabled or chronically ill).

For this purpose, the final regulations provide that a trust is divided immediately upon the death of the employee into separate shares for one or more trust beneficiaries only if the trust is terminated, the separate interests of the trust beneficiaries are held in separate trusts, and there is no discretion as to the extent to which the separate trusts will be entitled to receive post-death distributions attributable to the employee's interest in the plan. In addition, the final regulations clarify that a trust does not fail to be divided immediately upon the death of the employee merely because there are administrative delays between the date of the employee's death and the date on which the trust actually is divided and terminated provided that any amounts received by the trust during this period are allocated as if the trust had been divided on the date of the employee's death.

II. Section 402(c) Regulations

The proposed regulations provided updates to existing rules of § 1.402(c)–2 that reflect certain statutory amendments made to section 402(c) since the regulations were issued in 1995. Those amendments are described in the Background section of this preamble under the heading Section 402(c)—Rollovers.

A. Special Rule for Certain Distributions to Surviving Spouses

The proposed regulations provided a new rule to limit the ability of a surviving spouse to use the 5-year rule or the 10-year rule to defer distributions beyond the calendar year that annual distributions would have been required to commence and then, after that calendar year, commence annual distributions. This rule, which applied in limited circumstances, would have been used to determine, with respect to a distribution to the employee's surviving spouse to whom the 5-year rule or 10-year rule applies, the portion of that distribution that is treated as a required minimum distribution under section 401(a)(9) (and thus is not an eligible rollover distribution). This special rule, which treated a portion of a distribution made before the last year of the 5-year or 10-year period (whichever applies to the spouse) as a required minimum distribution, applied if: (1) the distribution was made in or after the calendar year the surviving spouse attains age 72; and (2) the surviving spouse rolled over some or all of the distribution to an eligible retirement plan under which the surviving spouse is not treated as the beneficiary of the employee.

Under this special rule, the portion of the distribution that is treated as a required minimum distribution was the cumulative total, over a span of years, of the hypothetical required minimum distribution for each year had the life expectancy rule applied (or, in the case of a defined benefit plan, had the annuity payment rule applied), reduced by any amounts actually distributed to the surviving spouse during that span of years. The span of years began with the first applicable year (defined as the later of the calendar year in which the surviving spouse reaches age 72 and the calendar year in which the employee would have reached age 72) and ended in the year of distribution.

In calculating the hypothetical required minimum distributions from a defined contribution plan for a calendar year under this special rule (the determination year), the proposed regulations provided that an adjusted

¹⁸ The Treasury Department and the IRS remind taxpayers that in the case of a QDRO that does not provide that either the former spouse is entitled to the survivor benefits under the contract or that the former spouse is treated as a surviving spouse for purposes of the contract, there is a risk that the spousal rights rules of sections 401(a)(11) and 417 will be violated if the employee remarries.

account balance would be used. The adjusted account balance for a calendar year was determined by reducing the account balance that normally would be used to determine the required minimum distribution for that determination year by the excess (if any) of: (1) the sum of the hypothetical required minimum distributions beginning with the first applicable year and ending with the calendar year preceding the calendar year of the determination, over (2) the distributions actually made to the surviving spouse during those calendar years.

Several commenters requested that the final regulations eliminate the special rule for distributions to surviving spouses. In support of that request, commenters point to the absence of a similar rule in the statute (both pre- and post-SECURE Act). Commenters also argued that in the case of an individual with no financial advisor, determining the amount of the hypothetical required minimum distribution that is ineligible for rollover would be difficult because it requires complex calculations based on amounts actually distributed in prior years and reduced account balances for each year past what would have been the spouse's required beginning date that are based on the current account balance. Other commenters argued that plan administrators would not have the knowledge of whether a beneficiary was rolling over a distribution to their own IRA or to a beneficiary IRA and accordingly, what portion of that distribution is an eligible rollover distribution. As a result, the plan administrator would not know the proper withholding amount for the distribution.

The final regulations do not eliminate this special rule. The Treasury Department and the IRS concluded that this rule will prevent a spouse who will be taking annual distributions from effectively delaying the commencement of those distributions for a number of years beyond the spouse's required beginning date (or, if later, the year in which the employee would have reached the applicable age). The regulations accomplish this result by requiring the spouse to catch up on distributions that would have been made had the spouse been taking annual life expectancy payments starting in the year the spouse reached the applicable age (or, if later, the year in which the employee would have reached the applicable age). While there was no similar rule in effect prior to the enactment of section 401(a)(9)(H), the potential number of years that the commencement of life expectancy

distributions may be delayed is much higher as a result of the expansion of the 5-year rule into a 10-year rule.

Although this special rule is not eliminated, to reflect that it is intended only to prevent the lengthened delay in commencement that resulted from the expansion of the 5-year rule into a 10-year rule, the final regulations provide that this rule does not apply in the case of a surviving spouse who is subject to the 5-year rule. Accordingly, this rule will apply only in the case of surviving spouse who is the beneficiary of an employee in a defined contribution plan. In addition, the final regulations provide that the hypothetical required minimum distribution is calculated assuming that the election described in § 1.401(a)(9)–5(g)(3)(i) is in effect for that spouse.¹⁹

The final regulations also provide that plan administrators may make reasonable assumptions related to distributions to the surviving spouse. Specifically, a plan administrator may assume that a surviving spouse to whom this special rule applies will roll over only the portion of the distribution that is eligible for rollover (in accordance with this rule) to an eligible retirement plan under which that spouse is not treated as the beneficiary of the employee. Thus, a plan administrator may treat that portion of the distribution as an eligible rollover distribution for purposes of sections 401(a)(31) and 3405(c). However, pursuant to § 1.402(c)–2(k)(2), a surviving spouse may roll over the entire distribution to an individual retirement plan under which that spouse is treated as the beneficiary of the employee.

B. Distributions to Non-Spousal Beneficiaries

Like the proposed regulations, these regulations provide that a designated beneficiary who is not a spouse may elect, under section 402(c)(11), to have any portion of a distribution that fits within the definition of an eligible rollover distribution transferred via a direct trustee-to-trustee transfer to an IRA established for the purpose of receiving that distribution. If that

transfer is made pursuant to section 402(c)(11), the distribution is treated as an eligible rollover distribution; the IRA is treated as an inherited account or annuity (as defined in section 408(d)(3)(C)), so that distributions from the inherited IRA are not eligible to be rolled over; and the IRA is subject to section 401(a)(9)(B) (other than section 401(a)(9)(B)(iv)). Consistent with a request from a commenter, these regulations clarify that a see-through trust may be treated as a designated beneficiary for purposes of section 402(c)(11)(A).

If the distribution is made directly to a beneficiary who is not the surviving spouse of the employee (instead of a direct trustee-to-trustee transfer to an inherited IRA), then these regulations provide that the distribution is not an eligible rollover distribution for purposes of section 402(c)(4) (that is, it cannot be rolled over). However, in response to comments requesting clarity on the issue, these regulations provide that the distribution described in the preceding sentence is generally still subject to 20-percent withholding under section 3405(c) (which sets forth the withholding requirements for eligible rollover distributions as defined in section 402(f)(2)(A)). In this case, 20-percent withholding is required because section 402(f)(2)(A) specifies that the term “eligible rollover distribution” has the same meaning as in section 402(c)(4) but also includes a distribution to a non-spouse designated beneficiary that would be treated as an eligible rollover distribution if the requirements of section 402(c)(11) were satisfied. Under this definition, the amount that would be an eligible rollover distribution if the requirements of section 402(c)(11) were satisfied excludes amounts treated as a required minimum distribution.

III. Section 403(b) Regulations

The final regulations regarding section 403(b) plans are the same as proposed, except for a few changes. The final regulations clarify that the rule under which the minimum distribution requirements of section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in § 1.408–8 refers to the provisions in § 1.408–8 that apply to an IRA that is not a Roth IRA. With respect to a designated Roth account in a section 403(b) contract, the final regulations reflect the provisions of section 325 of the SECURE 2.0 Act under which no required minimum distributions are due from a designated Roth account during the lifetime of the employee. Under the final regulations, the rules of § 1.401(a)(9)–3(a)(2) (which provides

¹⁹ Commenters requested an expansion of the numerical example of the application of the rules for determining the amount of a surviving spouse's distribution that is a required minimum distribution and therefore cannot be rolled over that were included in proposed § 1.402(c)–2(j)(3)(iii). Because of the change to the calculation of the hypothetical required minimum distributions to assume that § 1.401(a)(9)–5(g)(3)(i) is in effect for the surviving spouse, a paragraph is reserved for the example in these regulations, and the numerical example is included in a notice of proposed rulemaking (REG–103529–23) in the Proposed Rules section of this issue of the **Federal Register**.

that if an employee's entire interest under a defined contribution plan is in a designated Roth account, then the employee is treated as having died before the required beginning date), § 1.401(a)(9)–5(b)(3) (which excludes amounts held in a designated Roth account from the employee's account balance during the employee's lifetime), and § 1.401(a)(9)–5(g)(2)(iii) (treatment of distributions from designated Roth accounts, which is reserved in these regulations) apply, rather than the rules of § 1.408–8(b)(1)(ii) that apply to a Roth IRA. Lastly, the final regulations provide that the changes to § 1.403(b)–6 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025.

In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on possible changes to the required minimum distribution rules for section 403(b) plans, so that they would more closely follow the required minimum distribution rules for qualified plans (as opposed to IRAs). Commenters made various suggestions in response to this request and requested that any of those changes not be implemented in these final regulations. The Treasury Department and IRS are considering these comments, and any further changes relating to the required minimum distribution rules for section 403(b) plans will be set forth in separate guidance.

IV. Section 1.408–8—Distribution Requirements for IRAs

These regulations amend § 1.408–8 (which sets forth the required minimum distribution rules for IRAs) to implement the changes made to section 401(a)(9) under the SECURE Act and the SECURE 2.0 Act. Generally, the minimum distribution required from an individual retirement account is determined in accordance with the rules of § 1.401(a)(9)–5 and the minimum distribution required from an individual retirement annuity is determined in accordance with the rules of § 1.401(a)(9)–6 (including § 1.401(a)(9)–6(d)(2)).

Like the proposed regulations, these final regulations retain the rules from the 2002 regulations under which the required minimum distribution from one IRA is permitted to be distributed from another IRA in order to satisfy section 401(a)(9), subject to the certain restrictions involving inherited IRAs and Roth IRAs. To implement the statutory instruction under section 204(c) of the SECURE 2.0 Act, these final regulations provide that, subject to

the same limitations that apply to aggregation of IRAs generally, an individual who holds an IRA that is an annuity contract described in section 408(b) may elect to aggregate that IRA with one or more IRAs with account balances that the individual holds and apply the optional aggregation rule of § 1.401(a)(9)–5(a)(5)(iv) (described in section I.E.2 of this Summary of Comments and Explanation of Revisions) with respect to the annuity contract and the account balances under those IRAs as if the account balances were the remaining account balances following the purchase of the annuity contract with a portion of those account balances.

In addition, whether a designated beneficiary of an IRA owner is an eligible designated beneficiary and whether the beneficiaries of a trust are treated as beneficiaries of the IRA owner is generally determined in accordance with § 1.401(a)(9)–4. Consistent with requests made by commenters, these regulations provide that, in determining whether an IRA owner's designated beneficiary is disabled or chronically ill within the meaning of §§ 1.401(a)(9)–4(e)(4) and (5), respectively, or whether the beneficiaries of a trust are treated as beneficiaries of the IRA owner, the required documentation described in § 1.401(a)(9)–4(e)(7), or § 1.401(a)(9)–4(h), respectively, need not be provided to the IRA custodian, issuer, or trustee.

The proposed regulations generally incorporated the rules in Notice 2007–7, Q&As–17 and 19 (relating to the carryover of the method of determining required minimum distributions from a plan to a receiving IRA when a beneficiary is making a transfer described in section 402(c)(11)) and extended those rules to provide comparable treatment to a surviving spouse. These rules relating to the distribution method of the receiving IRA did not apply to a surviving spouse when that spouse is rolling over a distribution to the spouse's own account in a qualified plan or to the spouse's own IRA (because distributions would then be made in accordance with section 401(a)(9)(A) instead of section 401(a)(9)(B)). In that case, the proposed regulations provided that the amount of the distribution treated as a required minimum distribution, and thus not eligible to be rolled over, is determined in accordance with § 1.402(c)–2(j) (including the rule under which in certain circumstances a spouse who elects the 10-year rule is required to treat a portion of any distribution as a required minimum distribution as described in section II.A of this

Summary of Comments and Explanation of Revisions).

To coordinate with the rules in § 1.402(c)–2(j), the proposed regulations added a deadline for the election under which a surviving spouse may elect to treat a decedent's IRA as the spouse's own. Specifically, a surviving spouse must make that election by the later of (1) the end of the calendar year in which the surviving spouse reaches age 72, and (2) the end of the calendar year following the calendar year of the IRA owner's death. Under the proposed regulations, if the surviving spouse were to miss that deadline, the surviving spouse still would be permitted to roll over distributions to the spouse's own IRA but would be subject to the special rule on the catch-up of hypothetical required minimum distributions described in section II of this Summary of Comments and Explanation of Revisions.

Consistent with requests made by commenters, the final regulations eliminate the deadline described in the preceding paragraph. Instead, these regulations provide a timing rule that applies on a yearly basis and only if the special rule on the catch-up of hypothetical required minimum distributions would apply to the IRA owner's surviving spouse had a distribution been made directly to the surviving spouse in the calendar year. In addition, these regulations provide that, even if the timing rule otherwise applies, a surviving spouse may still make an election to treat an IRA as the surviving spouse's own IRA, but only if that election does not apply to amounts in the IRA that would be treated as required minimum distributions pursuant to § 1.402(c)–2(j)(4)(ii) had they been distributed in that calendar year. Thus, the election can be made only in a calendar year after the amounts treated as required minimum distributions under § 1.402(c)–2(j)(4)(ii) for that calendar year have been distributed from the IRA.

These regulations also clarify the rules for the beneficiaries of an owner of multiple IRAs that are aggregated for purposes of satisfying the required minimum distribution rules. The new rules apply in the case of an IRA owner who dies before taking the total required minimum distribution in a calendar year (that is, there is a shortfall) if the beneficiary designations with respect to all of those IRAs are not identical. In that case, each of the owner's IRAs is subject to a requirement to distribute a proportionate share of the shortfall to a beneficiary of that IRA. This allocation of the proportionate share of the shortfall to a particular IRA is made

without regard to whether some of the required minimum distribution for the calendar year was already made to the IRA owner from that IRA. Similar rules apply in the case of a beneficiary of multiple IRAs that are aggregated for purposes of satisfying the required minimum distribution rules if a required minimum distribution is due for the calendar year of the beneficiary's death to the extent that the amount was not distributed to the beneficiary.

The proposed regulations provided that amounts that are treated as distributed pursuant to section 408(e) (relating to the loss of tax exemption when an IRA owner engages in a prohibited transaction or borrows any money under an individual retirement annuity, and the deemed distribution of amounts when an individual uses a portion of an individual retirement account as security for a loan) or amounts that are deemed to be distributed with respect to collectibles pursuant to section 408(m) may not be used to satisfy the required minimum distribution for a calendar year. Several commenters argued that final regulations should not exclude amounts treated as distributed under those sections for purposes of determining whether section 401(a)(9) has been satisfied. The commenters asserted that in this case, the IRA account balance could be zero and without any assets from which to take a required minimum distribution, the IRA owner would be required to pay an excise tax.

The final regulations retain the rules from the proposed regulations with minor changes. However, the Treasury Department and the IRS remind taxpayers that, pursuant to § 1.401(a)(9)-5(a)(1), the required minimum distribution amount will never exceed the entire account balance on the date of the distribution. Accordingly, because section 408(e)(2)(B) and (3) reduces an IRA owner's account balance to zero as of the first day of the taxable year, the required minimum distribution for that calendar year would also be zero. By contrast, section 408(e)(4) and (m) does not reduce an IRA owner's account balance by the deemed distribution and accordingly, the amount of the required minimum distribution for a calendar year is not affected by the deemed distribution. In that case, allowing the deemed distribution that results from the use of the IRA to secure a loan or to purchase a collectible to be used to satisfy the requirement to take a minimum distribution would reduce the deterrent effect of the statutorily specified tax consequence of those actions.

The proposed regulations provided that the limitation on premiums paid for a QLAC purchased under an IRA is the lesser of a dollar limitation and a percentage limitation. The percentage limitation in the proposed regulations was 25-percent of the total of all IRA account balances that an individual holds as the IRA owner (other than Roth IRAs) as of December 31 of the calendar year preceding the date the premium payment is made. Several commenters requested changes that would address the issue of the percentage limitation in the case of a taxpayer who has no IRAs other than a newly established IRA that received a rollover from a qualified plan (because, in such a case, the IRA did not have an account balance as of December 31 of the prior calendar year and thus, the taxpayer would not be permitted to purchase a QLAC with the assets of the IRA until the year after the year of the rollover). However, section 202(a)(1) of the SECURE 2.0 Act eliminated the percentage limitation. Accordingly, these final regulations provide that the limitation on premiums is the dollar limitation provided for in section 202(a)(2) of the SECURE 2.0 Act (\$200,000, adjusted for inflation).

V. Section 1.457-6(d)—Minimum Required Distributions for Eligible Plans

Several comments were received asking whether the rules of section 401(a)(9)(H) apply to an eligible deferred compensation plan of a tax-exempt entity. Section 401(a)(9)(H)(vi) provides that all eligible retirement plans (as defined in section 402(c)(8)(B) (other than certain defined benefit plans)) are treated as defined contribution plans for purposes of applying the rules of section 401(a)(9)(H). This provision does not provide an exhaustive list of the plans that are treated as defined contribution plans for purposes of applying the rules of section 401(a)(9)(H). Accordingly, the final regulations clarify that, if an eligible deferred compensation plan is subject to the rules of § 1.401(a)(9)-5, then the plan must also satisfy the rules of section 401(a)(9)(H) (without regard to whether the plan is maintained by a tax-exempt entity).

VI. Section 54.4974-1—Excise Tax on Accumulations in Qualified Retirement Plans

The proposed regulations provided for an automatic waiver of the excise tax that applies in the case of an individual who had a minimum distribution requirement in a calendar year and died in that calendar year before satisfying that minimum distribution requirement.

In this situation, a beneficiary of the individual must satisfy the minimum distribution requirement by the end of that calendar year. However, if that beneficiary fails to satisfy the minimum distribution requirement in that calendar year, then the proposed regulations provided that the excise tax for that failure is automatically waived provided that the beneficiary takes the missed required minimum distribution no later than the tax filing deadline (including extensions thereof) for the taxable year of that beneficiary that begins with or within that calendar year. Consistent with requests made by commenters, the final regulations extend the deadline for the beneficiary to take the missed required minimum distribution and be eligible for the automatic waiver. The new deadline is the later of the tax filing deadline for the taxable year of the beneficiary that begins with or within the calendar year in which the individual died and the end of the following calendar year.

These regulations also reflect the amendments made to section 4974 by section 302(a) of the SECURE 2.0 Act effective for taxable years beginning after December 29, 2022. In accordance with section 302(a) of the SECURE 2.0 Act, these regulations provide that the tax imposed by section 4974(a) of the Code generally is equal to 25 percent of the amount by which the required minimum distribution exceeds the actual amount distributed during the calendar year. In addition, these regulations reflect section 4974(e) (which was added to the Code by section 302(b) of the SECURE 2.0 Act) and provide that the excise tax is reduced to 10 percent in the case of a taxpayer who, by the last day of the correction window, receives a corrective distribution from the qualified retirement plan or eligible deferred compensation plan of the amount by which the required minimum distribution exceeds the actual amount distributed during the calendar year from that plan and submits a return reflecting the excise tax. For purposes of these regulations, the correction window ends on the earliest of: (1) the date a notice of deficiency under section 6212 with respect to the tax imposed by section 4974(a) is mailed; (2) the date on which the tax imposed by section 4974(a) is assessed; or (3) the last day of the second taxable year that begins after the end of the taxable year in which the tax under section 4974(a) is imposed.

In addition, these final regulations provide that if the minimum distribution was required to be paid from a particular qualified retirement plan or eligible deferred compensation

plan, then the corrective distribution must be made from that particular qualified retirement plan or eligible deferred compensation plan. However, if the requirement to take a minimum distribution could have been satisfied by a payment from any one of a number of qualified retirement plans (such as an individual retirement account under section 408(a) or a section 403(b) plan), then the corrective distribution may be made from any one of those qualified retirement plans.

Applicability Dates

Amended §§ 1.401(a)(9)–1 through 1.401(a)(9)–9, 1.403(b)–6(e), and 1.408–8 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. Amended § 1.402(c)–2 applies for distributions made on or after January 1, 2025. Amended § 54.4974–1 applies for taxable years beginning on or after January 1, 2025. For earlier years, taxpayers must apply the preexisting final regulations, but taking into account a reasonable, good faith interpretation of the amendments made by sections 114 and 401 of the SECURE Act. Compliance with the proposed regulations will satisfy that requirement. For the 2023 and 2024 distribution calendar years, taxpayers must also take into account a reasonable, good faith interpretation of the amendments made by sections 107, 201, 202, 204, and 337 of the SECURE 2.0 Act.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

These regulations include third-party disclosures and recordkeeping requirements, in §§ 1.401(a)(9)–3(b)(4)(iii) and (c)(5)(iii), 1.401(a)(9)–4(e)(7), and 1.401(a)(9)–4(h), that are required to determine whether a beneficiary is an eligible designated beneficiary entitled to distributions over the beneficiary's life expectancy and to record the names of the taxpayer's beneficiaries under the trust. These collections of information would generally be used by the IRS for tax compliance purposes and by plan administrators to facilitate compliance with the required minimum distribution requirements under section 401(a)(9). The likely respondents to these collections are beneficiaries of employees participating in retirement plans (and, in limited circumstances, the participating employees).

Sections 1.401(a)(9)–3(b)(4)(iii) and (c)(5)(iii) allow a plan to permit an eligible designated beneficiary in that plan to elect between the 5-year rule (or 10-year rule, if applicable) and life expectancy rule in the case of an employee who dies before the employee's required beginning date. This election only arises in the context of a plan (and not an IRA) because the plan administrator will need that information to satisfy the required minimum distribution requirements with respect to the beneficiary. An IRA custodian has no obligation to ensure compliance with the required minimum distribution rules, so there is no need for a beneficiary of an IRA to file any type of election with the custodian. Although the plan may provide that the employee may make this election, it is expected that more commonly, the employee's beneficiary will be the individual making the election. Moreover, the plan will have specified a default method of payment to the beneficiary in the absence of an election (so that the beneficiaries will not be required to make an election).

Section 1.401(a)(9)–4(e)(7) requires a beneficiary to provide documentation to a plan administrator showing that the beneficiary was disabled or chronically ill as of the date of the employee's death. Typically, this requirement will be satisfied by having a licensed health care practitioner certify that the beneficiary was disabled or chronically ill in a statement that is provided to the plan administrator.

Section 1.401(a)(9)–4(h) permits an employee who wants to name a trust as a beneficiary to treat the underlying beneficiaries of the trust as designated beneficiaries of the employee's benefit under a retirement plan if the employee (or the trustee of the trust) either: (1)

provides a copy of the trust instrument to the plan administrator or (2) provides a list of all the beneficiaries of the trust, certifies that, to the best of the employee's (or trustee's) knowledge, this list is correct and complete, and agrees to provide a copy of the trust instrument upon demand. If the trust instrument is amended at any time in the future, the employee (or trustee) must, within a reasonable time, provide a copy of each such amendment, or provide corrected certifications to the extent that the amendment changes the information previously certified. This requirement must generally be satisfied no later than October 31 of the calendar year following the calendar year of the employee's death.

The collections of information contained in this notice of final rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act. The Treasury Department and the IRS solicited public comments during the proposed rulemaking at 87 FR 10504 on February 24, 2022. During the public comment period, the Treasury Department and the IRS did not receive any comments on the collections of information. Several commenters requested that plan administrators be permitted to rely on self-certifications from a designated beneficiary (or, in the case of a see-through trust, the trustee of that trust) that the beneficiary is disabled or chronically ill within the meaning of § 1.401(a)(9)–4(d). These final regulations do not adopt that rule for the reasons described in section I.D.1.c of the Summary of Comments and Explanation of Revisions. Commenters also requested that final regulations allow for a certification from the trustee of the trust as to the beneficiaries who are to be treated as beneficiaries of the employee for purposes of section 401(a)(9). These final regulations do not adopt that rule for the reasons described in section I.D.2.b of the Summary of Comments and Explanation of Revisions.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. These regulations affect certain plan administrators and participants, owners of individual retirement accounts and annuities; employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts; and beneficiaries of those plans, contracts,

accounts, and annuities. Because of the broad scope of the regulations, the rule may affect a substantial number of small entities. However, even if a substantial number of small entities are affected, the economic impact of these regulations will not be significant. These final regulations primarily update the existing regulations to implement the statutory changes made since the issuance of the prior regulations, while clarifying certain technical issues that have arisen in applying those prior regulations. These regulations do not impose new compliance burdens and are not expected to result in economically meaningful changes in behavior relative to the 2002 or 2004 final regulations. The election described in § 1.401(a)(9)–3(b)(4)(iii) and (c)(5)(iii) is expected to be an unusual occurrence for small entities because few individuals with benefits in retirement plans maintained by small entities are likely to make these elections. In the case of § 1.401(a)(9)–4(e)(7), when determining whether a designated beneficiary is disabled or chronically ill, the reporting burden is primarily on the designated beneficiary rather than the plan sponsor. In the case of § 1.401(a)(9)–4(h), when determining required minimum distributions in cases in which a plan participant wishes to designate a trust as beneficiary of the participant's benefit, the reporting burden is primarily on the plan participant (or the trustee of the trust named as beneficiary) to supply information rather than on the entity maintaining the retirement plan. In addition, the number of participants per plan to whom the burden applies is likely to be small. In § 1.403(b)–3(e)(6)(ii), the recordkeeping burden with respect to section 403(b) contracts under which the pre-1987 account balance must be maintained only applies to issuers and custodians of those contracts, which generally are not small entities.

Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration (Office of Advocacy) for comment on their impact on small business. The Office of Advocacy commented on the proposed regulations²⁰ and recommended that

the IRS publish for public comment either a supplemental regulatory flexibility act assessment with a valid factual basis in support of a certification or an initial regulatory flexibility analysis. The Office of Advocacy argued that the certification in the proposed regulations did not adequately address the economic impact of the proposed regulations on financial planners for the costs to learn those rules, update distribution plans, and advise clients. The Treasury Department and the IRS disagree because the certification is based on the direct economic impact of the proposed regulations on the regulated community rather than their advisors. Any economic impact on a financial planner is not a direct impact. The regulations do not address the conduct of, or requirements related to, financial planners.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. The regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The regulations would not have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

VI. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs of

the Summary of Comments and Explanation of Revisions portion of this preamble. For the reasons described in that section, these regulations retain that rule.

the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*) (“CRA”).

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Drafting Information

The principal authors of these regulations are Brandon M. Ford and Linda S.F. Marshall, of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 54

Excise taxes, Health care, Pensions, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 1, 31, and 54 as follows:

PART 1—INCOME TAX

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** For each section set forth below, revise the section by removing the text that appears in the column labeled “Remove” and replacing it with the text that appears in the column labeled “Insert”:

²⁰ The comment included a recommendation to eliminate the requirement for annual distribution in certain circumstances as described in section I.E.3.a

Regulation section	Remove	Insert
§ 1.72(p)–1, Q&A–12	“§ 1.402(c)–2, Q&A–4(d)”	“§ 1.402(c)–2(c)(3)”.
§ 1.72(p)–1, Q&A–13(a)(2)	“§ 1.402(c)–2, Q&A–9(b)”	“§ 1.402(c)–2(g)(3)(i)”.
§ 1.72(p)–1, Q&A–13(b)	“§ 1.402(c)–2, Q&A–9(c), Example 6”	“Example 6 in § 1.402(c)–2(g)(5)(vi)”.
§ 1.401(a)(31)–1, Q&A–1(a)	“§ 1.402(c)–2, Q&A–3 through Q&A–10 and Q&A–14”.	“§ 1.402(c)–2”.
§ 1.401(a)(31)–1, Q&A–1(a)	“§ 1.402(c)–2, Q&A–2”	“§ 1.402(c)–2(a)(1)(iii)”.
§ 1.401(a)(31)–1, Q&A–1(a)	“§ 1.402(c)–2, Q&A–3 through Q&A–10 and Q&A–14”.	“§ 1.402(c)–2”.
§ 1.401(a)(31)–1, Q&A–14(b)(1)	“§ 1.402–2(c)–2, Q&A–1”	“§ 1.402(c)–2(a)”.
§ 1.401(a)(31)–1, Q&A–14(b)(1)	“§ 1.402(c)–2, Q&A–9”	“§ 1.402(c)–2(g)”.
§ 1.401(a)(31)–1, Q&A–14(b)(2)	“§ 1.402(c)–2, Q&A–1”	“§ 1.402(c)–2(a)”.
§ 1.401(a)(31)–1, Q&A–16	“§ 1.402(c)–2(b), Q&A–9”	“§ 1.402(c)–2(g)”.
§ 1.401(a)(31)–1, Q&A–17	“§ 1.402(c)–2, Q&A–10”	“§ 1.402(c)–2(h)”.
§ 1.401(a)(31)–1, Q&A–17	“Section 1.402(c)–2, Q&A–10”	“Section 1.402(c)–2(h)”.
§ 1.401(a)(31)–1, Q&A–18(a)	“§ 1.402(c)–2, Q&A–15”	“§ 1.402(c)–2(k)(2)”.
§ 1.401(k)–2(b)(2)(vi)	“§ 1.402(c)–2, A–4”	“§ 1.402(c)–2(c)(3)”.
§ 1.401(k)–2(b)(2)(vii)(C)	“§ 1.401(a)(9)–5, A–9(b)”	“§§ 1.401(a)(9)–5(g)(2)(ii) and 1.402(c)–2(c)(3)”.
§ 1.401(k)–4(e)(1)	“§ 1.402(c)–2, Q&A–1(a)”	“§ 1.402(c)–2(a)”.
§ 1.401(m)–2(b)(2)(vi)(A)	“§ 1.402(c)–2, A–4”	“§ 1.402(c)–2(c)(3)”.
§ 1.401(m)–2(b)(3)(iii)	“§ 1.401(a)(9)–5, A–9(b)”	“§§ 1.401(a)(9)–5(g)(2)(ii) and 1.402(c)–2(c)(3)”.
§ 1.402(a)–1(a)(2)	“1.401(a)(9)–6, Q&A–4”	“1.401(a)(9)–6(d)”.
§ 1.402A–1, Q&A–11	“A–4 of § 1.402(c)–2”	“§ 1.402(c)–2(c)(3)”.
§ 1.402A–1, Q&A–14	“§ 1.402(c)–2, A–10(a)”	“§ 1.402(c)–2(h)”.
§ 1.408A–4, Q&A 14(b)(3)	“§ 1.401(a)(9)–6, Q&A–12”	“§ 1.401(a)(9)–6(m)(2)”.
§ 1.408A–4, Q&A 14(b)(3)(iii)	“§ 1.401(a)(9)–6, Q&A–12(c)(1) and (c)(2)”	“§ 1.401(a)(9)–6(m)(3)”.
§ 1.408A–6, Q&A–14(d)	“A–3 of § 1.401(a)(9)–5”	“§ 1.401(a)(9)–5(b)(4)”.
§ 1.408A–6, Q&A–14(d)	“A–12 of § 1.408–8”	“§ 1.408–8(h)”.
§ 1.408A–6, Q&A–14(d)	“A–17 of § 1.401(a)(9)–6”	“§ 1.401(a)(9)–6(q)”.
§ 1.409A–2(b)(2)(ii)(B)(5)	“§ 1.401(a)(9)–6, Q&A–14(a)(1) or (2)”	“§ 1.401(a)(9)–6(o)(1)(i) or (ii)”.
§ 1.411(b)(5)–1(d)(4)(iii)	“§ 1.401(a)(9)–6, A–14(b)”	“§ 1.401(a)(9)–6(o)(2)”.
§ 1.411(b)(5)–1(d)(4)(iii)	“§ 1.401(a)(9)–6, A–14(b)(2)”	“§ 1.401(a)(9)–6(o)(2)(ii)”.
§ 1.6047–2(a)(1)	“A–17 of § 1.401(a)(9)–6”	“§ 1.401(a)(9)–6(q)”.
§ 1.6047–2(b)(1)	“A–17(d)(2)(ii) of § 1.401(a)(9)–6”	“§ 1.401(a)(9)–6(q)(4)(ii)(B)”.

■ **Par. 3.** Revise and republish

§§ 1.401(a)(9)–0 through 1.401(a)(9)–8 to read as follows:

§ 1.401(a)(9)–0 Required minimum distributions; table of contents.

This table of contents lists the regulations relating to required minimum distributions under section 401(a)(9) of the Internal Revenue Code as follows:

§ 1.401(a)(9)–1 Minimum distribution requirement in general.

(a) Plans subject to minimum distribution requirement.

- (1) In general.
- (2) Participant in multiple plans.
- (3) Governmental plans.

(b) Statutory effective date.

- (1) In general.
- (2) Effective date for section 401(a)(9)(H).
- (3) Examples.

(c) Required and optional plan provisions.

- (1) Required provisions.
- (2) Optional provisions.
- (d) Regulatory applicability date.

§ 1.401(a)(9)–2 Distributions commencing during an employee's lifetime.

(a) Distributions commencing during an employee's lifetime.

- (1) In general.
- (2) Amount required to be distributed for a calendar year.

(3) Distributions commencing before required beginning date.

(4) Distributions after death.

(b) Determination of required beginning date.

- (1) General rule.
- (2) Definition of applicable age.
- (3) Required beginning date for 5-percent owner.
- (4) Uniform required beginning date.
- (5) Plans maintained by more than one employer.

§ 1.401(a)(9)–3 Death before required beginning date.

(a) Distribution requirements.

- (1) In general.
- (2) Special rule for designated Roth accounts.
- (b) Distribution requirements in the case of a defined benefit plan.

- (1) In general.
- (2) 5-year rule.
- (3) Annuity payments.
- (4) Determination of which rule applies.
- (c) Distributions in the case of a defined contribution plan.

- (1) In general.
- (2) 5-year rule.
- (3) 10-year rule.
- (4) Life expectancy payments.
- (5) Determination of which rule applies.
- (d) Permitted delay for surviving spouse beneficiaries.

(e) Distributions that commence after surviving spouse's death.

- (1) In general.

(2) Remarriage of surviving spouse.

(3) When distributions are treated as having begun to surviving spouse.

§ 1.401(a)(9)–4 Determination of the designated beneficiary.

(a) Beneficiary designated under the plan.

(1) In general.

(2) Entitlement to employee's interest in the plan.

(3) Specificity of beneficiary designation.

(4) Affirmative and default elections of designated beneficiary.

(b) Designated beneficiary must be an individual.

(c) Rules for determining beneficiaries.

(1) Time period for determining the beneficiary.

(2) Circumstances under which a beneficiary is disregarded as a beneficiary of the employee.

(3) Examples.

(d) Application of beneficiary designation rules to surviving spouse.

(e) Eligible designated beneficiaries.

(1) In general.

(2) Multiple designated beneficiaries.

(3) Determination of age of majority.

(4) Disabled individual.

(5) Chronically ill individual.

(6) Individual not more than 10 years younger than the employee.

(7) Documentation requirements for disabled or chronically ill individuals.

(8) Applicability of definition of eligible designated beneficiary to beneficiary of surviving spouse.

(9) Examples.
 (f) Special rules for trusts.
 (1) Look-through of trust to determine designated beneficiaries.
 (2) Trust requirements.
 (3) Trust beneficiaries treated as beneficiaries of the employee.
 (4) Multiple trust arrangements.
 (5) Identifiability of trust beneficiaries.
 (6) Examples.
 (g) Applicable multi-beneficiary trust.
 (1) Certain see-through trusts with disabled or chronically ill beneficiaries.
 (2) Termination of interest in trust.
 (3) Special definition of designated beneficiary.
 (h) Documentation requirements for trusts.
 (1) General rule.
 (2) Required minimum distributions while employee is still alive.
 (3) Required minimum distributions after death.
 (4) Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments.

§ 1.401(a)(9)-5 Required minimum distributions from defined contribution plans.
 (a) General rules.
 (1) In general.
 (2) Distribution calendar year.
 (3) Time for distributions.
 (4) Minimum distribution incidental benefit requirement.
 (5) Annuity contracts.
 (6) Impact of additional distributions in prior years.
 (b) Determination of account balance.
 (1) General rule.
 (2) Adjustment for subsequent allocations and distributions.
 (3) Adjustment for designated Roth accounts.
 (4) Exclusion for QLAC.
 (5) Treatment of rollovers.
 (c) Determination of applicable denominator during employee's lifetime.
 (1) General rule.
 (2) Spouse is sole beneficiary.
 (d) Applicable denominator after employee's death.
 (1) Death on or after the employee's required beginning date.
 (2) Death before an employee's required beginning date.
 (3) Remaining life expectancy.
 (e) Distribution of employee's entire interest required.
 (1) In general.
 (2) 10-year limit for designated beneficiary who is not an eligible designated beneficiary.
 (3) 10-year limit following death of eligible designated beneficiary.
 (4) 10-year limit after minor child of the employee reaches age of majority.
 (f) Rules for multiple designated beneficiaries.
 (1) Determination of applicable denominator.
 (2) Determination of when entire interest is required to be distributed.
 (g) Special rules.
 (1) Treatment of nonvested amounts.
 (2) Distributions taken into account.
 (3) Surviving spouse election under section 401(a)(9)(B)(iv).

§ 1.401(a)(9)-6 Required minimum distributions for defined benefit plans and annuity contracts.
 (a) General rules.
 (1) In general.
 (2) Definition of life annuity.
 (3) Annuity commencement.
 (4) Single-sum distributions.
 (5) Death benefits.
 (6) Separate treatment of separate identifiable components.
 (7) Additional guidance.
 (b) Application of incidental benefit requirement.
 (1) Life annuity for employee.
 (2) Joint and survivor annuity.
 (3) Period certain and annuity features.
 (4) Deemed satisfaction of incidental benefit rule.
 (c) Period certain annuity.
 (1) Distributions commencing during the employee's life.
 (2) Distributions commencing after the employee's death.
 (d) Use of annuity contract.
 (1) In general.
 (2) Applicability of section 401(a)(9)(H).
 (e) Treatment of additional accruals.
 (1) General rule.
 (2) Administrative delay.
 (f) Treatment of nonvested benefits.
 (g) Requirement for actuarial increase.
 (1) General rule.
 (2) Nonapplication to 5-percent owners.
 (3) Nonapplication to governmental plans.
 (4) Nonapplication to church plans and church employees.
 (h) Amount of actuarial increase.
 (1) In general.
 (2) Actuarial equivalence basis.
 (3) Coordination with section 411 actuarial increase.
 (i) [Reserved]
 (j) Distributions restricted pursuant to section 436.
 (1) General rule.
 (2) Payments restricted under section 436(d)(3).
 (3) Payments restricted under section 436(d)(1) or (2).
 (k) Treatment of early commencement.
 (1) General rule.
 (2) Joint and survivor annuity, non-spouse beneficiary.
 (3) Limitation on period certain.
 (l) Early commencement for surviving spouse.
 (m) Determination of entire interest under annuity contract.
 (1) General rule.
 (2) Entire interest.
 (3) Exclusions.
 (4) Examples.
 (n) Change in annuity payment period.
 (1) In general.
 (2) Reannuitization.
 (3) Conditions.
 (4) Examples.
 (o) Increase in annuity payments.
 (1) General rules.
 (2) Eligible cost of living index.
 (3) Additional permitted increases for annuity contracts purchased from insurance companies.
 (4) Additional permitted increases for annuity payments from a qualified trust.

(5) Actuarial gain defined.
 (6) Examples.
 (p) Payments to children.
 (1) In general.
 (2) Age of majority.
 (q) Qualifying longevity annuity contract.
 (1) Definition of qualifying longevity annuity contract.
 (2) Limitation on premiums.
 (3) Payments after death of the employee.
 (4) Rules of application.

§ 1.401(a)(9)-7 Rollovers and transfers.
 (a) Treatment of rollover from distributing plan.
 (b) Treatment of rollover by receiving plan.
 (c) Treatment of transfer under transferor plan.
 (1) Generally not treated as distribution.
 (2) Account balance decreased after transfer.
 (d) Treatment of transfer under transferee plan.
 (e) Treatment of spinoff or merger.

§ 1.401(a)(9)-8 Special rules.
 (a) Use of separate accounts.
 (1) Separate application of section 401(a)(9) for each beneficiary.
 (2) Separate accounting requirements.
 (b) Application of consent requirements.
 (c) Definition of spouse.
 (d) Treatment of QDROs.
 (1) Continued treatment of spouse.
 (2) Separate accounts.
 (3) Other situations.
 (e) Application of section 401(a)(9) pending determination of whether a domestic relations order is a QDRO is being made.
 (f) Application of section 401(a)(9) when insurer is in State delinquency proceedings.
 (g) In-service distributions required to satisfy section 401(a)(9).
 (h) TEFRA section 242(b) elections.
 (1) In general.
 (2) Application of section 242(b) election after transfer.
 (3) Application of section 242(b) election after rollover.
 (4) Revocation of section 242(b) election.

§ 1.401(a)(9)-9 Life expectancy and Uniform Lifetime tables.
 (a) In general.
 (b) Single Life Table.
 (c) Uniform Lifetime Table.
 (d) Joint and Last Survivor Table.
 (e) Mortality rates.
 (f) Applicability dates.
 (1) In general.
 (2) Application to life expectancies that may not be recalculated.

§ 1.401(a)(9)-1 Minimum distribution requirement in general.

(a) *Plans subject to minimum distribution requirement—(1) In general.*
 Under section 401(a)(9), all stock bonus, pension, and profit-sharing plans qualified under section 401(a) and annuity contracts described in section 403(a) are subject to required minimum distribution rules. See this section and §§ 1.401(a)(9)-2 through 1.401(a)(9)-9 for the distribution rules applicable to these plans. Under section 403(b)(10), annuity contracts and custodial

accounts described in section 403(b) are subject to required minimum distribution rules. See § 1.403(b)–6(e) for the distribution rules applicable to these annuity contracts and custodial accounts. Under section 408(a)(6) and 408(b)(3), individual retirement accounts and individual retirements annuities (collectively, IRAs) are subject to required minimum distribution rules. See § 1.408–8 for the minimum distribution rules applicable to IRAs and § 1.408A–6 for the minimum distribution rules applicable to Roth IRAs under section 408A. Under section 457(d)(2), eligible deferred compensation plans described in section 457(b) for employees of tax-exempt organizations or employees of State and local governments are subject to required minimum distribution rules. See § 1.457–6(d) for the minimum distribution rules applicable to those eligible deferred compensation plans.

(2) *Participant in multiple plans.* If an employee is a participant in more than one plan, the plans in which the employee participates are not permitted to be aggregated for purposes of testing whether the distribution requirements of section 401(a)(9) are met. Thus, the distribution of the benefit of the employee under each plan must separately meet the requirements of section 401(a)(9). For this purpose, a plan described in section 414(k) is treated as two separate plans, a defined contribution plan to the extent benefits are based on an individual account and a defined benefit plan with respect to the remaining benefits.

(3) *Governmental plans.* A governmental plan (within the meaning of section 414(d)), or an eligible governmental plan described in § 1.457–2(f), is treated as having complied with section 401(a)(9) if the plan complies with a reasonable, good faith interpretation of section 401(a)(9). Thus, the terms of a governmental plan that reflect a reasonable, good faith interpretation of section 401(a)(9) do not have to provide that distributions will be made in accordance with this section and §§ 1.401(a)(9)–2 through 1.401(a)(9)–9. Similarly, a governmental plan may apply the rules of section 401(a)(9)(F) using the rules of § 1.401(a)(9)–6, Q&A–15 (as it appeared in the April 1, 2023, edition of 26 CFR part 1).

(b) *Statutory effective date*—(1) *In general.* The distribution rules of section 401(a)(9) generally apply to all account balances and benefits in existence on or after January 1, 1985.

(2) *Effective date for section 401(a)(9)(H)*—(i) *General effective date.* Except as otherwise provided in this

paragraph (b)(2), section 401(a)(9)(H) applies with respect to employees who die on or after January 1, 2020. However, in the case of a governmental plan (as defined in section 414(d)), section 401(a)(9)(H) applies with respect to employees who die on or after January 1, 2022.

(ii) *Delayed effective date for collectively bargained plans*—(A) *General rule.* In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before December 20, 2019 (the date of enactment of the Further Consolidated Appropriations Act, 2020, Public Law 116–94, 133 Stat. 2534 (2019)), section 401(a)(9)(H) generally applies with respect to employees who die on or after January 1, 2022.

(B) *Earlier effective date if agreements terminate.* Notwithstanding paragraph (b)(2)(ii)(A) of this section, section 401(a)(9)(H) applies to a plan maintained pursuant to one or more collective bargaining agreements with respect to employees who die in 2020 or 2021 if—

(1) The year in which the employee dies begins after the date on which the last of the collective bargaining agreements described in paragraph (b)(2)(ii)(A) of this section terminates (determined without regard to any extension thereof to which the parties agreed on or after December 20, 2019), and

(2) Section 401(a)(9)(H) would apply with respect to the employee under the rules of paragraph (b)(2)(i) of this section.

(C) *Rules of application.* For purposes of this paragraph (b)(2)(ii)—

(1) A plan is treated as maintained pursuant to one or more collective bargaining agreements only if the plan constitutes a collectively bargained plan under the rules of § 1.436–1(a)(5)(ii)(B), and

(2) Any plan amendment made pursuant to a collective bargaining agreement that amends the plan solely to conform to the requirements of section 401(a)(9)(H) is not treated as a termination of the collective bargaining agreement.

(iii) *Applicability upon death of designated beneficiary*—(A) *In general.* Except as otherwise provided in this paragraph (b)(2)(iii), if an employee who died before the effective date described in paragraph (b)(2)(i) or (ii) of this section (whichever applies to the plan) has only one designated beneficiary and that beneficiary dies on or after that effective date, then, upon the death of the designated beneficiary, section

401(a)(9)(H) applies with respect to any beneficiary of the employee's designated beneficiary. Section 401(b)(5) of Division O of the Further Consolidated Appropriations Act, 2020 (known as the SECURE Act) provides that, if an employee dies before the effective date, then a designated beneficiary of an employee is treated as an eligible designated beneficiary. Accordingly, once the rules of section 401(a)(9)(H) apply with respect to the employee's designated beneficiary, the rules of section 401(a)(9)(H)(iii) (requiring full distribution of the employee's interest within 10 years after the death of an eligible designated beneficiary) apply upon the designated beneficiary's death.

(B) *Employee with multiple designated beneficiaries.* If an employee described in paragraph (b)(2)(iii)(A) of this section has more than one designated beneficiary, then whether section 401(a)(9)(H) applies is determined based on the date of death of the oldest of the employee's designated beneficiaries. Thus, section 401(a)(9)(H) will apply upon the death of the oldest of the employee's designated beneficiaries if that designated beneficiary is still alive on or after the effective date of section 401(a)(9)(H) for the plan as determined under the rules of paragraph (b)(2)(i) or (ii) of this section. However, see § 1.401(a)(9)–8(a) for rules related to the separate application of section 401(a)(9) with respect to multiple beneficiaries if certain requirements are met.

(C) *Surviving spouse of the employee dies before employee's required beginning date.* If an employee described in paragraph (b)(2)(iii)(A) of this section dies before the employee's required beginning date and the employee's surviving spouse is waiting to begin distributions until the year for which the employee would have been required to begin distributions pursuant to section 401(a)(9)(B)(iv)(II), then, in applying the rules of this paragraph (b)(2)(iii), the surviving spouse is treated as the employee. Thus, for example, if an employee with a required beginning date of April 1, 2025, names the employee's surviving spouse as the sole beneficiary of the employee's interest in the plan, both the employee and the employee's surviving spouse die before the effective date of section 401(a)(9)(H) for the plan, and that spouse's designated beneficiary dies on or after that effective date, then section 401(a)(9)(H) applies with respect to the surviving spouse's designated beneficiary upon the death of that designated beneficiary (so that full distribution of the employee's interest must be made no later than the end of

the calendar year that includes the tenth anniversary of the date of that designated beneficiary's death).

(iv) *Qualified annuity exception*—(A) *In general.* Section 401(a)(9)(H) does not apply to a commercial annuity (as defined in section 3405(e)(6))—

(1) That is a binding annuity contract in effect as of December 20, 2019;

(2) Under which payments satisfy the requirements of §§ 1.401(a)(9)–1 through 1.401(a)(9)–9 (as those sections appeared in the April 1, 2019, edition of 26 CFR part 1); and

(3) That satisfies the irrevocability requirements of paragraph (b)(2)(iv)(B) of this section.

(B) *Irrevocability requirements applicable to annuity contract.* A contract satisfies the requirements of this paragraph (b)(2)(iv)(B) if the employee (or, if the employee has died, the designated beneficiary) has made an irrevocable election before December 20, 2019, as to the method and amount of annuity payments to the employee and any designated beneficiary.

(3) *Examples.* The following examples illustrate the applicability date rules of this paragraph (b).

(i) *Example 1.* Employer M maintains a defined contribution plan, Plan X. Employee A died in 2017, at the age of 68, and designated A's 40-year-old child, B, who was not disabled or chronically ill at the time of A's death, as the sole beneficiary of A's interest in Plan X. Pursuant to a plan provision in Plan X, B elected to take distributions over B's life expectancy under section 401(a)(9)(B)(iii). B dies in 2024, after the effective date of section 401(a)(9)(H). Because section 401(b)(5) of the SECURE Act treats B as an eligible designated beneficiary, the rules of section 401(a)(9)(H)(iii) apply to B's beneficiaries. Therefore, A's remaining interest in Plan X must be distributed by the end of 2034 (the calendar year that includes the tenth anniversary of B's death).

(ii) *Example 2.* The facts are the same as in paragraph (b)(3)(i) of this section (*Example 1*), except that B died in 2019. Because A's designated beneficiary died before the effective date of section 401 of the SECURE Act, the rules of section 401(a)(9)(H) do not apply to B's beneficiaries.

(iii) *Example 3.* The facts are the same as in paragraph (b)(3)(i) of this section (*Example 1*) except that, pursuant to a provision in Plan X, B elected the 5-year rule under section 401(a)(9)(B)(ii). Accordingly, A's entire interest is required to be distributed by the end of 2022. Because A died before January 1, 2020, section 401(a)(9)(H) does not apply with respect to B. Therefore,

section 401(a)(9)(H)(i)(I) does not extend the 5-year period under B's election to a 10-year period. Although B's election required A's entire interest to be distributed by the end of 2022, the enactment of section 401(a)(9)(I)(iii)(II) (permitting disregard of 2020 when the 5-year period applies) permits distribution of A's entire interest in the plan to be delayed until the end of 2023.

(iv) *Example 4.* The facts are the same as in paragraph (b)(3)(i) of this section (*Example 1*), except that A designates a see-through trust that satisfies the requirements of § 1.401(a)(9)–4(f)(2) as the sole beneficiary of A's interest in Plan X. All of the trust beneficiaries are alive as of January 1, 2020. The oldest of the trust beneficiaries, C, died in 2022. Because section 401(b)(5) of the SECURE Act treats C as an eligible designated beneficiary, the rules of section 401(a)(9)(H)(iii) apply to the other trust beneficiaries. Thus, unless the rules of § 1.401(a)(9)–5(f)(2)(ii)(B) or (iii) apply, A's remaining interest in Plan X must be distributed by the end of 2032 (the calendar year that includes the tenth anniversary of C's death).

(v) *Example 5.* The facts are the same as in paragraph (b)(3)(iv) of this section (*Example 4*), except that C died in 2019. Because the oldest designated beneficiary died before January 1, 2020, the rules of section 401(a)(9)(H) do not apply to any of the other trust beneficiaries.

(vi) *Example 6.* The facts are the same as in paragraph (b)(3)(i) of this section (*Example 1*), except that B elected to purchase an annuity that pays over B's lifetime with a 15-year certain period starting in the calendar year following the calendar year of A's death. Because B died after the effective date of section 401(a)(9)(H), the rules of section 401(a)(9)(H)(iii) apply, and accordingly, the annuity may not provide distributions any later than the end of 2034.

(c) *Required and optional plan provisions*—(1) *Required provisions.* In order to satisfy section 401(a)(9), a plan must include the provisions described in this paragraph (c)(1) reflecting section 401(a)(9). First, a plan generally must set forth the statutory rules of section 401(a)(9), including the incidental death benefit requirement in section 401(a)(9)(G). Second, a plan must provide that distributions will be made in accordance with this section and §§ 1.401(a)(9)–2 through 1.401(a)(9)–9. A plan document also must provide that the provisions reflecting section 401(a)(9) override any distribution options in the plan that are inconsistent with section 401(a)(9). A plan also must include any other provisions reflecting

section 401(a)(9) that are prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(2) *Optional provisions.* A plan may also include optional provisions governing plan distributions that do not conflict with section 401(a)(9). For example, a defined benefit plan may include a provision described in § 1.401(a)(9)–3(b)(4)(ii) (requiring that the 5-year rule apply to an employee who has a designated beneficiary). Similarly, a defined contribution plan may provide for an election by an eligible designated beneficiary as described in § 1.401(a)(9)–3(c)(5)(iii).

(d) *Regulatory applicability date.* This section and §§ 1.401(a)(9)–2 through 1.401(a)(9)–9 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. For earlier calendar years, the rules of §§ 1.401(a)(9)–1 through 1.401(a)(9)–9 (as those sections appeared in the April 1, 2023, edition of 26 CFR part 1) apply.

§ 1.401(a)(9)–2 Distributions commencing during an employee's lifetime.

(a) *Distributions commencing during an employee's lifetime*—(1) *In general.* In order to satisfy section 401(a)(9)(A), the entire interest of each employee must be distributed to the employee not later than the required beginning date, or must be distributed, beginning not later than the required beginning date, over the life of the employee or the joint lives of the employee and a designated beneficiary or over a period not extending beyond the life expectancy of the employee or the joint life and last survivor expectancy of the employee and the designated beneficiary. Under section 401(a)(9)(G), lifetime distributions must satisfy the incidental death benefit requirements of § 1.401–1(b)(1).

(2) *Amount required to be distributed for a calendar year.* The amount required to be distributed for each calendar year in order to satisfy section 401(a)(9)(A) and (G) generally depends on whether the amount to be distributed is from an individual account under a defined contribution plan, is an annuity payment from a defined benefit plan, or is a payment under an annuity contract. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(A) and (G) from an individual account under a defined contribution plan, see § 1.401(a)(9)–5. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(A) and (G) in the case of

annuity payments from a defined benefit plan or under an annuity contract (including an annuity contract purchased under a defined contribution plan), see § 1.401(a)(9)–6.

(3) *Distributions commencing before required beginning date*—(i) *In general.* Lifetime distributions made before the employee's required beginning date for calendar years before the employee's first distribution calendar year, as defined in § 1.401(a)(9)–5(a)(2)(ii), need not be made in accordance with section 401(a)(9). However, if distributions commence before the employee's required beginning date under a particular distribution option (such as in the form of an annuity) and, under the terms of that distribution option, distributions to be made for the employee's first distribution calendar year (or any subsequent calendar year) will fail to satisfy section 401(a)(9), then the distribution option fails to satisfy section 401(a)(9) at the time distributions commence.

(ii) *Date distributions are treated as having begun.* Except as otherwise provided in paragraph (a)(3)(iii) of this section and § 1.401(a)(9)–6(k), distributions to the employee are not treated as having begun in accordance with section 401(a)(9)(A)(ii) until the employee's required beginning date, as determined in accordance with paragraph (b)(1) or (3) of this section, whichever applies to the employee. The preceding sentence applies even if the employee has received distributions before the employee's required beginning date (either pursuant to plan terms that require distributions to begin by an earlier date or pursuant to the employee's election). Thus, even if payments have been made before the employee's required beginning date, the rules of § 1.401(a)(9)–3 will apply if the employee dies before that date. For example, if A is an employee who retires in 2023, the calendar year A attains age 71, and begins receiving installment distributions from a profit-sharing plan over a period not exceeding the joint life and last survivor expectancy of A and A's spouse, benefits are not treated as having begun in accordance with section 401(a)(9)(A)(ii) until April 1, 2026 (the April 1 following the calendar year in which A attains age 73). Consequently, if A dies before April 1, 2026 (A's required beginning date), distributions after A's death must be made in accordance with § 1.401(a)(9)–3 (addressing payments to beneficiaries pursuant to section 401(a)(9)(B)(ii), (iii), or (iv), whichever applies, in cases in which required distributions have not begun) rather than section 401(a)(9)(B)(i)

(addressing payments to beneficiaries in cases in which required distributions have begun). This is the case without regard to whether, before A's death, the plan distributed the minimum distribution for the A's first distribution calendar year (as defined in § 1.401(a)(9)–5(a)(2)(ii)).

(iii) *Exception for uniform required beginning date.* If a plan provides, in accordance with paragraph (b)(4) of this section, that the required beginning date for purposes of section 401(a)(9) for all employees is April 1 of the calendar year following the calendar year described in paragraph (b)(1)(i) of this section, without regard to whether the employee is a 5-percent owner, then an employee who dies on or after the required beginning date determined under the plan terms is treated as dying after distributions have begun in accordance with section 401(a)(9)(A)(ii) (even if the employee dies before the April 1 following the calendar year in which the employee retires).

(4) *Distributions after death.* Section 401(a)(9)(B)(i) provides that, if the distribution of an employee's interest has begun in accordance with section 401(a)(9)(A)(ii), and the employee dies before the employee's entire interest has been distributed to the employee, the remaining portion of the employee's interest must be distributed at least as rapidly as under the distribution method being used under section 401(a)(9)(A)(ii) as of the date of the employee's death. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(B)(i) from an individual account under a defined contribution plan, see § 1.401(a)(9)–5. In the case of annuity payments from a defined benefit plan or under an annuity contract (including an annuity contract purchased under a defined contribution plan), see § 1.401(a)(9)–6.

(b) *Determination of required beginning date*—(1) *General rule.* Except as otherwise provided in this paragraph (b), the employee's required beginning date (within the meaning of section 401(a)(9)(C)) is April 1 of the calendar year following the later of—

(i) The calendar year in which the employee attains the applicable age; and

(ii) The calendar year in which the employee retires from employment with the employer maintaining the plan.

(2) *Definition of applicable age*—(i) *In general.* The applicable age is determined using the employee's date of birth as set forth in this paragraph (b)(2).

(ii) *Employees born before July 1, 1949.* In the case of an employee born before July 1, 1949, the applicable age is age 70½.

(iii) *Other employees born before 1951.* In the case of an employee born on or after July 1, 1949, but before January 1, 1951, the applicable age is age 72;

(iv) *Employees born in 1951 through 1958.* In the case of an employee born on or after January 1, 1951, but before January 1, 1959, the applicable age is age 73;

(v) [Reserved]

(vi) *Employees born after 1959.* In the case of an employee born on or after January 1, 1960, the applicable age is age 75.

(3) *Required beginning date for 5-percent owner*—(i) *In general.* In the case of an employee who is a 5-percent owner, the employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee attains the applicable age.

(ii) *Definition of 5-percent owner.* For purposes of section 401(a)(9), a 5-percent owner is an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains the applicable age.

(iii) *No applicability to governmental plan or church plan.* This paragraph (b)(3) does not apply in the case of a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of § 1.401(a)(9)–6(g)(4)(i)).

(4) *Uniform required beginning date.* A plan is permitted to provide that the required beginning date for purposes of section 401(a)(9) for all employees is April 1 of the calendar year following the calendar year described in paragraph (b)(1)(i) of this section, without regard to whether the employee is a 5-percent owner.

(5) *Plans maintained by more than one employer.* In the case of a plan maintained by more than one employer, an employee who retires from employment with any of those employers but continues to be employed by another employer that maintains the plan is not treated as having retired for purposes of paragraph (b)(1)(ii) of this section.

§ 1.401(a)(9)–3 Death before required beginning date.

(a) *Distribution requirements*—(1) *In general.* Except as otherwise provided in §§ 1.401(a)(9)–2(a)(3) and 1.401(a)(9)–6(k), if an employee dies before the employee's required beginning date (and thus before distributions are treated as having begun in accordance with section 401(a)(9)(A)(ii)), then—

(i) In the case of a defined benefit plan, distributions are required to be

made in accordance with paragraph (b) of this section, and

(ii) In the case of a defined contribution plan, distributions are required to be made in accordance with paragraph (c) of this section.

(2) *Special rule for designated Roth accounts.* If an employee's entire interest under a defined contribution plan is in a designated Roth account (as described in section 402A(b)(2)), then no distributions are required to be made to the employee during the employee's lifetime. Upon the employee's death, that employee is treated as having died before his or her required beginning date (so that distributions must be made in accordance with the requirements of paragraph (c) of this section).

(b) *Distribution requirements in the case of a defined benefit plan—(1) In general.* Distributions from a defined benefit plan are made in accordance with this paragraph (b) if the distributions satisfy either paragraph (b)(2) or (3) of this section, whichever applies with respect to the employee. The determination of whether paragraph (b)(2) or (3) of this section applies is made in accordance with paragraph (b)(4) of this section.

(2) *5-year rule.* Except as otherwise provided in § 1.401(a)(9)–6(j) (relating to defined benefit plans subject to limitations under section 436), distributions satisfy this paragraph (b)(2) if the employee's entire interest is distributed by the end of the calendar year that includes the fifth anniversary of the date of the employee's death. For example, if an employee dies on any day in 2022, then in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii), the entire interest generally must be distributed by the end of 2027.

(3) *Annuity payments.* Distributions satisfy this paragraph (b)(3) if annuity payments that satisfy the requirements of § 1.401(a)(9)–6 commence no later than the end of the calendar year following the calendar year in which the employee died, except as provided in paragraph (d) of this section (permitting a surviving spouse to delay the commencement of distributions).

(4) *Determination of which rule applies—(i) No plan provision.* If a defined benefit plan does not provide for an optional provision described in paragraph (b)(4)(ii) or (b)(4)(iii) of this section specifying the method of distribution after the death of an employee, then distributions must be made as follows—

(A) If the employee has no designated beneficiary, as determined under § 1.401(a)(9)–4, distributions must satisfy paragraph (b)(2) of this section; and

(B) If the employee has a designated beneficiary, distributions must satisfy paragraph (b)(3) of this section.

(ii) *Optional plan provisions.* A defined benefit plan will not fail to satisfy section 401(a)(9) merely because it includes a provision specifying that the 5-year rule in paragraph (b)(2) of this section (rather than the annuity payment rule in paragraph (b)(3) of this section) will apply with respect to some or all of the employees who have a designated beneficiary.

(iii) *Elections.* A defined benefit plan will not fail to satisfy section 401(a)(9) merely because it includes a provision that applies with respect to some or all of the employees who have a designated beneficiary under which the employee (or designated beneficiary) is permitted to elect whether the 5-year rule in paragraph (b)(2) of this section or the annuity payment rule in paragraph (b)(3) of this section applies. If a plan provides for this type of an election, then—

(A) The plan must specify the method of distribution that applies if neither the employee nor the designated beneficiary makes the election unless that method is the method specified in paragraph (b)(4)(i) of this section;

(B) The election must be made no later than the end of the earlier of the calendar year by which distributions must be made in order to satisfy paragraph (b)(2) of this section and the calendar year in which distributions would be required to begin in order to satisfy the requirements of paragraph (b)(3) of this section or, if applicable, paragraph (d) of this section; and

(C) As of the last date the election may be made, the election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent calendar years.

(c) *Distributions in the case of a defined contribution plan—(1) In general.* The requirements of this paragraph (c) are satisfied if distributions are made in accordance with paragraph (c)(2), (3), or (4) of this section, whichever applies with respect to the employee. The determination of whether paragraph (c)(2), (3), or (4) of this section applies is made in accordance with paragraph (c)(5) of this section.

(2) *5-year rule.* Distributions satisfy this paragraph (c)(2) if the employee's entire interest is distributed by the end of the calendar year that includes the fifth anniversary of the date of the employee's death. For example, if an employee dies on any day in 2022, the entire interest must be distributed by the end of 2027 in order to satisfy the

5-year rule in section 401(a)(9)(B)(ii). For purposes of this paragraph (c)(2), if an employee died before January 1, 2020, then the 2020 calendar year is disregarded when determining the calendar year that includes the fifth anniversary of the date of the employee's death.

(3) *10-year rule.* Distributions satisfy this paragraph (c)(3) if the employee's entire interest is distributed by the end of the calendar year that includes the tenth anniversary of the date of the employee's death. For example, if an employee died on any day in 2021, the entire interest must be distributed by the end of 2031 in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii), as extended to 10 years by section 401(a)(9)(H)(i).

(4) *Life expectancy payments.* Distributions satisfy this paragraph (c)(4) if annual distributions that satisfy the requirements of § 1.401(a)(9)–5 commence by the end of the calendar year following the calendar year in which the employee died, except as provided in paragraph (d) of this section (permitting a surviving spouse to delay the commencement of distributions). The requirement to take an annual distribution in accordance with the preceding sentence continues to apply for all subsequent calendar years until the employee's interest is fully distributed. Thus, a required minimum distribution is due for the calendar year of the eligible designated beneficiary's death, and that amount must be distributed during that calendar year to any beneficiary of the deceased eligible designated beneficiary to the extent it has not already been distributed to the eligible designated beneficiary.

(5) *Determination of which rule applies—(i) No plan provision.* If a defined contribution plan does not include an optional provision described in paragraph (c)(5)(ii) or (c)(5)(iii) of this section specifying the method of distribution after the death of an employee, distributions must be made as follows—

(A) If the employee does not have a designated beneficiary, as determined under § 1.401(a)(9)–4, distributions must satisfy the 5-year rule described in paragraph (c)(2) of this section;

(B) If the employee dies on or after the effective date of section 401(a)(9)(H) (as determined in § 1.401(a)(9)–1(b)(2)(i) or (ii), whichever applies to the plan) and has a designated beneficiary who is not an eligible designated beneficiary (as determined under § 1.401(a)(9)–4(e)), distributions must satisfy the 10-year rule described in paragraph (c)(3) of this section; and

(C) If the employee has an eligible designated beneficiary, distributions must satisfy the life expectancy rule described in paragraph (c)(4) of this section.

(ii) *Optional plan provisions.* A defined contribution plan will not fail to satisfy section 401(a)(9) merely because it includes a provision specifying that the 10-year rule described in paragraph (c)(3) of this section (rather than the life expectancy rule described in paragraph (c)(4) of this section) will apply with respect to some or all of the employees who have an eligible designated beneficiary or will apply to some categories of eligible designated beneficiaries.

(iii) *Elections.* A defined contribution plan will not fail to satisfy section 401(a)(9) merely because it includes a provision that applies with respect to some or all of the employees who have an eligible designated beneficiary or to some categories of eligible designated beneficiaries, under which the employee (or eligible designated beneficiary) is permitted to elect whether the 10-year rule in paragraph (c)(3) of this section or the life expectancy rule in paragraph (c)(4) of this section applies. If a plan provides for this type of election, then—

(A) The plan must specify the method of distribution that applies if neither the employee nor the designated beneficiary makes the election unless that method is the method specified in paragraph (c)(5)(i) of this section;

(B) The election must be made no later than the end of the earlier of the calendar year by which distributions must be made in order to satisfy paragraph (c)(3) of this section and the calendar year in which distributions would be required to begin in order to satisfy the requirements of paragraph (c)(4) of this section (or, if applicable, paragraph (d) of this section); and

(C) As of the last date the election may be made, the election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent calendar years.

(d) *Permitted delay for surviving spouse beneficiaries.* If the employee's surviving spouse is the employee's sole beneficiary, then the commencement of distributions under paragraph (b)(3) or (c)(4) of this section may be delayed until the end of the calendar year in which the employee would have attained the applicable age.

(e) *Distributions that commence after surviving spouse's death—(1) In general.* If the employee's surviving spouse is the employee's sole beneficiary and dies before distributions have commenced

under paragraph (d) of this section, then the 5-year rule in paragraph (b)(2) or (c)(2) of this section, the 10-year rule in paragraph (c)(3) of this section, the annuity payment rules in paragraph (b)(3) of this section, or the life expectancy rules in paragraph (c)(4) of this section, are to be applied as if the surviving spouse were the employee. For this purpose, the date of death of the surviving spouse is substituted for the date of death of the employee.

(2) *Remarriage of surviving spouse.* If the delayed commencement in paragraph (d) of this section applies to the surviving spouse of the employee, and the surviving spouse remarries but dies before distributions have begun, then the rules in paragraph (d) of this section are not available to the surviving spouse of the deceased employee's surviving spouse.

(3) *When distributions are treated as having begun to surviving spouse.* For purposes of section 401(a)(9)(B)(iv)(III), distributions are considered to have begun to the surviving spouse of an employee on the date, determined in accordance with paragraph (d) of this section, on which distributions are required to commence to the surviving spouse without regard to whether payments have actually been made before that date. However, see § 1.401(a)(9)–6(l) for an exception to this rule in the case of an annuity that commences early.

§ 1.401(a)(9)–4 Determination of the designated beneficiary.

(a) *Beneficiary designated under the plan—(1) In general.* This section provides rules for purposes of determining the designated beneficiary under section 401(a)(9). For this purpose, a designated beneficiary is an individual who is a beneficiary designated under the plan.

(2) *Entitlement to employee's interest in the plan.* A beneficiary designated under the plan is a person who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event. The determination of whether a beneficiary designated under the plan is taken into account for purposes of section 401(a)(9) is made in accordance with paragraph (c) of this section or, if applicable, paragraph (d) of this section.

(3) *Specificity of beneficiary designation.* A beneficiary need not be specified by name in the plan or by the employee to the plan in order for the beneficiary to be designated under the plan, provided that the person who is to be the beneficiary is identifiable pursuant to the designation. For example, a designation of the

employee's children as beneficiaries of equal shares of the employee's interest in the plan is treated as a designation of beneficiaries under the plan even if the children are not specified by name. The fact that an employee's interest under the plan passes to a certain person under a will or otherwise under applicable State law does not make that person a beneficiary designated under the plan absent a designation under the plan.

(4) *Affirmative and default elections of designated beneficiary.* A beneficiary designated under the plan may be designated by a default election under the terms of the plan or, if the plan so provides, by an affirmative election of the employee (or the employee's surviving spouse). The choice of beneficiary is subject to the requirements of sections 401(a)(11), 414(p), and 417. See §§ 1.401(a)(9)–8(d) and (e) for rules that apply to qualified domestic relations orders.

(b) *Designated beneficiary must be an individual.* A person that is not an individual, such as the employee's estate, is not a designated beneficiary. If a person other than an individual is a beneficiary designated under the plan, the employee will be treated as having no designated beneficiary, even if individuals are also designated as beneficiaries. However, see paragraphs (f)(1) and (3) of this section for a rule under which certain beneficiaries of a see-through trust that is designated as the employee's beneficiary under the plan are treated as the employee's beneficiaries under the plan rather than the trust and § 1.401(a)(9)–8(a) for rules under which section 401(a)(9) is applied separately with respect to the separate interests of each of the employee's beneficiaries under the plan.

(c) *Rules for determining beneficiaries—(1) Time period for determining the beneficiary.* Except as provided in paragraphs (d) and (f) of this section and § 1.401(a)(9)–6(b)(2)(i), a person is a beneficiary taken into account for purposes of section 401(a)(9) if, as of the date of the employee's death, that person is a beneficiary designated under the plan and none of the events described in paragraph (c)(2) of this section has occurred with respect to that person by September 30 of the calendar year following the calendar year of the employee's death.

(2) *Circumstances under which a beneficiary is disregarded as a beneficiary of the employee.* With respect to a beneficiary who was designated as a beneficiary under the plan as of the date of the employee's death (including a beneficiary who is treated as having been designated as a

beneficiary pursuant to paragraph (f) of this section), if any of the following events occurs by September 30 of the calendar year following the calendar year of the employee's death, then that beneficiary is not treated as a beneficiary—

(i) The beneficiary predeceases the employee;

(ii) The beneficiary is treated as having predeceased the employee pursuant to a simultaneous death provision under applicable State law or pursuant to a qualified disclaimer satisfying section 2518 that applies to the entire interest to which the beneficiary is entitled; or

(iii) The beneficiary receives the entire benefit to which the beneficiary is entitled.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c).

(i) *Example 1.* Employer M maintains a defined contribution plan, Plan X. Employee A dies in 2024 having designated A's three children—B, C, and D—as beneficiaries, each with a one-third share of A's interest in Plan X. B executes a disclaimer of B's entire share of A's interest in Plan X within 9 months of A's death and the disclaimer satisfies the other requirements of a qualified disclaimer under section 2518. Pursuant to the qualified disclaimer, B is disregarded as a beneficiary.

(ii) *Example 2.* The facts are the same as in paragraph (c)(3)(i) of this section (*Example 1*), except that B does not execute the disclaimer until 10 months after A's death. Even if the disclaimer is executed by September 30 of the calendar year following the calendar year of A's death, the disclaimer is not a qualified disclaimer (because B does not meet the 9-month requirement of section 2518) and B remains a designated beneficiary of A.

(iii) *Example 3.* The facts are the same as in paragraph (c)(3)(i) of this section (*Example 1*) except that, in exchange for B's disclaimer of the one-third share of A's interest in Plan X, C transfers C's interest in real property to B. Because B has received consideration for B's disclaimer of the one-third share, it is not a qualified disclaimer under section 2518 and B remains a designated beneficiary.

(iv) *Example 4.* The facts are the same as in paragraph (c)(3)(i) of this section (*Example 1*), except that Charity E (an organization exempt from taxation under section 501(c)(3)) also is a beneficiary designated under the plan as of the date of A's death, with B, C, D, and Charity E each having a one-fourth share of A's interest in Plan X. Plan X distributes Charity E's one-fourth share of A's interest in the plan by September

30 of the calendar year following the calendar year of A's death. Accordingly, Charity E is disregarded as A's beneficiary, and B, C, and D are treated as A's designated beneficiaries.

(v) *Example 5.* The facts are the same as in paragraph (c)(3)(i) of this section (*Example 1*), except that A's spouse, F, also is a beneficiary designated under the plan. A and F were residents of State Z so that State Z law applies. The laws of State Z include a simultaneous death provision under which two individuals who die within a 120-hour period of one another are treated as predeceasing each other. F dies four hours after A and under the laws of State Z, F is treated as predeceasing A. Because, under applicable State law, F is treated as predeceasing A, F is disregarded as a beneficiary of A.

(vi) *Example 6.* The facts are the same as in paragraph (c)(3)(i) of this section (*Example 1*), except that B, who was alive as of the date of A's death, dies before September 30 of the calendar year following the calendar year of A's death. Prior to B's death, none of the events described in paragraph (c)(2) of this section occurred with respect to B. Accordingly, B is still a beneficiary taken into account for purposes of section 401(a)(9) regardless of the identity of B's successor beneficiaries.

(d) *Application of beneficiary designation rules to surviving spouse.* This paragraph (d) applies in the case of distributions to which § 1.401(a)(9)–3(e) applies (because the employee's spouse is the employee's sole beneficiary as of September 30 of the calendar year following the calendar year of the employee's death, and the surviving spouse dies before distributions to the spouse have begun). If this paragraph (d) applies, then the determination of whether a person is a beneficiary of the surviving spouse is made using the rules of paragraph (c) of this section, except that the date of the surviving spouse's death is substituted for the date of the employee's death. Thus, a person is a beneficiary if, as of the date of the surviving spouse's death, that person is a beneficiary designated under the plan and remains a beneficiary as of September 30 of the calendar year following the calendar year of the surviving spouse's death.

(e) *Eligible designated beneficiaries—*(1) *In general.* A designated beneficiary of the employee is an eligible designated beneficiary if, at the time of the employee's death, the designated beneficiary is—

(i) The surviving spouse of the employee;

(ii) A child of the employee (within the meaning of section 152(f)(1)) who

has not reached the age of majority within the meaning of paragraph (e)(3) of this section;

(iii) Disabled within the meaning of paragraph (e)(4) of this section;

(iv) Chronically ill within the meaning of paragraph (e)(5) of this section;

(v) Not more than 10 years younger than the employee as determined under paragraph (e)(6) of this section; or

(vi) A designated beneficiary of an employee if the employee died before the effective date of section 401(a)(9)(H) described in § 1.401(a)(9)–1(b)(2)(i) and (ii), whichever applies to the plan.

(2) *Multiple designated beneficiaries—*(i) *In general.* Except as provided in paragraphs (e)(2)(ii) and (iii) of this section and § 1.401(a)(9)–8(a) (relating to separate account treatment), if the employee has more than one designated beneficiary, and at least one of those beneficiaries is not an eligible designated beneficiary, then the employee is treated as not having an eligible designated beneficiary.

(ii) *Special rule for children.* If any of the employee's designated beneficiaries is an eligible designated beneficiary because the beneficiary is the child of the employee who had not reached the age of majority at the time of the employee's death, then the employee is treated as having an eligible designated beneficiary even if the employee has other designated beneficiaries who are not eligible designated beneficiaries.

(iii) *Special rule for applicable multi-beneficiary trust.* If a trust that is designated as the beneficiary of an employee under a plan is an applicable multi-beneficiary trust described in paragraph (g) of this section, then the trust beneficiaries described in paragraph (g)(1)(ii) of this section are treated as eligible designated beneficiaries even if one or more of the other trust beneficiaries are not eligible designated beneficiaries.

(3) *Determination of age of majority.* An individual reaches the age of majority on the individual's 21st birthday.

(4) *Disabled individual—*(i) *In general.* Subject to the documentation requirements of paragraph (e)(7) of this section, an individual is disabled if, as of the date of the employee's death—

(A) The individual is described in paragraph (e)(4)(ii) or (iii) of this section; or

(B) Paragraph (e)(4)(iv) of this section applies to the individual.

(ii) *Disability defined for individual who is age 18 or older.* An individual who, as of the date of the employee's death, is age 18 or older is disabled if, as of that date, the individual is unable

to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration.

(iii) *Disability defined for individual who is not age 18 or older.* An individual who, as of the date of the employee's death, is not age 18 or older is disabled if, as of that date, that individual has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or to be of long-continued and indefinite duration.

(iv) *Use of social security disability determination.* If the Commissioner of Social Security has determined that, as of the date of the employee's death, an individual is disabled within the meaning of 42 U.S.C. 1382c(a)(3), then that individual will be deemed to be disabled within the meaning of this paragraph (e)(4).

(5) *Chronically ill individual.* An individual is chronically ill if the individual is chronically ill within the definition of section 7702B(c)(2) and satisfies the documentation requirements of paragraph (e)(7) of this section. However, for purposes of the preceding sentence, an individual will be treated as chronically ill under section 7702B(c)(2)(A)(i) only if there is a certification from a licensed health care practitioner (as that term is defined in section 7702B(c)(4)) that, as of the date of the certification, the individual is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living and the period of that inability is an indefinite one that is reasonably expected to be lengthy in nature.

(6) *Individual not more than 10 years younger than the employee.* Whether a designated beneficiary is not more than 10 years younger than the employee is determined based on the dates of birth of the employee and the beneficiary. Thus, for example, if an employee's date of birth is October 1, 1953, then the employee's beneficiary is not more than 10 years younger than the employee if the beneficiary was born on or before October 1, 1963.

(7) *Documentation requirements for disabled or chronically ill individuals.* This paragraph (e)(7) is satisfied with respect to an individual described in paragraph (e)(1)(iii) or (iv) of this section if documentation of the disability or chronic illness described in paragraph (e)(4) or (5) of this section, respectively, is provided to the plan administrator by October 31 of the calendar year following the calendar

year of the employee's death (or October 31, 2025, if later). For individuals described in paragraph (e)(1)(iv) of this section, the documentation must include a certification from a licensed health care practitioner (as that term is defined in section 7702B(c)(4)).

(8) *Applicability of definition of eligible designated beneficiary to beneficiary of surviving spouse.* In a case to which § 1.401(a)(9)–3(e) applies, a designated beneficiary of the employee's surviving spouse is an eligible designated beneficiary provided that designated beneficiary would be an eligible designated beneficiary described in paragraph (e)(1) of this section if that paragraph were to be applied by substituting the surviving spouse for the employee.

(9) *Examples.* The following examples illustrate the rules of this paragraph (e).

(i) *Example 1.* Employer M maintains a defined contribution plan, Plan X. Employee A designates A's child, B, as the sole beneficiary of A's interest in Plan X. B will not reach the age of majority until 2024. A dies on July 1, 2022, after A's required beginning date. As of the date of A's death, B is disabled within the meaning of paragraph (e)(4) of this section. On November 1, 2024, B satisfies the requirements of paragraph (e)(7) of this section by providing the plan administrator a letter from a licensed health care practitioner stating that, as of July 1, 2022, B is unable to engage in any substantial gainful activity by reason of a physical impairment that can be expected to be of long-continued and indefinite duration. Due to B's disability, B remains an eligible designated beneficiary even after reaching the age of majority in 2024, and Plan X is not required to distribute A's remaining interest in the plan by the end of 2034 pursuant to the rules of § 1.401(a)(9)–5(e)(4), but instead may continue life expectancy payments to B during B's lifetime.

(ii) *Example 2.* The facts are the same as in paragraph (e)(9)(i) of this section (*Example 1*), except that the documentation requirements of paragraph (e)(7) of this section are not timely satisfied with respect to B. B ceases to be an eligible designated beneficiary upon reaching the age of majority in 2024, and Plan X is required to distribute A's remaining interest in the plan by the end of 2034 pursuant to the rules of § 1.401(a)(9)–5(e)(4).

(iii) *Example 3.* The facts are the same as in paragraph (e)(9)(i) of this section (*Example 1*), except that B becomes disabled in 2023 (after A's death in 2022). Because B was not disabled as of the date of A's death, B ceases to be an

eligible designated beneficiary upon reaching the age of majority in 2024, and Plan X is required to distribute A's remaining interest in the plan by the end of 2034 pursuant to the rules of § 1.401(a)(9)–5(e)(4).

(f) *Special rules for trusts—(1) Look-through of trust to determine designated beneficiaries—(i) In general.* If a trust that is designated as the beneficiary of an employee under a plan meets the requirements of paragraph (f)(2) of this section, then certain beneficiaries of the trust that are described in paragraph (f)(3) of this section (and not the trust itself) are treated as having been designated as beneficiaries of the employee under the plan, provided that those beneficiaries are not disregarded under paragraph (c)(2) of this section. A trust described in the preceding sentence is referred to as a see-through trust.

(ii) *Types of trusts.* The determination of which beneficiaries of a see-through trust are treated as having been designated as beneficiaries of the employee under the plan depends on whether the see-through trust is a conduit trust or an accumulation trust. For this purpose—

(A) The term *conduit trust* means a see-through trust, the terms of which provide that, with respect to the deceased employee's interest in the plan, all distributions will, upon receipt by the trustee, be paid directly to, or for the benefit of, specified trust beneficiaries; and

(B) The term *accumulation trust* means any see-through trust that is not a conduit trust.

(2) *Trust requirements.* The requirements of this paragraph (f)(2) are met if, during any period for which required minimum distributions are being determined by treating the beneficiaries of the trust as having been designated as beneficiaries of the employee under the plan, the following requirements are met—

(i) The trust is a valid trust under State law or would be but for the fact that there is no corpus.

(ii) The trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.

(iii) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's interest in the plan are identifiable (within the meaning of paragraph (f)(5) of this section) from the trust instrument.

(iv) The documentation requirements in paragraph (h) of this section have been satisfied.

(3) *Trust beneficiaries treated as beneficiaries of the employee—(i) In general.* Subject to the rules of

paragraphs (f)(3)(ii) and (iii) of this section, the following beneficiaries of a see-through trust are treated as having been designated as beneficiaries of the employee under the plan—

(A) Any beneficiary that could receive amounts in the trust representing the employee's interest in the plan that are neither contingent upon, nor delayed until, the death of another trust beneficiary who did not predecease (and who is not treated as having predeceased) the employee; and

(B) Any beneficiary of an accumulation trust that could receive amounts in the trust representing the employee's interest in the plan that were not distributed to beneficiaries described in paragraph (f)(3)(i)(A) of this section.

(ii) *Certain trust beneficiaries disregarded*—(A) *Entitlement conditioned on death of beneficiary.* Any beneficiary of an accumulation trust who could receive amounts from the trust representing the employee's interest in the plan solely because of the death of another beneficiary described in paragraph (f)(3)(i)(B) of this section is not treated as having been designated as a beneficiary of the employee under the plan. The preceding sentence does not apply if the deceased beneficiary described in paragraph (f)(3)(i)(B) of this section—

(1) Predeceased (or is treated as having predeceased) the employee; or

(2) Also is described in paragraph (f)(3)(i)(A) of this section.

(B) *Entitlement conditioned on death of young individual.* If a beneficiary of a see-through trust is an individual who is treated as a beneficiary of the employee under paragraph (f)(3)(i)(A) of this section, and the terms of the trust require full distribution of amounts in the trust representing the employee's interest in the plan to that individual by the later of the end of the calendar year following the calendar year of the employee's death or the end of the calendar year that includes the tenth anniversary of the date on which that individual reaches the age of majority (within the meaning of paragraph (e)(3) of this section), then any other beneficiary of the trust who could receive amounts in the trust representing the employee's interest in the plan if that individual dies before full distribution to that individual is made is not treated as having been designated as a beneficiary of the employee under the plan. The preceding sentence does not apply if the beneficiary who could receive amounts in the trust conditioned on the death of that individual also is described in paragraph (f)(3)(i)(A) of this section.

(iii) *Certain accumulations disregarded.* For purposes of this paragraph (f)(3), a trust will not fail to be treated as a conduit trust merely because the trust terms requiring that distributions from the plan, upon receipt by the trustee, are paid directly to, or for the benefit of, trust beneficiaries do not apply after the death of all of the beneficiaries described in paragraph (f)(3)(i)(A) of this section.

(iv) *Treatment of payments for the benefit of a trust beneficiary.* For purposes of this paragraph (f)(3), a trust beneficiary will be treated as if the beneficiary could receive amounts in the trust representing the employee's interest in the plan regardless of whether those amounts could be paid to that beneficiary or for the benefit of that beneficiary. Thus, for example, if a trust beneficiary is a minor child of the employee, payments that could be made to a custodial account for the benefit of that child are treated as amounts that could be received by the child.

(4) *Multiple trust arrangements.* If a beneficiary of a see-through trust is another trust, the beneficiaries of the second trust will be treated as beneficiaries of the first trust, provided that the requirements of paragraph (f)(2) of this section are satisfied with respect to the second trust. In that case, the beneficiaries of the second trust are treated as having been designated as beneficiaries of the employee under the plan.

(5) *Identifiability of trust beneficiaries*—(i) *In general.* Except as otherwise provided in this paragraph (f)(5), trust beneficiaries described in paragraph (f)(3) of this section are identifiable if it is possible to identify each person eligible to receive a portion of the employee's interest in the plan through the trust. For this purpose, the specificity requirements of paragraph (a)(3) of this section apply.

(ii) *Power of appointment*—(A) *Exercise or release of power of appointment by September 30.* A trust does not fail to satisfy the identifiability requirements of this paragraph (f)(5) merely because an individual (powerholder) has the power to appoint a portion of the employee's interest to one or more beneficiaries that are not identifiable within the meaning of paragraph (f)(5)(i) of this section. If the power of appointment is exercised in favor of one or more identifiable beneficiaries by September 30 of the calendar year following the calendar year of the employee's death, then those identifiable beneficiaries are treated as beneficiaries designated under the plan. The preceding sentence also applies if,

by that September 30, in lieu of exercising the power of appointment, the powerholder restricts it so that the power can be exercised at a later time in favor of only two or more identifiable beneficiaries (in which case, those identified beneficiaries are treated as beneficiaries designated under the plan). However, if, by that September 30, the power of appointment is not exercised (or restricted) in favor of one or more beneficiaries that are identifiable within the meaning of paragraph (f)(5)(i) of this section, then each taker in default (that is, any person that is entitled to the portion that represents the employee's interest in the plan subject to the power of appointment in the absence of the powerholder's exercise of the power) is treated as a beneficiary designated under the plan.

(B) *Exercise of power of appointment after September 30 of the calendar year following the calendar year of the employee's death.* If an individual has a power of appointment to appoint a portion of the employee's interest to one or more beneficiaries and the individual exercises the power of appointment after September 30 of the calendar year following the calendar year of the employee's death, then the rules of paragraph (f)(5)(iv) of this section apply with respect to any trust beneficiary that is added pursuant to the exercise of the power of appointment.

(iii) *Modification of trust terms*—(A) *State law will not cause trust to fail to satisfy identifiability requirement.* A trust will not fail to satisfy the identifiability requirements of this paragraph (f)(5) merely because the trust is subject to State law that permits the trust terms to be modified after the death of the employee (such as through a court reformation or a permitted decanting) and thus, permits changing the beneficiaries of the trust.

(B) *Modification of trust to remove trust beneficiaries.* If a trust beneficiary described in paragraph (f)(3) of this section is removed pursuant to a modification of trust terms (such as through a court reformation or a permitted decanting) by September 30 of the calendar year following the calendar year of the employee's death, then that person is disregarded in determining the employee's designated beneficiary.

(C) *Modification of trust to add trust beneficiaries.* If a trust beneficiary described in paragraph (f)(3) of this section is added through a modification of trust terms (such as through a court reformation or a permitted decanting) on or before September 30 of the calendar year following the calendar

year of the employee's death, then paragraph (c) of this section will apply taking into account the beneficiary that was added. If the beneficiary is added after that September 30, then the rules of paragraph (f)(5)(iv) of this section will apply with respect to the addition of that beneficiary.

(iv) *Addition of beneficiary after September 30.* If, after September 30 of the calendar year following the calendar year of the employee's death, a trust beneficiary described in paragraph (f)(3) of this section is added as a trust beneficiary (whether through the exercise of a power of appointment, the modification of trust terms, or otherwise), then—

(A) The addition of the beneficiary will not cause the trust to fail to satisfy the identifiability requirements of this paragraph (f)(5);

(B) Beginning in the calendar year following the calendar year in which the new trust beneficiary was added, the rules of § 1.401(a)(9)–5(f)(1) will apply taking into account the new beneficiary and all of the beneficiaries of the trust that were treated as beneficiaries of the employee before the addition of the new beneficiary; and

(C) Subject to paragraph (f)(5)(v) of this section, the rules of paragraphs (b) and (e)(2) of this section and § 1.401(a)(9)–5(f)(2) will apply taking into account the new beneficiary and all of the beneficiaries of the trust that were treated as beneficiaries of the employee before the addition of the new beneficiary.

(v) *Delay in full distribution requirement.* This paragraph (f)(5)(v) provides a special rule that applies if a full distribution of the employee's entire interest in the plan is not required in a calendar year pursuant to § 1.401(a)(9)–5(e), but a beneficiary is added in that calendar year. In that case, if, taking into account the added beneficiary pursuant to paragraph (f)(5)(iv)(C) of this section, a full distribution of the employee's entire interest in the plan would have been required in that calendar year or an earlier calendar year, then a full distribution of the employee's entire interest in the plan will not be required until the end of the calendar year following the calendar year in which the beneficiary is added. For example, if life expectancy payments are being made to an eligible designated beneficiary and, more than 10 years after the employee's death, a beneficiary is added who is not an eligible designated beneficiary as described in paragraph (e) of this section, then the employee is treated as not having an eligible designated beneficiary for purposes of § 1.401(a)(9)–5(e)(2) (so that a full

distribution of the employee's entire interest in the plan would have been required within 10 years of the employee's death). However, pursuant to this paragraph (f)(5)(v), the full distribution of the employee's entire interest in the plan is not required until the end of the calendar year following the calendar year in which the new trust beneficiary was added.

(6) *Examples.* The following examples illustrate the see-through trust rules of this paragraph (f).

(i) *Example 1—(A) Facts.* Employer L maintains a defined contribution plan, Plan W. Unmarried Employee C died in 2024 at age 30. Prior to C's death, C named a testamentary trust (Trust T) that satisfies the requirements of paragraph (f)(2) of this section, as the beneficiary of C's interest in Plan W. The terms of Trust T require that all distributions received from Plan W, upon receipt by the trustee, be paid directly to D, C's sibling, who is 5 years older than C. The terms of Trust T also provide that, if D dies before C's entire account balance has been distributed to D, E will be the beneficiary of C's remaining account balance.

(B) *Analysis.* Pursuant to paragraph (f)(1)(ii)(A) of this section, Trust T is a conduit trust. Because Trust T is a conduit trust (meaning the residual beneficiary rule in paragraph (f)(3)(i)(B) of this section does not apply) and because E is only entitled to any portion of C's account if D dies before the entire account has been distributed, E is disregarded in determining C's designated beneficiary. Because D is an eligible designated beneficiary, D may use the life expectancy rule of § 1.401(a)(9)–3(c)(4). Accordingly, even if D dies before C's entire interest in Plan W is distributed to Trust T, D's life expectancy continues to be used to determine the applicable denominator. Note, however, that because § 1.401(a)(9)–5(e)(3) applies in this situation, a distribution of C's entire interest in Plan W will be required no later than the end of the calendar year that includes the tenth anniversary of D's death.

(ii) *Example 2—(A) Facts related to plan and beneficiary.* Employer M maintains a defined contribution plan, Plan X. Employee A died in 2024 at the age of 55, survived by Spouse B, who was then 50 years old. A's account balance in Plan X is invested only in productive assets and was includible in A's gross estate under section 2039. A named a testamentary trust (Trust P) as the beneficiary of all amounts payable from A's account in Plan X after A's death. Trust P satisfies the see-through

trust requirements of paragraph (f)(2) of this section.

(B) *Facts related to trust.* Under the terms of Trust P, all trust income is payable annually to B, and no one has the power to appoint or distribute Trust P principal to any person other than B. A's sibling, C, who is less than 10 years younger than A (and thus is an eligible designated beneficiary) and is younger than B, is the sole residual beneficiary of Trust P. Also, under the terms of Trust P, if C predeceases B, then, upon B's death, all Trust P principal is distributed to Charity Z (an organization exempt from tax under section 501(c)(3)). No other person has a beneficial interest in Trust P. Under the terms of Trust P, B has the power, exercisable annually, to compel the trustee to withdraw from A's account balance in Plan X an amount equal to the income earned during the calendar year on the assets held in A's account in Plan X and to distribute that amount through Trust P to B. Plan X includes no prohibition on withdrawal from A's account of amounts in excess of the annual required minimum distributions under section 401(a)(9). In accordance with the terms of Plan X, the trustee of Trust P elects to take annual life expectancy payments pursuant to section 401(a)(9)(B)(iii). If B exercises the withdrawal power, the trustee must withdraw from A's account under Plan X the greater of the amount of income earned in the account during the calendar year or the required minimum distribution. However, under the terms of Trust P, and applicable State law, only the portion of the Plan X distribution received by the trustee equal to the income earned by A's account in Plan X is required to be distributed to B (along with any other trust income).

(C) *Analysis.* Because Trust P does not require that distributions from A's account in Plan X to Trust P, upon receipt by the trustee, be paid directly to (or for the benefit of) B, Trust P is not a conduit trust and accordingly is an accumulation trust (as described in paragraph (f)(1)(ii)(B) of this section). Pursuant to paragraph (f)(3)(i)(B) of this section, C, as the residual beneficiary of Trust P, is treated as a beneficiary designated under Plan X (even though access to those amounts is delayed until after B's death). Pursuant to paragraph (f)(2)(iii)(A) of this section, because Charity Z's entitlement to amounts in the trust is based on the death of a beneficiary described in paragraph (f)(3)(i)(B) of this section who is not also described in paragraph (f)(3)(i)(A) of this section, Charity Z is disregarded as a beneficiary of A. Under § 1.401(a)(9)–

5(f)(1), the designated beneficiary used to determine the applicable denominator is the oldest of the designated beneficiaries of Trust P's interest in Plan X. B is the oldest of the beneficiaries of Trust P's interest in Plan X (including residual beneficiaries). Thus, the applicable denominator for purposes of section 401(a)(9)(B)(iii) is B's life expectancy. Because C is a beneficiary of A's account in Plan X in addition to B, B is not the sole beneficiary of A's account and the special rule in section 401(a)(9)(B)(iv) and § 1.401(a)(9)–3(d) is not available. Accordingly, the annual required minimum distributions from the account to Trust P must begin no later than the end of the calendar year following the calendar year of A's death.

(iii) *Example 3—(A) Facts.* The facts are the same as in paragraph (f)(6)(ii) of this section (*Example 2*), except that C is more than 10 years younger than A, meaning that at least one of the beneficiaries of Trust P's interest in Plan X is not an eligible designated beneficiary.

(B) *Analysis.* Pursuant to paragraph (e)(2)(i) of this section, A is treated as not having an eligible designated beneficiary. Pursuant to § 1.401(a)(9)–3(c)(5), the trustee of Trust P is not permitted to make an election to take annual life expectancy distributions and the 10-year rule of § 1.401(a)(9)–3(c)(3) applies.

(iv) *Example 4—(A) Facts related to plan and beneficiary.* Employer N maintains a defined contribution plan, Plan Y. Employee F died in 2025 at the age of 60. F named a testamentary trust (Trust Q), which was established under F's will, as the beneficiary of all amounts payable from F's account in Plan X after F's death. Trust Q satisfies the see-through trust requirements of paragraph (f)(2) of this section.

(B) *Facts related to trust.* Under the terms of Trust Q, all trust income is payable to F's surviving spouse G for life, no person has the power to appoint or distribute Trust Q principal to any person other than G, and G has a testamentary power of appointment to name the beneficiaries of the remainder in Trust Q. The power of appointment provides that, if G does not exercise the power, then upon G's death, F's descendants, per stirpes, are entitled to the remainder interest in Trust Q. As of the date of F's death, F has two children, K and L, neither of whom is disabled, chronically ill, or under age 21. Before September 30 of the calendar year following the calendar year in which F died, G irrevocably restricts G's power of appointment so that G may exercise the power to appoint the

remainder beneficiaries of Trust Q only in favor of G's siblings (who all are less than 10 years younger than F and thus, are eligible designated beneficiaries).

(C) *Analysis.* Pursuant to paragraph (f)(5)(ii)(A) of this section, because G timely restricted the power of appointment so that G may exercise the power to appoint the residual interest in Trust Q only in favor of G's siblings, the designated beneficiaries are G and G's siblings. Because all of the designated beneficiaries are eligible designated beneficiaries, annual life expectancy payments are permitted under section 401(a)(9)(B)(iii). Note, however, that because § 1.401(a)(9)–5(e)(3) applies, a distribution of the remaining interest is required by no later than 10 years after the calendar year in which the oldest of G and G's siblings dies.

(v) *Example 5—(A) Facts.* The facts are the same as in paragraph (f)(6)(iv) of this section (*Example 4*), except that G does not restrict the power by September 30 of the calendar year following the calendar year of F's death.

(B) *Analysis.* Pursuant to paragraph (f)(5)(ii)(A) of this section, G, K, and L are treated as F's beneficiaries. Pursuant to § 1.401(a)(9)–3(c)(5), because K and L are not eligible designated beneficiaries, the trustee of Trust Q is not permitted to make an election to take annual life expectancy distributions, and the 10-year rule of § 1.401(a)(9)–3(c)(3) applies.

(g) *Applicable multi-beneficiary trust—(1) Certain see-through trusts with disabled or chronically ill beneficiaries.* An applicable multi-beneficiary trust is a see-through trust with more than one beneficiary and with respect to which—

(i) All of the trust beneficiaries are designated beneficiaries;

(ii) The trust terms identify one or more individuals, each of whom is disabled (as defined in paragraph (e)(1)(iii) of this section) or chronically ill (as defined in paragraph (e)(1)(iv) of this section), who are described in paragraph (f)(3)(i)(A) of this section; and

(iii) The terms of the trust provide that no beneficiary (other than an individual described in paragraph (g)(1)(ii) of this section) has any right to the employee's interest in the plan until the death of all of the eligible designated beneficiaries described in paragraph (g)(1)(ii) of this section.

(2) *Termination of interest in trust.* A provision in the trust agreement that permits the termination of the interest in the trust of a beneficiary described in paragraph (g)(1)(ii) of this section prior to that beneficiary's death will not cause the trust to fail to be treated as an applicable multi-beneficiary trust, but only if paragraph (g)(1)(iii) of this

section continues to apply. Upon the death of the last to survive of the beneficiaries described in paragraph (g)(1)(ii) of this section, the trust is treated as having been modified as of the date of that death to add the other trust beneficiaries. Thus, if the death occurs after September 30 of the calendar year following the calendar year of the employee's death, the rules of paragraph (f)(5)(iv) of this section will apply.

(3) *Special definition of designated beneficiary.* For purposes of paragraph (g)(1)(i) of this section, any beneficiary that is an organization described in section 408(d)(8)(B)(i) (certain organizations to which a charitable contribution may be made) is treated as a designated beneficiary.

(h) *Documentation requirements for trusts—(1) General rule.* The documentation requirements of this paragraph (h) are satisfied if—

(i) With respect to required minimum distributions for a distribution calendar year that begins on or before the date of the employee's death, paragraph (h)(2) of this section is satisfied no later than the first day of the distribution calendar year; or

(ii) With respect to required minimum distributions for a distribution calendar year that begins after the date of the employee's death, or that begins after the employee's surviving spouse has died in a case to which § 1.401(a)(9)–3(d) applies, paragraph (h)(3) of this section is satisfied no later than October 31 of the calendar year following the calendar year that includes the employee's date of death or the date of death of the employee's surviving spouse, respectively.

(2) *Required minimum distributions while employee is still alive—(i) In general.* If an employee designates a trust as the beneficiary of the employee's entire benefit and the employee's spouse is the only beneficiary of the trust treated as a beneficiary of the employee pursuant to the rules of paragraph (f) of this section, then, in order to satisfy the documentation requirements of this paragraph (h)(2) (so that the applicable denominator for a distribution calendar year may be determined under the rules of § 1.401(a)(9)–5(c)(2), assuming the other requirements of paragraph (f)(2) of this section are satisfied), the employee must satisfy either the requirements of paragraph (h)(2)(ii) of this section (requiring the employee to provide a copy of the trust instrument) or the requirements of paragraph (h)(2)(iii) of this section (requiring the employee to provide a list of beneficiaries). The plan administrator may determine which of

the two alternatives in the preceding sentence is available to the employee.

(ii) *Employee to provide copy of trust instrument.* An employee satisfies the requirements of this paragraph (h)(2)(ii) if the employee—

(A) Provides the plan administrator a copy of the trust instrument; and

(B) Agrees that, if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide the plan administrator a copy of each amendment.

(iii) *Employee to provide list of beneficiaries.* An employee satisfies the requirements of this paragraph (h)(2)(iii) if the employee—

(A) Provides the plan administrator a list of all of the beneficiaries of the trust (including contingent beneficiaries) with a description of the conditions on their entitlement sufficient to establish that the spouse is the only beneficiary of the trust treated as a beneficiary of the employee pursuant to the rules of paragraph (f) of this section;

(B) Certifies that, to the best of the employee's knowledge, the list described in paragraph (h)(2)(iii)(A) of this section is correct and complete and that the requirements of paragraphs (f)(2)(i) through (iii) of this section are satisfied; and

(C) Agrees that, if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide the plan administrator corrected certifications to the extent that the amendment changes any information previously certified; and

(D) Agrees to provide a copy of the trust instrument to the plan administrator upon request.

(3) *Required minimum distributions after death*—(i) *In general.* In order to satisfy the documentation requirement of this paragraph (h)(3) for required minimum distributions after the death of the employee (or after the death of the employee's surviving spouse in a case to which § 1.401(a)(9)–3(d) applies), the trustee of the trust must satisfy the requirements of either paragraph (h)(3)(ii) (requiring the trustee to provide a list of beneficiaries) or paragraph (h)(3)(iii) of this section (requiring the trustee to provide a copy of the trust instrument). The plan administrator may determine which of the two alternatives in the preceding sentence is available for the trust.

(ii) *Trustee to provide list of beneficiaries.* A trustee satisfies the requirements of this paragraph (h)(3)(ii) if the trustee—

(A) Provides the plan administrator a final list of all beneficiaries of the trust as of September 30 of the calendar year following the calendar year of the death

(including contingent beneficiaries) with a description of the conditions on their entitlement sufficient to establish which of those beneficiaries are treated as beneficiaries of the employee (or surviving spouse, if applicable);

(B) Certifies that, to the best of the trustee's knowledge, this list is correct and complete and that the requirements of paragraphs (f)(2)(i) through (iii) of this section are satisfied; and

(C) Agrees to provide a copy of the trust instrument to the plan administrator upon request.

(iii) *Trustee to provide copy of trust instrument.* A trustee satisfies the requirements of this paragraph (h)(3)(iii) if the trustee provides the plan administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the employee under the plan as of the employee's date of death.

(4) *Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments*—(i) *In general.* If required minimum distributions are determined based on the information provided to the plan administrator in certifications or trust instruments described in paragraph (h)(2) or (3) of this section, a plan will not fail to satisfy section 401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the plan administrator, but only if—

(A) The plan administrator reasonably relied on the information provided; and

(B) The required minimum distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument.

(ii) *Excise tax.* For purposes of determining the amount of the excise tax under section 4974, the required minimum distribution is determined for any year based on the actual terms of the trust in effect during the year.

§ 1.401(a)(9)–5 Required minimum distributions from defined contribution plans.

(a) *General rules*—(1) *In general.* Subject to the rules of paragraph (e) of this section (requiring distribution of an employee's entire interest by a specified deadline in certain situations), if an employee's accrued benefit is in the form of an individual account under a defined contribution plan, the minimum amount required to be distributed for each distribution calendar year beginning with the first distribution calendar year for the employee or designated beneficiary (as determined

under paragraph (a)(2) of this section) is equal to the quotient obtained by dividing the account balance (determined under paragraph (b) of this section) by the applicable denominator (determined under paragraph (c) or (d) of this section, whichever applies). However, the required minimum distribution amount will never exceed the entire account balance on the date of the distribution. See paragraph (g)(1) of this section for rules that apply if a portion of the employee's account is not vested.

(2) *Distribution calendar year*—(i) *In general.* A calendar year for which a minimum distribution is required is a distribution calendar year.

(ii) *First distribution calendar year for employee if employee dies on or after required beginning date.* If an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee attains the applicable age, then the employee's first distribution calendar year is the year the employee attains the applicable age. If an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee retires, the employee's first distribution calendar year is the calendar year in which the employee retires.

(iii) *First distribution calendar year for designated beneficiary if employee dies before required beginning date.* In the case of an employee who dies before the required beginning date, if the life expectancy rule in § 1.401(a)(9)–3(c)(4) applies, then the first distribution calendar year for the designated beneficiary is the calendar year following the calendar year in which the employee died (or, if applicable, the calendar year described in § 1.401(a)(9)–3(d)). See § 1.401(a)(9)–3(c)(5) to determine whether the life expectancy rule applies.

(3) *Time for distributions.* The distribution required for the employee's first distribution calendar year (as described in paragraph (a)(2)(ii) of this section) may be made on or before April 1 of the following calendar year. The required minimum distribution for any other distribution calendar year (including the required minimum distribution for the distribution calendar year in which the employee's required beginning date occurs or the first distribution calendar year for the designated beneficiary) must be made on or before the end of that distribution calendar year.

(4) *Minimum distribution incidental benefit requirement.* If distributions of an employee's account balance under a

defined contribution plan are made in accordance with this section—

(i) With respect to the retirement benefits provided by that account balance, to the extent the incidental benefit requirement of § 1.401-1(b)(1)(i) requires distributions, that requirement is deemed satisfied; and

(ii) No additional distributions are required to satisfy section 401(a)(9)(G).

(5) *Annuity contracts*—(i) *Purchase of annuity contract permitted.* A plan may satisfy section 401(a)(9) by the purchase of an annuity contract from an insurance company in accordance with § 1.401(a)(9)-6(d) with the employee's entire individual account, provided that the terms of the annuity satisfy § 1.401(a)(9)-6. However, a distribution of an annuity contract is not a distribution for purposes of this section.

(ii) *Transition from defined contribution rules to defined benefit rules.* If an annuity is purchased in accordance with paragraph (a)(5)(i) of this section after distributions are required to commence (the required beginning date, in the case of distributions commencing before death, or the calendar year determined under § 1.401(a)(9)-3(c)(4) or, if applicable, § 1.401(a)(9)-3(d), in the case of distributions commencing after death), then the plan will satisfy section 401(a)(9) only if, in the year of purchase, distributions from the individual account satisfy this section, and for calendar years following the year of purchase, payments under the annuity contract are made in accordance with § 1.401(a)(9)-6. Payments under the annuity contract during the year in which the annuity contract is purchased are treated as distributions from the individual account for purposes of determining whether the distributions from the individual account satisfy this section in the calendar year of purchase.

(iii) *Bifurcation if annuity contract is purchased with portion of employee's account.* A portion of an employee's account balance under a defined contribution plan is permitted to be used to purchase an annuity contract while another portion remains in the account, provided that the requirements of paragraphs (a)(5)(i) and (ii) of this section are satisfied (other than the requirement that the contract be purchased with the employee's entire individual account). In that case, in order to satisfy section 401(a)(9) for calendar years after the calendar year of purchase, the remaining account balance under the plan must be distributed in accordance with this section.

(iv) *Optional aggregation rule.* In the case of an annuity contract purchased

with a portion of the employee's account balance, in lieu of applying section 401(a)(9) separately with respect to the annuity contract and the remaining account balance as described in paragraph (a)(5)(iii) of this section, a plan may permit an employee to elect to satisfy section 401(a)(9) for the annuity contract and that account balance in the aggregate by—

(A) Adding the fair market value of the contract to the remaining account balance determined under paragraph (b) of this section; and

(B) Treating payments under the annuity contract as distributions from the employee's individual account.

(v) [Reserved]

(6) *Impact of additional distributions in prior years.* If, for any distribution calendar year, the amount distributed exceeds the required minimum distribution for that calendar year, no credit towards a required minimum distribution will be given in subsequent calendar years for the excess distribution.

(b) *Determination of account balance*—(1) *General rule.* In the case of an individual account under a defined contribution plan, the benefit used in determining the required minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year preceding that distribution calendar year (valuation calendar year) adjusted in accordance with this paragraph (b). For this purpose, all of an employee's accounts under the plan are aggregated. Thus, all separate accounts, including a separate account for employee contributions under section 72(d)(2), are aggregated for purposes of this section.

(2) *Adjustment for subsequent allocations and distributions*—(i) *Subsequent allocations.* The account balance is increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date. For this purpose, contributions that are allocated to the account balance as of dates in the valuation calendar year after the valuation date, but that are not actually made during the valuation calendar year, may be excluded.

(ii) *Subsequent distributions.* The account balance is decreased by distributions made in the valuation calendar year after the valuation date.

(3) *Adjustment for designated Roth accounts.* For distribution calendar years up to and including the calendar year that includes the employee's date of death, the account balance does not include amounts held in a designated

Roth account (as described in section 402A(b)(2)).

(4) *Exclusion for QLAC.* The account balance does not include the value of any qualifying longevity annuity contract (QLAC), defined in § 1.401(a)(9)-6(q), that is held under the plan.

(5) *Treatment of rollovers.* If an amount is distributed from a plan and rolled over to another plan (receiving plan), then the rules of § 1.401(a)(9)-7(b) apply for purposes of determining the benefit and required minimum distribution under the receiving plan. If an amount is transferred from one plan (transferor plan) to another plan (transferee plan) in a transfer to which section 414(l) applies, then the rules of §§ 1.401(a)(9)-7(c) and (d) apply for purposes of determining the amount of the benefit and required minimum distribution under both the transferor and transferee plans.

(c) *Determination of applicable denominator during employee's lifetime*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section (relating to a spouse beneficiary who is more than 10 years younger than the employee), the applicable denominator for required minimum distributions for each distribution calendar year beginning with the employee's first distribution calendar year (as described in paragraph (a)(2)(ii) of this section) is determined using the Uniform Lifetime Table in § 1.401(a)(9)-9(c) for the employee's age as of the employee's birthday in the relevant distribution calendar year. The requirement to take an annual distribution calculated in accordance with the preceding sentence applies for every distribution calendar year up to and including the calendar year that includes the employee's date of death. Thus, a required minimum distribution is due for the calendar year of the employee's death, and that amount must be distributed during that year to any beneficiary to the extent it has not already been distributed to the employee.

(2) *Spouse is sole beneficiary*—(i) *Determination of applicable denominator.* If the employee's surviving spouse who is more than 10 years younger than the employee is the employee's sole beneficiary, then the applicable denominator is the joint and last survivor life expectancy for the employee and spouse determined using the Joint and Last Survivor Table in § 1.401(a)(9)-9(d) for the employee's and spouse's ages as of their birthdays in the relevant distribution calendar year (rather than the applicable

denominator determined under paragraph (c)(1) of this section).

(ii) *Spouse must be sole beneficiary at all times.* Except as otherwise provided in paragraph (c)(2)(iii) of this section (relating to a death or divorce in a calendar year), the spouse is the sole beneficiary for purposes of determining the applicable denominator for a distribution calendar year during the employee's lifetime only if the spouse is the sole beneficiary of the employee's entire interest at all times during the distribution calendar year.

(iii) *Change in marital status.* If the employee and the employee's spouse are married on January 1 of a distribution calendar year, but do not remain married throughout that year (that is, the employee or the employee's spouse dies or they become divorced during that year), the employee will not fail to have a spouse as the employee's sole beneficiary for that year merely because they are not married throughout that year. However, the change in beneficiary due to the death or divorce of the spouse in a distribution calendar year will be effective for purposes of determining the applicable denominator under section 401(a)(9) and this paragraph (c) for the following calendar years.

(d) *Applicable denominator after employee's death—(1) Death on or after the employee's required beginning date—(i) In general.* If an employee dies after distribution has begun as determined under § 1.401(a)(9)–2(a)(3) (generally, on or after the employee's required beginning date), distributions must satisfy section 401(a)(9)(B)(i). In order to satisfy this requirement, the applicable denominator for distribution calendar years that begin after the employee's death is determined under the rules of this paragraph (d)(1) (or is determined under the rules of paragraph (g)(3) of this section, if applicable). The requirement to take an annual distribution in accordance with the preceding sentence continues to apply for every distribution calendar year until the employee's interest is fully distributed. Thus, a required minimum distribution is due for the calendar year of the beneficiary's death, and that amount must be distributed during that calendar year to any beneficiary of the deceased beneficiary to the extent it has not already been distributed to the deceased beneficiary. If section 401(a)(9)(H) applies to the employee's interest in the plan, then the distributions also must satisfy either section 401(a)(9)(B)(ii) (applied by substituting 10 years for 5 years) or, if the beneficiary is an eligible designated beneficiary, section 401(a)(9)(B)(iii)

(taking into account sections 401(a)(9)(E)(iii) and 401(a)(9)(H)(iii)). In order to satisfy those requirements, in addition to determining the applicable denominator under the rules of this paragraph (d)(1), the distributions must satisfy any applicable requirements under paragraph (e) of this section.

(ii) *Employee with designated beneficiary.* If the employee has a designated beneficiary as of the date determined under § 1.401(a)(9)–4(c), the applicable denominator is the greater of—

(A) The designated beneficiary's remaining life expectancy; and

(B) The employee's remaining life expectancy.

(iii) *Employee with no designated beneficiary.* If the employee does not have a designated beneficiary as of the date determined under § 1.401(a)(9)–4(c), the applicable denominator is the employee's remaining life expectancy.

(2) *Death before an employee's required beginning date.* If an employee dies before distributions have begun (as determined under § 1.401(a)(9)–2(a)(3)) and the life expectancy rule described in § 1.401(a)(9)–3(c)(4) applies, then the applicable denominator for distribution calendar years beginning with the first distribution calendar year for the designated beneficiary (as described in paragraph (a)(2)(iii) of this section) is the designated beneficiary's remaining life expectancy (or is determined under the rules of paragraph (g)(3) of this section, if applicable).

(3) *Remaining life expectancy—(i) Life expectancy table.* For purposes of this paragraph (d), all life expectancies are determined using the Single Life Table in § 1.401(a)(9)–9(b).

(ii) *Employee's life expectancy.* The employee's remaining life expectancy is determined initially using the employee's age as of the employee's birthday in the calendar year of the employee's death. In subsequent calendar years, the remaining life expectancy is determined by reducing that initial life expectancy by one for each calendar year that has elapsed after that first calendar year.

(iii) *Non-spouse designated beneficiary.* If the designated beneficiary is not the employee's surviving spouse, then the designated beneficiary's remaining life expectancy is determined initially using the beneficiary's age as of the beneficiary's birthday in the calendar year following the calendar year of the employee's death. Except as otherwise provided in paragraph (d)(3)(iv) of this section, for subsequent calendar years, the designated beneficiary's remaining life expectancy is determined by reducing that initial

life expectancy by one for each calendar year that has elapsed after that first calendar year.

(iv) *Spouse as designated beneficiary.* If the surviving spouse of the employee is the employee's sole beneficiary, then the surviving spouse's remaining life expectancy is redetermined each distribution calendar year up to and including the calendar year of the spouse's death using the surviving spouse's age as of the surviving spouse's birthday in the distribution calendar year. For each calendar year following the calendar year of the spouse's death, the spouse's remaining life expectancy is determined by reducing the spouse's remaining life expectancy in the calendar year of the spouse's death by one for each calendar year that has elapsed after that calendar year.

(e) *Distribution of employee's entire interest required—(1) In general.* Except as provided in paragraph (f) of this section, if an employee's accrued benefit is in the form of an individual account under a defined contribution plan, then the entire interest of the employee must be distributed by the end of the earliest of the calendar years described in paragraph (e)(2), (3), or (4) of this section. However, the preceding sentence does not apply if section 401(a)(9)(H) does not apply with respect to the employee (for example, if both the employee and the employee's designated beneficiary died before January 1, 2020). See § 1.401(a)(9)–1(b) for rules relating to the section 401(a)(9)(H) effective date.

(2) *10-year limit for designated beneficiary who is not an eligible designated beneficiary.* If the employee's designated beneficiary is not an eligible designated beneficiary (as determined in accordance with § 1.401(a)(9)–4(e)), then the calendar year described in this paragraph (e)(2) is the calendar year that includes the tenth anniversary of the date of the employee's death.

(3) *10-year limit following death of eligible designated beneficiary.* If the employee's designated beneficiary is an eligible designated beneficiary (as determined in accordance with § 1.401(a)(9)–4(e)), then the calendar year described in this paragraph (e)(3) is the calendar year that includes the tenth anniversary of the date of the designated beneficiary's death.

(4) *10-year limit after minor child of the employee reaches age of majority.* If the employee's designated beneficiary is an eligible designated beneficiary only because the beneficiary is the child of the employee who has not reached the age of majority at the time of the employee's death, then the calendar

year described in this paragraph (e)(4) is the calendar year that includes the tenth anniversary of the date the designated beneficiary reaches the age of majority.

(f) *Rules for multiple designated beneficiaries*—(1) *Determination of applicable denominator*—(i) *General rule*. Except as otherwise provided in paragraph (f)(1)(ii) of this section and § 1.401(a)(9)–8(a), if the employee has more than one designated beneficiary, then the determination of the applicable denominator under paragraph (d) of this section is made using the oldest designated beneficiary of the employee.

(ii) *Applicable multi-beneficiary trusts*. If an employee's beneficiary is an applicable multi-beneficiary trust described in § 1.401(a)(9)–4(g)(1), then only the trust beneficiaries described in § 1.401(a)(9)–4(g)(1)(ii) are taken into account in determining the oldest designated beneficiary for purposes of paragraph (f)(1)(i) of this section.

(2) *Determination of when entire interest is required to be distributed*—(i) *General rule*. Except as otherwise provided in paragraphs (f)(2)(ii) and (iii) of this section and § 1.401(a)(9)–8(a), if an employee has more than one designated beneficiary, then paragraph (e)(1) of this section is applied with respect to the oldest of the employee's designated beneficiaries.

(ii) *Special rule for employee's minor child*. If any of the employee's designated beneficiaries is an eligible designated beneficiary because that designated beneficiary is described in § 1.401(a)(9)–4(e)(1)(ii) (relating to the child of the employee who has not reached the age of majority at the time of the employee's death), then—

(A) Paragraph (e)(2) of this section does not apply;

(B) Paragraph (e)(3) of this section applies as if the death of the employee's eligible designated beneficiary does not occur until the death of all of the designated beneficiaries who are described in § 1.401(a)(9)–4(e)(1)(ii); and

(C) Paragraph (e)(4) of this section applies as if the attainment of the age of majority of the employee's eligible designated beneficiary described in § 1.401(a)(9)–4(e)(1)(ii) does not occur until the youngest of those eligible designated beneficiaries reaches the age of majority.

(iii) *Applicable multi-beneficiary trust*. If an employee's beneficiary is an applicable multi-beneficiary trust described in § 1.401(a)(9)–4(g)(1), then paragraph (e)(3) of this section applies as if the death of the employee's eligible designated beneficiary does not occur until the death of the last to survive of the trust beneficiaries who are described in § 1.401(a)(9)–4(g)(1)(ii).

(g) *Special rules*—(1) *Treatment of nonvested amounts*. If the employee's benefit is in the form of an individual account under a defined contribution plan, the benefit used to determine the required minimum distribution for any distribution calendar year will be determined in accordance with paragraph (a) of this section without regard to whether or not all of the employee's benefit is vested. If, as of the end of a distribution calendar year (or as of the employee's required beginning date, in the case of the employee's first distribution calendar year), the total amount of the employee's vested benefit is less than the required minimum distribution for the calendar year, only the vested portion, if any, of the employee's benefit is required to be distributed by the end of the calendar year (or, if applicable, by the employee's required beginning date). However, the required minimum distribution for the subsequent calendar year must be increased by the sum of amounts not distributed in prior calendar years because the employee's vested benefit was less than the required minimum distribution determined in accordance with paragraph (a) of this section.

(2) *Distributions taken into account*—(i) *General rule*. Except as provided in this paragraph (g)(2), all amounts distributed from an individual account under a defined contribution plan are distributions that are taken into account in determining whether this section is satisfied for a calendar year, regardless of whether the amount is includible in income. Thus, for example, amounts that are excluded from income as recovery of investment in the contract under section 72 generally are taken into account for purposes of determining whether this section is satisfied for a calendar year. Similarly, amounts excluded from income as net unrealized appreciation on employer securities generally are taken into account for purposes of satisfying this section.

(ii) *Amounts not eligible for rollover*. An amount is not taken into account in determining whether this section is satisfied for a calendar year if that amount is described in § 1.402(c)–2(c)(3) (relating to amounts that are not treated as eligible rollover distributions).

(iii) [Reserved]

(iv) [Reserved]

(3) *Surviving spouse election under section 401(a)(9)(B)(iv)*—(i) *In general*. A defined contribution plan may include a provision, applicable to an employee whose sole beneficiary is that employee's surviving spouse, under which the surviving spouse may elect to be treated as the employee for purposes

of determining the required minimum distribution for a calendar year under this section.

(ii) [Reserved]

§ 1.401(a)(9)–6 Required minimum distributions for defined benefit plans and annuity contracts.

(a) *General rules*—(1) *In general*. In order to satisfy section 401(a)(9), except as otherwise provided in this section, distributions of the employee's entire interest under a defined benefit plan or under an annuity contract must be paid in the form of periodic annuity payments for the employee's life (or the joint lives of the employee and beneficiary) or over a period certain that does not exceed the maximum length of the period certain determined in accordance with paragraph (c) of this section. The interval between payments for the annuity must not exceed one year and, except as otherwise provided in this section, must be uniform over the entire distribution period. Once payments have commenced over a period, the period may only be changed in accordance with paragraph (n) of this section. Life (or joint and survivor) annuity payments must satisfy the minimum distribution incidental benefit requirements of paragraph (b) of this section. Except as otherwise provided in this section (for example, permitted increases described in paragraph (o) of this section), all payments (whether paid over an employee's life, joint lives, or a period certain) also must be nonincreasing.

(2) *Definition of life annuity*. An annuity described in this section may be a life annuity (or joint and survivor annuity) with a period certain, provided that the life annuity (or joint and survivor annuity, if applicable) and the period certain payments each meet the requirements of paragraph (a)(1) of this section. For purposes of this section, if distributions are permitted to be made over the lives of the employee and the designated beneficiary, references to a life annuity include a joint and survivor annuity.

(3) *Annuity commencement*—(i) *First payment and frequency*. Annuity payments must commence on or before the employee's required beginning date (within the meaning of § 1.401(a)(9)–2(b)). The first payment, which must be made on or before the employee's required beginning date, must be the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Similarly, if the employee dies before the required beginning date,

and distributions are to be made in accordance with section 401(a)(9)(B)(iii) (or, if applicable, section 401(a)(9)(B)(iv)), then the first payment, which must be made on or before the last day of the calendar year following the calendar year in which the employee died (or the date determined under § 1.401(a)(9)-3(d), if applicable), must be the payment that is required for one payment interval. Payment intervals are the periods for which payments are received, for example, bimonthly, monthly, semi-annually, or annually. All benefit accruals as of the last day of the first distribution calendar year must be included in the calculation of the amount of annuity payments for payment intervals ending on or after the employee's required beginning date.

(ii) *Example.* A defined benefit plan (Plan X) provides monthly annuity payments for the life of unmarried participants with a 10-year period certain. An unmarried, retired participant A in Plan X attains age 73 in 2025. A's monthly annuity payment under this single life annuity based on accruals through December 31, 2025, is \$500. In order to meet the requirements of this paragraph (a)(3), the first monthly payment of \$500 must be made on behalf of A on or before April 1, 2026, and monthly payments must continue to be made thereafter for the life of A (or over the 10-year period certain, if longer).

(4) *Single-sum distributions*—(i) *In general.* In the case of a single-sum distribution of an employee's entire accrued benefit during a distribution calendar year, the portion of the distribution that is the required minimum distribution for the distribution calendar year (and thus not an eligible rollover distribution pursuant to section 402(c)(4)(B)) is determined using the rule in either paragraph (a)(4)(ii) or (iii) of this section.

(ii) *Treatment as individual account.* The portion of the single-sum distribution that is a required minimum distribution is determined by treating the single-sum distribution as a distribution from an individual account plan and treating the amount of the single-sum distribution as the employee's account balance as of the end of the relevant valuation calendar year. If the single-sum distribution is being made in the calendar year that includes the required beginning date and the required minimum distribution for the employee's first distribution calendar year has not been distributed, the portion of the single-sum distribution that represents the required minimum distribution for the

employee's first and second distribution calendar years is not eligible for rollover.

(iii) *Treatment as first annuity payment.* The portion of the single-sum distribution that is a required minimum distribution is permitted to be determined by expressing the employee's benefit as an annuity that would satisfy this section with an annuity starting date that is the first day of the distribution calendar year for which the required minimum distribution is being determined, and treating one year of annuity payments as the required minimum distribution for that year (and therefore, not an eligible rollover distribution). If the single-sum distribution is being made in the calendar year that includes the required beginning date, and the required minimum distribution for the employee's first distribution calendar year has not been made, then the benefit must be expressed as an annuity with an annuity starting date that is the first day of the first distribution calendar year, and the payments for the first two distribution calendar years are treated as required minimum distributions (and therefore not eligible rollover distributions).

(5) *Death benefits.* The rule in paragraph (a)(1) of this section prohibiting increasing payments under an annuity applies to payments made upon the death of an employee. However, the payment of an ancillary death benefit described in this paragraph (a)(5) may be disregarded in determining whether annuity payments are increasing, and it can be excluded in determining an employee's entire interest. A death benefit with respect to an employee's benefit is an ancillary death benefit for purposes of this paragraph (a) if—

(i) It is not paid as part of the employee's accrued benefit or under any optional form of the employee's benefit; and

(ii) The death benefit, together with any other potential payments with respect to the employee's benefit that may be provided to a survivor, satisfies the incidental benefit requirement of § 1.401-1(b)(1)(i).

(6) *Separate treatment of separate identifiable components.* If an employee's benefit under a defined benefit plan or annuity contract consists of separate identifiable components that are subject to different distribution elections, then the rules of this section may be applied separately to each of those components.

(7) *Additional guidance.* Additional guidance regarding how distributions under a defined benefit plan must be

paid in order to satisfy section 401(a)(9) may be issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(b) *Application of incidental benefit requirement*—(1) *Life annuity for employee.* If the employee's benefit is paid in the form of a life annuity for the life of the employee satisfying section 401(a)(9) without regard to the minimum distribution incidental benefit requirement under section 401(a)(9)(G) (MDIB requirement), then the MDIB requirement will be satisfied.

(2) *Joint and survivor annuity*—(i) *Determination of designated beneficiary.* If the employee's benefit is paid in the form of a life annuity for the lives of the employee and a designated beneficiary, then the designated beneficiary is determined as of the annuity starting date.

(ii) *Spouse beneficiary.* If the employee's sole beneficiary is the employee's spouse and the distributions satisfy section 401(a)(9) without regard to the MDIB requirement, the distributions to the employee will be deemed to satisfy the MDIB requirement. For example, if an employee's benefit is being distributed in the form of a joint and survivor annuity for the lives of the employee and the employee's spouse and the spouse is the sole beneficiary of the employee, the amount of the periodic payment payable to the spouse would not violate the MDIB requirement if it were 100 percent of the annuity payment payable to the employee, regardless of the difference in the ages between the employee and the employee's spouse.

(iii) *Joint and survivor annuity, non-spouse beneficiary.* If distributions commence in the form of a joint and survivor annuity for the lives of the employee and a beneficiary other than the employee's spouse, and the employee is the applicable age or older on the employee's birthday in the calendar year that includes the annuity starting date, then the MDIB requirement will not be satisfied as of the date distributions commence unless, under the distribution option, the annuity payments satisfy the conditions of this paragraph (b)(2)(iii). The periodic annuity payments to the survivor satisfy this paragraph (b)(2)(iii) only if, at any time on or after the employee's required beginning date, those payments do not exceed the applicable percentage of the periodic annuity payment payable to the employee using the table in this paragraph (b)(2)(iii). The applicable percentage is based on the employee/

beneficiary age difference, which is equal to the excess of the age of the employee over the age of the beneficiary based on their ages on their birthdays in the calendar year that includes the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of this paragraph (b)(2)(iii) will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary. See paragraph (k)(2) of this section for rules regarding the application of the MDIB requirement in the case of annuity payments with an annuity starting date that is before the calendar year in which an employee attains the applicable age.

TABLE 1 TO PARAGRAPH (b)(2)(iii)

Employee/beneficiary age difference	Applicable percentage
10 years or less	100
11	96
12	93
13	90
14	87
15	84
16	82
17	79
18	77
19	75
20	73
21	72
22	70
23	68
24	67
25	66
26	64
27	63
28	62
29	61
30	60
31	59
32	59
33	58
34	57
35	56
36	56
37	55
38	55
39	54
40	54
41	53
42	53
43	53
44 and greater	52

(3) *Period certain and annuity features.* If a distribution form includes a period certain, the amount of the annuity payments payable to the beneficiary need not be reduced during the period certain, but in the case of a joint and survivor annuity with a period certain, the amount of the annuity payments payable to the beneficiary must satisfy paragraph (b)(2)(iii) of this

section after the expiration of the period certain.

(4) *Deemed satisfaction of incidental benefit rule.* Except in the case of distributions with respect to an employee's benefit that include an ancillary death benefit described in paragraph (a)(5) of this section, to the extent the incidental benefit requirement of § 1.401-1(b)(1)(i) requires a distribution, that requirement is deemed to be satisfied if distributions satisfy the MDIB requirement of this paragraph (b). If the employee's benefits include an ancillary death benefit described in paragraph (a)(5) of this section, the benefits (including the ancillary death benefit) must be distributed in accordance with the incidental benefit requirement described in § 1.401-1(b)(1)(i) and the benefits (excluding the ancillary death benefit) must also satisfy the MDIB requirement of this paragraph (b).

(c) *Period certain annuity—(1) Distributions commencing during the employee's life.* If the employee is the applicable age or older on the employee's birthday in the calendar year that includes the annuity starting date, then the period certain is not permitted to exceed the applicable denominator for the calendar year that includes the annuity starting date that would apply pursuant to § 1.401(a)(9)-5(c) if the plan were a defined contribution plan. However, that applicable denominator is determined taking into account the rules of § 1.401(a)(9)-5(c)(2) (relating to a spouse who is more than 10 years younger than the employee) only if the period certain is not provided in conjunction with a life annuity under paragraph (a)(2) of this section. See paragraph (k) of this section for the rule for annuity payments with an annuity starting date that is before the calendar year in which the employee attains the applicable age.

(2) *Distributions commencing after the employee's death.* If the employee dies before the required beginning date and annuity distributions commence after the death of the employee under the life expectancy rule (under section 401(a)(9)(B)(iii) or (iv)), the period certain for any distributions commencing after death may not exceed the applicable denominator that would apply pursuant to § 1.401(a)(9)-5(d)(2) for the calendar year that includes the annuity starting date if the plan were a defined contribution plan.

(d) *Use of annuity contract—(1) In general.* A plan will not fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract purchased from an insurance company that is licensed to do business

under the laws of the State in which the contract is sold, provided that the payments satisfy the requirements of this section. Except in the case of a qualifying longevity annuity contract (QLAC) described in paragraph (q) of this section, if the annuity contract is purchased after the required beginning date, then the first payment interval must begin on or before the purchase date and the payment that is made at the end of that payment interval is the amount required for one payment interval. If the payments actually made under the annuity contract do not meet the requirements of this section, the plan fails to satisfy section 401(a)(9). See also paragraph (o) of this section permitting certain increases under annuity contracts.

(2) *Applicability of section 401(a)(9)(H)—(i) Annuity contract subject to section 401(a)(9)(H).* If an annuity contract is purchased under a defined contribution plan, or the annuity contract is otherwise subject to section 401(a)(9)(H), payments under that annuity contract cannot extend past the calendar year described in § 1.401(a)(9)-5(e).

(ii) *Determination of an eligible designated beneficiary.* If an annuity contract is described in paragraph (d)(2)(i) of this section, then the determination of whether a beneficiary is an eligible designated beneficiary under section 401(a)(9)(E)(ii), is made as of the annuity starting date. For example, if, as of the annuity starting date, the employee's beneficiary under the contract is the employee's spouse, then the spouse is treated as an eligible designated beneficiary for purposes of applying the rules of section 401(a)(9)(H) even if the employee and spouse are subsequently divorced.

(e) *Treatment of additional accruals—(1) General rule.* If additional benefits accrue in a calendar year after the employee's first distribution calendar year, distribution of the amount that accrues in that later calendar year must commence in accordance with paragraph (a) of this section beginning with the first payment interval ending in the calendar year following the calendar year in which that amount accrues.

(2) *Administrative delay.* A plan will not fail to satisfy this section merely because there is an administrative delay in the commencement of the distribution of the additional benefits accrued in a calendar year, provided that—

(i) The payment commences no later than the end of the first calendar year following the calendar year in which the additional benefit accrues; and

(ii) The total amount paid during that first calendar year with respect to those additional benefits is no less than the total amount that was required to be paid during that year under paragraph (e)(1) of this section.

(f) *Treatment of nonvested benefits.* In the case of annuity distributions under a defined benefit plan, if any portion of the employee's benefit is not vested as of December 31 of a distribution calendar year, the portion that is not vested as of that date is treated as not having accrued for purposes of determining the required minimum distribution for that distribution calendar year. When an additional portion of the employee's benefit becomes vested, that portion will be treated as an additional accrual. See paragraph (e) of this section for the rules for distributing benefits that accrue under a defined benefit plan after the employee's first distribution calendar year.

(g) *Requirement for actuarial increase—(1) General rule—(i) Applicability of increase.* Except as otherwise provided in this paragraph (g), if an employee retires after the calendar year in which the employee attains age 70½, then, in order to satisfy section 401(a)(9)(C)(iii), the employee's accrued benefit under a defined benefit plan must be actuarially increased for the period (if any) from the start date described in paragraph (g)(1)(ii) of this section to the end date described in paragraph (g)(1)(iii) of this section.

(ii) *Start date for actuarial increase.* The start date for the required actuarial increase is April 1 following the calendar year in which the employee attains age 70½ (or January 1, 1997, if the employee attained 70½ prior to January 1, 1997).

(iii) *End date for actuarial increase.* The end date for the required actuarial increase is the date on which benefits commence after retirement in a form that satisfies paragraphs (a) and (h) of this section.

(iv) *Determination of when employee attains age 70½.* An employee attains age 70½ as of the date six calendar months after the 70th anniversary of the employee's birth. For example, if the date of birth of an employee is June 30, 1955, the 70th anniversary of the employee's birth is June 30, 2025, and the employee attains age 70½ in 2025. However, if the employee's date of birth is July 1, 1955, the 70th anniversary of the employee's birth is July 1, 2025, and the employee attains age 70½ in 2026.

(2) *Nonapplication to 5-percent owners.* This paragraph (g) does not apply to an employee if that employee is a 5-percent owner (as defined in

section 416) with respect to the plan year ending in the calendar year in which the employee attains the applicable age.

(3) *Nonapplication to governmental plans.* The actuarial increase required under this paragraph (g) does not apply to a governmental plan (within the meaning of section 414(d)).

(4) *Nonapplication to church plans and church employees—(i) Church plans.* The actuarial increase required under this paragraph (g) does not apply to a church plan. For purposes of this paragraph (g)(4)—

(A) The term *church plan* means a plan maintained by a church (as defined in section 3121(w)(3)(A)) or a qualified church-controlled organization (as defined in section 3121(w)(3)(B)) for its employees; and

(B) A plan is treated as a church plan only if at least 85 percent of the individuals covered by the plan are employees of a church or a qualified church-controlled organization.

(ii) *Determination of whether an individual is an employee of a church.* For purposes of this paragraph (g)(4), the determination of whether an individual is an employee of a church or a qualified church-controlled organization is made in accordance with the rules of section 414(e)(3)(B) other than section 414(e)(3)(B)(ii).

(iii) *Church employees covered in other plans.* If a plan is not a church plan within the meaning of paragraph (g)(4)(i) of this section, then the actuarial increase required under this paragraph (g) does not apply to benefits accrued under the plan by an individual that are attributable to the service the individual performs as an employee of a church or a qualified church-controlled organization (including service performed as an employee described in section 414(e)(3)(B)(i)).

(h) *Amount of actuarial increase—(1) In general.* In order to satisfy section 401(a)(9)(C)(iii), the retirement benefits payable with respect to an employee as of the end of the period for which actuarial increases must be provided as described in paragraph (g) of this section must be no less than—

(i) The actuarial equivalent of the employee's retirement benefits that would have been payable as of the start date described in paragraph (g)(1)(ii) of this section if benefits had commenced on that date; plus

(ii) The actuarial equivalent of any additional benefits accrued after that date; reduced by

(iii) The actuarial equivalent of any distributions made with respect to the employee's retirement benefits after that date.

(2) *Actuarial equivalence basis.* For purposes of this paragraph (h), actuarial equivalence is determined using reasonable actuarial assumptions. If the plan is subject to section 411, the plan's assumptions must be the same as the assumptions used for determining actuarial equivalence for purposes of satisfying section 411.

(3) *Coordination with section 411 actuarial increase.* Under section 411, in order for an employee's accrued benefit under a defined benefit plan to be nonforfeitable, the plan must make an actuarial adjustment to any portion of that accrued benefit, the payment of which is deferred past normal retirement age. The only exception to this rule is that, generally, no actuarial adjustment is required to reflect the period during which a benefit is suspended as permitted under section 411(a)(3)(B). The actuarial increase required under section 401(a)(9)(C)(iii) for the period (if any) described in paragraph (g)(1)(i) of this section generally is the same as, and not in addition to, the actuarial increase required for the same period under section 411 to reflect any delay in the payment of retirement benefits after normal retirement age. However, unlike the actuarial increase required under section 411, the actuarial increase required under section 401(a)(9)(C)(iii) must be provided even during any period during which an employee's benefit has been suspended in accordance with section 411(a)(3)(B).

(i) [Reserved]

(j) *Distributions restricted pursuant to section 436—(1) General rule.* If an employee's entire interest is being distributed in accordance with the 5-year rule of section 401(a)(9)(B)(ii), a plan is not treated as failing to satisfy section 401(a)(9) merely because of the application of a payment restriction under section 436(d), provided that distributions of the employee's interest commence by the end of the calendar year that includes the fifth anniversary of the date of the employee's death and, after the annuity starting date, those distributions are paid in a form that is as accelerated as permitted under section 436(d), as described in paragraph (j)(2) or (3) of this section.

(2) *Payments restricted under section 436(d)(3).* If the payment restriction of section 436(d)(3) applies at the time benefits commence under paragraph (j)(1) of this section, then distributions are made in a form that is as accelerated as permitted under section 436(d) if the benefits are paid in a single-sum payment equal to the maximum amount allowed under section 436(d)(3), with the remainder paid as a life annuity to

the beneficiary (or over the course of 240 months pursuant to § 1.436–1(j)(6)(ii) in the case of a beneficiary that is not an individual), subject to a requirement that the benefit remaining is commuted to a single-sum payment when the section 436(d)(3) payment restriction ceases to apply (to the extent that a single-sum payment is permitted under section 436(d)(1) and (2)).

(3) *Payments restricted under section 436(d)(1) or (2).* If a plan is subject to the payment restriction in section 436(d)(1) or (2) at the time benefits commence under paragraph (j)(1) of this section, then distributions are made in a form that is as accelerated as permitted under section 436(d) if the benefits are paid in the form of a life annuity to the beneficiary (or over the course of 240 months pursuant to § 1.436–1(j)(6)(ii), in the case of a beneficiary that is not an individual), subject to a requirement that the benefit remaining is commuted to a single-sum payment to the extent permitted under section 436(d) (for example, the maximum amount allowed under section 436(d)(3)) when the payment restriction under section 436(d)(1) or (2) ceases to apply.

(k) *Treatment of early commencement—(1) General rule.* Generally, the determination of whether a stream of payments satisfies the requirements of this section is made as of the required beginning date. However, if distributions start prior to the required beginning date in a distribution form that is an annuity under which distributions are made in accordance with the provisions of paragraph (a) of this section and are made over a period permitted under section 401(a)(9)(A)(ii), then, except as provided in this paragraph (k), the annuity starting date will be treated as the required beginning date for purposes of applying the rules of this section and § 1.401(a)(9)–2. Thus, for example, the determination of the designated beneficiary and the amount of distributions will be made as of the annuity starting date. Similarly, if the employee dies after the annuity starting date but before the required beginning date determined under § 1.401(a)(9)–2(b), then after the employee's death—

(i) The remaining portion of the employee's interest must continue to be distributed in accordance with this section over the remaining period over which distributions commenced; and

(ii) The rules in § 1.401(a)(9)–3 relating to death before the required beginning date do not apply.

(2) *Joint and survivor annuity, non-spouse beneficiary—(i) Application of MDIB requirement.* If distributions commence in the form of a joint and

survivor annuity for the lives of the employee and a beneficiary other than the employee's spouse, and as of the employee's birthday in the calendar year that includes the annuity starting date, the employee is younger than the applicable age, then the MDIB requirement will not be satisfied as of the date distributions commence unless, under the distribution option, the annuity payments to be made on and after the employee's required beginning date satisfy the conditions of this paragraph (k)(2). The periodic annuity payments payable to the survivor satisfy this paragraph (k)(2) if, at all times on and after the employee's annuity starting date, those payments do not exceed the applicable percentage of the periodic annuity payment payable to the employee determined using the table in paragraph (b)(2)(iii) of this section (but based on the adjusted employee/beneficiary age difference). The adjusted employee/beneficiary age difference is determined by first calculating the employee/beneficiary age difference under paragraph (b)(2)(iii) of this section and then reducing that age difference by the number of years by which the employee is younger than the applicable age on the employee's birthday in the calendar year that includes the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of this paragraph (k)(2) will not fail to be satisfied merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary.

(ii) *Example—(A) Facts.* Distributions under a defined benefit plan commence on January 1, 2025, to an employee Z, born March 1, 1958. Z's daughter Y, born February 5, 1989, is Z's beneficiary. The distributions are in the form of a joint and survivor annuity for the lives of Z and Y with payments of \$500 a month to Z and upon Z's death of \$500 a month to Y (so that the monthly payment to Y is 100 percent of the monthly amount payable to Z).

(B) *Analysis and conclusion.* Z's required beginning date is April 1, 2032 (that is, April 1 of the calendar year following the calendar year in which Z will attain age 73). Under paragraph (k)(1) of this section, because distributions commence prior to Z's required beginning date and are in the form of a joint and survivor annuity for the lives of Z and Y, compliance with the rules of this section is determined as of the annuity starting date. Under this paragraph (k)(2), the adjusted employee/beneficiary age difference is calculated by taking the excess of the employee's

age over the beneficiary's age and subtracting the number of years the employee is younger than the applicable age (in this case, age 73). In 2025, Z attains age 67 and Y attains age 36. Accordingly, the employee/beneficiary age difference is 31. Because Z is commencing benefits 6 years before attaining the applicable age, the adjusted employee/beneficiary age difference is 25 years. Under table 1 to paragraph (b)(2)(iii) of this section, the applicable percentage for a 25-year adjusted employee/beneficiary age difference is 66 percent. The plan does not satisfy the MDIB requirement because, as of January 1, 2025 (the annuity starting date), the distribution option provides that, as of Z's required beginning date, the monthly payment to Y upon Z's death will exceed 66 percent of Z's monthly payment.

(3) *Limitation on period certain.* If, as of the employee's birthday in the calendar year that includes the annuity starting date, the employee is younger than the applicable age, then the period certain may not exceed the limitation on the period certain for an individual who has attained the applicable age as specified in paragraph (c)(1) of this section, increased by the number of years by which the employee is younger than the applicable age on that birthday.

(l) *Early commencement for surviving spouse.* Generally, the determination of whether a stream of payments satisfies the requirements of this section is made as of the date on which distributions are required to commence. However, if the employee dies prior to the required beginning date, distributions commence to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) prior to the date on which distributions are required to commence, and the distribution form is an annuity under which distributions are made in accordance with the provisions of paragraph (a) of this section, then the annuity starting date will be considered the required beginning date for purposes of section 401(a)(9)(B)(iv)(III). Thus, if the surviving spouse dies after commencing benefits and before the date described in 401(a)(9)(B)(iv)(II), then after the surviving spouse's death—

(1) The rules in § 1.401(a)(9)–3(e)(1) relating to the death of the surviving spouse before the required beginning date under section 401(a)(9)(B)(iv)(III) will not apply upon the death of the surviving spouse; and

(2) The annuity distributions must continue to be made in accordance with paragraph (a) of this section over the remaining period over which distributions commenced.

(m) *Determination of entire interest under annuity contract*—(1) *General rule.* Prior to the date that an annuity contract under an individual account plan is annuitized, the interest of an employee or beneficiary under that contract is treated as an individual account for purposes of section 401(a)(9). Thus, the required minimum distribution for any year with respect to that interest is determined under § 1.401(a)(9)–5 rather than this section. See § 1.401(a)(9)–5(a)(5) for rules relating to the satisfaction of section 401(a)(9) in the year that annuity payments commence (including situations in which an annuity contract is purchased with a portion of an employee's account balance) and § 1.401(a)(9)–5(b)(4) for rules relating to QLACs (as defined in paragraph (q) of this section).

(2) *Entire interest.* For purposes of applying the rules in § 1.401(a)(9)–5, the entire interest under the annuity contract as of December 31 of the relevant valuation calendar year is treated as the account balance for the valuation calendar year described in § 1.401(a)(9)–5(c). The entire interest under an annuity contract is the dollar amount credited to the employee or beneficiary under the contract (that is, the notional account balance) plus the actuarial present value of any additional benefits (for example, survivor benefits in excess of the dollar amount credited to the employee or beneficiary) that will be provided under the contract. However, paragraph (m)(3) of this section describes certain additional benefits that may be disregarded in determining the employee's entire interest under the annuity contract. The actuarial present value of any additional benefits described under this paragraph (m) is to be determined using reasonable actuarial assumptions, including reasonable assumptions as to future distributions, and without regard to an individual's health.

(3) *Exclusions*—(i) *Additional value does not exceed 20 percent.* The

actuarial present value of any additional benefits provided under an annuity contract described in paragraph (m)(2) of this section may be disregarded if the sum of the dollar amount credited to the employee or beneficiary under the contract and the actuarial present value of the additional benefits is no more than 120 percent of the dollar amount credited to the employee or beneficiary under the contract and the additional benefits are one or both of the following—

(A) Additional benefits that, in the case of a distribution, are reduced by an amount sufficient to ensure that the ratio of the sum to the dollar amount credited does not increase as a result of the distribution; and

(B) An additional benefit that is the right to receive a final payment upon death that does not exceed the amount by which the total consideration paid exceeds the amount of prior distributions.

(ii) *Return of premium death benefit.* If the only additional benefit provided under the contract is the additional benefit described in paragraph (m)(3)(i)(B) of this section, the additional benefit may be disregarded regardless of its value in relation to the dollar amount credited to the employee or beneficiary under the contract.

(iii) *Additional guidance.* The Commissioner, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d) of this chapter), may provide additional guidance on additional benefits that may be disregarded.

(4) *Examples.* The examples in this paragraph (m)(4), which use a 5 percent interest rate and the mortality table used for distributions subject to section 417(e)(3) provided in Notice 2019–67, 2019–52 IRB 1510, illustrate the application of the rules in this paragraph (m):

(i) *Example 1*—(A) *Facts.* G is the owner of a variable annuity contract (Contract S) under an individual

account plan that has not been annuitized. Contract S provides a death benefit until the end of the calendar year in which the owner attains the age of 84 equal to the greater of the current Contract S notional account balance (dollar amount credited to G under the contract) and the largest notional account balance at any previous policy anniversary reduced proportionally for subsequent partial distributions (High Water Mark). Contract S provides a death benefit in calendar years after the calendar year in which the owner attains age 84 equal to the current notional account balance. Contract S provides that assets within the contract may be invested in a Fixed Account at a guaranteed rate of 2 percent. Contract S provides no other additional benefits.

(B) *Actuarial calculations.* At the end of 2028, when G has an attained age of 78 and 9 months, the notional account balance of Contract S (after the distribution for 2028 of 4.55 percent of the notional account balance as of December 31, 2027) is \$550,000, and the High Water Mark, before adjustment for any withdrawals from Contract S in 2028, is \$1,000,000. Thus, Contract S will provide additional benefits (that is, the death benefits in excess of the notional account balance) through 2034, the year S turns 84. The actuarial present value of these additional benefits at the end of 2028 is determined to be \$67,978 (12 percent of the notional account balance). In making this determination, the following assumptions are made: on average, deaths occur mid-year; the investment return on G's notional account balance is 2 percent per annum; and minimum required distributions (determined without regard to additional benefits under the Contract S) are made at the end of each year. The following two tables summarize the actuarial methodology used in determining the actuarial present value of the additional benefit.

TABLE 2 TO PARAGRAPH (m)(4)(i)(B)

Year	Death benefit during year	End-of-year notional account balance before withdrawal	Average notional account balance	Withdrawal at end of year	End-of-year notional account balance after withdrawal
2028	\$1,000,000	.....	.....	.....	\$550,000
2029	¹ 954,545	² \$561,000	³ \$555,500	⁴ \$26,606	534,934
2030	909,306	545,633	540,283	26,482	519,151
2031	864,291	529,534	524,342	26,760	502,774
2032	819,740	512,829	507,801	27,177	485,652
2033	775,430	495,365	490,509	27,438	467,927
2034	731,620	477,286	472,606	27,853	449,433

¹ \$1,000,000 death benefit reduced 4.55 percent for withdrawal during 2028.

² Notional account balance at end of preceding year (after distribution) increased by 2 percent return for year.

³ Average of \$550,000 notional account balance at end of preceding year (after distribution) and \$561,000 notional account balance at end of current year (before distribution).

⁴ December 31, 2028 notional account balance (before distribution) divided by uniform lifetime table age 79 factor of 21.1.

TABLE 3 TO PARAGRAPH (m)(4)(i)(B)

Year	Survivorship to start of year	Interest discount to end of 2028	Mortality rate during year	Discounted additional benefits within year
2028 .....	.....	.....	.....	.....
2029	1.00000	.97590	⁵ .03321	12,933
2030	.96679	⁶ .92943	.03739	⁷ 12,398
2031	⁸ .93064	.88517	.04198	11,756
2032	.89157	.84302	.04715	11,055
2033	.84953	.80288	.05305	10,310
2034	.80446	.76464	.05979	9,526
.....	.....	.....	.....	\$67,978

⁵ One-quarter age 78 rate plus three-quarters age 79 rate.

⁶ Five percent discounted 18 months ($1.05^{(-1.5)}$).

⁷ Blended age 79/age 80 mortality rate (.03739) multiplied by the \$369,023 excess of death benefit over the average notional account balance (\$909,306 less \$540,283) multiplied by .96679 probability of survivorship to the start of 2030 multiplied by 18-month interest discount of .92943.

⁸ Survivorship to start of preceding year (.96679) multiplied by probability of survivorship during prior year ($1 - .03739$).

(C) *Conclusion.* Because Contract S provides that, in the case of a distribution, the value of the additional death benefit (which is the only additional benefit available under the contract) is reduced by an amount that is at least proportional to the reduction in the notional account balance and, at age 78 and 9 months, the sum of the notional account balance (dollar amount credited to the employee under the contract) and the actuarial present value

of the additional death benefit is no more than 120 percent of the notional account balance, the exclusion under paragraph (m)(3)(i) of this section applies for 2029. Therefore, for purposes of applying the rules in § 1.401(a)(9)–5, the entire interest under Contract S may be determined as the notional account balance (that is, without regard to the additional death benefit).

(ii) *Example 2—(A) Facts.* The facts are the same as in paragraph (m)(4)(i) of

this section (*Example 1*), except that the notional account balance is \$550,000 at the end of 2028. In this instance, the actuarial present value of the death benefit in excess of the notional account balance in 2028 is determined to be \$97,273 (24 percent of the notional account balance). The following two tables summarize the actuarial methodology used in determining the actuarial present value of the additional benefit.

TABLE 4 TO PARAGRAPH (m)(4)(ii)(A)

Year	Death benefit during year	End-of-year notional account balance before withdrawal	Average notional account balance	Withdrawal at end of year	End-of-year notional account balance after withdrawal
2028	\$1,000,000	.....	.....	.....	\$400,000
2029	954,545	\$408,000	\$404,000	\$18,957	389,043
2030	909,306	396,824	392,933	19,260	377,564
2031	864,291	385,115	381,339	19,462	365,653
2032	819,740	372,966	369,310	19,765	353,201
2033	775,430	360,265	356,733	19,955	340,310
2034	731,620	347,116	343,713	20,257	326,859

TABLE 5 TO PARAGRAPH (m)(4)(ii)(A)

Year	Survivorship to start of year	Interest discount to end of 2028	Mortality rate during year	Discounted additional benefits within year
2028 .....	.....	.....	.....	.....
2029	1.00000	.97590	.03321	\$17,843
2030	.96679	.92943	.03739	17,349
2031	.93064	.88517	.04198	16,701
2032	.89157	.84302	.04715	15,963
2033	.84953	.80288	.05305	15,150
2034	.80446	.76464	.05979	14,267
.....	.....	.....	.....	\$97,273

(B) *Conclusion.* Because the sum of the notional account balance and the actuarial present value of the additional death benefit is more than 120 percent of the notional account balance, the exclusion under paragraph (m)(3)(i) of this section does not apply for 2029. Therefore, for purposes of applying the rules in § 1.401(a)(9)–5, the entire interest under Contract S must include the actuarial present value of the additional death benefit.

(n) *Change in annuity payment period*—(1) *In general.* An annuity payment period may be changed in accordance with the reannuitization provisions set forth in paragraph (n)(2) of this section or in association with an annuity payment increase described in paragraph (o) of this section.

(2) *Reannuitization.* If, in a stream of annuity payments that otherwise satisfies section 401(a)(9), the annuity payment period is changed and the annuity payments are modified in association with that change, this modification will not cause the distributions to fail to satisfy section 401(a)(9) provided the conditions set forth in paragraph (n)(3) of this section are satisfied, and—

(i) The modification occurs at the time that the employee retires or in connection with a plan termination;

(ii) The annuity payments prior to modification are annuity payments paid over a period certain without life contingencies; or

(iii) The annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the employee and a designated beneficiary, the employee's spouse is the sole beneficiary, and the modification occurs in connection with the employee becoming married to that spouse.

(3) *Conditions.* In order to modify a stream of annuity payments in accordance with paragraph (n)(2) of this section, the following conditions must be satisfied—

(i) The future payments under the modified stream satisfy section 401(a)(9) and this section (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the participant);

(ii) For purposes of sections 415 and 417, the modification is treated as a new annuity starting date;

(iii) After taking into account the modification, the annuity stream satisfies section 415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable as of that date); and

(iv) The end point of the period certain, if any, for any modified payment period is not later than the end point available under section 401(a)(9) to the employee at the original annuity starting date.

(4) *Examples.* For the purposes of the examples in this paragraph (n)(4), assume that the applicable segment rates under section 417(e)(3) are 5.00 percent, 5.50 percent, and 6.00 percent, and the applicable mortality table under section 417(e)(3) is the mortality table provided in Notice 2023–73, 2023–45 IRB 232. In addition, assume that the section 415 limit at age 72 for a straight life annuity is \$306,667 (which is the lesser of the annual benefit under section 415(b)(1)(A), as adjusted pursuant to section 415(d) and further adjusted for age 72 in accordance with § 1.415(b)–1(e)(1)(i), and 100 percent of the participant's average compensation for the participant's high 3 years):

(i) *Example 1*—(A) *Facts*—(1) *Background.* Participant D has 10 years of participation in a frozen defined benefit plan (Plan W). D is not retired and elects to receive distributions from Plan W in the form of a straight life annuity with annual payments of \$310,000 per year beginning in 2025 at a date when D has an attained age of 72. Plan W offers non-retired employees in pay status the opportunity to modify their annuity payments due to an associated change in the payment period at retirement. Plan W treats the date of the change in payment period as a new annuity starting date for purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent. Plan W determines modifications of annuity payment amounts at retirement so that the present value of future new annuity payment amounts (taking into account the new associated payment period) is actuarially equivalent to the present value of future pre-modification annuity payments (taking into account the pre-modification annuity payment period). Actuarial equivalency for this purpose is determined using the applicable segment rates under section 417(e)(3)(C) and the applicable mortality table as of the date of modification.

(2) *Payment of retirement benefits to Participant D.* D retires in 2029 at the age of 76 and, after receiving four annual payments of \$310,000, elects to receive the remaining distributions from Plan W in the form of an immediate final lump sum payment of \$2,795,732. Because payment of retirement benefits in the form of an immediate final lump sum payment satisfies (in terms of form)

section 401(a)(9), the condition under paragraph (n)(3)(i) of this section is met.

(B) *Analysis.* Because Plan W treats a modification of an annuity payment stream at retirement as a new annuity starting date for purposes of sections 415 and 417, the condition under paragraph (n)(3)(ii) of this section is met. After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 72 of \$310,000, \$310,000, \$310,000, \$310,000, and \$2,795,732. This benefit stream is actuarially equivalent to a straight life annuity at age 72 of \$315,145, calculated in accordance with section 415(b)(2)(E)(ii), which is an amount less than the section 415 limit determined at the original annuity starting date. Thus, the condition under paragraph (n)(3)(iii) of this section is met. In addition, because the modified payment period does not include a period certain, paragraph (n)(3)(iv) of this section does not apply.

(C) *Conclusion.* Because a stream of annuity payments in the form of a straight life annuity satisfies section 401(a)(9), and because each of the conditions under paragraph (n)(3) of this section are satisfied, the modification of annuity payments to D described in this example meets the requirements of this paragraph (n).

(ii) *Example 2*—(A) *Facts.* The facts are the same as in paragraph (n)(4)(i) of this section (*Example 1*), except that the straight life annuity payments are paid at a rate of \$330,000 per year and, after D retires, the lump sum payment at age 76 is \$2,976,102. Thus, after taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 72 of \$330,000, \$330,000, \$330,000, \$330,000, and \$2,976,102.

(B) *Conclusion.* The benefit stream described in paragraph (n)(4)(ii)(A) of this section is actuarially equivalent to a straight life annuity at age 72 of \$335,477, calculated in accordance with section 415(b)(2)(E)(ii), which exceeds the section 415 limit determined at the original annuity starting date. Thus, the lump sum payment to D fails to satisfy the condition under paragraph (n)(3)(iii) of this section. Therefore, the lump sum payment to D fails to meet the requirements of this paragraph (n) and fails to satisfy the requirements of section 401(a)(9).

(iii) *Example 3*—(A) *Facts*—(1) *Background.* Participant E has 10 years of participation in Plan X, a frozen defined benefit plan. E retires in 2025 at a date when E's attained age is 72. E

elects to receive annual distributions from Plan X in the form of a 27-year period certain annuity (that is, a 27-year annuity payment period without a life contingency) paid at a rate of \$37,000 per year beginning in 2025 with future payments increasing at a rate of 4.00 percent per year (that is, the 2026 payment will be \$38,480, the 2027 payment will be \$40,019 and so on). Plan X offers participants in pay status whose annuity payments are in the form of a term-certain annuity the opportunity to modify their payment period at any time and treats the modifications as a new annuity starting date for the purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent.

(2) *Plan provisions for determination of actuarial equivalence.* Plan X determines modifications of annuity payment amounts so that the present value of future new annuity payment amounts (taking into account the new associated payment period) is actuarially equivalent to the present value of future pre-modification annuity payments (taking into account the pre-modification annuity payment period). Actuarial equivalency for this purpose is determined using 5.00 percent and the applicable mortality table as of the date of modification.

(3) *Modification of retirement benefits paid to Participant E.* In 2028, E, after receiving annual payments of \$37,000, \$38,480, and \$40,019, elects to receive the remaining distributions from Plan W in the form of a straight life annuity paid with annual payments of \$92,133 per year.

(B) *Analysis.* Because payment of retirement benefits in the form of a straight life annuity satisfies (in terms of form) section 401(a)(9), the condition under paragraph (n)(3)(i) of this section is met. Because Plan X treats a modification of an annuity payment stream at retirement as a new annuity starting date for purposes of sections 415 and 417, the condition under paragraph (n)(3)(ii) of this section is met. After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 72 of \$37,000, \$38,480, and \$40,019, and a straight life annuity beginning at age 75 of \$92,133. This benefit stream is actuarially equivalent to a straight life annuity at age 72 of \$81,924, calculated in accordance with section 415(b)(2)(E)(i), which is an amount less than the section 415 limit determined at the original annuity starting date. Thus,

the condition under paragraph (n)(3)(iii) of this section is met. In addition, because the modified payment period does not include a period certain, paragraph (n)(3)(iv) of this section does not apply.

(C) *Conclusion.* Because a stream of annuity payments in the form of a straight life annuity satisfies section 401(a)(9), and each of the conditions under paragraph (n)(3) of this section are satisfied, the modification of annuity payments to E meets the requirements of this paragraph (n).

(o) *Increase in annuity payments—(1) General rules.* Notwithstanding the general rule under paragraph (a)(1) of this section prohibiting increases in annuity payments, the following increases in annuity payments are permitted—

(i) An annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index (as defined in paragraph (o)(2) of this section) for a 12-month period ending in the year during which the increase occurs or the prior year;

(ii) A percentage increase that occurs at specified times (for example, at specified ages) and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index (as defined in paragraph (o)(2) of this section) after the annuity starting date, or if later, the date of the most recent percentage increase;

(iii) An increase by a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year;

(iv) An increase eliminating some or all of the reduction in the amount of the employee's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the period described in section 401(a)(9)(A)(ii) over which payments were being made dies or is no longer the employee's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);

(v) An increase to pay increased benefits that result from a plan amendment;

(vi) An increase to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single-sum distribution upon the employee's death;

(vii) An increase to the extent permitted in accordance with paragraph (o)(3) or (4); or

(viii) An increase resulting from the resumption of benefits that were suspended pursuant to section 411(a)(3)(B), 418E, or 432(e)(9).

(2) *Eligible cost of living index—(i) In general.* For purposes of this paragraph (o), an eligible cost-of-living index means an index described in paragraph (o)(2)(ii), (iii), or (iv) of this section.

(ii) *Consumer price index.* An index is described in this paragraph (o)(2)(ii) if it is a consumer price index that is based on prices of all items (or all items excluding food and energy) and issued by the Bureau of Labor Statistics, including an index for a specific population (for example, urban consumers or urban wage earners and clerical workers) and an index for a geographic area or areas (for example, a metropolitan area or State).

(iii) *Consumer price index with banking.* An index is described in this paragraph (o)(2)(iii) if it is a percentage adjustment based on a cost-of-living index described in paragraph (o)(2)(ii) of this section, or a fixed percentage if less. In any year when the cost-of-living index is lower than the fixed percentage, the fixed percentage may be treated as an increase in an eligible cost-of-living index, provided it does not exceed the sum of—

(A) The cost-of-living index for that year, and

(B) The accumulated excess of the annual cost-of-living index from each prior year over the fixed annual percentage used in that year (reduced by any amount previously utilized under this paragraph (o)(2)(iii)(B)).

(iv) *Adjustment based on compensation for position.* An index is described in this paragraph (o)(2)(iv) if it is a percentage adjustment based on the increase in compensation for the position held by the employee at the time of retirement, and provided under either—

(A) The terms of a governmental plan (within the meaning of section 414(d)), or

(B) The terms of a nongovernmental plan, as in effect on April 17, 2002.

(3) *Additional permitted increases for annuity contracts purchased from insurance companies.* Payments made from an annuity contract purchased from an insurance company will not fail to satisfy the nonincreasing payment requirement in paragraph (a)(1) of this section merely because the payments are increased in accordance with one or more of the following—

(i) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (o)(5) of this section), but only if—

(A) Actuarial gain is measured no less frequently than annually;

(B) The resulting dividend payments or other payments are either paid no

later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured); and

(C) The issuer of the contract uses reasonable actuarial methods and assumptions, as determined in good faith, when calculating the initial annuity payments, the issuer's experience with respect to those factors, and the amount of the dividend payments or other payments;

(ii) As a result of a shortening of the payment period with respect to the annuity or a full or partial commutation of the future annuity payments, provided that the amount of the payment pursuant to the commutation is determined using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract.

(iii) To provide a final payment upon death that does not exceed the amount by which the total consideration paid for the contract exceeds the aggregate amount of prior distributions under the contract; or

(iv) To provide a short-term advance of payments under the annuity, under which annuity payments that would otherwise satisfy the requirements of this section are paid up to one year before the payments were scheduled to be made.

(4) *Additional permitted increases for annuity payments from a qualified trust.* Annuity payments made under a defined benefit plan qualified under section 401(a) (including payments under an annuity contract purchased from an insurance company that provides the same benefits that would have been payable under the defined benefit plan if an annuity contract had not been purchased, but not an annuity contract that provides other benefits) will not fail to satisfy the nonincreasing payment requirement in paragraph (a)(1) of this section merely because the payments are increased in accordance with one of the following—

(i) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (o)(5) of this section), but only if—

(A) The actuarial gain is measured no less frequently than annually;

(B) The resulting dividend payments or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the annuity over the remaining period of

the annuity (beginning no later than the year following the year for which the actuarial experience is measured);

(C) The actuarial gain taken into account is limited to the actuarial gain from investment experience;

(D) The assumed interest used to calculate actuarial gains is not less than 3 percent; and

(E) The payments are not increasing by a constant percentage as described in paragraph (o)(1)(iii) of this section; or

(ii) To provide a final payment upon the death of the employee that does not exceed the excess of the actuarial present value of the employee's accrued benefit (within the meaning of section 411(a)(7)) calculated as of the annuity starting date using the applicable interest rate and the applicable mortality table under section 417(e) (or, if greater, the total amount of employee contributions plus interest) over the total of payments before the death of the employee.

(5) *Actuarial gain defined.* For purposes of this paragraph (o), actuarial gain means the difference between an amount determined using the actuarial assumptions (that is, investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced, and the amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.

(6) *Examples.* This paragraph (o) is illustrated by the following examples.

(i) *Example 1. Variable annuity—(A) Facts.* A retired participant Z1 in Plan X, a defined contribution plan, attains age 72 in 2021. Z1 elects to purchase Contract Y1 from Insurance Company W in 2025. Contract Y1 is a single life annuity contract with a 10-year period certain. Contract Y1 provides for an initial annual payment calculated with an assumed interest rate (AIR) of 3 percent, which is assumed for purposes of this example to be a reasonable interest rate selected in good faith. Subsequent payments are determined by multiplying the prior year's payment by a fraction, the numerator of which is 1 plus the actual return on the separate account assets underlying Contract Y1 since the preceding payment (which is reasonably determined in good faith) and the denominator of which is 1 plus the AIR during that period.

(B) *Analysis.* Under paragraph (o)(3)(i) of this section, payments made from an annuity contract purchased from an insurance company will not fail to satisfy the nonincreasing payment requirement on account of payment increases that result from actuarial gains (within the meaning of paragraph (o)(5) of this section), if the conditions set forth in paragraphs (o)(3)(i)(A) through (C) of this section are satisfied. The payment increases under Contract Y1 are the result of actuarial gain within the meaning of paragraph (o)(5) of this section because they are the result of the difference between investment experience and the 3 percent interest rate used to calculate the initial payments under Contract Y1. Contract Y1 satisfies the requirement of paragraph (o)(3)(i)(A) of this section because actuarial gain under Contract Y1 is measured annually. Contract Y1 satisfies the requirement of paragraph (o)(3)(i)(B) of this section because the actuarial gains are paid over the remaining period of the annuity beginning in the year following the year for which the actuarial experience is measured. Contract Y1 satisfies the requirement of paragraph (o)(3)(i)(C) of this section because the issuer of Contract Y1 used reasonable actuarial methods and assumptions, as determined in good faith, when calculating the initial annuity payments, the issuer's experience with respect to those factors, and the amount of adjustments under Contract Y1.

(C) *Conclusion.* Because payments under Contract Y1 increase only as a result of actuarial gain, and those increases satisfy the conditions set forth in paragraphs (o)(3)(i)(A) through (C) of this section, those increases are described in paragraph (o)(3)(i) of this section and therefore are excepted from the nonincreasing payment requirement of paragraph (a)(1) of this section pursuant to the exception under paragraph (o)(1)(vii) of this section.

(ii) *Example 2. Participating annuity—(A) Facts.* A retired participant Z2 in Plan X, a defined contribution plan, attains age 73 in 2025. Z2 elects to purchase Contract Y2 from Insurance Company W in 2025. Contract Y2 is a participating single life annuity contract with a 10-year period certain. Contract Y2 provides for level annual payments with dividends paid in a lump sum in the year after the year for which the actuarial experience is measured or paid out levelly beginning in the year after the year for which the actuarial gain is measured over the remaining lifetime and period certain (that is, the period certain ends at the same time as the original period

certain). Dividends are determined annually by the Board of Directors of Company W based upon a comparison of actual actuarial experience to expected actuarial experience in the past year, with those amounts determined on a reasonable basis in good faith. The initial payment was determined in good faith using reasonable actuarial assumptions and methods.

(B) *Analysis.* Under paragraph (o)(3)(i) of this section, payments made from an annuity contract purchased from an insurance company will not fail to satisfy the nonincreasing payment requirement on account of payment increases that result from actuarial gains (within the meaning of paragraph (o)(5) of this section), if the conditions set forth in paragraphs (o)(3)(i)(A) through (C) of this section are satisfied. The payment increases under Contract Y2 are the result of actuarial gain within the meaning of paragraph (o)(5) of this section. Contract Y2 satisfies the requirement of paragraph (o)(3)(i)(A) of this section because actuarial gain under Contract Y2 is measured annually. Contract Y2 satisfies the requirement of paragraph (o)(3)(i)(B) of this section because the resulting increases are paid either in the form of a lump sum or over the remaining period of the annuity beginning in the year following the year for which the actuarial experience is measured. Contract Y2 satisfies the requirement of paragraph (o)(3)(i)(C) of this section because the issuer of Contract Y2 used reasonable actuarial methods and assumptions, as determined in good faith, when calculating the initial annuity payments, the issuer's experience with respect to those factors, and the amount of adjustments under Contract Y2.

(C) *Conclusion.* Because payments under Contract Y2 increase only as a result of actuarial gain, and those increases satisfy the conditions set forth in paragraphs (o)(3)(i)(A) through (C) of this section, those increases are described in paragraph (o)(3)(i) of this section and therefore are excepted from the nonincreasing payment requirement of paragraph (a)(1) of this section pursuant to the exception under paragraph (o)(1)(vii) of this section.

(iii) *Example 3. Participating annuity with dividend accumulation—(A) Facts.* The facts are the same as in paragraph (o)(6)(ii) of this section (*Example 2*), except that the annuity provides a dividend accumulation option under which Z2 may defer receipt of the dividends to a time selected by Z2.

(B) *Conclusion.* Because the dividend accumulation option permits dividends to be paid commencing later than the

end of the year following the year for which the actuarial experience is measured, the dividend accumulation option does not meet the requirements of paragraph (o)(3)(i)(B) of this section. Neither does the dividend accumulation option fit within any of the other permissible increases described in paragraph (o)(3) of this section. Accordingly, payment increases pursuant to the dividend accumulation option are not excepted from the nonincreasing payment requirement of paragraph (a)(1) of this section pursuant to the exception under paragraph (o)(1)(vii) of this section. Thus, Contract Y2, and consequently any distributions from the contract, fail to meet the requirements of this paragraph (o) and thus to fail to satisfy the requirements of section 401(a)(9).

(iv) *Example 4. Participating annuity with dividends used to purchase additional death benefits—(A) Facts.* The facts are the same as in paragraph (o)(6)(ii) of this section (*Example 2*), except that the annuity provides an option under which actuarial gain under the contract is used to provide additional death benefit protection for Z2.

(B) *Conclusion.* Because this option permits payments as a result of actuarial gain to be paid commencing later than the end of the year following the year for which the actuarial experience is measured, the option does not meet the requirements of paragraph (o)(3)(i)(B) of this section. Neither does the option fit within any of the other permissible increases described in paragraph (o)(3) of this section. Accordingly, payment increases pursuant to the dividend accumulation option are not excepted from the nonincreasing payment requirement of paragraph (a)(1) of this section pursuant to the exception under paragraph (o)(1)(vii) of this section. Thus, Contract Y2, and consequently any distributions from the contract, fail to meet the requirements of this paragraph (o) and thus to fail to satisfy the requirements of section 401(a)(9).

(p) *Payments to children—(1) In general.* Payments under a defined benefit plan or annuity contract that are made to an employee's child until the child reaches the age of majority as provided in paragraph (p)(2) of this section (or dies, if earlier) may be treated, for purposes of section 401(a)(9), as if the payments under the defined benefit plan or annuity contract were made to the surviving spouse to the extent they become payable to the surviving spouse upon cessation of the payments to the child. Thus, when payments described in this paragraph (p)(1) become payable to the surviving

spouse because the child attains the age of majority, there is not an increase in benefits under paragraph (a) of this section. Likewise, the age of the child receiving the payments described in this paragraph (p)(1) is not taken into consideration for purposes of the MDIB requirement of paragraph (b) of this section.

(2) *Age of majority—(i) General rule.* Except as provided in paragraph (p)(2)(ii) of this section, the determination of when an employee's child attains the age of majority is made under the rules of § 1.401(a)(9)–4(e)(3).

(ii) *Exception for preexisting plan terms.* A defined benefit plan may apply a definition of the age of majority other than the definition in paragraph (p)(2)(i) of this section, but only if the plan terms regarding the age of majority—

(A) Were adopted on or before February 24, 2022; and

(B) Met the requirements of A–15 of 26 CFR 1.401(a)(9)–6 (as it appeared in the April 1, 2021, edition of 26 CFR part 1).

(q) *Qualifying longevity annuity contract—(1) Definition of qualifying longevity annuity contract.* A qualifying longevity annuity contract (QLAC) is an annuity contract described in paragraph (d) of this section that is purchased from an insurance company for an employee and that, in accordance with the rules of application of paragraph (q)(4) of this section, satisfies each of the following requirements—

(i) Premiums for the contract satisfy the limitations of paragraph (q)(2) of this section;

(ii) The contract provides that distributions under the contract must commence not later than a specified annuity starting date that is no later than the first day of the month next following the 85th anniversary of the employee's birth;

(iii) The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of this section (other than the requirement in paragraph (a)(3) of this section that annuity payments commence on or before the required beginning date);

(iv) After the required beginning date, the contract does not make available any commutation benefit, cash surrender right, or other similar feature (other than a right to rescind the contract within a period not exceeding 90 days from the date of purchase);

(v) No benefits are provided under the contract after the death of the employee other than the benefits described in paragraph (q)(3) of this section;

(vi) When the contract is issued (or December 31, 2016, if later), the contract

(or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and

(vii) The contract is not a variable contract under section 817, an indexed contract, or a similar contract, except to the extent provided by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d) of this chapter).

(2) *Limitation on premiums*—(i) *In general.* The premiums paid with respect to the contract on a date (premium payment date) satisfy the limitation of this paragraph (q)(2) if they do not exceed the dollar limitation of paragraph (q)(2)(ii) of this section.

(ii) *Dollar limitation.* The dollar limitation as of a premium payment date is an amount by which \$200,000 (as adjusted under paragraph (q)(4)(ii)(A) of this section), exceeds the sum of—

(A) The premiums paid before that date with respect to the contract, and

(B) The premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is purchased for the employee under the plan, or any other plan, annuity, or account described in section 401(a), 403(a), 403(b), or 408 or eligible governmental plan under section 457(b).

(iii) *Exchange of insurance contract for QLAC.* For purposes of this paragraph (q)(2), if an insurance contract is exchanged for a contract intended to be a QLAC, the fair market value of the exchanged contract will be treated as a premium paid for the QLAC. However, if an insurance contract is surrendered for its cash value, the surrender extinguishes all benefits and other characteristics of the contract, and the cash is used to purchase a QLAC, then only the cash from the surrendered contract is treated as a premium paid for the QLAC.

(3) *Payments after death of the employee*—(i) *Surviving spouse is sole beneficiary*—(A) *Death on or after annuity starting date.* If the employee dies on or after the annuity starting date for the contract and the employee's surviving spouse is the sole beneficiary under the contract then, except as provided in paragraph (q)(3)(iv) of this section, the only benefit permitted to be paid after the employee's death is a life annuity payable to the surviving spouse under which the periodic annuity payment does not exceed 100 percent of the periodic annuity payment that was payable to the employee.

(B) *Death before annuity starting date.* If the employee dies before the annuity starting date and the employee's surviving spouse is the sole beneficiary

under the contract, then, except as provided in paragraph (q)(3)(iv) of this section, the only benefit permitted to be paid after the employee's death is a life annuity payable to the surviving spouse under which the periodic annuity payment does not exceed 100 percent of the periodic annuity payment that would have been payable to the employee as of the date that benefits to the surviving spouse commence. However, the annuity is permitted to exceed 100 percent of the periodic annuity payment that would have been payable to the employee to the extent necessary to satisfy the requirement to provide a qualified preretirement survivor annuity (as defined under section 417(c)(2) of the Code or section 205(e)(2) of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, 88 Stat. 829, as amended (ERISA), pursuant to section 401(a)(11)(A)(ii) of the Code or section 205(a)(2) of ERISA). Any life annuity payable to the surviving spouse under this paragraph (q)(3)(i)(B) must commence no later than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died.

(ii) *Surviving spouse is not sole beneficiary*—(A) *Death on or after annuity starting date.* If the employee dies on or after the annuity starting date for the contract and the employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in paragraph (q)(3)(iv) of this section, the only benefit permitted to be paid after the employee's death is a life annuity payable to the designated beneficiary under which the periodic annuity payment does not exceed the applicable percentage (determined under paragraph (q)(3)(iii) of this section) of the periodic annuity payment that is payable to the employee.

(B) *Death before annuity starting date.* If the employee dies before the annuity starting date and the employee's surviving spouse is not the sole beneficiary under the contract, then, except as provided in paragraph (q)(3)(iv) of this section, the only benefit permitted to be paid after the employee's death is a life annuity payable to the designated beneficiary under which the periodic annuity payment is not in excess of the applicable percentage (determined under paragraph (q)(3)(iii) of this section) of the periodic annuity payment that would have been payable to the employee as of the date that benefits to the designated beneficiary commence under this paragraph

(q)(3)(ii)(B). In any case in which the employee dies before the annuity starting date, any life annuity payable to a designated beneficiary under this paragraph (q)(3)(ii)(B) must commence by the last day of the calendar year following the calendar year of the employee's death.

(C) *Designated beneficiary who is not an eligible designated beneficiary.* Benefits paid to a designated beneficiary under this paragraph (q)(3)(ii) must satisfy the rules of section 401(a)(9)(H) and paragraph (d)(2) of this section.

(iii) *Applicable percentage*—(A) *Contracts without pre-annuity starting date death benefits.* If, as described in paragraph (q)(3)(iii)(E) of this section, the contract does not provide for a pre-annuity starting date non-spousal death benefit, the applicable percentage is the percentage described in the table in paragraph (b)(3) of this section.

(B) *Contracts with set beneficiary designation.* If the contract provides for a set non-spousal beneficiary designation as described in paragraph (q)(3)(iii)(F) of this section (and is not a contract described in paragraph (q)(3)(iii)(E) of this section), the applicable percentage is the percentage described in table 6 to paragraph (q)(3)(iii)(D).

(C) *Contracts providing for return of premium.* If the contract provides for a return of premium as described in paragraph (q)(3)(v) of this section, the applicable percentage is 0.

(D) *Applicable percentage table.* The applicable percentage is the percentage specified in following table for the adjusted employee/beneficiary age difference, determined in the same manner as in paragraph (b)(2)(iii) of this section.

TABLE 6 TO PARAGRAPH (q)(3)(iii)(D)

Adjusted employee/beneficiary age difference	Applicable percentage
2 years or less	100
3	88
4	78
5	70
6	63
7	57
8	52
9	48
10	44
11	41
12	38
13	36
14	34
15	32
16	30
17	28
18	27
19	26
20	25
21	24

TABLE 6 TO PARAGRAPH
(q)(3)(iii)(D)—Continued

Adjusted employee/beneficiary age difference	Applicable percentage
22	23
23	22
24	21
25 and greater	20

(E) *No pre-annuity starting date non-spousal death benefit.* A contract is described in this paragraph (q)(3)(iii)(E) if the contract provides that no benefit may be paid to a beneficiary other than the employee's surviving spouse after the employee's death—

(1) In any case in which the employee dies before the annuity starting date under the contract; and

(2) In any case in which the employee selects an annuity starting date that is earlier than the specified annuity starting date under the contract and the employee dies less than 90 days after making that election.

(F) *Contracts permitting set non-spousal beneficiary designation.* A contract provides for a set non-spousal beneficiary designation as described in this paragraph (q)(3)(iii)(F) if the contract provides that, if the beneficiary under the contract is not the employee's surviving spouse, then benefits are payable to the beneficiary only if the beneficiary was irrevocably designated on or before the later of the date of purchase and the employee's required beginning date. A contract does not fail to be described in the preceding sentence merely because the surviving spouse becomes the sole beneficiary before the annuity starting date. In those circumstances, the requirements of paragraph (q)(3)(i) of this section apply and not the requirements of this paragraph (q)(3)(iii).

(iv) *Calculation of early annuity payments.* For purposes of paragraphs (q)(3)(i)(B) and (ii)(B) of this section, to the extent the contract does not provide an option for the employee to select an annuity starting date that is earlier than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died, the contract must provide a way to determine the periodic annuity payment that would have been payable if the employee were to have an option to accelerate the payments and the payments had commenced to the employee immediately prior to the date that benefit payments to the surviving spouse or designated beneficiary commence.

(v) *Return of premiums—(A) In general.* In lieu of a life annuity payable to a designated beneficiary under paragraph (q)(3)(i) or (ii) of this section, a QLAC may provide for a benefit to be paid to a beneficiary after the death of the employee up to the amount by which the premium payments made with respect to the QLAC exceed the payments already made under the QLAC.

(B) *Payments after death of surviving spouse.* If a QLAC is providing a life annuity to a surviving spouse (or will provide a life annuity to a surviving spouse) under paragraph (q)(3)(i) of this section, it may also provide for a benefit payable to a beneficiary after the death of both the employee and the spouse up to the amount by which the premium payments made with respect to the QLAC exceed the payments already made under the QLAC.

(C) *Timing of return of premium payment and other rules.* A return of premium payment under this paragraph (q)(3)(v) must be paid no later than the end of the calendar year following the calendar year in which the employee dies. If the employee's death is after the required beginning date, the return of premium payment is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover. If the return of premium payment is paid after the death of a surviving spouse who is receiving a life annuity (or after the death of a surviving spouse who has not yet commenced receiving a life annuity after the death of the employee), the return of premium payment under this paragraph (q)(3)(v) must be made no later than the end of the calendar year following the calendar year in which the surviving spouse dies. If the surviving spouse's death is after the required beginning date for the surviving spouse, then the return of premium payment is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover.

(vi) *Multiple beneficiaries.* If an employee has more than one designated beneficiary under a QLAC, the rules in § 1.401(a)(9)–8(a) apply for purposes of paragraphs (q)(3)(i) and (ii) of this section.

(vii) *Treatment of former spouses—(A) In general.* The payment of survivor benefits to the employee's former spouse under an annuity contract will not cause the contract to fail to satisfy the requirements of this paragraph (q)(3) merely because the divorce between the employee and that former spouse occurred after the contract is purchased, provided that a qualified domestic relations order described in section

414(p) (or, to the extent provided in paragraph (q)(3)(vii)(B) of this section, a divorce or separation instrument) satisfying the requirements of paragraph (q)(3)(vii)(C) of this section has been issued in connection with the divorce.

(B) [Reserved]

(C) *Applicable requirements.* This paragraph (q)(3)(vii)(C) is satisfied if the qualified domestic relations order (or divorce or separation instrument) issued in connection with the divorce—

(1) Provides that the former spouse is entitled to the survivor benefits under the contract;

(2) Provides that the former spouse is treated as a surviving spouse for purposes of the contract;

(3) Does not modify the treatment of the former spouse as the beneficiary under the contract who is entitled to the survivor benefits; or

(4) Does not modify the treatment of the former spouse as the measuring life for the survivor benefits under the contract.

(4) *Rules of application—(i) Rules relating to premiums—(A) Reliance on representations.* For purposes of the limitation on premiums described in paragraph (q)(2) of this section, unless the plan administrator has actual knowledge to the contrary, the plan administrator may rely on an employee's representation (made in writing or such other form as may be prescribed by the Commissioner) of the amount of the premiums described in paragraph (q)(2)(ii)(B) of this section, but only with respect to premiums that are not paid under a plan, annuity, or contract that is maintained by the employer or an entity that is treated as a single employer with the employer under section 414(b), (c), (m), or (o).

(B) *Consequences of excess premiums and correction.* If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (q)(2) of this section, then the contract is not a QLAC beginning on the date on which the premium is paid and the value of the contract may not be disregarded under § 1.401(a)(9)–5(b)(4) as of the date on which the contract ceases to be a QLAC (unless the excess premium is returned to the non-QLAC portion of the employee's account in accordance with the next sentence). However, if the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the employee's account by the end of the calendar year following the calendar year in which the excess premium was originally paid, then the contract will not be treated as exceeding the limits under paragraph

(q)(2) of this section at any time, and the value of the contract will not be included in the employee's account balance under § 1.401(a)(9)–5(b)(4). If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the employee's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the employee's account balance for that calendar year must be increased to reflect that excess premium in the same manner as an employee's account balance is increased under § 1.401(a)(9)–7(b) to reflect a rollover received after the last valuation date. If the excess premium is returned to the non-QLAC portion of the employee's account as described in paragraph (q)(4)(ii)(B) of this section, it will not be treated as a violation of the requirement in paragraph (q)(1)(iv) of this section that the contract not provide a commutation benefit.

(ii) *Dollar and age limitations subject to adjustments*—(A) *Dollar limitation*. The \$200,000 amount under paragraph (q)(2)(ii) of this section will be adjusted at the same time and in the same manner as the limits are adjusted under section 415(d), except that—

(1) The base period is the calendar quarter beginning July 1, 2022; and

(2) The amount of any increment to the limit that is not a multiple of \$10,000 will be rounded to the next lowest multiple of \$10,000.

(B) *Age limitation*. The maximum age set forth in paragraph (q)(1)(ii) of this section may be adjusted to reflect changes in mortality, with any adjusted age to be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(C) *Prospective application of adjustments*. If a contract fails to be a QLAC because it does not satisfy the dollar limitation in paragraph (q)(2)(ii) of this section or the age limitation in paragraph (q)(1)(ii) of this section, any subsequent adjustment that is made pursuant to this paragraph (q)(4)(ii) will not cause the contract to become a QLAC.

(iii) *Determination of whether contract is intended to be a QLAC*—(A) *Structural deficiency*. If a contract fails to be a QLAC at any time for a reason other than an excess premium described in paragraph (q)(4)(i)(B) of this section, then, as of the date of purchase, the contract will not be treated as a QLAC (for purposes of § 1.401(a)(9)–5(b)(4)) or as a contract that is intended to be a

QLAC (for purposes of paragraph (q)(2) of this section).

(B) *Roth IRAs*. A contract that is purchased under a Roth IRA is not treated as a contract that is intended to be a QLAC for purposes of applying the dollar limitation rule in paragraph (q)(2)(ii) of this section. See A–14(d) of § 1.408A–6. If a QLAC is purchased or held under a plan, annuity, account, or traditional IRA, and that contract is later rolled over or converted to a Roth IRA, the contract is not treated as a contract that is intended to be a QLAC after the date of the rollover or conversion. Thus, premiums paid with respect to the contract will not be taken into account under paragraph (q)(2)(ii) of this section after the date of the rollover or conversion.

(iv) *Certain contract features permitted for QLACs*—(A) *Participating annuity contract*. An annuity contract does not fail to satisfy the requirement of paragraph (q)(1)(vii) of this section merely because it provides for the payment of dividends described in paragraph (n)(3)(iii) of this section.

(B) *Contracts with cost-of-living adjustments*. An annuity contract does not fail to satisfy the requirement of paragraph (q)(1)(vii) of this section merely because it provides for a cost-of-living adjustment as described in paragraph (o)(2) of this section.

(v) *Group annuity contract certificates*. The requirement under paragraph (q)(1)(vi) of this section that the contract state that it is intended to be a QLAC when issued is satisfied if a certificate is issued under a group annuity contract and the certificate, when issued, states that the employee's interest under the group annuity contract is intended to be a QLAC.

§ 1.401(a)(9)–7 Rollovers and transfers.

(a) *Treatment of rollover from distributing plan*. If an amount is distributed by a plan, then the amount distributed is still taken into account by the distributing plan for purposes of satisfying the requirements of section 401(a)(9), even if part of the distribution is rolled over into another eligible retirement plan described in section 402(c)(8). However, an amount that is a required minimum distribution under section 401(a)(9) is not eligible to be rolled over (and is therefore includible in the taxpayer's gross income under section 402). For this purpose, the amount that constitutes a required minimum distribution for a calendar year is determined in accordance with § 1.402(c)–2(f) for a distribution to an employee and § 1.402(c)–2(j) for a distribution to a beneficiary.

(b) *Treatment of rollover by receiving plan*. If an amount is distributed by one plan (distributing plan) and is rolled over to another plan (receiving plan), the benefit of the employee under the receiving plan is increased by the amount rolled over for purposes of determining the required minimum distribution for the calendar year following the calendar year in which the amount rolled over was distributed. If the amount rolled over is received after the last valuation date in the calendar year under the receiving plan, the benefit of the employee as of that valuation date, adjusted in accordance with § 1.401(a)(9)–5(b), is increased by the rollover amount valued as of the date of receipt. In addition, if the amount rolled over is received in a different calendar year from the calendar year in which it is distributed, the amount rolled over is deemed to have been received by the receiving plan on the last day of the calendar year in which it was distributed.

(c) *Treatment of transfer under transferor plan*—(1) *Generally not treated as distribution*. In the case of a transfer of an amount of an employee's benefit from one plan (transferor plan) to another plan (transferee plan), the transfer is not treated as a distribution by the transferor plan for purposes of section 401(a)(9). Instead, the benefit of the employee under the transferor plan is decreased by the amount transferred. However, if any portion of an employee's benefit is transferred in a distribution calendar year with respect to that employee, in order to satisfy the requirements of section 401(a)(9), the transferor plan must determine the amount of the required minimum distribution with respect to that employee for the calendar year of the transfer using the employee's benefit under the transferor plan before the transfer. Additionally, if any portion of an employee's benefit is transferred in the employee's second distribution calendar year, but on or before the employee's required beginning date, in order to satisfy section 401(a)(9), the transferor plan must determine the amount of the required minimum distribution for the employee's first distribution calendar year based on the employee's benefit under the transferor plan before the transfer. The transferor plan may satisfy the minimum distribution requirement for the calendar year of the transfer (and the prior year if applicable) by segregating the amount that must be distributed from the employee's benefit and not transferring that amount. That amount may be retained by the transferor plan

and must be distributed on or before the date required under section 401(a)(9).

(2) *Account balance decreased after transfer.* For purposes of determining any required minimum distribution for the calendar year following the calendar year in which the transfer occurs, in the case of a transfer after the last valuation date for the calendar year of the transfer under the transferor plan, the benefit of the employee as of that valuation date, adjusted in accordance with § 1.401(a)(9)–5(b), is decreased by the amount transferred, valued as of the date of the transfer.

(d) *Treatment of transfer under transferee plan.* In the case of a transfer from a transferor plan to a transferee plan, the benefit of the employee under the transferee plan is increased by the amount transferred in the same manner as if it were a plan receiving a rollover contribution under paragraph (b) of this section.

(e) *Treatment of spinoff or merger.* For purposes of determining an employee's benefit and required minimum distribution under section 401(a)(9), a spinoff, a merger, or a consolidation (as defined in § 1.414(l)–1(b)) is treated as a transfer of the benefits of the employees involved. Consequently, the benefit and required minimum distribution with respect to each employee whose benefits are transferred will be determined in accordance with paragraphs (c) and (d) of this section.

§ 1.401(a)(9)–8 Special rules.

(a) *Use of separate accounts—(1) Separate application of section 401(a)(9) for each beneficiary—(i) In general.* Except as otherwise provided in this paragraph (a)(1), for calendar years beginning after the calendar year in which the employee dies, section 401(a)(9) is applied separately with respect to the separate interests of each of the employee's beneficiaries under the plan provided that those interests are held in separate accounts that satisfy the separate accounting requirements of paragraphs (a)(2)(i) and (ii) of this section.

(ii) *Separate accounting requirements not timely satisfied.* If the separate accounts that satisfy the separate accounting requirements of paragraph (a)(2) of this section are not established until after the end of the calendar year following the calendar year of the employee's death, then for distribution calendar years after those requirements are satisfied—

(A) The aggregate required distribution for a distribution calendar year is determined without regard to the separate account rule in paragraph (a)(1)(i) of this section;

(B) The amount of the aggregate required distribution determined in accordance with paragraph (a)(1)(ii)(A) of this section is allocated among the beneficiaries based on each respective beneficiary's share of the total remaining balance of the employee's interest in the plan; and

(C) The allocated share for each beneficiary determined under paragraph (a)(2)(ii)(B) of this section is required to be distributed to that beneficiary.

(iii) *Separate application of section 401(a)(9) for trust beneficiaries—(A) General prohibition.* Except as provided in paragraph (a)(1)(iii)(B) of this section, section 401(a)(9) may not be applied separately to the separate interests of each of the beneficiaries of a see-through trust described in § 1.401(a)(9)–4(f)(1)(i). For purposes of the excise tax under section 4974, unless the exception in paragraph (a)(1)(iii)(B) of this section applies, the trust is the payee with respect to the required distribution of the employee's interest in the plan.

(B) *Exception for certain trusts divided upon the death of the employee.* Section 401(a)(9) is applied separately with respect to the separate interests of the beneficiaries of a see-through trust if the terms of the trust provide that it is to be divided immediately upon the death of the employee, provided that the requirements in paragraph (a)(1)(iii)(C) of this section are satisfied. The preceding sentence applies only if the separate interests are held in separate see-through trusts (in which case the rules of §§ 1.401(a)(9)–4(f) and 1.401(a)(9)–5 will apply separately to each separate trust).

(C) *Immediately divided defined.* For purposes of paragraph (a)(1)(iii)(B) of this section, a trust is immediately divided upon the death of the employee only if, as of the date of death, the trust is terminated and there is no discretion as to the extent to which of the separate trusts post-death distributions attributable to the employee's interest in the plan are allocated. A trust does not fail to be immediately divided upon the death of the employee merely because there are administrative delays between the date of the employee's death and the date on which the trust is divided and terminated, provided that any amounts received by the trust during this period are allocated as if the trust had been divided on the date of the employee's death.

(2) *Separate accounting requirements—(i) Allocation of post-death distributions required.* A separate accounting satisfies the requirements of this paragraph (a)(2)(i) only if all post-death distributions with respect to a

beneficiary's interest are allocated to the separate account of the beneficiary receiving the distributions.

(ii) *Allocation of other items.* A separate accounting satisfies the requirements of this paragraph (a)(2)(ii) if all post-death investment gains and losses, contributions, forfeitures, and expenses for the period prior to the establishment of the separate accounts are allocated on a pro rata basis in a reasonable and consistent manner among the separate accounts. The separate accounting does not fail to satisfy the requirements of this paragraph (a)(2)(ii) merely because, in lieu of a pro rata allocation of investment gains and losses—

(A) Separate accounts are established that have separate investments; and

(B) The investment gains and losses attributable to assets held in each of those separate accounts are allocated only to that separate account.

(b) *Application of consent requirements.* Section 411(a)(11) and section 417(e) require employee and spousal consent to certain distributions of plan benefits while those benefits are immediately distributable. If an employee's normal retirement age is later than the employee's required beginning date and, therefore, benefits are still immediately distributable (within the meaning of § 1.411(a)–11(c)(4)), distributions must be made to the employee (or, if applicable, to the employee's spouse) in a manner that satisfies the requirements of section 401(a)(9) even though the employee (or, if applicable, the employee's spouse) fails to consent to the distribution. In that case, the benefit may be distributed in the form of a qualified joint and survivor annuity (QJSA) or in the form of a qualified preretirement survivor annuity (QPSA), as applicable, and the consent requirements of sections 411(a)(11) and 417(e) are deemed to be satisfied if the plan has made reasonable efforts to obtain consent from the employee (or, if applicable, the employee's spouse) and if the distribution otherwise meets the requirements of section 417. If the distribution is not required to be in the form of a QJSA to an employee or a QPSA to a surviving spouse, the required minimum distribution amount may be paid to satisfy section 401(a)(9), and the consent requirements of sections 411(a)(11) and 417(e) are deemed to be satisfied if the plan has made reasonable efforts to obtain consent from the employee (or, if applicable, the employee's spouse) and the distribution otherwise meets the requirements of section 417.

(c) *Definition of spouse.* Except as otherwise provided in paragraph (d)(1) of this section (in the case of distributions of a portion of an employee's benefit payable to a former spouse of an employee pursuant to a qualified domestic relations order), for purposes of satisfying the requirements of section 401(a)(9), an individual is the spouse or surviving spouse of an employee if the marriage of the employee and individual is recognized for Federal tax purposes under the rules of § 301.7701-18. In the case of distributions after the death of an employee, for purposes of section 401(a)(9), the spouse of the employee is determined as of the date of death of the employee.

(d) *Treatment of QDROs—(1) Continued treatment of spouse.* A former spouse to whom all or a portion of the employee's benefit is payable pursuant to a qualified domestic relations order described in section 414(p) (QDRO) is treated as a spouse (including a surviving spouse) of the employee for purposes of satisfying the requirements of section 401(a)(9), including the minimum distribution incidental benefit requirement under section 401(a)(9)(G), regardless of whether the QDRO specifically provides that the former spouse is treated as the spouse for purposes of sections 401(a)(11) and 417.

(2) *Separate accounts—(i) In general—(A) Separate accounts while the employee is alive.* If a QDRO provides that an employee's benefit is to be divided and a portion is to be allocated to an alternate payee, that portion will be treated as a separate account (or segregated share) that separately must satisfy the requirements of section 401(a)(9) and may not be aggregated with other separate accounts (or segregated shares) of the employee for purposes of satisfying section 401(a)(9). Except as otherwise provided in paragraph (f)(2)(ii) of this section, distribution of a separate account allocated to an alternate payee pursuant to a QDRO must be made in accordance with section 401(a)(9). For example, distributions of the separate account will satisfy section 401(a)(9)(A) if required minimum distributions from the separate account during the employee's lifetime begin no later than the employee's required beginning date and the required minimum distribution is determined in accordance with § 1.401(a)(9)-5 for each distribution calendar year using an applicable denominator determined under § 1.401(a)(9)-5(c) (determined by treating the spousal alternate payee as the employee's spouse).

(B) *Separate accounts after the death of the employee.* The determination of whether distributions from the separate account after the death of the employee to the alternate payee will be made in accordance with section 401(a)(9)(B)(i), or in accordance with section 401(a)(9)(B)(ii) or (iii) and (iv), will depend on whether distributions have begun as determined under § 1.401(a)(9)-2(a)(3) (which provides, in general, that distributions are not treated as having begun until the employee's required beginning date even though payments may actually have begun before that date). For example, if the alternate payee dies before the employee, and if distributions of the separate account allocated to the alternate payee pursuant to the QDRO are to be made to the alternate payee's beneficiary, then that beneficiary may be treated as a designated beneficiary for purposes of determining the required minimum distribution from the separate account after the death of the employee, provided that the beneficiary of the alternate payee is an individual who is a beneficiary under the plan or specified to or in the plan. Specification in or pursuant to the QDRO is treated as specification to the plan.

(ii) *Satisfaction of section 401(a)(9) requirements.* Distribution of the separate account allocated to an alternate payee pursuant to a QDRO satisfies the requirements of section 401(a)(9)(A)(ii) if the separate account is distributed, beginning no later than the employee's required beginning date, over the life of the alternate payee (or over a period not extending beyond the life expectancy of the alternate payee). Also, if, pursuant to § 1.401(a)(9)-3(b)(4)(iii) or (c)(5)(iii), the plan permits the employee to elect the distribution method that will apply upon the death of the employee, that election is to be made only by the alternate payee for purposes of distributing the alternate payee's separate account. If the alternate payee dies after distribution of the alternate payee's separate account has begun (determined under § 1.401(a)(9)-2(a)(3)) but before the employee dies, distribution of the remaining portion of that portion of the benefit allocated to the alternate payee must be made in accordance with the rules in § 1.401(a)(9)-5(c) or § 1.401(a)(9)-6(a) for distributions during the life of the employee. Only after the death of the employee is the amount of the required minimum distribution determined in accordance with the rules in § 1.401(a)(9)-5(d) or § 1.401(a)(9)-6(b).

(3) *Other situations.* If a QDRO does not provide that an employee's benefit is to be divided but provides that a

portion of an employee's benefit (otherwise payable to the employee) is to be paid to an alternate payee, that portion is not treated as a separate account (or segregated share) of the employee. Instead, that portion is aggregated with any amount distributed to the employee and treated as having been distributed to the employee for purposes of determining whether section 401(a)(9) has been satisfied with respect to that employee.

(e) *Application of section 401(a)(9) pending determination of whether a domestic relations order is a QDRO is being made.* A plan does not fail to satisfy the requirements of section 401(a)(9) merely because it fails to distribute an amount otherwise required to be distributed by section 401(a)(9) during the period in which the issue of whether a domestic relations order is a QDRO is being determined pursuant to section 414(p)(7), provided that the period does not extend beyond the 18-month period described in section 414(p)(7)(E). To the extent that a distribution otherwise required under section 401(a)(9) is not made during this period, any segregated amounts, as defined in section 414(p)(7)(A), are treated as though the amounts are not vested during the period and any distributions with respect to those amounts must be made under the relevant rules for nonvested benefits described in either § 1.401(a)(9)-5(g)(1) or § 1.401(a)(9)-6(f), as applicable.

(f) *Application of section 401(a)(9) when insurer is in State delinquency proceedings.* A plan does not fail to satisfy the requirements of section 401(a)(9) merely because an individual's distribution from the plan is less than the amount otherwise required to satisfy section 401(a)(9) because distributions were being paid under an annuity contract issued by a life insurance company in State insurer delinquency proceedings and have been reduced or suspended by reason of those State proceedings. To the extent that a distribution otherwise required under section 401(a)(9) is not made during the State insurer delinquency proceedings, that amount and any additional amount accrued during that period are treated as though those amounts are not vested during that period and any distributions with respect to those amounts must be made under the relevant rules for nonvested benefits described in either § 1.401(a)(9)-5(g)(1) or § 1.401(a)(9)-6(f), as applicable.

(g) *In-service distributions required to satisfy section 401(a)(9).* A plan does not fail to qualify as a pension plan within the meaning of section 401(a) solely because the plan permits

distributions to commence to an employee on or after the employee's required beginning date (as determined in accordance with § 1.401(a)(9)–2(b)) even though the employee has not retired or attained the normal retirement age under the plan as of the date on which the distributions commence. This rule applies without regard to whether the employee is a 5-percent owner with respect to the plan year ending in the calendar year in which distributions commence.

(h) *TEFRA section 242(b) elections—*

(1) *In general.* Even though the distribution requirements added by the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, 96 Stat. 324 (1982) (TEFRA), were retroactively repealed in 1984, the transitional election rule in section 242(b) of TEFRA (referred to as a section 242(b)(2) election in this paragraph (h)) was preserved. While sections 401(a)(11) and 417 must be satisfied with respect to any distribution subject to those requirements, satisfaction of those requirements is not considered a revocation of the section 242(b) election.

(2) *Application of section 242(b) election after transfer—*(i) *Section 242(b)(2) election made under transferor plan.* If an amount is transferred from one plan (transferor plan) to another plan (transferee plan), the amount transferred may be distributed in accordance with a section 242(b)(2) election made under the transferor plan if the employee did not elect to have the amount transferred and if the transferee plan separately accounts for the amount transferred. However, only the benefit attributable to the amount transferred, plus earnings thereon, may be distributed in accordance with the section 242(b)(2) election made under the transferor plan. If the employee elected to have the amount transferred or the transferee plan does not separately account for the amount transferred, the transfer is treated as a distribution and rollover of the amount transferred for purposes of this section.

(ii) *Section 242(b)(2) election made under transferee plan.* If an amount is transferred from one plan to another plan, the amount transferred may not be distributed in accordance with a section 242(b)(2) election made under the transferee plan. If a section 242(b)(2) election was made under the transferee plan, the transferee plan must separately account for the amount transferred. If the transferee plan does not separately account for the amount transferred, the section 242(b)(2) election under the transferee plan is revoked, and subsequent distributions by the

transferee plan must satisfy section 401(a)(9).

(iii) *Spinoff, merger, or consolidation treated as transfer.* A spinoff, merger, or consolidation, as defined in § 1.414(l)–1(b), is treated as a transfer for purposes of the section 242(b)(2) election.

(3) *Application of section 242(b) election after rollover.* If an amount is distributed from one plan (distributing plan) and rolled over into another plan (receiving plan), the amount rolled over must be distributed from the receiving plan in accordance with section 401(a)(9) whether or not the employee made a section 242(b)(2) election under the distributing plan. Further, if the amount rolled over was not distributed in accordance with the election, the election under the distributing plan is revoked and all subsequent distributions by the distributing plan must satisfy section 401(a)(9). Finally, if the employee made a section 242(b)(2) election under the receiving plan and the election is still in effect, the receiving plan must separately account for the amount rolled over and distribute that amount in accordance with section 401(a)(9). If the receiving plan does not separately account for the amounts rolled over, any section 242(b)(2) election under the receiving plan is revoked and subsequent distributions under the receiving plan must satisfy section 401(a)(9).

(4) *Revocation of section 242(b) election—*(i) *In general.* A section 242(b)(2) election may be revoked after the required beginning date under section 401(a)(9)(C). However, if the section 242(b)(2) election is revoked after the required beginning date, and the total amount of the distributions that would have been required prior to the date of the revocation in order to satisfy section 401(a)(9), but for the section 242(b)(2) election, have not been made, then—

(A) The catch-up distribution described in paragraph (h)(4)(ii) of this section must be made by the end of the calendar year following the calendar year in which the revocation occurs; and

(B) Distributions must continue in accordance with section 401(a)(9).

(ii) *Catch-up distribution.* The catch-up distribution must be equal to the total amount not yet distributed that would have been required to be distributed to satisfy the requirements of section 401(a)(9).

■ **Par. 4.** Amend § 1.401(a)(9)–9 as follows:

■ a. Amend the title by removing the phrase “distribution period” and adding in its place the phrase “Uniform Lifetime”;

■ b. Amend paragraph (a) by removing the phrase “applicable distribution period” and adding in its place the phrase “Uniform Lifetime”;

■ c. Amend paragraph (c) by removing the phrase “distribution period” and adding in its place the phrase “applicable denominator”;

■ d. Revise the heading of the second column of Table 2 to paragraph (c) by removing the phrase “Distribution period” and adding in its place the phrase “Applicable denominator”; and

■ e. Revise and republish paragraph (f)(2).

The revisions and republications read as follows:

§ 1.401(a)(9)–9 Life expectancy and Uniform Lifetime tables.

* * * * *

(f) * * *

(2) *Application to life expectancies that may not be recalculated—*(i) *Redetermination of initial life expectancy using current tables.* If an employee died before January 1, 2022, and, under the rules of § 1.401(a)(9)–5, the applicable denominator for a calendar year following the calendar year of the employee's death is equal to a single life expectancy calculated as of the calendar year of the employee's death (or, if applicable, the following calendar year), reduced by 1 for each subsequent year, then that life expectancy is reset as provided in paragraph (f)(2)(ii) of this section. Similarly, if an employee's sole beneficiary is the employee's surviving spouse, and the spouse dies before January 1, 2022, then the spouse's life expectancy for the calendar year of the spouse's death (which is used to determine the applicable denominator for later years) is reset as provided in paragraph (f)(2)(ii) of this section.

(ii) *Determination of applicable denominator—*(A) *Applicable denominator based on new life expectancy.* With respect to a life expectancy described in paragraph (f)(2)(i) of this section, the applicable denominator for a distribution calendar year beginning on or after January 1, 2022, is determined by using the Single Life Table in paragraph (b) of this section to determine the initial life expectancy for the age of the relevant individual in the relevant calendar year and then reducing the resulting applicable denominator by 1 for each subsequent year.

(B) *Example of redetermination.* Assume that an employee died at age 80 in 2019 and the employee's designated beneficiary (who was not the employee's spouse) was age 75 in the year of the employee's death. For 2020,

the denominator that would have applied for the beneficiary was 12.7 years (the life expectancy for a 76-year-old under the Single Life Table in formerly applicable § 1.401(a)(9)–9), and for 2021, it would have been 11.7 years (the original life expectancy, reduced by 1 year). For 2022, if the designated beneficiary is still alive, then the applicable denominator would be 12.1 years (the 14.1-year life expectancy for a 76-year-old under the Single Life Table in paragraph (b) of this section, reduced by 2 years).

■ **Par. 5.** Revise and republish § 1.402(c)–2 to read as follows:

§ 1.402(c)–2 Eligible rollover distributions.

(a) *Overview of rollover and related statutory provisions*—(1) *General rule*—

(i) *Rollover of distribution paid to employee.* Under section 402(c), any portion of a distribution paid to an employee from a qualified plan that is an eligible rollover distribution described in section 402(c)(4) may be rolled over to an eligible retirement plan described in section 402(c)(8)(B). See paragraph (j) of this section for rules relating to distributions paid to a surviving spouse or a non-spousal beneficiary.

(ii) *Exclusion from income.* Except as otherwise provided in this section, if an eligible rollover distribution is paid to an employee, then the amount distributed is not currently includible in gross income, provided that it is contributed to an eligible retirement plan no later than the 60th day following the day on which the employee received the distribution. However, if all or any portion of the amount distributed (including any amount withheld as income tax under section 3405(c)) is not contributed as a rollover, it is included in the employee's gross income to the extent required under section 402(a), and also may be subject to the 10-percent additional income tax under section 72(t).

(iii) *Definition of eligible retirement plan*—(A) *In general.* An eligible retirement plan means an IRA described in paragraph (a)(1)(iii)(B)(1) of this section or a qualified plan described in paragraph (a)(1)(iii)(B)(2) of this section. In addition, an eligible deferred compensation plan described in section 457(b) that is maintained by an employer described in section 457(e)(1)(A) is treated as an eligible retirement plan, but only if the plan separately accounts for the amount of the rollover.

(B) *Definitions of IRA and qualified plan.* For purposes of section 402(c) and this section—

(1) An IRA is an individual retirement account described in section 408(a) or an individual retirement annuity (other than an endowment contract) described in section 408(b); and

(2) A qualified plan is an employees' trust described in section 401(a) that is exempt from tax under section 501(a), an annuity plan described in section 403(a), or an annuity contract described in section 403(b).

(iv) *Multiple distributions.* If more than one distribution is received by an employee from a qualified plan during a taxable year, the 60-day deadline applies separately to each distribution. Because the amount withheld as income tax under section 3405(c) is considered an amount distributed under section 402(c), an amount equal to all or any portion of the amount withheld may be contributed as a rollover to an eligible retirement plan within the 60-day period in addition to the net amount of the eligible rollover distribution actually received by the employee.

(v) *Definition of rollover.* For purposes of section 402(c) and this section, a rollover is—

(A) A direct rollover as described in § 1.401(a)(31)–1, Q&A–3;

(B) A contribution of an eligible rollover distribution to an eligible retirement plan that, except as provided in paragraph (b)(2) of this section, satisfies the time period requirement in paragraph (a)(1)(ii) of this section and the designation requirement described in paragraph (k)(1) of this section; or

(C) A repayment of a distribution that is treated as a rollover, as described in paragraph (a)(1)(vi) of this section.

(vi) *Certain repayments treated as rollovers.* The repayment of a distribution is treated as a rollover if that treatment is prescribed under another statutory provision. For example, the repayment of a qualified disaster recovery distribution under section 72(t)(11)(C) is treated as a rollover for purposes of this section.

(2) *Related Internal Revenue Code provisions*—(i) *Direct rollover option.* Section 401(a)(31) requires qualified plans to provide a distributee of an eligible rollover distribution the option to elect to have the distribution paid directly to an eligible retirement plan in a direct rollover. See § 1.401(a)(31)–1 for further guidance concerning this direct rollover option.

(ii) *Notice requirement.* Section 402(f) requires the plan administrator of a qualified plan to provide, within a reasonable time before making an eligible rollover distribution, a written explanation to the distributee of the distributee's right to elect a direct rollover and the withholding

consequences of not making that election. The explanation also is required to provide certain other relevant information relating to the taxation of distributions. See § 1.402(f)–1 for guidance concerning the written explanation required under section 402(f).

(iii) *Mandatory income tax withholding.* If a distributee of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under section 401(a)(31), the eligible rollover distribution is subject to mandatory income tax withholding under section 3405(c). See § 31.3405(c)–1 of this chapter for provisions relating to the withholding requirements applicable to eligible rollover distributions.

(iv) *Section 403(b) annuities.* See § 1.403(b)–7(b) for guidance concerning the direct rollover requirements for distributions from annuities described in section 403(b).

(3) *Applicability date*—(i) *In general.* The rules provided in this section apply to any distribution made on or after January 1, 2025.

(ii) *Distributions prior to January 1, 2025.* For any distribution made before January 1, 2025, the rules of 26 CFR 1.402(c)–2 and 26 CFR 1.402(c)–3 (as they appeared in the April 1, 2023, edition of 26 CFR part 1) apply. Alternatively, the rules provided in this section may be applied to those distributions.

(b) *Special rules*—(1) *Rules related to Roth accounts*—(i) *Treatment of Roth conversions.* If all or any portion of an eligible rollover distribution that is rolled over to a Roth IRA is not from a designated Roth account described in section 402A, then the amount rolled over to the Roth IRA is included in the employee's gross income to the extent required under section 402(a). However, the amount rolled over to a Roth IRA generally is not subject to the 10-percent additional income tax under section 72(t).

(ii) *Treatment of distributions from designated Roth accounts.* A distribution from a designated Roth account may be rolled over only to another designated Roth account or to a Roth IRA. See § 1.402A–1, Q&A–5 for rules that apply to such a rollover.

(2) *Extensions of and exceptions to 60-day deadline*—(i) *Waiver of 60-day deadline.* The Commissioner may waive the 60-day deadline described in paragraph (a)(1)(ii) of this section if the failure to waive that requirement would be against equity or good conscience, including casualty, disaster, or other

events beyond the reasonable control of the individual with respect to such requirement. See section 402(c)(3)(B).

(ii) *Frozen deposits.* The 60-day period described in paragraph (a)(1)(ii) of this section does not include any period during which the amount transferred to the employee is a frozen deposit described in section 402(c)(7)(B). The 60-day period also does not end earlier than 10 days after that amount ceases to be a frozen deposit.

(iii) *Exception for qualified plan loan offsets.* See paragraph (g) of this section for the timing requirements related to the rollover of a qualified plan loan offset amount.

(iv) *Other distributions treated as rollovers.* In the case of a repayment of a distribution treated as a rollover as described in paragraph (a)(1)(vi) of this section, see the applicable statutory provision and accompanying regulations, if any, for the timing requirements relating to the repayment.

(3) *Special rules for distribution that includes basis—*(i) *Rollover of basis to IRA.* If an eligible rollover distribution includes some or all of an employee's basis (that is, the employee's investment in the contract), then the portion of the distribution that is allocable to the employee's basis may be rolled over to an IRA.

(ii) *Rollover of basis to qualified trust must be done through direct trustee-to-trustee transfer.* If an eligible rollover distribution includes some or all of an employee's basis, then the portion of an eligible rollover distribution that is allocable to the employee's basis may be rolled over to a qualified plan only through a direct trustee-to-trustee transfer. In that case, the qualified trust or annuity contract must provide for separate accounting of the amount transferred (and earnings on that amount) including separately accounting for the portion of the distribution that includes an employee's basis and the portion of the distribution that does not include basis.

(iii) *Rollover of basis to section 457(b) plans not permitted.* The portion of an eligible rollover distribution that is allocable to an employee's basis may not be rolled over to an eligible deferred compensation plan described in section 457(b).

(iv) *Rollover of portion of distribution.* If an eligible rollover distribution includes some or all of an employee's basis and less than the entire distribution is being rolled over, then the amount rolled over is treated as consisting first of the portion of the distribution that is not allocable to the employee's basis.

(4) *Special rules for distributions that include property—*(i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, if an eligible rollover distribution consists of property other than money, then, only that property may be rolled over to an eligible retirement plan.

(ii) *Rollover of proceeds permitted.* In the case of an eligible rollover distribution that consists of property other than money, the proceeds of the sale of that property may be rolled over to an eligible retirement plan. However, to the extent those proceeds exceed the property's fair market value at the time of the sale, that excess may not be rolled over. See section 402(c)(6)(C) and (D) for other rules relating to the sale of distributed property.

(c) *Definition of eligible rollover distribution—*(1) *General rule.* Unless specifically excluded, an eligible rollover distribution means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified plan. Thus, except as specifically provided in paragraph (c)(2) or (3) of this section, any amount distributed to an employee from a qualified plan is an eligible rollover distribution, regardless of whether it is a distribution of a benefit that is protected under section 411(d)(6).

(2) *Exceptions.* An eligible rollover distribution does not include the following:

(i) Any distribution that is one of a series of substantially equal periodic payments made (not less frequently than annually) over any one of the following periods—

(A) The life of the employee (or the joint lives of the employee and the employee's designated beneficiary);

(B) The life expectancy of the employee (or the joint life and last survivor expectancy of the employee and the employee's designated beneficiary); or

(C) A specified period of ten years or more;

(ii) Any distribution to the extent the distribution is a required minimum distribution under section 401(a)(9); or

(iii) Any distribution that is made on account of hardship.

(3) *Other amounts not treated as eligible rollover distributions.* The following amounts are not treated as eligible rollover distributions:

(i) Elective deferrals (as defined in section 402(g)(3)) and employee contributions that, pursuant to rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d) of

this chapter), are returned to the employee (together with the income allocable thereto) in order to comply with the section 415 limitations;

(ii) Corrective distributions of excess deferrals as described in § 1.402(g)–1(e)(3), together with the income allocable to these corrective distributions;

(iii) Corrective distributions of excess contributions under a qualified cash or deferred arrangement described in § 1.401(k)–2(b)(2) and excess aggregate contributions described in § 1.401(m)–2(b)(2), together with the income allocable to these distributions;

(iv) Loans that are treated as deemed distributions pursuant to section 72(p);

(v) Subject to the rules of paragraph (c)(4) of this section, dividends paid on employer securities as described in section 404(k);

(vi) The costs of life insurance coverage includible in the employee's income under section 72(m)(3)(B);

(vii) Prohibited allocations that are treated as deemed distributions pursuant to section 409(p);

(viii) Distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of section 414(w);

(ix) Distributions of premiums for accident or health insurance under § 1.402(a)–1(e)(1)(i) (other than distributions subject to section 402(l), as described in § 1.402(a)–1(e)(3));

(x) Amounts treated as distributed as a result of the purchase of a collectible pursuant to section 408(m); and

(xi) Similar items designated by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(4) *Dividends reinvested in employer securities.* Dividends paid to an employee stock ownership plan (as defined in section 4975(e)(7)) that are reinvested in employer securities pursuant to a participant election under section 404(k)(2)(A)(iii)(II) are included in the participant's account balance and lose their character as dividends when subsequently distributed from the account. As a result, these amounts are eligible rollover distributions if they otherwise meet the requirements of this paragraph (c).

(d) *Determination of substantially equal periodic payments—*(1) *General rule.* For purposes of paragraph (c)(2)(i) of this section, and except as provided in this paragraph (d) or paragraph (e) of this section, whether a series of payments is a series of substantially equal periodic payments over a specified period is determined at the

time payments begin, and by following the principles of section 72(t)(2)(A)(iv), without regard to contingencies or modifications that have not yet occurred. Thus, for example, a joint and 50-percent survivor annuity will be treated as a series of substantially equal periodic payments at the time payments commence, as will a joint and survivor annuity that provides for increased payments to the employee if the employee's beneficiary dies before the employee. Similarly, for purposes of determining if a disability benefit payment is part of a series of substantially equal periodic payments for a period described in section 402(c)(4)(A), any contingency under which payments cease upon recovery from the disability may be disregarded.

(2) *Certain supplements disregarded.* For purposes of determining whether a distribution is one of a series of periodic payments that are substantially equal, social security supplements described in section 411(a)(9) are disregarded. For example, if a distributee receives a life annuity of \$500 per month, plus a social security supplement consisting of payments of \$200 per month until the distributee reaches the age at which social security benefits of not less than \$200 a month begin, the \$200 supplemental payments are disregarded and, therefore, each monthly payment of \$700 made before the social security age and each monthly payment of \$500 made after the social security age is treated as one of a series of substantially equal periodic payments for life. A series of periodic payments that are not substantially equal solely because the amount of each payment is reduced upon attainment of social security retirement age (or, alternatively, upon commencement of social security early retirement, survivor, or disability benefits) is also treated as substantially equal as long as the reduction in the actual payments is level and does not exceed the applicable social security benefit.

(3) *Changes in the amount of payments or the distributee.* If the amount (or, if applicable, the method of calculating the amount) of the payments changes so that subsequent payments are not substantially equal to prior payments, then a new determination must be made as to whether the remaining payments are a series of substantially equal periodic payments over a period specified in paragraph (c)(2)(i) of this section. This determination is made without taking into account payments made or the years of payment that elapsed prior to the change. However, a new determination is not made merely

because, upon the death of the employee, the employee's beneficiary becomes the distributee. Thus, if distributions commence over a period that is at least as long as either the first annuitant's life or 10 years, then substantially equal payments to the survivor are not eligible rollover distributions even though the payment period remaining after the death of the employee is or may be less than the period described in section 402(c)(4)(A). For example, substantially equal periodic payments made under a life annuity with a five-year term certain would not be an eligible rollover distribution even when paid after the death of the employee with three years remaining under the term certain.

(4) *Defined contribution plans.* The following rules apply in determining whether a series of payments from a defined contribution plan constitutes a series of substantially equal periodic payments for a period described in section 402(c)(4)(A)—

(i) *Declining balance of years.* A series of payments from an account balance under a defined contribution plan over a period is considered a series of substantially equal periodic payments over that period if, for each year, the amount of the distribution is calculated by dividing the account balance by the number of years remaining in the period. For example, a series of payments is considered substantially equal payments over 10 years if the series is determined as follows. In year 1, the annual payment is the account balance divided by 10; in year 2, the annual payment is the remaining account balance divided by 9; and so on until year 10 when the entire remaining balance is distributed.

(ii) *Reasonable actuarial assumptions.* If an employee's account balance under a defined contribution plan is to be distributed in annual installments of a specified amount until the account balance is exhausted, then, for purposes of determining if the period of distribution is a period described in section 402(c)(4)(A), the period of years over which the installments will be distributed must be determined using reasonable actuarial assumptions. For example, if an employee has an account balance of \$100,000, the employee elects distributions of \$12,000 per year until the account balance is exhausted, and the future rate of return is assumed to be 5 percent per year, the account balance will be exhausted in approximately 12 years. Similarly, if the same employee elects a fixed annual distribution amount and the fixed annual amount is less than or equal to \$10,000, it is reasonable to assume that

the future rate of return will be greater than 0 percent and, thus, the account will not be exhausted in less than 10 years.

(e) *Determination of whether a payment is an independent payment—*
(1) *Definition of independent payments.* Except as provided in paragraphs (e)(2) and (3) of this section, a payment is treated as independent of the payments in a series of substantially equal payments, and thus not part of the series described in paragraph (c)(2)(i) of this section, if the payment is substantially larger or smaller than the other payments in the series. An independent payment is an eligible rollover distribution if it is not otherwise excepted from the definition of eligible rollover distribution. This rule applies regardless of whether the payment is made before, with, or after payments in the series. For example, if an employee elects a single payment of half of the account balance with the remainder of the account balance paid over the life expectancy of the distributee, the single payment is treated as independent of the payments in the series and is an eligible rollover distribution unless otherwise excepted. Similarly, if an employee's surviving spouse receives a survivor life annuity of \$1,000 per month plus a single payment on account of death of \$7,500, the single payment is treated as independent of the payments in the annuity and is an eligible rollover distribution unless otherwise excepted.

(2) *Special rules—*(i) *Administrative error or delay.* If, due solely to reasonable administrative error or delay in payment, there is an adjustment after the annuity starting date to the amount of any payment in a series of payments that otherwise would constitute a series of substantially equal payments described in section 402(c)(4)(A) and this section, the adjusted payment or payments are treated as part of the series of substantially equal periodic payments and are not treated as independent of the payments in the series. For example, if, due solely to reasonable administrative delay, the first payment of a life annuity is delayed by two months and reflects an additional two months' worth of benefits, that payment is treated as a substantially equal payment in the series rather than as an independent payment. The result does not change merely because the amount of the adjustment is paid in a separate supplemental payment.

(ii) *Supplemental payments for annuitants.* A supplemental payment from a defined benefit plan to an annuitant (that is, a retiree or beneficiary) is treated as part of a series

of substantially equal payments, rather than as an independent payment, provided that the following conditions are met—

(A) The supplement is a benefit increase for annuitants;

(B) The amount of the supplement is determined in a consistent manner for all similarly situated annuitants;

(C) The supplement is paid to annuitants who are otherwise receiving payments that would constitute substantially equal periodic payments; and

(D) The aggregate supplement is less than or equal to the greater of 10 percent of the annual rate of payment for the annuity, or \$750.

(iii) *Final payment in a series.* If a payment in a series of periodic payments from an account balance under a defined contribution plan is equal to the remaining balance in the account and is substantially less than the other payments in the series, the final payment must nevertheless be treated as a payment in the series of substantially equal periodic payments and may not be treated as an independent payment if the other payments in the series are substantially equal and the payments are for a period described in section 402(c)(4)(A) based on the rules provided in paragraph (d)(4)(ii) of this section. Thus, the final payment will not be an eligible rollover distribution.

(3) *Additional guidance.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may provide additional rules for determining what is an independent payment under paragraph (e)(1) of this section and may prescribe a higher amount than the \$750 amount in paragraph (e)(2)(ii)(D) of this section. See § 601.601(d) of this chapter.

(f) *Determination of whether a distribution is a required minimum distribution—(1) Determination for calendar year of distribution.* Except as provided in paragraphs (f)(2) and (3) of this section, if a minimum distribution is required for a calendar year, then the amounts distributed during that calendar year are treated as required minimum distributions under section 401(a)(9) to the extent that the total minimum distribution required under section 401(a)(9) for the calendar year has not been satisfied (and accordingly, those amounts are not eligible rollover distributions). For example, if an employee is required under section 401(a)(9) to receive a minimum distribution for a calendar year of \$5,000 and the employee receives a total of \$7,200 in that year, the first \$5,000 distributed will be treated as the

required minimum distribution and will not be an eligible rollover distribution, and the remaining \$2,200 will be an eligible rollover distribution if it otherwise qualifies. If the total section 401(a)(9) required minimum distribution for a calendar year prior to the calendar year of the distribution is not distributed in that calendar year (for example, when the distribution for the calendar year in which the employee reaches the applicable age is made on April 1 of the following calendar year), then the amount that was required to be distributed, but not distributed, is added to the amount required to be distributed for the next calendar year in determining the portion of any distribution in the next calendar year that is a required minimum distribution (and, thus, is not an eligible rollover distribution).

(2) *Distribution before first distribution calendar year.* Any amount that is paid to an employee before January 1 of the first distribution calendar year for the employee (as described in § 1.401(a)(9)–5(a)(2)(ii)) is not treated as required under section 401(a)(9) and, thus, is an eligible rollover distribution if it otherwise qualifies.

(3) *Special rule for annuities.* In the case of annuity payments from a defined benefit plan, or under an annuity contract purchased from an insurance company (including a qualified plan distributed annuity contract (as defined in paragraph (h) of this section)), the entire amount of any annuity payment made on or after January 1 of the first distribution calendar year for the employee (as described in § 1.401(a)(9)–5(a)(2)(ii)) is treated as an amount required under section 401(a)(9) and, thus, is not an eligible rollover distribution.

(g) *Treatment of plan loan offset amounts—(1) General rule.* A distribution of a plan loan offset amount, as defined in paragraph (g)(3)(i) of this section (including a qualified plan loan offset amount, a type of plan loan offset amount defined in paragraph (g)(3)(ii) of this section), is an eligible rollover distribution if it is described in paragraph (c) of this section. See § 1.401(a)(31)–1, Q&A–16, for guidance concerning the offering of a direct rollover of a plan loan offset amount. See also § 31.3405(c)–1, Q&A–11, of this chapter for guidance concerning special withholding rules with respect to plan loan offset amounts.

(2) *Rollover period for a plan loan offset amount—(i) Plan loan offset amount that is not a qualified plan loan offset amount.* A distribution of a plan loan offset amount that is an eligible

rollover distribution and that is not a qualified plan loan offset amount may be rolled over by the employee to an eligible retirement plan within the 60-day period set forth in section 402(c)(3)(A), as described in paragraph (a)(1)(ii) of this section.

(ii) *Plan loan offset amount that is a qualified plan loan offset amount.* A distribution of a plan loan offset amount that is an eligible rollover distribution and that is a qualified plan loan offset amount may be rolled over by the employee to an eligible retirement plan within the period set forth in section 402(c)(3)(C), which is the individual's tax filing due date (including extensions) for the taxable year in which the offset is treated as distributed from a qualified employer plan.

(3) *Definitions—(i) Plan loan offset amount.* For purposes of section 402(c), a plan loan offset amount is the amount by which, under the plan terms governing a plan loan, an employee's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in an employee's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of circumstances, for example, when the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, accelerated, or treated as if it were in default (for example, when the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

(ii) *Qualified plan loan offset amount.* For purposes of section 402(c), a qualified plan loan offset amount is a plan loan offset amount that satisfies the following requirements:

(A) The plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan because of the severance from employment of the employee; and

(B) The plan loan offset amount relates to a plan loan that met the requirements of section 72(p)(2) immediately prior to the termination of the qualified employer plan or the

severance from employment of the employee, as applicable.

(iii) *Qualified employer plan.* For purposes of section 402(c) and this section, a qualified employer plan is a qualified employer plan as defined in section 72(p)(4).

(4) *Special rules for qualified plan loan offset amounts—(i) Definition of severance from employment.* For purposes of paragraph (g)(3)(ii)(A) of this section, whether an employee has a severance from employment with the employer that maintains the qualified employer plan is determined in the same manner as under § 1.401(k)–1(d)(2). Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan.

(ii) *Offset because of severance from employment.* A plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the repayment terms of a plan loan because of severance from employment of the employee if the plan loan offset:

(A) Relates to a failure to meet the repayment terms of the plan loan, and

(B) Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date.

(5) *Examples.* The following examples illustrate the rules with respect to plan loan offset amounts, including qualified plan loan offset amounts, in this paragraph (g) and in §§ 1.401(a)(31)–1, Q&A–16, and 31.3405(c)–1, Q&A–11, of this chapter. For purposes of these examples, each reference to a plan refers to a qualified employer plan as described in section 72(p)(4).

(i) *Example 1—(A)* In 2025, Employee A has an account balance of \$10,000 in Plan Y, of which \$3,000 is invested in a plan loan to Employee A that is secured by Employee A's account balance in Plan Y. Employee A has made no after-tax employee contributions to Plan Y. The plan loan meets the requirements of section 72(p)(2). Plan Y does not provide any direct rollover option with respect to plan loans. Employee A severs from employment on June 15, 2025. After severance from employment, Plan Y accelerates the plan loan and provides Employee A 90 days to repay the remaining balance of the plan loan. Employee A, who is under the age set forth in section 401(a)(9)(C)(i)(I), does not repay the loan within the 90 days and instead elects a direct rollover of Employee A's entire account balance in Plan Y. On September 18, 2025 (within the 12-month period beginning on the

date that Employee A severed from employment), Employee A's outstanding loan is offset against the account balance.

(B) In order to satisfy section 401(a)(31), Plan Y must make a direct rollover by paying \$7,000 directly to the eligible retirement plan chosen by Employee A. When Employee A's account balance was offset by the amount of the \$3,000 unpaid loan balance, Employee A received a plan loan offset amount (equivalent to \$3,000) that is an eligible rollover distribution. However, under § 1.401(a)(31)–1, Q&A–16, Plan Y satisfies section 401(a)(31), even though a direct rollover option was not provided with respect to the \$3,000 plan loan offset amount.

(C) No withholding is required under section 3405(c) on account of the distribution of the \$3,000 plan loan offset amount because no cash or other property (other than the plan loan offset amount) is received by Employee A from which to satisfy the withholding.

(D) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on the employee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(ii) *Example 2—(A)* The facts are the same as in paragraph (g)(5)(i) of this section (*Example 1*), except that, rather than accelerating the plan loan, Plan Y permits Employee A to continue making loan installment payments after severance from employment. Employee A continues making loan installment payments until January 1, 2026, at which time Employee A does not make the loan installment payment due on January 1, 2026. In accordance with § 1.72(p)–1, Q&A–10, Plan Y allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due. Employee A does not make a plan loan installment payment during the cure period. Plan Y offsets the unpaid \$3,000 loan balance against Employee A's account balance on July 1, 2026 (which is after the 12-month period beginning on the date that Employee A severed from employment).

(B) The conclusion is the same as in paragraph (g)(5)(i) of this section (*Example 1*), except that the \$3,000 plan loan offset amount is not a qualified plan loan offset amount (because the offset did not occur within the 12-month period beginning on the date that

Employee A severed from employment). Accordingly, Employee A may roll over up to the \$3,000 plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(iii) *Example 3—(A)* The facts are the same as in paragraph (g)(5)(i) of this section (*Example 1*), except that the terms governing the plan loan to Employee A provide that, upon severance from employment, Employee A's account balance is automatically offset by the amount of any unpaid loan balance to repay the loan. Employee A severs from employment but does not request a distribution from Plan Y. Nevertheless, pursuant to the terms governing the plan loan, Employee A's account balance is automatically offset on June 15, 2025, by the amount of the \$3,000 unpaid loan balance.

(B) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(iv) *Example 4—(A)* The facts are the same as in paragraph (g)(5)(i) of this section (*Example 1*), except that Employee A elects to receive a cash distribution of the account balance that remains after the \$3,000 plan loan offset amount, instead of electing a direct rollover of the remaining account balance.

(B) The amount of the distribution received by Employee A is \$10,000 (\$3,000 relating to the plan loan offset and \$7,000 relating to the cash distribution). Because the amount of the \$3,000 plan loan offset amount attributable to the loan is included in determining the amount of the eligible rollover distribution to which withholding applies, withholding in the amount of \$2,000 (20 percent of \$10,000) is required under section 3405(c). The \$2,000 is required to be withheld from the \$7,000 to be distributed to Employee A in cash, so that Employee A actually receives a cash amount of \$5,000.

(C) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan

offset to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs. In addition, Employee A may roll over up to \$7,000 (the portion of the distribution that is not related to the offset) within the 60-day period provided in section 402(c)(3).

(v) *Example 5*—(A) The facts are the same as in paragraph (g)(5)(iv) of this section (*Example 4*), except that the \$7,000 distribution to Employee A after the offset consists solely of employer securities within the meaning of section 402(e)(4)(E).

(B) No withholding is required under section 3405(c) because the distribution consists solely of the \$3,000 plan loan offset amount and the \$7,000 distribution of employer securities. This is the result because the total amount required to be withheld does not exceed the sum of the cash and the fair market value of other property distributed, excluding plan loan offset amounts and employer securities.

(C) Employee A may roll over up to the \$7,000 of employer securities to an eligible retirement plan within the 60-day period provided in section 402(c)(3). The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(vi) *Example 6*—(A) Employee B, who is age 40, has an account balance in Plan Z. Plan Z does not provide for after-tax employee contributions. In 2025, Employee B receives a loan from Plan Z, the terms of which satisfy section 72(p)(2). The loan is secured by elective contributions subject to the distribution restrictions in section 401(k)(2)(B).

(B) Employee B fails to make an installment payment due on April 1, 2026, or any other monthly payments thereafter. In accordance with § 1.72(p)–1, Q&A–10, Plan Z allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due (September 30, 2026). Employee B does not make a plan loan installment payment during the cure period. On September 30, 2026, pursuant to section 72(p)(1), Employee B is taxed on a deemed distribution equal to the amount of the unpaid loan balance. Pursuant to paragraph (c)(3)(iv)

of this section, the deemed distribution is not an eligible rollover distribution.

(C) Because Employee B has not severed from employment or experienced any other event that permits the distribution under section 401(k)(2)(B) of the elective contributions that secure the loan, Plan Z is prohibited from executing on the loan. Accordingly, Employee B's account balance is not offset by the amount of the unpaid loan balance at the time of the deemed distribution. Thus, there is no distribution of an offset amount that is an eligible rollover distribution on September 30, 2026.

(vii) *Example 7*—(A) The facts are the same as in paragraph (g)(5)(vi) of this section (*Example 6*), except that Employee B has a severance from employment on November 1, 2026. On that date, Employee B's unpaid loan balance is offset against the account balance on distribution.

(B) The plan loan offset amount is not a qualified plan loan offset amount. Although the offset occurred within 12 months after Employee B severed from employment, the plan loan does not meet the requirement in paragraph (g)(3)(ii)(B) of this section (that the plan loan meet the requirements of section 72(p)(2) immediately prior to Employee B's severance from employment). Instead, the loan was taxable on September 30, 2026 (prior to Employee B's severance from employment on November 1, 2026), because of the failure to meet the level amortization requirement in section 72(p)(2)(C). Accordingly, Employee B may roll over the plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee B's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(h) *Qualified plan distributed annuity contract*—(1) *Definition of a qualified plan distributed annuity contract*. A qualified plan distributed annuity contract is an annuity contract purchased for a participant, and distributed to the participant, by a qualified plan.

(2) *Treatment of amounts paid as eligible rollover distributions*. Amounts paid under a qualified plan distributed annuity contract are payments of the balance to the credit of the employee for purposes of section 402(c) and are eligible rollover distributions if they otherwise qualify. Thus, for example, if the employee surrenders the contract for a single sum payment of its cash surrender value, the payment would be an eligible rollover distribution to the

extent it is not a required minimum distribution under section 401(a)(9). This rule applies even if the annuity contract is distributed in connection with a plan termination. See § 1.401(a)(31)–1, Q&A–17 and § 31.3405(c)–1, Q&A–13 of this chapter concerning the direct rollover requirements and 20-percent withholding requirements, respectively, that apply to eligible rollover distributions from such an annuity contract.

(i) [Reserved]

(j) *Treatment of distributions to beneficiary*—(1) *Spousal distributee*—(i) *In general*. Pursuant to section 402(c)(9), if any distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. The same rule applies if any distribution attributable to an employee is paid in accordance with a qualified domestic relations order (as defined in section 414(p)) (QDRO) to the employee's spouse or former spouse who is an alternate payee. Therefore, a distribution to the surviving spouse of an employee (or to a spouse or former spouse who is an alternate payee under a QDRO), including a distribution of ancillary death benefits attributable to the employee, is an eligible rollover distribution if it would be described in paragraph (c) of this section had it been paid to the employee. For this purpose, the amount excluded from the definition of eligible rollover distribution under paragraph (c)(2)(ii) of this section as a required minimum distribution is determined under the rules of paragraph (j)(3) of this section (or paragraph (j)(4) of this section, if applicable).

(ii) *Rollovers to qualified plans must be in capacity of employee*. If a surviving spouse rolls over a distribution to a qualified plan described in paragraph (a)(1)(iii)(B)(2) of this section or to an eligible deferred compensation plan described in section 457(b) that is maintained by an employer described in section 457(e)(1)(A), then, with respect to the amount rolled over, that amount is treated as the spouse's own interest under the receiving plan and not the interest of the decedent under the distributing plan. Thus, for example, in determining the required minimum distribution from the receiving plan with respect to the amount rolled over, distributions must satisfy section 401(a)(9)(A) and not section 401(a)(9)(B).

(2) *Non-spousal distributee*—(i) *Eligibility for rollover*. A distributee

other than the employee or the employee's surviving spouse (or a spouse or former spouse who is an alternate payee under a QDRO) is not permitted to roll over a distribution from a qualified plan. Therefore, a distribution to a non-spousal distributee does not constitute an eligible rollover distribution under section 402(c)(4).

(ii) *Direct transfer permitted.*

Although a non-spousal distributee may not roll over a distribution, pursuant to section 402(c)(11), if the distributee is a designated beneficiary (as determined under § 1.401(a)(9)–4) who is not described in paragraph (j)(1) of this section and the distribution would be an eligible rollover distribution had it been paid to the employee, then the distributee may elect that the distribution be made in the form of a direct trustee-to-trustee transfer to an IRA established for the purpose of receiving that distribution. If a direct trustee-to-trustee transfer is made pursuant to section 402(c)(11) then—

(A) The transfer is treated as an eligible rollover distribution;

(B) The IRA is an inherited IRA described in section 408(d)(3)(ii); and

(C) Section 401(a)(9)(B) (other than section 401(a)(9)(B)(iv)) will apply to the IRA.

(iii) *Applicability to see-through trusts.* If a distributee described in paragraph (j)(2)(ii) of this section is a see-through trust described in § 1.401(a)(9)–4(f)(1)(i), then the beneficiaries of the trust that are treated as designated beneficiaries under § 1.401(a)(9)–4(f)(3) are also treated as designated beneficiaries for purposes of section 402(c)(11)(A).

(iv) *Applicability of withholding rules.* An amount that could have been transferred to a beneficiary IRA in accordance with section 402(c)(11), but instead, was paid directly to a non-spouse beneficiary, is treated as an eligible rollover distribution for purposes of section 3405(c). Thus, 20-percent withholding under section 3405(c) applies to a distribution made directly to a non-spouse beneficiary.

(3) *Determination of amounts that constitute required minimum distributions for distributions to beneficiaries—(i) In general—(A) First portion of a distribution is treated as a required minimum distribution.* If a minimum distribution is required to be made to a beneficiary in a calendar year, then the amounts distributed during that calendar year are treated as required minimum distributions under section 401(a)(9), to the extent that the total required minimum distribution under section 401(a)(9) for the calendar year has not been satisfied. Accordingly,

those amounts are not eligible rollover distributions. If the employee dies before the employee's required beginning date (within the meaning of § 1.401(a)(9)–2(b)), then no amount is a required minimum distribution for the year in which the employee dies.

(B) *Determination of required minimum distribution based on distribution method.* Except as otherwise provided in paragraphs (j)(3)(ii) and (4) of this section, if an employee dies before the employee's required beginning date, then the amount that is not an eligible rollover distribution because it is a required minimum distribution for the calendar year is determined under paragraph (j)(3)(i)(C), (D), or (E) of this section, whichever applies to the beneficiary. See § 1.401(a)(9)–3(b)(4) and (c)(5) to determine which rule applies. If an employee dies on or after the employee's required beginning date, then the amount that is not an eligible rollover distribution because it is a required minimum distribution for a calendar year is determined under paragraph (j)(3)(i)(F) of this section.

(C) *Five-year rule in the case of death before required beginning date.* If the 5-year rule described in § 1.401(a)(9)–3(b)(2) or (c)(2) applies to the beneficiary, then no amount is required to be distributed until the end of the calendar year that includes the fifth anniversary of the date of the employee's death. In that year, the entire amount to which the beneficiary is entitled under the plan must be distributed, and because it is a required minimum distribution, it is not an eligible rollover distribution. Thus, if the 5-year rule applies with respect to a designated beneficiary, then any distribution made before the calendar year that includes the fifth anniversary of the date of the employee's death is eligible for rollover if it otherwise meets the requirements of this section.

(D) *Ten-year rule in the case of death before required beginning date.* If the 10-year rule described in § 1.401(a)(9)–3(c)(3) applies to the beneficiary, then no amount is required to be distributed until the end of the calendar year that includes the tenth anniversary of the date of the employee's death. In that year, the entire amount to which the beneficiary is entitled under the plan must be distributed, and because it is treated as a required minimum distribution, it is not an eligible rollover distribution. Thus, if the 10-year rule applies with respect to a designated beneficiary, then any distribution made before the calendar year that includes the tenth anniversary of the date of the employee's death is eligible for rollover

if it otherwise meets the requirements of this section.

(E) *Life expectancy rule.* If the life expectancy rule described in § 1.401(a)(9)–3(c)(4) (or, in the case of a defined benefit plan, the annuity payment rule described in § 1.401(a)(9)–3(b)(3)) applies to the designated beneficiary, then, in the first distribution calendar year for the beneficiary (as defined in § 1.401(a)(9)–5(a)(2)(iii)) and in each subsequent calendar year, the amount treated as a required minimum distribution and not eligible to be rolled over is determined in accordance with § 1.401(a)(9)–5(d) and (e) (or, in the case of a defined benefit plan, § 1.401(a)(9)–6).

(F) *Employee dies on or after required beginning date.* If the employee dies on or after the employee's required beginning date, then, in the calendar year of the employee's death, the amount treated as a required minimum distribution and not eligible to be rolled over is determined in accordance with § 1.401(a)(9)–5(c) (or, in the case of a defined benefit plan, § 1.401(a)(9)–6). For each subsequent calendar year, the amount treated as a required minimum distribution and not eligible to be rolled over is determined in accordance with § 1.401(a)(9)–5(d) and (e) (or, in the case of a defined benefit plan, § 1.401(a)(9)–6).

(ii) *Exception allowing beneficiary to change distribution method.* If the 5-year rule or 10-year rule described in § 1.401(a)(9)–3(b)(2), (c)(2) or (c)(3) applies to a designated beneficiary under the plan, and the eligible designated beneficiary is using the exception under § 1.408–8(d)(2)(ii) to switch to the use of the life expectancy rule under the IRA to which the distribution is rolled over or transferred, then the designated beneficiary must determine the portion of the distribution that is a required minimum distribution that is not eligible for rollover using the life expectancy rule described in § 1.401(a)(9)–3(c)(4) (or, in the case of a defined benefit plan, the annuity payment rule described in § 1.401(a)(9)–3(b)(3)).

(4) *Special rule applicable to a spouse beneficiary—(i) In general.* This paragraph (j)(4) provides a special rule relating to the determination of amounts treated as a required minimum distribution for distributions to an employee's surviving spouse to whom the 10-year rule described in § 1.401(a)(9)–3(c)(3) applies. This rule, which treats a portion of a distribution made before the last year of the 10-year period as a required minimum distribution, applies if—

(A) The distribution is made in or after the calendar year the surviving spouse attains the applicable age described in § 1.401(a)(9)–2(b)(2); and

(B) The surviving spouse rolls over a portion of that distribution to an eligible retirement plan under which the surviving spouse is not treated as the beneficiary of the employee.

(ii) *Catch-up of missed required minimum distributions.* If this paragraph (j)(4) applies to a distribution then, notwithstanding paragraph (j)(3)(i)(D) of this section, the portion of the distribution that is treated as a required minimum distribution, and thus is not an eligible rollover distribution, is the excess (if any) of—

(A) The sum of the hypothetical required minimum distributions determined under paragraph (j)(4)(iii) of this section for each year during the catch-up period with respect to that distribution (determined under paragraph (j)(4)(v) of this section), over

(B) The actual distributions made to the surviving spouse during those calendar years (other than the calendar year in which that distribution is made).

(iii) *Calculation of hypothetical required minimum distributions for the catch-up period.* This paragraph (j)(4)(iii) provides rules for determining the calculation of the hypothetical required minimum distribution for each calendar year during the catch-up period with respect to a distribution (determination year). The hypothetical required minimum distribution for a determination year is the amount that would have been the required minimum distribution for that year had the election under § 1.401(a)(9)–5(g)(3)(i) been in effect for the spouse. Thus, the hypothetical required minimum distribution is calculated using the applicable denominator determined under § 1.401(a)(9)–5(g)(3). However, in lieu of the account balance that would otherwise be used to determine the required minimum distribution for the determination year, an adjusted account balance is used for this purpose. The adjusted account balance for a determination year is calculated by reducing the account balance that would otherwise be used to determine the required minimum distribution for the calendar year in which the distribution is made by the excess (if any) of—

(A) The sum of the hypothetical required minimum distributions determined under this paragraph (j)(4)(iii) beginning with the first applicable year and ending with the calendar year preceding the determination year; over

(B) The actual distributions made to the surviving spouse during those calendar years.

(iv) *Definition of first applicable year.* The first applicable year is the later of—

(A) The calendar year in which the surviving spouse attains the applicable age, and

(B) The calendar year in which the employee would have attained the applicable age.

(v) *Definition of catch-up period.* The catch-up period with respect to a distribution is the period that—

(A) Begins with first applicable year, and

(B) Ends in the calendar year in which the distribution is made.

(vi) *Reasonable assumptions by plan administrator.* For purposes of section 402(f)(2)(A), a plan administrator is permitted to assume that a surviving spouse to whom this paragraph (j)(4) applies will roll over (to the extent permitted under the rules of this paragraph (j)(4)) the entire distribution to an eligible retirement plan under which that spouse is not treated as the beneficiary of the employee. Thus, a plan administrator may assume that the catch-up of missed required minimum distributions described in paragraph (j)(4)(ii) of this section applies to the distribution and treat only the remaining portion of the distribution as an eligible rollover distribution for purposes of sections 401(a)(31) and 3405(c). See paragraph (k)(2) of this section concerning the effect of this assumption for purposes of section 402(c).

(vii) [Reserved]

(k) *Other rules—*(1) *Designation must be irrevocable—*(i) *Indirect rollover.* In order for a contribution of an eligible rollover distribution to an individual retirement plan to constitute a rollover and, thus, to qualify for exclusion from gross income under section 402(c), a distributee must elect, at the time the contribution is made, to treat the contribution as a rollover contribution. An election is made by designating to the trustee, issuer, or custodian of the eligible retirement plan that the contribution is a rollover contribution. This election is irrevocable. Once any portion of an eligible rollover distribution has been contributed to an individual retirement plan and designated as a rollover distribution, taxation of the withdrawal of the contribution from the individual retirement plan is determined under section 408(d) rather than under section 402 or 403. Therefore, the eligible rollover distribution is not eligible for capital gains treatment, five-year or ten-year averaging, or the exclusion from

gross income for net unrealized appreciation on employer stock.

(ii) *Direct rollover.* If an eligible rollover distribution is paid to an eligible retirement plan in a direct rollover at the election of the distributee, the distributee is deemed to have irrevocably designated that the direct rollover is a rollover contribution.

(2) *Use of actual minimum required distribution calculation.* The portion of any distribution that an employee (or spousal distributee) may roll over as an eligible rollover distribution under section 402(c) is determined based on the actual application of section 402 and other relevant provisions of the Internal Revenue Code. The actual application of these provisions may produce different results than any assumption described in paragraph (j)(4)(vi) of this section or § 1.401(a)(31)–1, Q&A–18, that is used by the plan administrator. Thus, for example, if the plan administrator assumes there is no designated beneficiary and calculates the portion of a distribution that is a required minimum distribution using the Uniform Lifetime Table under § 1.401(a)(9)–9(c), but the portion of the distribution that is actually a required minimum distribution and thus not an eligible rollover distribution is determined by taking into account a spousal designated beneficiary who is more than 10 years younger than the employee, then a greater portion of the distribution is actually an eligible rollover distribution and the distributee may roll over the additional amount.

(3) *Plan rollover not counted towards one rollover per year limitation.* A distribution from a qualified plan that is rolled over to an individual retirement account or individual retirement annuity is not treated for purposes of section 408(d)(3)(B) as an amount received by an individual from an individual retirement account or individual retirement annuity that is not includible in gross income because of the application of section 408(d)(3).

§ 1.402(c)–3 [Removed]

■ **Par. 6.** Section 1.402(c)–3 is removed.

■ **Par. 7.** Amend § 1.403(b)–6 by revising and republishing paragraph (e).

The revision and republication read as follows:

§ 1.403(b)–6 Timing of distributions and benefits.

* * * * *

(e) *Minimum required distributions for eligible plans—*(1) *In general.* Under section 403(b)(10), a section 403(b) contract must meet the minimum distribution requirements of section 401(a)(9) (in both form and operation).

See section 401(a)(9) for these requirements.

(2) *Generally treated as IRAs.* For purposes of applying the minimum distribution requirements of section 401(a)(9) to section 403(b) contracts, the minimum distribution requirements applicable to individual retirement annuities described in section 408(b) and individual retirement accounts described in section 408(a) apply to section 403(b) contracts. Consequently, except as otherwise provided in this paragraph (e), the minimum distribution requirements of section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in § 1.408–8 that apply to an IRA that is not a Roth IRA.

(3) *Exceptions under which qualified plan rules will apply*—(i) *Required beginning date.* The required beginning date for purposes of section 403(b)(10) is determined in accordance with § 1.401(a)(9)–2(b) (rather than § 1.408–8(b)(1)).

(ii) *Amounts not taken into account.* The amounts not taken into account in determining whether the minimum distribution requirement of section 401(a)(9) has been satisfied for a calendar year are the amounts described in § 1.402(c)–2(c)(3) (rather than the amounts described in § 1.408–8(g)(2)).

(iii) *Designated Roth account.* The rules of § 1.401(a)(9)–3(a)(2) (which provides that if an employee's entire interest under a defined contribution plan is in a designated Roth account, then no distributions are required during the employee's lifetime and, upon death, the employee is treated as having died before the required beginning date), § 1.401(a)(9)–5(b)(3) (which excludes amounts held in a designated Roth account from the employee's account balance), and § 1.401(a)(9)–5(g)(2)(iii) (regarding distributions from designated Roth accounts) apply to a designated Roth account in a section 403(b) contract (rather than the rules of § 1.408–8(b)(1)(ii) that apply to a Roth IRA).

(iv) *Qualifying longevity annuity contracts.* The rules in § 1.401(a)(9)–6(q)(2)(i) (relating to the limitation on premiums for a qualifying longevity annuity contract (QLAC), as defined in § 1.401(a)(9)–6(q)(1)) and § 1.401(a)(9)–6(q)(4)(i)(A) (relating to reliance on representations with respect to a QLAC) apply to the purchase of a QLAC under a section 403(b) plan (rather than the rules in § 1.408–8(h)(2) and (3)).

(4) *Surviving spouse rule does not apply.* The rule in § 1.408–8(c) (under which the surviving spouse of an IRA owner is permitted to treat an IRA of the decedent as the spouse's own IRA) does

not apply to a section 403(b) contract. Thus, the surviving spouse of a participant is not permitted to treat a section 403(b) contract as the spouse's own section 403(b) contract, even if the spouse is the sole beneficiary.

(5) *Retirement income accounts.* For purposes of § 1.401(a)(9)–6(d) (relating to annuity contracts purchased under a defined contribution plan), annuity payments provided with respect to retirement income accounts do not fail to satisfy the requirements of section 401(a)(9) merely because the payments are not made under an annuity contract purchased from an insurance company that is licensed to do business under the laws of a State, provided that the relationship between the annuity payments and the retirement income accounts is not inconsistent with any rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d) of this chapter). See also § 1.403(b)–9(a)(5) for additional rules relating to annuities payable from a retirement income account.

(6) *Special rules for benefits accruing before December 31, 1986*—(i) *Non-applicability of section 401(a)(9) to pre-'87 account balance.* The minimum distribution requirements of section 401(a)(9) do not apply to the undistributed portion of the account balance under a section 403(b) contract valued as of December 31, 1986, exclusive of subsequent earnings (pre-'87 account balance). The minimum distribution requirements of section 401(a)(9) apply to all benefits under any section 403(b) contract accruing after December 31, 1986 (post-'86 account balance), including earnings after December 31, 1986. Consequently, the post-'86 account balance includes earnings after December 31, 1986, on contributions made before January 1, 1987, in addition to the contributions made after December 31, 1986, and earnings thereon.

(ii) *Recordkeeping required.* The issuer or custodian of the section 403(b) contract must keep records that enable it to identify the pre-'87 account balance and subsequent changes as set forth in paragraph (e)(6)(iii) of this section and provide that information upon request to the relevant employee or beneficiaries with respect to the contract. If the issuer or custodian does not keep those records, the entire account balance is treated as subject to section 401(a)(9).

(iii) *Applicability of section 401(a)(9) to post-'86 account balance.* In applying the minimum distribution requirements of section 401(a)(9), only the post-'86 account balance is used to calculate the

required minimum distribution for a calendar year. The amount of any distribution from a contract is treated as being paid from the post-'86 account balance to the extent the distribution is required to satisfy the minimum distribution requirement with respect to that contract for a calendar year. Any amount distributed in a calendar year from a contract in excess of the required minimum distribution for a calendar year with respect to that contract is treated as paid from the pre-'87 account balance, if any, of that contract.

(iv) *Rollover of amounts from pre-'87 account balance.* If an amount is distributed from the pre-'87 account balance and rolled over to another section 403(b) contract, the amount is treated as part of the post-'86 account balance in that second contract. However, if the pre-'87 account balance under a section 403(b) contract is directly transferred to another section 403(b) contract (as permitted under § 1.403(b)–10(b)), the amount transferred retains its character as a pre-'87 account balance, provided the issuer of the transferee contract satisfies the recordkeeping requirements of paragraph (e)(6)(ii) of this section.

(v) *Relevance of distinction between pre-'87 and post-'86 account balance for purposes of section 72.* The distinction between the pre-'87 account balance and the post-'86 account balance provided for under this paragraph (e)(6) has no relevance for purposes of determining the portion of a distribution that is includible in income under section 72.

(vi) *Pre-'87 account balance distributions must satisfy incidental benefit requirement.* The pre-'87 account balance must be distributed in accordance with the incidental benefit requirement of § 1.401–1(b)(1)(i). Distributions attributable to the pre-'87 account balance are treated as satisfying this requirement if all distributions from the section 403(b) contract (including distributions attributable to the post-'86 account balance) satisfy the requirements of § 1.401–1(b)(1)(i) without regard to this section, and distributions attributable to the post-'86 account balance satisfy the rules of this paragraph (e) (without regard to this paragraph (e)(6)). Distributions attributable to the pre-'87 account balance are treated as satisfying the incidental benefit requirement if all distributions from the section 403(b) contract (including distributions attributable to both the pre-'87 account balance and the post-'86 account balance) satisfy the rules of this paragraph (e) (without regard to this paragraph (e)(6)).

(7) *Application to multiple contracts for an employee.* The required minimum distribution must be determined separately for each section 403(b) contract of an employee. However, because, as provided in paragraph (e)(2) of this section, the minimum distribution requirements of section 401(a)(9) apply to section 403(b) contracts in accordance with the provisions in § 1.408–8, the required minimum distribution from one section 403(b) contract of an employee is permitted to be distributed from another section 403(b) contract in order to satisfy the minimum distribution requirements of section 401(a)(9). Thus, as provided in § 1.408–8(e), with respect to IRAs, the required minimum distribution amount from each contract is then totaled and the total minimum distribution taken from any one or more of the individual section 403(b) contracts. However, consistent with the rules in § 1.408–8(e), only amounts in section 403(b) contracts that an individual holds as an employee may be aggregated. In addition, amounts in section 403(b) contracts that a person holds as a beneficiary of a decedent may be aggregated, but those amounts may not be aggregated with amounts held in section 403(b) contracts that the person holds as the employee or as the beneficiary of another decedent. Distributions from section 403(b) contracts do not satisfy the minimum distribution requirements for IRAs, nor do distributions from IRAs satisfy the minimum distribution requirements for section 403(b) contracts.

(8) *Governmental plans.* A section 403(b) contract that is part of a governmental plan (within the meaning of section 414(d)) is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the contract, if the terms of the contract reflect a reasonable, good faith interpretation of section 401(a)(9).

(9) *Effective date.* This paragraph (e) applies for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. For earlier calendar years, the rules of 26 CFR 1.403(b)–6(e) (as it appeared in the April 1, 2023, edition of 26 CFR part 1) apply.

* * * * *

■ **Par. 8.** Revise and republish § 1.408–8 to read as follows:

§ 1.408–8 Distribution requirements for individual retirement plans.

(a) *Applicability of section 401(a)(9).*—(1) *In general.* An IRA is subject to the required minimum distribution requirements of section 401(a)(9). In order to satisfy section 401(a)(9), the

rules of §§ 1.401(a)(9)–1 through 1.401(a)(9)–9 must be applied, except as otherwise provided in this section. For example, if the owner of an individual retirement account dies before the IRA owner's required beginning date, whether the 10-year rule or the life expectancy rule applies to distributions after the IRA owner's death is determined in accordance with § 1.401(a)(9)–3(c), and the rules of § 1.401(a)(9)–4 apply for purposes of determining an IRA owner's designated beneficiary. The amount of the minimum distribution required for each calendar year from an individual retirement account is determined in accordance with § 1.401(a)(9)–5 and the minimum distribution required for each calendar year from an individual retirement annuity described in section 408(b) is determined in accordance with § 1.401(a)(9)–6 (including § 1.401(a)(9)–6(d)(2)).

(2) *Definition of IRA and IRA owner.* For purposes of this section, an IRA is an individual retirement account or annuity described in section 408(a) or (b), and the IRA owner is the individual for whom an IRA is originally established by contributions for the benefit of that individual and that individual's beneficiaries.

(3) *Substitution of specific terms.* For purposes of applying the required minimum distribution rules of §§ 1.401(a)(9)–1 through 1.401(a)(9)–9, the IRA trustee, custodian, or issuer is treated as the plan administrator, and the IRA owner is substituted for the employee.

(4) *Treatment of SEPs and SIMPLE IRA Plans.* IRAs that receive employer contributions under a SEP arrangement (within the meaning of section 408(k)) or a SIMPLE IRA plan (within the meaning of section 408(p)) are treated as IRAs, rather than employer plans, for purposes of section 401(a)(9) and are, therefore, subject to the distribution rules in this section.

(b) *Different rules for IRAs and qualified plans.*—(1) *Determination of required beginning date.*—(i) *In general.* An IRA owner's required beginning date is determined using the rules for employees who are 5-percent owners under § 1.401(a)(9)–2(b)(3). Thus, the IRA owner's required beginning date is April 1 of the calendar year following the calendar year in which the individual attains the applicable age.

(ii) *Special rules for Roth IRAs.* No minimum distributions are required to be made from a Roth IRA while the owner is alive. After the Roth IRA owner dies, the required minimum distribution rules apply to the Roth IRA as though the Roth IRA owner died

before his or her required beginning date. In accordance with section 401(a)(9)(B)(iv)(II), if the sole beneficiary is the Roth IRA owner's surviving spouse, then the surviving spouse may delay distributions until the Roth IRA owner would have attained the applicable age.

(2) *Account balance determination.* For purposes of determining the required minimum distribution from an IRA for any calendar year, the account balance of the IRA as of December 31 of the calendar year preceding the calendar year for which distributions are required to be made is substituted for the account balance of the employee under § 1.401(a)(9)–5(b). Except as provided in paragraph (d) of this section, no adjustments are made for contributions or distributions after that date.

(3) *Determination of portion of distribution that is a required minimum distribution.* The portion of a distribution from an IRA that is a required minimum distribution and thus not eligible for rollover is determined in the same manner as provided in § 1.402(c)–2(f) and (j) for a distribution from a qualified plan. For example, if a minimum distribution to an IRA owner is required under section 401(a)(9)(A)(ii) for a calendar year, any amount distributed during a calendar year from an IRA of that IRA owner is treated as a required minimum distribution under section 401(a)(9) to the extent that the total required minimum distribution for the year under section 401(a)(9) from all of that IRA owner's IRAs has not been satisfied (either by a distribution from the IRA or, as permitted under paragraph (e) of this section, from another IRA).

(4) *Documentation requirements.*—(i) *Disabled or chronically ill beneficiaries.* In determining whether an IRA owner's designated beneficiary is disabled or chronically ill for purposes of § 1.401(a)(9)–4(e), the required documentation described in § 1.401(a)(9)–4(e)(7) need not be provided to the IRA trustee, custodian, or issuer.

(ii) *Trust documentation.* In determining whether the requirements of § 1.401(a)(9)–4(f)(2) are met (to determine whether a trust is a see-through trust), the trust documentation described in § 1.401(a)(9)–4(h) need not be provided to the IRA trustee, custodian, or issuer.

(c) *Surviving spouse treating IRA as own.*—(1) *Election generally permitted.*—(i) *In general.* The surviving spouse of an individual may elect, in the manner described in paragraph (c)(2) of this section, to treat the surviving spouse's entire interest as a beneficiary in the

individual's IRA (or the remaining part of that interest if distributions have begun) as the surviving spouse's own IRA.

(ii) *Eligibility to make election.* In order to make the election described in this paragraph (c)(1), the surviving spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the surviving spouse is the sole beneficiary of the trust.

(iii) *Timing of election.* If § 1.402(c)–2(j)(4) (the special rule for catch-up distributions after a surviving spouse reaches the applicable age) would apply to the IRA owner's surviving spouse had a distribution been made directly to the surviving spouse in a calendar year, then, except as provided in paragraph (c)(1)(iv) of this section, the election described in this paragraph (c)(1) may not be made in that calendar year.

(iv) *Exception for late elections.* In the case of a surviving spouse who, pursuant to the timing rule in paragraph (c)(1)(iii) of this section, may not make the election described in paragraph (c)(1)(i) of this section in a calendar year, the spouse may nevertheless make the election in that calendar year provided that the election does not apply to amounts in the IRA that would be treated as required minimum distributions under § 1.402(c)–2(j)(4)(ii) had they been distributed in that calendar year. Thus, the election can be made in a calendar year only after the amounts treated as required minimum distributions under § 1.402(c)–2(j)(4)(ii) for that calendar year have been distributed from the IRA.

(2) *Election procedures.* The election described in paragraph (c)(1) of this section is made by the surviving spouse redesignating the account as an account in the name of the surviving spouse as IRA owner rather than as beneficiary. Alternatively, a surviving spouse eligible to make the election is deemed to have made the election if, at any time, either of the following occurs—

(i) Any amount in the IRA that would be required to be distributed to the surviving spouse as beneficiary under section 401(a)(9)(B) for a calendar year following the calendar year of the IRA owner's death is not distributed within the time period required under section 401(a)(9)(B); or

(ii) A contribution (other than a rollover of a distribution from an eligible retirement plan of the decedent) is made to the IRA.

(3) *Effect of election.* Following an election described in paragraph (c)(1) of this section, the surviving spouse is

considered the IRA owner for whose benefit the trust is maintained for all purposes under the Internal Revenue Code (including section 72(t)). Thus, for example, the required minimum distribution for the calendar year of the election and each subsequent calendar year is determined under section 401(a)(9)(A) with the spouse as IRA owner and not section 401(a)(9)(B) with the surviving spouse as the deceased IRA owner's beneficiary. However, if the election is made in the calendar year that includes the date of the IRA owner's death, the spouse is not required to take a required minimum distribution as the IRA owner for that calendar year. Instead, the spouse is required to take a required minimum distribution for that year, determined with respect to the deceased IRA owner under the rules of § 1.401(a)(9)–5(c), to the extent the distribution was not made to the IRA owner before death.

(d) *Treatment of rollovers and transfers—(1) Treatment of rollovers—(i) In general.* If a distribution is rolled over to an IRA, then the rules in § 1.401(a)(9)–7 apply for purposes of determining the account balance and the required minimum distribution for that IRA. However, because the value of the account balance is determined as of December 31 of the year preceding the year for which the required minimum distribution is being determined, and not as of a valuation date in the preceding year, the account balance of the IRA is adjusted only if the amount rolled over is not received in the calendar year in which the amount was distributed. If the amount rolled over is received in the calendar year following the calendar year in which the amount was distributed, then, for purposes of determining the required minimum distribution for that following calendar year, the account balance of the IRA as of December 31 of the calendar year in which the distribution was made must be adjusted by the amount received in accordance with § 1.401(a)(9)–7(b).

(ii) *Spousal rollovers.* A surviving spouse is permitted to roll over a distribution to an IRA as the beneficiary of the deceased employee or IRA owner, and the rules of paragraph (d)(1)(i) of this section apply to that IRA. A surviving spouse may also elect to treat that IRA as the spouse's own IRA in accordance with paragraph (c) of this section.

(2) *Special rules for death before required beginning date—(i) Carryover of election under qualified plan or IRA.* If an employee or IRA owner dies before the required beginning date and the surviving spouse rolls over a distribution of the employee's or IRA

owner's interest to an IRA in the spouse's capacity as a beneficiary of the deceased employee or IRA owner, then, except as provided in paragraph (d)(2)(ii) of this section, the method for determining required minimum distributions that applied to that surviving spouse under the distributing plan or IRA (such as when a beneficiary makes an election described in § 1.401(a)(9)–3(c)(5)(iii)) also applies to the receiving IRA. Thus, for example, if an employee who died before the required beginning date designated the employee's surviving spouse as a beneficiary of the employee's interest in the plan and the plan provides that the surviving spouse is subject to the 10-year rule described in § 1.401(a)(9)–3(c)(4), then the 10-year rule also applies to any IRA in the name of the decedent that receives a rollover of the employee's interest.

(ii) *Change from 5-year rule or 10-year rule to life expectancy payments.* If the 5-year rule or 10-year rule described in § 1.401(a)(9)–3(b)(2), (c)(2), or (c)(3), respectively, applies to a distributing plan or IRA and a distribution is made to the employee's surviving spouse before the deadline described in § 1.401(a)(9)–3(b)(4)(iii) or (c)(5)(iii) that would have applied had the distributing plan or IRA permitted the surviving spouse to make an election between the 5-year rule or 10-year rule and the life expectancy rule (or, in the case of a defined benefit plan, the annuity payment rule), then the surviving spouse may elect to have the life expectancy rule described in § 1.401(a)(9)–3(c)(4) or the annuity payment rule described in § 1.401(a)(9)–3(b)(3) apply to any IRA to which any portion of that distribution is rolled over. However, see § 1.402(c)–2(j)(4)(ii) to determine the portion of that distribution that is treated as a required minimum distribution in the calendar year of the distribution and thus is not eligible for rollover.

(iii) *Spousal rollover to spouse's own IRA.* If an employee or IRA owner dies before the required beginning date and the surviving spouse rolls over a distribution described in paragraph (d)(2)(i) of this section from the surviving spouse's IRA in the capacity as the beneficiary of the decedent to the surviving spouse's own IRA, then, in determining the amount that is treated as a required minimum distribution under section 401(a)(9) and thus is not eligible for rollover, the rules of § 1.402(c)–2(j)(4) are applied as if the distribution was made directly from the decedent's interest in the plan or IRA to the surviving spouse's own IRA.

(3) *Applicability of rollover rules to non-spouse beneficiary.* The rules of paragraphs (d)(1)(i), (2)(i) and (ii) of this section apply to a non-spouse beneficiary who makes an election to have a distribution made in the form of a direct trustee-to-trustee transfer as described in section 402(c)(11) in the same manner as a rollover of a distribution made by a surviving spouse.

(4) *Treatment of transfers.* In the case of a trustee-to-trustee transfer from one IRA to another IRA that is not a distribution and rollover, the transfer is not treated as a distribution by the transferor IRA for purposes of section 401(a)(9). Accordingly, the minimum distribution requirement with respect to the transferor IRA must still be satisfied. After the transfer, the employee's account balance and the required minimum distribution under the transferee IRA are determined in the same manner that an account balance and required minimum distribution are determined under an IRA receiving a rollover contribution under paragraph (d)(1) of this section.

(e) *Application of section 401(a)(9) for multiple IRAs—(1) Distribution from one IRA to satisfy total required minimum distribution—(i) In general.* The required minimum distribution from one IRA is permitted to be distributed from another IRA in order to satisfy section 401(a)(9), subject to the limitations of paragraphs (e)(2) and (3) of this section. Except as provided in paragraph (e)(1)(ii) of this section, the required minimum distribution must be calculated separately for each IRA and the sum of those separately calculated required minimum distributions may be distributed from any one or more of the IRAs under the rules set forth in this paragraph (e).

(ii) *Permitted aggregation of annuity contract and account balance.* Subject to the limitations of paragraphs (e)(2) and (3) of this section, an individual who holds an IRA that is an annuity contract described in section 408(b) may elect to aggregate that IRA with one or more IRAs with account balances that the individual holds and apply the optional aggregation rule of § 1.401(a)(9)–5(a)(5)(iv) with respect to the annuity contract and the account balances under those IRAs as if the account balances were the remaining account balances following the purchase of the annuity contract with a portion of those account balances.

(2) *IRAs eligible for aggregate treatment—(i) IRA owners.* Generally, only amounts in IRAs that an individual holds as the IRA owner are aggregated for purposes of paragraph (e)(1) of this

section. Except in the case of a surviving spouse electing to treat a decedent's IRA as the spouse's own IRA, an IRA that a beneficiary acquires as a result of the death of an individual is not treated as an IRA of the beneficiary but rather as an IRA of the decedent for purposes of this paragraph (e). Thus, for example, for purposes of satisfying the minimum distribution requirements with respect to one IRA by making distributions from another IRA, IRAs for which the individual is the IRA owner are not aggregated with IRAs for which the individual is a beneficiary.

(ii) *IRA beneficiaries.* IRAs that a person holds as a beneficiary of a decedent are aggregated for purposes of paragraph (e)(1) of this section, but those amounts are not aggregated with IRAs that the person holds as the owner or as the beneficiary of a different decedent.

(3) *Non-Roth IRAs are treated separately from section 403(b) contracts and Roth IRAs.* Distributions from an IRA that is not a Roth IRA may not be used to satisfy the required minimum distribution requirements with respect to a Roth IRA, or a section 403(b) contract (as defined in § 1.403(b)–2(b)(16)(i)). Similarly, distributions from a Roth IRA do not satisfy the required minimum distribution requirements with respect to a section 403(b) contract or an IRA that is not a Roth IRA. In addition, distributions from a section 403(b) contract do not satisfy the required minimum distribution requirements with respect to an IRA.

(4) *Allocation rule for partial distributions in year of death—(i) Distribution required in year of IRA owner's death.* This paragraph (e)(4) provides a special rule that applies if an IRA owner has multiple IRAs (which do not all have identical beneficiary designations) that are aggregated in accordance with paragraph (e)(1) of this section and that IRA owner dies before taking the total required minimum distribution for the calendar year of the IRA owner's death (that is, there is a shortfall). In that case, each of the owner's IRAs is subject to a requirement to distribute a proportionate share of the shortfall for the calendar year to a beneficiary of that IRA, with the proportions based on the account balances determined under paragraph (b)(2) of this section. This allocation of the shortfall to a particular IRA is made without regard to whether some of the required minimum distribution for the calendar year was already made to the IRA owner from that IRA.

(ii) *Distribution requirement in the year of beneficiary's death.* Rules similar to the rules of paragraph (e)(4)(i)

of this section apply in the case of a beneficiary of multiple IRAs that are aggregated under paragraph (e)(1) of this section if a required minimum distribution is due for that beneficiary in the calendar year of the beneficiary's death, to the extent that the amount was not distributed to the beneficiary.

(iii) *Example.* Assume IRA owner X died on December 31, 2024, at the age of 75. At the time of X's death, X owned two separate IRAs, IRA Y and IRA Z, neither of which is a Roth IRA. The balance of IRA Y as of December 31, 2023, was \$100,000 and the balance of IRA Z as of December 31, 2023, was \$50,000. X died after X's required beginning date and under the rules of paragraph (e)(1) of this section, the total of the 2024 required minimum distributions for IRA Y and IRA Z is \$6,097.56 (\$150,000/24.6). X designated A as his beneficiary under IRA Y and B as his beneficiary under IRA Z. Prior to X's death, X had taken a \$3,000 distribution from IRA Z in 2024. Under the rules of paragraph (e)(4)(i) of this section, the remaining portion of the 2024 required minimum distribution (\$3,097.56) is allocated two-thirds to IRA Y and one-third to IRA Z. Thus, in the calendar year of X's death A is required to take a required minimum distribution of \$2,065.04 from IRA Y and B is required to take a required minimum distribution of \$1,032.52 from IRA Z.

(f) *Reporting requirements.* The trustee, custodian, or issuer of an IRA is required to report information with respect to the minimum amount required to be distributed from the IRA for each calendar year to individuals or entities, at the time, and in the manner, prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d) of this chapter), as well as the applicable Federal tax forms and accompanying instructions.

(g) *Distributions taken into account—(1) General rule.* Except as provided in paragraph (g)(2) of this section, all amounts distributed from an IRA are taken into account in determining whether section 401(a)(9) is satisfied, regardless of whether the amount is includible in income. Thus, for example, a qualified charitable distribution made pursuant to section 408(d)(8) is taken into account in determining whether section 401(a)(9) is satisfied.

(2) *Amounts not taken into account.* The following amounts are not taken into account in determining whether the required minimum distribution with

respect to an IRA for a calendar year has been made—

(i) Contributions returned pursuant to section 408(d)(4), together with the income allocable to these contributions;

(ii) Contributions returned pursuant to section 408(d)(5);

(iii) Corrective distributions of excess simplified employee pension contributions under section 408(k)(6)(C), together with the income allocable to these distributions;

(iv) Amounts that are treated as distributed pursuant to section 408(e);

(v) Amounts that are treated as distributed as a result of the purchase of a collectible pursuant to section 408(m);

(vi) Corrective distributions of excess deferrals as described in § 1.402(g)–1(e), together with the income allocable to these corrective distributions; and

(vii) Similar items designated by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(h) *Qualifying longevity annuity contracts*—(1) *General rule*. The special rule in § 1.401(a)(9)–5(b)(4) for a QLAC, defined in § 1.401(a)(9)–6(q), applies to an IRA, subject to the modifications set forth in this paragraph (h).

(2) *Reliance on representations*. For purposes of the limitation described in § 1.401(a)(9)–6(q)(2)(ii), unless the trustee, custodian, or issuer of an IRA has actual knowledge to the contrary, the trustee, custodian, or issuer may rely on the IRA owner's representation (made in writing or other form as may be prescribed by the Commissioner) of the amount of the premiums described

in § 1.401(a)(9)–6(q)(2)(ii) that are not paid under the IRA.

(3) *Permitted delay in setting beneficiary designation*. In the case of a contract that is rolled over from a plan to an IRA before the required beginning date under the plan, the contract will not violate the rule in § 1.401(a)(9)–6(q)(3)(iii)(F) that a non-spouse beneficiary must be irrevocably selected on or before the later of the date of purchase and the required beginning date under the IRA, provided that the contract requires a beneficiary to be irrevocably selected by the end of the year following the year of the rollover.

(4) *Roth IRAs*. The rule in § 1.401(a)(9)–5(b)(4) does not apply to a Roth IRA. Accordingly, a contract that is purchased under a Roth IRA is not treated as a contract that is intended to be a QLAC for purposes of applying the dollar limitation rule in § 1.401(a)(9)–6(q)(2)(ii). If a QLAC is purchased or held under a plan, annuity, account, or traditional IRA, and that contract is later rolled over or converted to a Roth IRA, the contract is not treated as a contract that is intended to be a QLAC after the date of the rollover or conversion. Thus, premiums paid with respect to the contract will not be taken into account under § 1.401(a)(9)–6(q)(2)(ii) after the date of the rollover or conversion.

(i) [Reserved]

(j) *Applicability date*. This section applies for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. For earlier calendar years, the rules of 26 CFR 1.408–8 (as it appeared in the April 1, 2023, edition of 26 CFR part 1) apply.

■ **Par. 9.** Amend § 1.457–6 by revising and republishing paragraph (d).

The revision and republication read as follows:

§ 1.457–6 Timing of distributions under eligible plans.

* * * * *

(d) *Minimum required distributions for eligible plans*. In order to be an eligible plan, a plan must meet the distribution requirements of section 457(d)(1) and (2). Under section 457(d)(2), a plan must meet the minimum distribution requirements of section 401(a)(9). See section 401(a)(9) and the regulations thereunder for these requirements. For taxable years beginning on or after January 1, 2025, if an eligible plan is subject to the rules of § 1.401(a)(9)–5, then the plan must meet the requirements of section 401(a)(9)(H). The preceding sentence applies to an eligible plan maintained by any eligible employer (including an eligible plan of a tax-exempt entity).

* * * * *

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 10.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

■ **Par. 11.** For each section set forth below, revise the section by removing the text that appears in the column labeled “Remove” and replacing it with the text that appears in the column labeled “Insert”:

Regulation section	Remove	Insert
§ 31.3405(c)–1, Q&A–1(a)	“§ 1.402(c)–2, Q&A–2”	“§ 1.402(c)–2(a)(1)(iii)”.
§ 31.3405(c)–1, Q&A–1(b)	“§ 1.402(c)–2, Q&A–3 through Q&A–10 and Q&A–14”.	“§ 1.402(c)–2”.
§ 31.3405(c)–1, Q&A–4	“§ 1.402(c)–2, Q&A–10”	“§ 1.402(c)–2(h)”.
§ 31.3405(c)–1, Q&A–7(a)	“§ 1.402(c)–2, Q&A–2”	“§ 1.402(c)–2(a)(1)(iii)”.
§ 31.3405(c)–1, Q&A–10(a)	“§ 1.402(c)–2, Q&A–15”	“§ 1.402(c)–2(k)(2)”.
§ 31.3405(c)–1, Q&A–11	“§ 1.402(c)–2, Q&A–9”	“§ 1.402(c)–2(g)”.
§ 31.3405(c)–1, Q&A–13	“Q&A–10 of § 1.402(c)–2”	“§ 1.402(c)–2(h)”.
§ 31.3405(c)–1, Q&A–13	“§ 1.402(c)–2, Q&A–10”	“§ 1.402(c)–2(h)”.

PART 54—PENSION EXCISE TAXES

■ **Par. 12.** The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

■ **Par. 13.** Revise and republish § 54.4974–1 to read as follows:

§ 54.4974–1 Excise tax on accumulations in qualified retirement plans.

(a) *Imposition of excise tax*—(1) *In general*. If the amount distributed to a payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) for a calendar year is less than the required minimum distribution for that year, section 4974 imposes an excise tax on the payee for the taxable year beginning with or within the

calendar year during which the amount is required to be distributed. Except as provided in paragraph (a)(2) of this section, the tax is equal to 25 percent of the amount by which the required minimum distribution for a calendar year exceeds the actual amount distributed during the calendar year.

(2) *Reduction of tax in certain cases*—(i) *In general*. In the case of a taxpayer who satisfies this paragraph (a)(2), the tax described in paragraph (a)(1) of this

section is equal to 10 percent (in lieu of 25 percent) of the amount by which the required minimum distribution for a calendar year exceeds the actual amount distributed during the calendar year.

(ii) *Eligible taxpayers.* This paragraph (a)(2) is satisfied if, by the last day of the correction window described in paragraph (a)(2)(iii) of this section, the taxpayer—

(A) Receives a corrective distribution from the applicable plan described in paragraph (a)(2)(iv) of this section of the amount by which the required minimum distribution for a calendar year exceeds the actual amount distributed during the calendar year from that plan; and

(B) Files a return reflecting the tax described in this paragraph (a).

(iii) *Correction window.* For purposes of paragraph (a)(2) of this section, the correction window ends on the earliest of—

(A) The date a notice of deficiency under section 6212 with respect to the tax imposed by section 4974(a) is mailed;

(B) The date on which the tax imposed by section 4974(a) is assessed; or

(C) The last day of the second taxable year that begins after the end of the taxable year in which the tax under section 4974(a) is imposed.

(iv) *Applicable plan.* If the minimum distribution was required to be paid from a particular qualified retirement plan or eligible deferred compensation plan, then the applicable plan is that particular qualified retirement plan or eligible deferred compensation plan. However, if the requirement to take a minimum distribution could have been satisfied by a payment from any one of a number of qualified retirement plans (such as an individual retirement account under section 408(a) or a section 403(b) plan), then the corrective distribution may be taken from any one of those qualified retirement plans.

(3) *Definition of required minimum distribution.* For purposes of section 4974, the term required minimum distribution means the minimum amount required to be distributed pursuant to section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may be. Except as otherwise provided in paragraph (f) of this section (which provides a special rule for amounts required to be distributed by an employee's, or an individual's, required beginning date), the required minimum distribution for a calendar year is the required minimum distribution amount required to be distributed during the calendar year.

(b) *Definition of qualified retirement plan.* For purposes of section 4974, each of the following is a qualified retirement plan—

(1) A plan described in section 401(a) that includes a trust exempt from tax under section 501(a);

(2) An annuity plan described in section 403(a);

(3) An annuity contract, custodial account, or retirement income account described in section 403(b);

(4) An individual retirement account described in section 408(a) (including a Roth IRA described in section 408A);

(5) An individual retirement annuity described in section 408(b) (including a Roth IRA described in section 408A); or

(6) Any other plan, contract, account, or annuity that, at any time, has been treated as a plan, account, or annuity described in paragraphs (b)(1) through (5) of this section but that no longer satisfies the applicable requirements for that treatment.

(c) *Determination of required minimum distribution for individual accounts—*(1) *General rule.* Except as otherwise provided in this paragraph (c), if a payee's interest under a qualified retirement plan or any eligible deferred compensation plan is in the form of an individual account (and distribution of that account is not being made under an annuity contract purchased in accordance with § 1.401(a)(9)–5(a)(5) and § 1.401(a)(9)–6(d)), the amount of the required minimum distribution for any calendar year for purposes of section 4974 is the amount required to be distributed to that payee for that calendar year determined in accordance with § 1.401(a)(9)–5 as provided in the following (whichever applies)—

(i) Section 401(a)(9), §§ 1.401(a)(9)–1 through 1.401(a)(9)–5, and 1.401(a)(9)–7 through 1.401(a)(9)–9, in the case of a plan described in section 401(a) that includes a trust exempt from tax under section 501(a) or an annuity plan described in section 403(a);

(ii) Section 403(b)(10) and § 1.403(b)–6(e) in the case of an annuity contract, custodial account, or retirement income account described in section 403(b);

(iii) Section 408(a)(6) or (b)(3) and § 1.408–8 in the case of an individual retirement account or annuity described in section 408(a) or (b); or

(iv) Section 457(d) and § 1.457–6(d) in the case of an eligible deferred compensation plan.

(2) *Distributions under 5-year rule or 10-year rule.* If an employee dies before the required beginning date and either § 1.401(a)(9)–3(c)(2) or (3) applies to the employee's beneficiary, there is no required minimum distribution until the

end of the calendar year described in whichever of those paragraphs applies to the beneficiary (that is, the calendar year that includes the fifth anniversary or the tenth anniversary of the date of the employee's death, as applicable). The required minimum distribution due in that fifth or tenth calendar year is the employee's entire interest in the plan.

(3) *Default provisions.* Unless otherwise provided under the qualified retirement plan or eligible deferred compensation plan (or, if applicable, the governing instrument of the plan), the default provisions in § 1.401(a)(9)–3(c)(5)(i) apply in determining whether paragraph (c)(1) or (2) of this section applies.

(4) *Plans providing uniform required beginning date.* For purposes of this section, if the plan provides a uniform required beginning date for purposes of section 401(a)(9) for all employees in accordance with § 1.401(a)(9)–2(b)(4), then the required minimum distribution for each calendar year for an employee who is not a 5-percent owner is the lesser of the amount determined based on a required beginning date of April 1 of the calendar year following the calendar year in which the employee attains the applicable age or the amount determined based on the required beginning date under the plan. Thus, for example, if an employee who was not a 5-percent owner participated in a defined contribution plan with a uniform required beginning date (as described in the preceding sentence) and the employee died after the applicable age (but before April 1 of the calendar year following the calendar year in which the employee retired) without a designated beneficiary, then required minimum distributions for calendar years after the calendar year that includes the date of the employee's death are equal to the lesser of—

(i) The required minimum distribution determined by treating the employee as dying before the required beginning date (that is, the 5-year rule of § 1.401(a)(9)–3(c)(2)); or

(ii) The required minimum distribution determined by treating the employee as dying on or after the required beginning date (annual distributions over the employee's remaining life expectancy, as set forth in § 1.401(a)(9)–5(d)).

(d) *Determination of required minimum distribution under a defined benefit plan or annuity—*(1) *General rule.* If a payee's interest in a qualified retirement plan or eligible deferred compensation plan is being distributed in the form of an annuity (either directly from the plan, in the case of a defined benefit plan, or under an annuity

contract purchased from an insurance company), then the amount of the required minimum distribution for purposes of section 4974 depends on whether the annuity is a permissible annuity distribution option or an impermissible annuity distribution option. For this purpose—

(i) A permissible annuity distribution option is an annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) that specifically provides for distributions that, if made as provided, would for every calendar year equal or exceed the minimum distribution amount required to be distributed to satisfy the applicable section enumerated in paragraph (b) of this section for that calendar year; and

(ii) An impermissible annuity distribution option is any other annuity distribution option.

(2) *Permissible annuity distribution option.* If the annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) under which distributions to the payee are being made is a permissible annuity distribution option, then the required minimum distribution for a given calendar year for purposes of section 4974 equals the amount that the annuity contract (or distribution option) provides is to be distributed for that calendar year.

(3) *Impermissible annuity distribution option—(i) General rule.* If the annuity contract (or, in the case of annuity distributions from a defined benefit plan, the distribution option) under which distributions to the payee are being made is an impermissible annuity distribution option, then the required minimum distribution for each calendar year for purposes of section 4974 is the amount that would be distributed under the applicable permissible annuity distribution option described in this paragraph (d)(3) (or the amount determined by the Commissioner if there is no option of this type). The determination of which permissible annuity distribution applies depends on whether distributions commenced before the death of the employee, whether the plan is a defined benefit or defined contribution plan, whether there is a designated beneficiary for purposes of section 401(a)(9), and whether the designated beneficiary is an eligible designated beneficiary under section 401(a)(9)(E)(ii). For this purpose, the determination of whether there is a designated beneficiary and whether that designated beneficiary is an eligible designated beneficiary is made in accordance with § 1.401(a)(9)–4, and the determination of which designated

beneficiary's life is to be used in the case of multiple designated beneficiaries in made in accordance with § 1.401(a)(9)–5(f).

(ii) *Defined benefit plan—(A) Benefits commence before employee dies.* If the plan under which distributions are being made is a defined benefit plan, benefits commence before the employee dies, and there is a designated beneficiary, then the applicable permissible annuity distribution option is the joint and survivor annuity option under the plan for the lives of the employee and the designated beneficiary that is a permissible annuity distribution option and that provides for the greatest level amount payable to the employee determined on an annual basis. If the plan does not provide an option described in the preceding sentence (or there is no designated beneficiary under the impermissible annuity distribution option), then the applicable permissible annuity distribution option is the life annuity option under the plan payable for the life of the employee in level amounts with no survivor benefit.

(B) *Employee dies before benefits commence.* If the plan under which distributions are being made is a defined benefit plan, the employee dies before benefits commence, there is a designated beneficiary, and the plan has a life annuity option payable for the life of the designated beneficiary in level amounts, then the applicable permissible annuity distribution option is that life annuity option. If there is no designated beneficiary, then the 5-year rule in section 401(a)(9)(B)(ii) applies in accordance with paragraph (d)(4)(i) of this section.

(iii) *Defined contribution plan—(A) In general.* If the plan under which distributions are being made is a defined contribution plan and the impermissible annuity distribution option is an annuity contract purchased from an insurance company, then the applicable permissible annuity distribution option is the applicable annuity described in paragraph (d)(3)(iii)(B) or (C) of this section that could have been purchased with the portion of the employee's or individual's account that was used to purchase the annuity contract that is the impermissible annuity distribution option. The amount of the payments under that annuity contract are determined using the interest rate prescribed under section 7520 determined as of the date the contract was purchased, the ages of the annuitants on that date, and the mortality rates in § 1.401(a)(9)–9(e).

(B) *Benefits commence before employee dies.* If the plan under which distributions are being made is a defined contribution plan, the benefits commence before the employee dies, and there is a designated beneficiary who is an eligible designated beneficiary within the meaning of section 401(a)(9)(E)(ii), then the applicable annuity is the joint and survivor annuity option providing level annual payments for the lives of the employee and the designated beneficiary, under which the amount of the periodic payment that would have been payable to the survivor is the applicable percentage under the table in § 1.401(a)(9)–6(b)(2) (taking into account the rules of § 1.401(a)(9)–6(k)(2)) of the amount of the periodic payment that would have been payable to the employee or individual. If there is no designated beneficiary, or if the designated beneficiary is not an eligible designated beneficiary under the impermissible distribution option, then the annuity described in this paragraph (d)(3)(iii)(B) is a life annuity for the life of the employee with no survivor benefit that provides level annual payments.

(C) *Employee dies before benefits commence.* If the plan under which distributions are being made is a defined contribution plan, the employee dies before benefits commence, and there is an eligible designated beneficiary under the impermissible annuity distribution option, then the applicable annuity is a life annuity for the life of the designated beneficiary that provides level annual payments and that would have been a permissible annuity distribution option. If there is no designated beneficiary, then section 401(a)(9)(B)(ii) applies in accordance with paragraph (d)(4)(i) of this section. If the designated beneficiary is not an eligible designated beneficiary, then section 401(a)(9)(B)(ii) applies in accordance with paragraph (d)(4)(ii) of this section.

(4) *Application of section 401(a)(9)(B)(ii)—(i) Application of 5-year rule.* If the 5-year rule in section 401(a)(9)(B)(ii) applies to the distribution to the payee under the contract (or distribution option), then no amount is required to be distributed to satisfy the applicable enumerated section in paragraph (b) of this section until the end of the calendar year that includes the fifth anniversary of the date of the employee's death. For the calendar year that includes the fifth anniversary of the date of the employee's death, the amount required to be distributed to satisfy the applicable enumerated section is the

payee's entire remaining interest in the annuity contract (or under the plan in the case of distributions from a defined benefit plan). However, see § 1.401(a)(9)–6(j) for rules regarding payments that are not permitted under section 436.

(ii) *Application of 10-year rule.* If the employee dies before distribution of the employee's entire interest, section 401(a)(9)(H) applies, and the designated beneficiary of the remaining interest is not an eligible designated beneficiary, then no amount is required to be distributed to satisfy the applicable enumerated section in paragraph (b) of this section until the end of the calendar year that includes the tenth anniversary of the date of the employee's death. For the calendar year that includes the tenth anniversary of the date of the employee's death, the amount required to be distributed to satisfy the applicable enumerated section is the payee's entire remaining interest in the annuity contract.

(5) *Plans providing uniform required beginning date.* Rules similar to the rules of paragraph (c)(4) of this section (relating to plans that have adopted a uniform required beginning date) apply in the case of a defined benefit plan.

(e) *Distribution of remaining benefit after deadline for required distribution.* If there is any remaining benefit with respect to an employee (or IRA owner) after the calendar year in which the entire remaining benefit is required to be distributed, the required minimum distribution for each calendar year subsequent to that calendar year is the entire remaining benefit. Thus, for example, if the designated beneficiary of the employee is not an eligible designated beneficiary, then, pursuant to § 1.401(a)(9)–5(e)(2), the entire interest of the employee must be distributed no later than the end of the calendar year that includes the tenth anniversary of the date of the employee's death, and the required minimum distribution for that calendar year and each subsequent calendar year is the remaining portion of the employee's interest in the plan.

(f) *Excise tax for first distribution calendar year.* If the amount not paid is

an amount required to be paid by April 1 of a calendar year that includes the employee's required beginning date, the missed distribution is a required minimum distribution for the previous calendar year (that is, for the employee's or the individual's first distribution calendar year as determined in accordance with § 1.401(a)(9)–5(a)(2)(ii)). However, the excise tax under section 4974 is calculated with respect to the calendar year that includes the last day by which the amount is required to be distributed (that is, the calendar year that includes the employee's or individual's required beginning date) even though the preceding calendar year is the calendar year for which the amount is required to be distributed. There is also a required minimum distribution for the calendar year that includes the employee's or individual's required beginning date, and that distribution is also required to be made during the calendar year that includes the employee's or individual's required beginning date.

(g) *Waiver of excise tax—(1) General rule.* The tax under paragraph (a) of this section may be waived if the payee establishes to the satisfaction of the Commissioner that—

(i) The failure to distribute the required minimum distribution described in this section was due to reasonable error; and

(ii) Reasonable steps are being taken to remedy the failure.

(2) *Automatic waiver after election to distribute within 10 years of employee's death.* Unless the Commissioner determines otherwise, the tax under paragraph (a) of this section is waived automatically if—

(i) The employee's or individual's death is before the employee's or individual's required beginning date;

(ii) The payee is an individual—

(A) Who is an eligible designated beneficiary (as defined in § 1.401(a)(9)–4(e));

(B) Whose required minimum distribution amount for a calendar year is determined under the life expectancy rule described in § 1.401(a)(9)–3(c)(4); and

(C) Who did not make an affirmative election to have the life expectancy rule apply as described in § 1.401(a)(9)–3(c)(5)(iii);

(iii) The payee fails to satisfy the minimum distribution requirement; and

(iv) The payee elects the 10-year rule described in § 1.401(a)(9)–3(c)(3) by the end of the ninth calendar year following the calendar year of the employee's death.

(3) *Automatic waiver for failure to take required minimum distribution for the year of death.* Unless the Commissioner determines otherwise, the tax under paragraph (a) of this section is waived automatically if—

(i) A distribution is required to be made to an individual under § 1.401(a)(9)–3 or § 1.401(a)(9)–5 in a calendar year;

(ii) The individual who was required to take the distribution described in paragraph (g)(3)(i) of this section died in that calendar year without satisfying that distribution requirement; and

(iii) The beneficiary of the individual described in paragraph (g)(3)(ii) of this section takes a corrective distribution in the amount needed to satisfy that distribution requirement no later than the tax filing deadline (including extensions thereof) for the taxable year of that beneficiary that begins with or within that calendar year (or, if later, the last day of the calendar year following that calendar year).

(h) *Applicability date.* This section applies for taxable years beginning on or after January 1, 2025. For earlier taxable years, the rules of 26 CFR 54.4974–2 (as it appeared in the April 1, 2023, edition of 26 CFR part 54) apply.

§ 54.4974–2 [Removed]

■ **Par. 14.** Section 54.4974–2 is removed.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: May 31, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary of the Treasury
(Tax Policy).

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Federal Register

Vol. 89, No. 139

Friday, July 19, 2024

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FEDERAL REGISTER PAGES AND DATE, JULY

54329-54718.....	1
54719-55016.....	2
55017-55494.....	3
55495-55882.....	5
55883-56188.....	8
56189-56658.....	9
56659-56820.....	10
56821-57046.....	11
57047-57338.....	12
57339-57716.....	15
57717-58038.....	16
58039-58246.....	17
58247-58618.....	18
58619-58954.....	19

CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:

Ch. IV 54372, 55114
602 54369

3 CFR

Proclamations:

10780 54329
10781 55883
10782 57339
10783 57347
10784 58619

Administrative Orders:

Memorandums:

Memorandum of June
7, 2024 57049Memorandum of June
21, 2024 57051Memorandum of June
21, 2024 57053Memorandum of June
28, 2024 55017Memorandum of July
9, 2024 57337

Notices:

Notice of July 10,
2024 57047Notice of July 16,
2024 58613Notice of July 16,
2024 58615Notice of July 16,
2024 58617

Presidential Determinations:

PD 2024-05 of June
24, 2024 57055PD 2024-06 of June
28, 2024 57057

7 CFR

926 57059
929 57059932 57061
966 550211217 58247
1416 54331

Proposed Rules:

930 58636
1000 575801001 57580
1005 575801006 57580
1007 575801030 57580
1032 575801033 57580
1051 575801124 57580
1126 575801131 57580
1210 56234

1222 57368

9 CFR

500 55023

10 CFR

Ch. I 55885
50 57717, 5803952 57717
54 5771772 57064
612 54336

Proposed Rules:

50 57372
51 5472752 57372
72 57095, 58080

100 57372

12 CFR

360 56620
1002 55024

1092 56028

Proposed Rules:

30 55114

13 CFR

120 57353

14 CFR

25 57070, 58253
39 56189, 56191, 56193,56195, 56198, 56203, 56205,
56659, 57073, 57075, 57721,57725, 58058, 58061, 58257,
5826071 54339, 55495, 55497,
56207, 57728, 5826291 55500
93 5682197 54340, 54342, 58621,
58622

121 57729

Proposed Rules:

21 56824
39 54393, 54737, 55120,55123, 55126, 55128, 55525,
56674, 57374, 57377, 57795,58081, 58084, 58086, 58089,
58295

71 54739, 54741, 58299

15 CFR

7 58263

734 58265

744 55033, 55036, 58265

772 58265

791 58263

16 CFR

436 57077

Proposed Rules:

1 56676

1215 58303

17 CFR	58.....58306	Proposed Rules:	Proposed Rules:
Ch. I.....58470, 58505, 58535,	301.....54746	2.....58660	206.....54966
58572		7.....58660	
Proposed Rules:	28 CFR	38 CFR	45 CFR
40.....55528	15.....55511	38.....58067	171.....54662
	20.....54344		Proposed Rules:
18 CFR	29 CFR	39 CFR	98.....57835
Proposed Rules:	1630.....55520	Proposed Rules:	
35.....57690	4044.....54347	3055.....56679	47 CFR
39.....55529			25.....58072
19 CFR	31 CFR	40 CFR	36.....58631
Proposed Rules:	587.....58286	52.....54358, 54362, 55888,	73.....55078, 57775
351.....57286	1010.....55050	55891, 56222, 56231, 56666,	Proposed Rules:
	Proposed Rules:	57361, 57734, 57736, 58291	2.....54402, 55530
20 CFR	802.....58653	60.....55521, 55522	4.....55180
30.....57730	850.....55846	63.....55522, 55684, 57738	8.....55885, 58312
21 CFR	1010.....55428	70.....58628	36.....58692
14.....56662	1020.....55428	170.....57770	54.....55542
180.....55039	1021.....55428	180.....54721, 56669, 57770,	73.....55911, 56250
630.....58274	1022.....55428	57773	
Proposed Rules:	1023.....55428	271.....57364	48 CFR
73.....58304	1024.....55428	Proposed Rules:	502.....55523
22 CFR	1025.....55428	52.....54396, 54748, 54753,	512.....55084
96.....57238	1026.....55428	55136, 55140, 55896, 55901,	527.....55084
	1027.....55428	56237, 56680, 56683, 56693,	532.....55084, 55086
23 CFR	1028.....55428	56825, 56827, 57120, 57819,	536.....55084
661.....57078	1029.....55428	57823, 58097, 58099, 58306,	541.....55084
1300.....57355	1030.....55428	58663	552.....55084, 55086
	32 CFR	55.....57828	Proposed Rules:
24 CFR	Proposed Rules:	62.....58685	22.....58323
Proposed Rules:	238.....57810	70.....58690	52.....58323
203.....57798	33 CFR	180.....54398, 57832	604.....54369
206.....57798	100.....55885, 56207, 56822,	271.....57381	652.....54369
291.....57798	57085, 58624	41 CFR	
883.....58092	117.....54719	102–76.....55071, 57775	49 CFR
25 CFR	165.....54348, 54350, 54351,	42 CFR	23.....55087
Proposed Rules:	54353, 54355, 54356, 54720,	414.....54662, 58071	26.....55087
83.....57097	55058, 55886, 56663, 56665,	425.....54662	Proposed Rules:
1000.....57524	56822, 57088, 57089, 57090,	495.....54662	571.....57381, 57998
	57091, 57357, 57359, 57732,	Proposed Rules:	572.....56251
26 CFR	58064, 58626	410.....55760	
1.....56480, 58275, 58886	Proposed Rules:	413.....55760	50 CFR
31.....56480, 58886	100.....55131, 55133, 56677	424.....55312	17.....55090, 57206
40.....55507	117.....57379	425.....55168	229.....55523
47.....55507	165.....58095	483.....55312	300.....54724
54.....58886	34 CFR	484.....55312	635.....58074
58.....55044	Ch. III.....56211, 56217	494.....55760	648.....57793, 57794, 58076
301.....56480	Ch. VI.....58287	512.....55760	660.....57093
Proposed Rules:	36 CFR	43 CFR	679.....58632
1.....57111, 58305, 58306,	13.....55059	3830.....54364	Proposed Rules:
58644	37 CFR	44 CFR	17.....54758, 56253, 57838
31.....54742	210.....56586, 57093	9.....56929	217.....55180
			223.....56847
			300.....58698

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.
Last List July 16, 2024

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